Los Angeles County
Metropolitan Transportation
Authority
One Gateway Plaza
3rd Floor Board Room
Los Angeles, CA

Metro

Board Report

File #:2016-0916, **File Type:**Contract

Agenda Number:48.

REGULAR BOARD MEETING
DECEMBER 1, 2016

SUBJECT: I-405 SEPULVEDA PASS IMPROVEMENTS PROJECT

ACTION: AUTHORIZATION FOR FINAL LIFE-OF-PROJECT INCREASE

RECOMMENDATION

CONSIDER:

A. APPROVING a **Life-of-Project (LOP) budget increase by $297.8M, from $1,308.4M to $1,606.2M for Project 405523, I-405 Sepulveda Pass Widening Project** (Project); and

B. AMENDING the Fiscal Year 2017 budget from $23.3M to $321.1M, an increase of $297.8M for Project 405523; and

C. APPROVING an extension of Stantec Consulting, Inc. (Stantec) Contract Work Order 2 (CWO 2) under Contract MC069 period of performance from December 31, 2016 to December 31, 2017 to complete close-out activities on the Project. This is a schedule extension only and has no impact on the budget.

ISSUE

In order to achieve final close-out of the Project, Metro staff is requesting an increase in the LOP by $297.8M in accordance with the Board-approved Contract Modification.

DISCUSSION

On April 23, 2009, the Board awarded Contract C0822 for the design and construction of the I-405 Sepulveda Pass Widening Project to Kiewit Infrastructure West, Co. (“Kiewit”) and established an original LOP budget of $1,034M for the Project. Substantial Completion and Punchlist Completion occurred on September 18, 2015 and December 14, 2015, respectively.

During the course of the Project, numerous disputes arose between Metro and Kiewit. On May 15, 2015, Metro and Kiewit signed an Alternative Dispute Resolution Contract Modification (“Arbitration Agreement”), which amended the Contract to provide for binding arbitration as the means to resolve the disputes between the parties. The Arbitration Agreement divided the disputes into two categories:

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Hearing 1, which consisted of Kiewit's claims for direct costs; and Hearing 2, which consisted of Kiewit's claims based on delay and disruption. The Hearing 2 disputes are also collectively referred to as "Claim 86."

To facilitate and expedite contract close-out and upon staff's recommendations, on October 22, 2015, the Board approved a Contract Modification and an interim LOP increase of $103M to settle and close-out the Hearing 1 disputes. At that time, staff informed the Board that the subject Contract Modification would not resolve any Hearing 2 disputes (Claim 86) and those disputes would continue to proceed through the arbitration process.

As the Hearing 2 arbitration process progressed, Metro and Kiewit decided to investigate and pursue further dispute resolution alternatives to reduce the significant legal, consultant, and staff costs associated with the arbitration. The parties agreed to stay the arbitration and retain the services of a mutually agreed upon independent and neutral evaluator. Metro and Kiewit used the Evaluator's written non-binding recommendation as a guideline in conducting and concluding a global settlement of the Claim 86 delay and disruption disputes in the amount $297.8M. On November 17, 2016, the Board approved this settlement which will be implemented through a Contract Modification.

Also, Metro is currently in the process of closing out the Project, together with addressing warranty items and requires limited administrative support from Stantec staff who are knowledgeable in the project history and records. Therefore, Metro staff are seeking approval to extend the period of performance of Contract Work Authorization (CWO) 2 for Construction Management Support Services under Contract No. MC069 with Stantec from December 31, 2016 to December 31, 2017. There is no cost/budget increase for this request, as there is existing authority available in the Board approved CWO 2 value to extend the period of performance through December 31, 2017.

There are a number of lessons learned from this Project, which have been or are being implemented on other Metro projects. Many of these were identified in the Office of Inspector General's Construction Management Best Practices report.

Some of the significant lessons learned are:

- Assuring that adequate due diligence is performed prior to the selection of a project delivery method and launch of a major construction project.
- Perform detailed underground utilities investigations and obtain utility cooperative agreements and rights prior to the award of a contract.
- Evaluate optimal organizational structures for Metro to manage a design-build contract on a Caltrans highway.
- Attempt to resolve contractual issues during the project to avoid claims, legal and expert costs,

and interest.

- Avoid major scope changes.
- Assure adequate documentation and record-keeping of project activities.

DETERMINATION OF SAFETY IMPACT

This Board action will not have an impact on established safety standards for Metro's Construction projects.

FINANCIAL IMPACT

Funding for the $297.8M action was not included in the FY17 budget for Project 405523. Should Recommendation 1 and 2 be approved, the FY17 budget and LOP budget will be increased by $297.8M in order to execute the payment to close-out Claim 86. Residual project close-out activities will be required associated with the approval of Recommendation 3. Should all recommendations be approved, the LOP and Fiscal Year 2017 increase will be added to Project number 405523 under cost center 8510. The Chief Program Management Officer and Project Manager will be responsible for future fiscal year project budgeting.

Impact to Budget
The funding source for the payment is Proposition C 25% funds, that will be provided via the sale of Proposition C bonds per approval of a Board report scheduled for consideration at the Finance, Budget and Audit Committee meeting on November 16, 2016, and at the December 1, 2016, Board meeting. The Proposition C 25% funds are not eligible for bus and rail operations.

ALTERNATIVES CONSIDERED

The Board may reject the LOP increase; however, that will delay Final Acceptance and contract close -out with Kiewit.

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