



File #: 2016-0971, Version: 1

**REVISED**  
**CONSTRUCTION COMMITTEE**  
**JANUARY 19, 2017**

**SUBJECT: WESTSIDE PURPLE LINE EXTENSION SECTION 2 PROJECT**

**ACTION: AWARD DESIGN/BUILD CONTRACT AND ESTABLISH LIFE-OF- PROJECT BUDGET**

### **RECOMMENDATION**

CONSIDER:

- A. ESTABLISHING a Life-of-Project Budget (LOP) Budget of \$2,440,969,299 for the **Westside Purple Line Extension Section 2 Project**;
- B. AUTHORIZING the Chief Executive Officer (CEO) to award a 102-month fixed price contract under Request for Proposal (RFP) No. C1120 to Tutor Perini/O & G, a Joint Venture (TPOG), the responsive and responsible Proposer determined to provide Metro with the best value for the final design and construction of the Westside Purple Line Extension Section 2 Project (Project) for a firm fixed price of \$1,376,500,000.00, subject to resolution of protest(s), if any; and
- C. AUTHORIZING the CEO, as part of a one-year pilot, to negotiate and execute project related agreements, including contract modification(s), up to the authorized Life-of-Project Budget for Sections 1 and 2 of the Westside Purple Line Extension Project, to streamline project management of the Project subject to monthly reporting requirements, that would include any pending project-related agreements, change orders/contract modifications and any significant changes to contract contingency to the Board of Directors. This action would allow the board to see in advance all project-related agreements and change orders.

### **ISSUE**

In June 2016, a Full Funding Grant Agreement (FFGA) budget of \$2,410,544,879 (minus finance charges) was established by the Board for the Westside Purple Line Extension Section 2 Project. Within that Board approval action, it was noted that a LOP Budget would be established concurrent with the staff recommended contract award. This approach is consistent with the recommendations in the Office of the Inspector General (OIG) Construction Management Best Practices Study Report and lessons learned regarding establishing final budgets, when adequate information (such as the selected price) is available.

In August 2016, the United States District Court for the Central District of California ruled that the Federal Transit Administration (FTA) must produce a Supplemental Environmental Impact Statement (SEIS) for portions of the Project. In its ruling, the Court declined to vacate the Record of Decision (ROD) for the Westside Purple Line Extension, allowing Metro and FTA to sign an FFGA for the Project. With the signed FFGA in hand, awarding the Design/Build contract at this time allows for preconstruction activities such as final design and utility relocations to occur while staff completes the SEIS, preventing a delay to the Project's schedule.

This report provides a recommendation for award of the contract within the FTA approved Full Funding Grant Agreement (FFGA). TPOG offers the best value to Metro given that the weighted technical results were comparable to the other proposers and the team's firm fixed price proposal is \$452 million less than the second ranked firm. In conjunction with this procurement, the CEO has identified the need to streamline the contract administration process for the Westside Purple Line Extension Section 2 Project and is requesting the authority as part of a one -year pilot, to negotiate and execute any remaining agreements such as professional services agreements, City or utility work orders, and contract modifications within the LOP budget, subject to monthly reporting to the Board, that would include any pending project-related agreements, change orders/contract modifications and any significant changes to contract contingency. This action would allow the Board to see in advance all project-related agreements and change orders but would allow the staff the flexibility, responsibility and authority to manage this large, fast moving project consistent with the need for rapid decision-making and Project Schedule.

The Metro leadership of the core Westside Purple Line team has a proven track record over a thirty year span, with successful project delivery on the Red line, Gold line and more recently on the successful startup of the Westside Purple Line Segment 1 Design build contract. The Project Manager for Segment 2 has over 20 years of experience in the design and construction of underground structures. His experience includes lead technical and management roles on complex underground construction projects for transit, highway and other heavy civil projects. In addition to the Metro leadership and core project management and support team, the project team will be supplemented in the integrated project management office by key staff from two nationally and internationally recognized consultants/Joint ventures providing engineering and construction management expertise. Additionally, Metro is in the process of procuring additional private sector program management expertise to supplement the Metro team at a strategic level.

As part of the approval process of the FFGA and the TIFIA loan, staff was required to produce a Westside Purple Line Extension Section 2 Project Management Plan (PMP) and sub plans that would ensure that Metro has the capacity and capability to manage and oversee the Project safely, on-time and within budget. As part of the Metro mid-year budget process, to strengthen the existing project management and support team, staff will be including the need for an additional 22 full time Metro staff. These staff will support engineering and construction management, project controls, safety, quality, environmental compliance, third party coordination, community relations, real estate, vendor/contract management and project labor agreement administration. Furthermore, additional staff may be requested as part of the FY 18 budget and future budget processes, in accordance with the PMP and the needs of the project.

## **BACKGROUND**

The Westside Purple Line Extension Section 2 Project consists of twin-bored tunnels and two underground stations located at Wilshire/Rodeo (City of Beverly Hills) and Century City Constellation (City of Los Angeles). Advanced utility relocation work has begun under pre-award authority that was granted by the Federal Transit Administration in December 2014. The major construction work will be performed under Contract No. C1120 which includes the design and construction of tunnels, stations, systems, and trackwork.

The recommended action to approve the LOP Budget is consistent with the approval action taken by the Board in June 2016 and the recent FTA approval of the Westside Purple Line Extension Section 2 Project FFGA and the Transportation Infrastructure Finance and Innovation Act (TIFIA) Loan from the United States Department of Transportation. The LOP Budget also includes \$30,424,420 of concurrent non-FFGA project activities. These concurrent activities include the planning/environmental phase of the Project, real estate loss of business goodwill, additional insurance coverage for Measure R Projects, certain community relations expenses, and public artwork. As of October 1, 2015, the Fixing America's Surface Transportation (FAST) Act prohibits federal transit funding for art elements of a transit project. The full funding plan is outlined in Attachment C.

On January 22, 2015, the Board authorized staff to use a design/build contracting delivery approach to complete the final design and construction of the Westside Purple Line Extension Section 2 Project and to solicit a contract for the 2.59 mile dual track heavy rail extension and two new underground stations. The Board authorized the procurement under Public Contract Code Section 20209.5 et seq., which allows for the negotiation and award of a design/build contract to a responsible proposer whose proposal is determined to be the best value to Metro.

A Request for Qualifications (RFQ)/Request for Proposals (RFP) two-step negotiated procurement was implemented for this design/build delivery approach. An open procurement was advertised on September 14, 2015, which culminated with three firms meeting the RFQ requirements and subsequently invited to submit proposals in response to the second phase of the solicitation, the RFP. Additional details for the procurement process, including the evaluation results, are in Attachment A.

## **DISCUSSION**

The recommended action to award the contract to the most advantageous proposer, TPOG, is based on a "Best Value" selection process. In accordance with Public Contract Code (PCC) 20209.5 - 20209.14, and its succeeding legislation, California Public Contract Code (PCC) § 22160-22169 (effective January 2015), the RFP defined Best Value as a value determined by objective criteria and may include, but is not limited to price, features, functions, life-cycle costs, and other criteria deemed appropriate by Metro; and the Best Value Proposal as the most advantageous Proposal to Metro when evaluated in accordance with the Evaluation Criteria defined in the RFP.

The Source Selection Plan and Request for Proposal (RFP) established the weighted value assigned

to the major evaluation criteria:

- |   |                    |
|---|--------------------|
| • Project Management                            | 45%                |
| • Technical Approach                            | 20%                |
| • Price   | <u>35%</u>         |
| ▪ Subtotal                                      | 100%               |
| • A Prompt Payment to Subcontractors Initiative | 5% (bonus scoring) |
| ▪ Total   | 105%               |

After a thorough and extensive competitive procurement process, Staff recommends TPOG as the contracting team for the final design and construction of the Westside Purple Line Extension Section 2 project.

#### Request for Best And Final Offer (BAFO)

The FTA Best Practices Manual points out that “BAFOs are revised proposals that extinguish the prior proposals”. The BAFOs may increase or decrease their original amount and make any other changes to the proposal unless specifically prohibited by the request for BAFO. Once a Proposer has submitted its BAFO, Metro does not have the luxury of picking between the original and subsequent proposals. New BAFO proposals are the only proposals that may then be considered and could require another round of evaluations and discussions if in the best interest of the Agency.

Unlike the mega project design-build procurements for Crenshaw/LAX, Regional Connector, and Westside Purple Line Extension Section 1, after discussions with Proposers were completed, there was no indication that a BAFO would result in lower pricing or other benefits for the Agency nor was it necessary to accommodate changes to the Scope of Work. There was reason to believe that prices might in fact increase given details that arose during Proposers’ respective discussions on issues within their proposals. The conclusion about the inefficacy of a BAFO was later supported by increased pricing submitted by two proposers, whereas the lowest price Proposer did not increase their price.

BAFOs may be sought at the discretion of the Contracting Officer after discussions/ negotiations have been completed with proposers in the competitive range. BAFOs are requested when it is determined necessary because (1) the nature of those discussions/negotiations has a significant or material impact on the proposals submitted; (2) the discussions/negotiations have resulted in a material change to the Scope of Work or other specifications; or (3) the Contracting Officer has determined additional requirements are necessary. None of the above requisites existed for this solicitation to necessitate a request for BAFOs.

#### Supporting Effective Project Management

The Westside Purple Line Section 2, like many Metro projects, is a fast-moving, challenging and uniquely complex design-build project. Quick decision-making is required to take advantage of cost

and scheduling opportunities and to keep the Project moving. A slow change order process is not consistent with the needs of a large, design/build project. There are limited project management resources, so the more time that project managers work on process-related activities, the less time they have solving problems. No process or too much process likely results in confusion, inefficiencies, and in some cases, conflicts. Part of the current process is the requirement to receive Board of Directors approval for changes above a specified threshold.

On a large mega-project, the thresholds requiring approval are easily exceeded. The need to bring a contract modification to the Board for approval can add two months to the schedule when contractors could have started the work immediately. This time can be critical to project schedules and risks exposure to extended overhead payments due the contractor, should the project be delayed.

As mentioned in the most recent Los Angeles Construction Market Analysis Update received by the Board in September 2015, contractors have indicated that delays in processing changes to be a significant risk when working on Metro projects. As a result they have had to include contingencies in their proposals to address this risk. This delay also puts DBEs subs at risk of not receiving timely payment for work performed.

The cost to the Crenshaw and Regional Connector projects for schedule delays ranges from \$3.3 to \$5 million per month for a total of \$6.6 million to \$10 million for a 2 month delay. Much of this delay could have been avoided if Board approval was not required prior to implementing a change.

Therefore, staff is proposing CEO authority to execute project related agreements, including change orders up to the LOP Budget. Any change that results in a LOP Budget increase would still require Board approval, which is the most critical aspect of managing projects. This approach is consistent with other transit agencies including San Jose, Seattle, and Denver.

In addition, staff would continue to report on the project budget, project labor agreement and small business/disadvantaged business compliance as part of the monthly updates to the Construction Committee and the detailed monthly reports that are issued to all stakeholders including the Board.

The benefits of this action are:

- Provides staff with the flexibility, responsibility and authority to manage this large, fast moving project consistent with the need for rapid decision-making and project schedule
- Still requires approval for any action requiring a LOP Budget increase
- Keeps the big picture focus on overall project budget management as opposed to detailed change orders
- Consistent with industry best practices for time sensitive, effective project management

In addition, Metro has or is in the process of implementing a number of construction best practices that would improve our ability to deliver projects on time and within budget. Examples include:

- Regular monthly reviews of the project status, together with a formal Annual Program Evaluation to continually assess project status for Board reporting.

- Implement a robust risk assessment process commencing early in the project development process and periodically through the project life to allow staff to identify risks/issues to facilitate early mitigation.
- Implement improved partnering processes at all levels from Chief Executive Officer on down to improve communication and facilitate timely resolution. Focus would be on avoiding or resolving disputes.
- Initiate a process to control potentially disruptive betterments, third party or Metro generated changes.
- To continuously provide adequate staff to manage the project, consistent with the approved Project Management Plans.

### **DETERMINATION OF SAFETY IMPACT**

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

### **FINANCIAL IMPACT**

Funds required in fiscal year 2017 for this board action are included in Project 865522 Westside Purple Line Extension Section 2 Project, in Cost Center 8510 (Construction Project Management), and Account Number 53101 (Acquisition Building and Structure).

Since this is a multi-year Project, the Chief Program Management Officer and the Project Manager will be responsible for budgeting costs in future years.

#### **Impact to Budget**

The sources of funds for the Project are capital funds identified in the recommended Funding/Expenditure Plan as shown in Attachment C. The recommended LOP Budget was assumed in the Long Range Transportation Plan for the Westside Purple Line Extension Section 2 Project and does not have an impact to operations funding sources. With respect to the \$30,424,420 of Concurrent Non-FFGA Project Activities, Attachment D shows the Measure R Cost Management Process and Policy analysis required for cost increases to Measure R projects. To comply with the Policy of the Metro Board of Directors, additional Measure R funds required for this Project will be from the projected remaining Measure R 35% Transit funds committed to the Westside Purple Line Extension Section 1, 2, and 3 collectively.

This Project is not eligible for Propositions A and C funding due to the proposed tunneling element of the Project.

### **ALTERNATIVES CONSIDERED**

The Board may choose to not move forward with the contract award and adopting a LOP Budget. This is not recommended as this is an adopted project within the Long Range Transportation Plan, and not moving forward with the recommendations will delay the schedule, increase the cost of the

Project, and jeopardize \$1.5 billion in grants and loans from the US Department of Transportation, as well as jeopardize completion of the Westside Purple Line Extension by 2024.

The Board may also choose to not move forward with authorizing the CEO to negotiate and execute project related agreements, including contract modifications, up to the authorized Life-of-Project Budget. This is not recommended because of the risks associated with potential schedule delays related to the approval process for project related agreements.

## **NEXT STEPS**

Upon approval by the Board, Metro will issue a Notice-of-Award, execute a contract with the recommended Design/Build Contractor and once bonds, insurance, and project labor agreement requirements are met; issue a Contract Notice-to-Proceed.

Based on the Court's ruling, the SEIS will be a limited scope document, providing additional detail and assessment of the Project. A Draft SEIS will be released for public comments in writing and at a public hearing in early 2017. Metro staff anticipates the Final SEIS will be published in late summer 2017, prior to the start of major construction, which is scheduled to begin after January 2018.

## **ATTACHMENTS**

Attachment A - Procurement Summary

Attachment B - DEOD Summary

Attachment C - Funding/Expenditure Plan

Attachment D - Measure R Cost Management Process and Policy Analysis

Prepared by:

Michael McKenna, Deputy Executive Officer, Project Management (213) 312-3132

Rick Wilson, Deputy Executive Officer, Program Control (213) 312-3108

Kenneth Stewart, Director, Contract Administration (213) 922-7687


Reviewed by:

Richard Clarke, Chief Program Management Officer, (213) 922-7557

Debra Avila, Chief Vendor/Contract Management Officer, (213) 418-3051

Stephanie Wiggins, Deputy Chief Executive Officer, (213) 922-1023

Phillip A. Washington, Chief Executive Officer, (213) 922-7555



---

Phillip A. Washington  
Chief Executive Officer