

**Board Report**

File #: 2019-0195, **File Type:** Contract**Agenda Number:** 31.

**CONSTRUCTION COMMITTEE
MAY 16, 2019****SUBJECT: PATSAOURAS BUS PLAZA STATION PROJECT****ACTION: APPROVE LIFE-OF-PROJECT BUDGET INCREASE****RECOMMENDATION**

INCREASE the Life of Project Budget for Patsaouras Bus Plaza Station Project (CP Number 202317) by \$11,120,000, increasing the Life of Project Budget from \$39,793,000 to \$50,913,000.

ISSUE

The Patsaouras Bus Plaza Station Project (PBPS) Life of Project (LOP) budget requires an increase of \$11,120,000 in order to pay for project staff and consultants during a 384 calendar day construction suspension due to archaeological and Native American issues and compensate the construction contractor for a negotiated settlement regarding such delays and completion of project construction.

BACKGROUND

The PBPS project is among the most complex design, construction and construction management activities undertaken by Metro. It is being built in a small, congested area with ongoing street, freeway and transit operations. This was exacerbated by the fact that PBPS scope, schedule, cost and quality were strongly influenced by historical and archeological discoveries to the extent not experienced in recent memory on a Metro project. Monthly reporting to the Board indicated the potential for impact to the LOP budget and project schedule, which are now being submitted to the Board for approval.

DISCUSSION

As with the design project environment, construction uncertainty and complexity shaped the PBPS project environment leading to significant time and cost overruns due to discovering thirty-seven (37) archaeological features, including numerous human and Native American remains, within the project site (see Attachment A). Some important discoveries are not only within the confines of the PBPS project site but also part of an extension of a significant adjacent archaeological site at Metropolitan

Water District and Union Station (CA-LAN-1575/H). Examples of PBPS discoveries include:

- Masonry foundation that might have been associated with the Aliso Mill, (1830s to 1850s)
- Historic period ground surface exposed, likely from the Spanish-Mexican period (predating the 1850s)
- A segment of one of the Los Angeles Zanja branches from the Spanish-Mexican Period, late 1700s or early 1800s
- Foundations of the Los Angeles Cracker Company, late 19th century
- Foundation of the University Medical College and associated artifacts from the 1880s and 1890s
- Two locations of Human Remains (one location of Native American remains; one location of historic period non-Native American remains associated with University Medical College)

This resulted in a work stoppage of construction at 60% completion status on April 24, 2018, triggered by the various federal, State and Native American consulting party's interests, priorities and objectives responsible for the investigation, evaluation and treatment of these discoveries. Consulting Parties concerns leading to the suspension of construction work included:

- Proximity of construction to discoveries of human remains
- Construction moving ahead without an evaluation/treatment plan
- Manner in which the consultation and notification process was being carried out, including inconsistencies in the notification process
- Considering discoveries as individual resources rather than considering features holistically as part of site CA-LAN-1575/H

This constructive suspension of work by the various stakeholders was simply to investigate, evaluate and protect the discovered archaeological resources and human remains; however, the PBPS project did not have the space for construction to work around. Additionally, there were limited contingency resources to support the consulting parties order to stop work, and contractual time constraints resulting in a Letter of Suspension on August 2, 2018 to the contractor directing suspension of work in accordance with the C0970 Contract, General Condition 39 - Suspension, as was previously communicated to the Board on August 6, 2018 (see Attachment B). This directive subjected Metro to schedule delays, cost overruns, rework and disputes. Therefore, the PBPS project team engaged in proactive conflict management to minimize the negative schedule and budget effects on the project.

The differing site/changed conditions resulting in Metro's action to suspend construction work was the

sole proximate cause of the delay, which at that time was uncertain, but assumed construction would resume January 7, 2019. This delay extended the contract period of performance by a minimum of 258 calendar days and Metro requested that certain contractor staff remain during the suspension period to complete construction related submittals, entitling the contractor to an adjustment to increase the contract time and price.

Per the contract, suspending construction work results in an excusable, compensable delay and entitles the contractor to field and home office overhead costs, not including profit. During settlement negotiations, the contractor provided sufficient evidence to Metro's Vendor Contract Management satisfaction per the contract:

- contractor and subcontractor wage rates
- construction escalation incurred
- global construction contractor and subcontractor impacts and inefficiencies
- construction field, as well as extended home office (as a percentage of costs), overhead directly related to the suspension in the amount of \$9,314 per day

At the time Metro suspended contract work, there were outstanding contractual conflicts, including a preconstruction delay request and thirty-eight (38) construction changes and claims (see Attachments C and D). The PBPS project team initiated a global settlement negotiation and partnered with the contractor to solve all open conflicts rather than at Substantial Completion, focusing on project success for solutions to reach the following negotiated settlement, as shown below.

Metro/Contractor Negotiated Settlement Summary

Contractor's Position - \$7,486,406

Settled - \$5,375,000

Difference - <\$2,111,407>

As a result of the extensive settlement negotiations, Metro and the contractor reached a tentative global settlement agreement in the amount of \$5,375,000, subject to Board approval. Also, it is important to note that Metro maintained a good working relationship with the contractor and the contractor's cooperative position to reach a negotiated settlement that was 28% less than their original request.

Concurrently, the PBPS project team worked with the Federal Transit Administration to complete the investigation, evaluation and treatment of the discovered cultural resource features and human remains. Additional investigation of Feature 27 in early March 2019 resulted in discovering a new

Feature (36), a segment of two parallel stone masonry walls of the Zanja Madre. Although the consulting parties agreed to an expedited process, the investigation, evaluation and treatment extended one-hundred and twenty-six (126) calendar days beyond the original schedule moving construction resumption from early January 2019 to the anticipated date of May 13, 2019.

PBPS Section 106 Process Timeline

April 24, 2018	Order to Stop Construction Work
June 5, 2018	Programmatic Agreement Initiated
November 7, 2018	Programmatic Agreement Approved
November 12, 2018	Archaeological Testing and Treatment Begin
April 12, 2019	Archaeological Testing and Treatment End
May 10, 2019	Forecasted Consulting Parties Concurrence
May 13, 2019	Forecasted Construction Suspension Lifted

Accordingly, this request also includes a project cost/LOP budget increase in the amount of \$5,745,000 to support the completion of the project:

- \$3,875,000 for Metro overhead charges, construction and professional services costs on the project by an additional 729 calendar days (384 calendar days during the suspension and 345 calendar days to complete construction)
- \$870,000 for potential contractor's Request for Change on the additional 87 calendar days delay related to archaeological Features 27 and 36 beyond the negotiated settlement agreement presumed construction resumption date of February 15th, yet to be negotiated
- \$1,000,000 for construction project contingency based on remaining construction expense cost (10%)

The suspension of construction clearly shifted the burden and Metro's position regarding the compensable delay in the settlement negotiation. The PBPS project team worked with the contractor to not only reach a better understanding of their concerns, but their interests in settling to enable Metro to develop mutually beneficial solutions. Based on objective criteria, staff reached a settlement negotiation that was clearly better off than Metro's best alternative to a negotiated agreement. During the extensive negotiation effort, the PBPS project team worked to improve Metro's outcome throughout the settlement negotiations.

Lessons Learned

During construction, the PBPS project team implemented Lessons Learned from past projects, including the following:

- Encouraging the contractor to file change notices and schedule delays to identify potential claims and disputes as early as possible and then focus on an issues resolution in a timely manner.
- Engaging on timely delay notices and acted aggressively to resolve any time extension and delay damages as soon as they occurred.

The PBPS project team also identified the following new Lessons Learned from the PBPS project:

- Establishing and prioritizing an adequate risk factor and probability of occurrence in the Risk Management Plan/Risk Register for subsurface conditions, including cultural resources and human remains.
- Performing detailed cultural resource investigations and entering into a Programmatic Agreement with the appropriate consulting parties prior to construction.
- Obtaining a Cooperative Agreement with Caltrans developed specifically for the Design/Build project delivery method in Caltrans right-of-way prior to the award of a contract.
- Applying the appropriate delivery method for each project by evaluating permitting and regulatory status, land site control, owner priorities, Geotechnical and subsurface analysis, degree of risk and potential for changes.
- Developing an index of issues from Change Orders on previous Metro projects and reviewing during new capital project's design and engineering phases to reduce the need for rework during their construction.
- Evaluating risk transfer in Metro Design/Build bid specifications relative to "Project Definition Documents" and assigning risk to the party best able to control and manage the risk.
- Using independent bidding constructability, operability and claims prevention reviews before issuing bidding documents.
- Reviewing contract document's terms, specifications and conditions for each project and ensuring the proper administration of the contract's terms, specifications and conditions.
- Revising Metro's Contract General Conditions to require a contractor to not only prove any delay to the critical path and extended duration was not their responsibility but that there was

also no concurrent delay during the same period.

These Lessons Learned are not an exhaustive list of factors nor “silver bullets” guaranteeing a project’s success; however, staff believes that when properly implemented by a project team, they will reduce a project’s risk exposure and increase the potential for a project’s success.

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 this project is currently in Cost Center 8510 (Construction Contracts/Procurement), Project 202317 - Patsaouras Plaza Busway Station. If the recommendation is approved, the LOP budget for this project would increase from \$39,793,000 to \$50,913,000. Approximately \$2,600,000 remains of the \$6,500,000 FY19 annual budget in Cost Center 8510. If the settlement is executed in FY19, the annual budget will have to be increased by \$2,780,000 to fund the \$5,375,000 settlement payment and pay for construction work performed through the end of June 2019. Since the construction contract and professional services contracts needed to support the PBPS project are multi-year contracts, the Project Manager and the Chief Program Management Officer will be responsible for budgeting in future fiscal years.

Impact to Budget

Construction will resume in May 2019 and the project should complete in May 2020. As a result, funding will be expended in fiscal years FY19 and FY20, and close-out will be in FY21. Project 202317 has been funded with five funding sources: a Bus Livability Section 5309 grant, Federal Section 5307 (CRD) funds, Prop C 40%, Prop C 25% Highway, and an escrow account for the Ramirez Flyover. Four of the five sources have been spent (see Attachment E), Prop C 25% will be used to fund the additional costs.

IMPLEMENTATION OF STRATEGIC PLAN GOALS

By supporting the recommendation to increase the LOP budget of the PBPS Project, the Board is supporting Metro’s Strategic Plan Goal 2, “*Deliver outstanding trip experiences for all users of the transportation system.*” The PBPS Project is in line with Goal 2 by improving the transit user experience. The primary objectives of the PBPS Project were to:

- improve safety and security - such that the transit journey on the existing Express Lanes feels safe and secure for all riders
- improve efficiency - by providing a more direct path between the Express Lanes and Union

Station

- improve accessibility - as PBPS Project has an unobstructed path and boarding area for customers of all abilities and the variety of ways in which they travel

ALTERNATIVES CONSIDERED

The Board has the option to reject the LOP increase, which will result in leaving insufficient funds to complete the project. Staff does not recommend this option as it would dismiss the extensive collaborative, negotiated settlement process with the contractor conducted in good faith and definitely evolve the conflict into a legal dispute requiring third-party intervention and resolution. More importantly, rejection of this request will further delay PBPS project's Substantial Completion.

NEXT STEPS

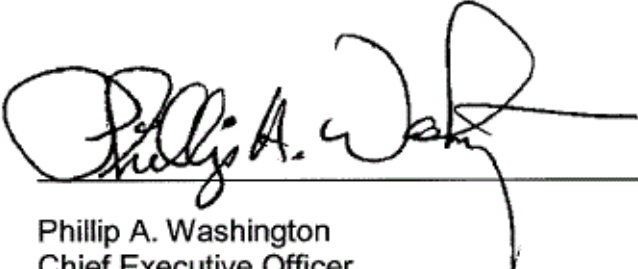
In accordance with the negotiated settlement, Metro will issue a Notice-to-Proceed letter directing the contractor to resume construction and complete Substantial Completion in 345 calendar days with the remaining April 2019 Progress Billing expense balance. Barring the unforeseen, the forecast values for the completion of construction work appear to be achievable with the LOP budget increase presented.

ATTACHMENTS

- Attachment A - PBPS Archaeological Feature Locations Map
- Attachment B - August 2018 Board Box regarding *PBPS Archaeological and Native American Issues*
- Attachment C - Procurement Summary
- Attachment D - Contract Modification/Change Order Log
- Attachment E - LOP Budget and Funding Plan

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