

**SOUND TRANSIT
STAFF REPORT**

MOTION NO. M2007-70

Settlement Agreement

Meeting:	Date:	Type of Action:	Staff Contact:	Phone:
Finance Committee	7/5/07	Discussion/Possible Action to Recommend Board	Ahmad Fazel, Link Executive Director	(206) 398-5389
Board	7/12/07	Confirmation of Settlement Acknowledgement and Confirmation of Settlement	Joe Gildner, Deputy Executive Director Gordon Wellwood Link Construction Manager	(206) 689-3350 (206) 370-5512

Contract/Agreement Type:	<input checked="" type="checkbox"/>	Requested Action:	<input checked="" type="checkbox"/>
Competitive Procurement	<input checked="" type="checkbox"/>	Execute New Contract/Agreement	
Sole Source		Amend Existing Contract/Agreement	
Agreement with Other Jurisdiction(s)		Budget Amendment	
Real Estate		Property Acquisition	

PROJECT NAME

Central Link Initial Segment

PROPOSED ACTION

Board briefing and acknowledgement of the chief executive officer's settlement of construction claims with Kiewit Pacific Company for the Royal Brougham to Airport Way Contract (C700) and the Operations and Maintenance Facility Contract (C810) in the amount of \$16 million.

KEY FEATURES of PROPOSED ACTION

- Brief the board on the settlement of construction claims submitted by Kiewit Pacific Company for the Royal Brougham to Airport Way Contract (C700) and the Operations and Maintenance Facility Contract (C810).
- Kiewit submitted construction claims in excess of \$45 million on the two projects, which included \$10.4 million of subcontractor claims. Kiewit and the subcontractors alleged delays and impacts related to design defects, steel shortages, maladministration, provisional sum changes, extra work, and unresolved change issues.
- Sound Transit disputed the claims on both projects. The chief executive officer settled the claims at mediation for \$16 million which is within budget for this project.

BUDGET IMPACT SUMMARY

Current Project Phase: Construction
Projected Completion Date: 2009

Action Outside of Adopted Budget:	✓	Comments on Checked Items
This Project		
This Phase		
This Task		Proposed action requires funding from unallocated contingency within the construction phase
Budget Amendment Required		

Key Financial Indicators:	✓	Comments on Checked Items
Contingency Funds Required		
Funding required from other parties (other than what is in financial plan)		

Not checked = action is assumed in current Board-adopted budget. No budget action or adjustment to financial plan required.

BUDGET and FINANCIAL PLAN DISCUSSION

The Adopted 2007 Budget for the Central Link Initial Segment is \$2.07 billion. Within that amount, \$48,802,000 has been set aside in the construction phase for Construction Segment C700 E-3 Busway (Royal Brougham to Airport Way) and \$65,053,800 for Construction Segment C810 Operations and Maintenance Base Facilities, for a combined total amount of \$113,855,800 for the two budget line items. When added to current commitments, the proposed action would increase the commitments for Construction Segments C700 and C810 to \$123,819,652, and result in a combined budget shortfall for these two budget line items of \$9,963,852, which would be funded from unallocated contingency within the construction phase.

The unallocated contingency within the construction phase of the Initial Segment has a current remaining balance of \$19,146,289. Payment of the settlement will reduce this amount by \$9,963,852, and result in a remaining balance of \$9,182,437 for construction phase unallocated contingency.

The settlement is consistent with the current adopted budget, and is affordable within the agency's long-term financial plan and subarea financial capacity. The action will have no new revenue impact on Sound Transit.

BUDGET TABLE

Action Item: Kiewit Pacific Company (global settlement for the Royal Brougham to Airport Way (C700 E-3 Busway) and Operations and Maintenance Facility (C810) construction contracts within the Central Link Initial Segment)

(Year of Expenditure \$000)

Initial Segment	Adopted 2007 Budget (A)	Committed To Date (B)	This Action (C)	Total Committed & Action (D)	Uncommitted (Shortfall) (E)
1 Agency Administration	214,780	135,123		135,123	79,657
2 Preliminary Engineering	33,357	33,310		33,310	46
3 Final Design	147,167	146,496		146,496	671
4 Right of Way	217,516	202,693		202,693	14,823
5 Construction	1,174,572	1,105,640	16,000	1,121,640	52,933
6 Construction Services	90,037	92,447		92,447	(2,410)
7 Third Party Agreements	60,264	59,566		59,566	698
8 Vehicles	132,307	131,799		131,799	508
9 Total Current Budget	2,070,000	1,907,074	16,000	1,923,074	146,926

(B) COMMITTED TO DATE amounts are from Agency WBS Report as of May 2007 + approved and pending board actions not recorded as of 5/31/07, or submitted after that date.

Construction Services Phase Detail	Adopted 2007 Budget (F)	Committed To Date (G)	This Action (H)	Total Committed & Action (I)	Uncommitted (Shortfall) (J)
10 Construction Segments C700/C810	113,856	107,820	16,000	123,820	(9,964)
11 Other Construction	1,018,639	974,889		974,889	43,750
12 Constr Unallocated Contingency	42,077	22,931		22,931	19,146
13 Total Phase	1,174,572	1,105,640	16,000	997,820	62,897

Budget Shortfall Task Level	\$ (K)	Potential Resources (L)	Source (M)
14 Constr Segments C700/C810	9,964	19,146	Construction phase unallocated contingency

SMALL BUSINESS PARTICIPATION

Prime Consultant/Contractor

Kiewit Pacific Company is the prime consultant for this contract. Kiewit committed to an 18% Small Business goal and a 12% Minority Business goal on both contracts, C700 and C810.

Royal Brougham to Airport Way Contract (C700) performance to date: Small Business Enterprise is 35% and Minority Business Enterprise is 25.46%

Operations and Maintenance Facility Contract (C810) performance to date: Small Business Enterprise is 20.37% and Minority Business Enterprise is 13.2%

PROJECT DESCRIPTION and BACKGROUND for PROPOSED ACTION

Contract Dates for C700 and C810

Event	C700	C810	
Advertised for Bid	3/14/2003	3/14/2003	
Pre-Bid Meeting	3/24/2003	3/24/2003	
Bids Submittal Date	6/12/2003	6/12/2003	
Original Bid Expiration Date	10/10/2003	10/10/2003	120 days
Two 1-week extensions	*	*	
Award	10/24/2003	10/24/2003	
NTP	11/10/2003	12/1/2003	
Contract Completion Dates	10/31/2005	4/14/2006	

Sound Transit required the completion of the Royal Brougham to Airport Way Contract (C700) and the Operations and Maintenance Facility Contract (C810) to facilitate the use of the test track, included in the C700 Contract, for the commissioning of the fleet of light rail vehicles (LRV).

The bid submittal date was June 12, 2003; however, Sound Transit was not able to award the contracts until October 24, 2003 upon receipt of the FTA Full Funding Grant, 132 days later. Kiewit agreed to extend their bids for C700 and C810 beyond the contractual 120 days; however, world steel price escalation created challenges for them because the subcontractors bidding on the various portions of the work held their bids for only thirty to sixty days. Kiewit and its subcontractors asserted claims related to steel escalation and delays caused by the steel shortage. Sound Transit disputed these claims on the basis of contract provisions that allocate the risk of rising material costs to the contractor.

The contract was bid with provisional sums for unidentified utility conflicts, unsuitable material excavation and backfill, and unidentified hazardous and contaminated materials. The original values for these items were exceeded, and change orders were issued to the contracts to increase these sums. Kiewit asserted claims for additional increases in provisional sums, which Sound Transit disputed, in part as a result of insufficient credits for base contract work and lack of supporting schedule documentation.

Numerous changes were recognized during the course of construction as a result of incomplete and conflicting design information. For many of these changes, requests for proposals or work directives were issued to resolve these design changes. Disputes with Kiewit about the contractor's responsibility to coordinate the construction trades and to provide the design for contractor selected equipment led to the submittal of numerous claims where cost and/or time entitlement could not be agreed. Sound Transit is seeking recovery of settlement costs related to design errors or omissions from its professional liability insurance.

The subcontractors performing work on the C700 and C810 projects claimed that changes during construction, and delays and impacts related to changes and contract administration significantly affected their ability to perform the contract work within their project budgets. Sound Transit contended that many of the subcontractors' impacts were caused by Kiewit's failure to coordinate the trades or to adequately plan the sequence of the work. The settlement resolves all of the subcontractors' claims against Sound Transit.

Prior Board/Committee Actions on this Project

Motion/Resolution Number and Date	Summary of Action for C700
M2005-08 01/13/05	Amending the project scope of the Central Link Light Rail Initial Segment to include the deferred Royal Brougham Station for a cost not to exceed \$3.7 million and with no increase to the Initial Segment budget and authorizing the Chief Executive Officer to contract for the work necessary to complete the Royal Brougham Station.
M2003-80 08/14/03	Authorizing the Chief Executive Officer to execute a contract with Kiewit Pacific Company (the apparent low bidder) for the construction of Contract C700 (E-3 Busway/Forest Street), in the amount of \$40,691,061 with a 10% contingency of \$4,069,106, for a new total contract amount not to exceed \$44,760,167.

Motion/Resolution Number and Date	Summary of Action for C700
M2007-07 01/11/07	Authorized the Chief Executive Officer to increase the contingency for the contract with Kiewit Pacific Company for the construction of Contract C810 (Central Link Operations and Maintenance Facility) in the amount of \$2,000,000 for a new total authorized contract amount not to exceed \$63,997,800.
M2006-35 4/27/07	Authorized the Chief Executive Officer to increase the contingency for the contract with Kiewit Pacific Company for the construction of Contract C810 (Central Link Operations and Maintenance Facility) in the amount of \$2,600,000 for a new total authorized contract amount not to exceed \$61,997,800.
M2003-81 8/14/03	Authorized the Chief Executive Officer to execute a contract with Kiewit Pacific Company for the construction of Contract C810 (Central Link Operations and Maintenance Facility) in the amount of \$53,998,000 with a 10% contingency of \$5,399,800 for a total authorized contract amount not to exceed \$59,397,800, subject to the execution of the Full Funding Grant Agreement.

CONSEQUENCES of DELAY

Not applicable to this action

PUBLIC INVOLVEMENT

Not applicable to this action

ENVIRONMENTAL COMPLIANCE

JI, 06/22/07

LEGAL REVIEW

DB 06/29/07

SOUND TRANSIT

MOTION NO. M2007-70

A motion of the Board of the Central Puget Sound Regional Transit Authority affirming the chief executive officer's settlement of construction claims with Kiewit Pacific Co. for the Royal Brougham to Airport Way Contract (C700) and the Operations and Maintenance Facility Contract (C810) in the amount of \$16 million.

Background:

Contract Dates for C700 and C810

Event	C700	C810	
Advertised for Bid	3/14/2003	3/14/2003	
Pre-Bid Meeting	3/24/2003	3/24/2003	
Bids Submittal Date	6/12/2003	6/12/2003	
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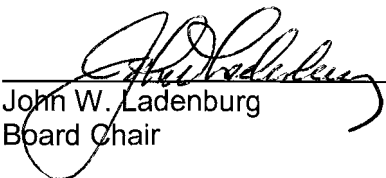
Numerous changes were recognized during the course of construction as a result of a need to provide adequate and correct design information. For many of these changes, requests for proposals or work directives were issued to resolve these design changes. Disputes with Kiewit about the contractor's responsibility to coordinate the construction trades and to provide the design for contractor selected equipment led to the submittal of numerous claims where cost and/or time entitlement could not be agreed. Sound Transit is seeking recovery of settlement costs related to design errors or omissions from its professional liability insurance.

The subcontractors performing work on the C700 and C810 projects claimed that changes during construction, and delays and impacts related to changes and contract administration significantly affected their ability to perform the contract work within their project budgets. Sound Transit contended that many of the subcontractors' impacts were caused by Kiewit's failure to coordinate the trades or to adequately plan the sequence of the work. The settlement resolves all of the subcontractors' claims against Sound Transit.

Motion:


It is hereby moved by the Board of the Central Puget Sound Regional Transit Authority that the chief executive officer's settlement of construction claims with Kiewit Pacific Co. for the Royal Brougham to Airport Way Contract (C700) and the Operations and Maintenance Facility Contract (C810) in the amount of \$16 million is affirmed.

APPROVED by the Board of the Central Puget Sound Regional Transit Authority at a regular meeting thereof held on July 12, 2007.



John W. Ladenburg
Board Chair

ATTEST:



Marcia Walker
Board Administrator