



Motion No. M2023-52

Contract Contingency Increase For Global Construction Claim Resolution with Stacy Witbeck/Atkinson for Contract E335 as part of the East Link Extension

Meeting:	Date:	Type of action:	Staff contact:
Board	06/22/2023	Final Action	Brooke Belman, Deputy CEO, Chief Expansion Delivery Officer Ron Lewis, DECM Executive Director Jon Lebo, Executive Project Director – East Link Extension

Proposed action

Authorizes the chief executive officer to increase the contract contingency for the construction contract with Stacy and Witbeck / Atkinson, a joint venture, for Global Construction Claim Resolution for the Downtown Bellevue to Spring District Segment of the East Link Extension, in the amount of \$25,870,000, for a new total authorized contract amount not to exceed \$449,358,121, all within the Board approved project budget.

Key features summary

- This action provides additional contract contingency required to execute a construction claim settlement on the East Link – E335 Downtown Bellevue to Spring District construction contract with Stacy & Witbeck / Atkinson (SWA), a joint venture.
- This settlement resolves all existing disputes, claims, and issues involving Sound Transit and SWA and its subcontractors arising from the E335 segment up to May 31, 2023. The contractor claims asserted included demands for costs related to owner caused delays and inefficiencies, COVID-19 impacts, design deficiencies at the Bellevue Downtown Station, and owner directed changes.
- Approval of this action will allow Sound Transit to effectively close out this contract. Sound Transit reserves its rights for claims for warranty work and latent defects.
- The sum of \$1.8 million of the settlement amount will be withheld to ensure completion of the small amount of remaining work and punch list items. If SWA achieves Project Acceptance after August 1, 2023, liquidated damages will be assessed at \$10,000 per calendar day, until Project Acceptance is achieved.
- This action does not increase the Board adopted baseline budget for the project.

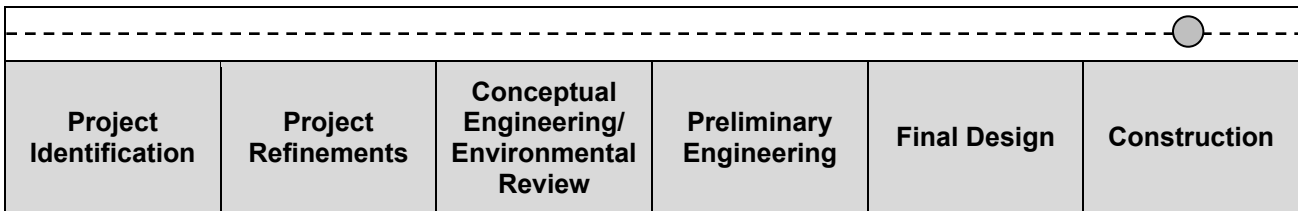
Background

In April 2017, Sound Transit (ST) entered into a construction contract with SWA for work on the E335 segment of the East Link Extension project from downtown Bellevue to 124th Ave NE. Work includes construction of approximately 2.3 miles of dual track, East Main Station, the South Portal Electrical Building, the Mid-Tunnel Access Shaft Headhouse, the installation of the tunnel systems including ten jet fans, electrical, and fire protection through the downtown Bellevue tunnel, the City of Bellevue Plaza, the Downtown Bellevue Station, the elevated guideway over I-405, the Wilburton Station, the Kirkland Wye

tracks for the Operation and Maintenance Facility East access, and the Spring Street Station at 120th Street.

During the project, SWA submitted Requests for Changes, delay notifications, and claims. Following ST's evaluation and analysis of the issues raised in these claims and the potential commercial exposure presented, the ST and SWA ("Parties") agreed to pursue a negotiated settlement. Multiple negotiation sessions were held between the Parties during which they attempted to resolve the outstanding issues and negotiate a global claim settlement of all issues and disputes. On June 1, 2023, ST and SWA engaged in a third negotiation session, and the Parties agreed to settle and resolve all claims, disputes, and issues, past and future, excepting agreed minor outstanding work, including a circuit breaker installation for a stair pressurization system, and any Sound Transit warranty and latent defect claims, for \$25,870,000. The sum of \$1.8 million will be withheld pending completion of a small amount of remaining contract work.

Project status



Projected completion date for Revenue Service: 2Q 2023 (baseline), spring 2025 (forecast)

Project scope, schedule and budget summary are located on page 43-44 of the April 2023 Agency Progress Report.

Fiscal information

This action is within the baseline budget and sufficient monies remain after approval of this action to fund the remaining work in the construction phase. This action does not affect the affordability of any other system expansion project.

The baseline budget for the East Link project is \$3,677,150,000. Within the construction phase, \$452,500,000 has been allocated to the budget line item for the E335 Downtown Bellevue to Spring District Construction. The action would commit an additional \$25,870,000 to this line item and leave a budget balance of \$643,621.

East Link Extension

(in thousands)	Total Baseline Budget	Board Approvals*	This Action	Board Approved Plus Action	Uncommitted / (Shortfall)
Operations and Maintenance	\$7,106	\$7,106		\$7,106	\$
Administration	183,174	129,183		129,183	53,991
Preliminary Engineering	50,874	50,874		50,874	0
Final Design	268,888	247,285		247,285	21,603
Third Parties	49,473	36,988		36,988	12,485
Right of Way	288,516	279,838		279,838	8,678
Construction	2,518,224	2,257,004	25,870	2,282,874	235,350
Construction Services	277,177	250,689		250,689	26,489
System Testing-Start Up	33,718	21,136		21,136	12,582
Total Current Budget	\$3,677,150	\$3,280,102	\$25,870	\$3,305,972	\$371,178

Phase Detail - Construction					
E335 Dwtwn Bllv. to Spring Di	\$452,500	\$425,986	\$25,870	\$451,856	\$644
Other Construction	2,065,724	1,831,017		\$1,831,017	\$234,707
Total Phase	\$2,518,224	\$2,257,004	\$25,870	\$2,282,874	\$235,350

Stacy and Wittbeck/Atkinson	Board Approvals to Date	Proposed Action	Proposed Total for Board Approval	Current Approved Contract Status
Contract Amount	\$393,798	\$	\$421,874	\$421,874
Contingency	29,690	25,870	27,484	1,614
Total Contract Amount	\$423,488	\$25,870	\$449,358	\$423,488
Percent Contingency	8%	100%	7%	0%

Notes:

Amounts are expressed in Year of Expenditure \$000s.

For detailed project information, see page 78 of the 2023 Financial Plan & Adopted Budget.

* Board Approvals = Commitment and PO Contingency Remaining as of 6/14/2023.

Disadvantaged and small business participation

Sound Transit promotes and encourages small business participation, which also includes disadvantaged business enterprises (DBEs). Consistent with Sound Transit Policies and federal regulations, Sound Transit has established small business/DBE goals for this contract. These goals are based on an examination of subcontracting opportunities in this contract's work and the number of small businesses/DBEs available to perform such subcontracting work.

For this specific contract, the following goals were set, and the successful Bidder/Proposer has committed to the following small business/DBE participation:

Small business and disadvantaged business enterprise (DBE) goals			
DBE Goal:	7%	Small Business Goal:	14%
DBE Commitment:	7%	Small Business Commitment:	14%
Current DBE Attainment:	8.21%	Current Small Business Attainment:	10.20%

Public involvement

Not applicable to this action.

Time constraints

Approval of this action in June 2023 will allow prompt payment of this claim in accordance with the settlement.

Prior Board/Committee actions

Motion No. M2021-05: Authorized the chief executive officer to increase the contingency for the contract with Stacy and Witbeck/Atkinson, a Joint Venture, for construction of the Downtown Bellevue to Spring District segment within the East Link Extension in the amount of \$10,000,000, for a new total authorized contract amount not to exceed \$423,488,121.

Motion No. M2018-09: Authorized the chief executive officer to amend the Heavy Civil General Contractor/Construction Manager contract with Stacy and Witbeck/Atkinson, a Joint Venture, to construct four stations for the Downtown Bellevue to Spring District segment within the East Link Extension in the amount of \$165,400,000, with a 5% contingency of \$8,270,000 totaling \$173,670,000, for a new total authorized contract amount not to exceed \$413,488,121.

Motion No. M2017-18: Authorized the chief executive officer to execute a construction contract with Stacy and Witbeck/Atkinson, a Joint Venture, to provide Heavy Civil General Contractor/Construction Manager construction services for the Downtown Bellevue to Spring District segment within the East Link Extension in the amount of \$228,398,210 with a 5% contingency of \$11,419,911 for a total authorized contract amount not to exceed \$239,818,121.

Environmental review – KH 6/14/23

Legal review – JEN 06/16/23



Motion No. M2023-52

A motion of the Board of the Central Puget Sound Regional Transit Authority authorizing the chief executive officer to increase the contract contingency for the construction contract with Stacy and Witbeck / Atkinson, a joint venture, for Global Construction Claim Resolution for the Downtown Bellevue to Spring District Segment of the East Link Extension, in the amount of \$25,870,000, for a new total authorized contract amount not to exceed \$449,358,121, all within the Board approved project budget.

Background

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This action does not increase the Board adopted baseline budget for the project.

Motion

It is hereby moved by the Board of the Central Puget Sound Regional Transit Authority that the chief executive officer is authorized to increase the contract contingency for the construction contract with Stacy and Witbeck / Atkinson, a joint venture, for Global Construction Claim Resolution for the Downtown Bellevue to Spring District Segment of the East Link Extension, in the amount of \$25,870,000, for a new total authorized contract amount not to exceed \$449,358,121, all within the Board approved project budget.

APPROVED by the Board of the Central Puget Sound Regional Transit Authority at a regular meeting thereof held on June 22, 2023.



Dow Constantine
Board Chair

Attest:



Kathryn Flores
Board Administrator