

STAFF REPORT

SOUND TRANSIT MOTION NO. M2000-80

Civil Engineering/Final Design Contract with CH2M HILL For South Walden Street to South Boeing Access Road (DS730 and DS740)

Meeting:	Date:	Type of Action:	Staff Contact:	Phone:
Finance Committee	9/7/00	Discussion/Possible Recommendation for Board Approval	Paul Bay, Director, Link Bill Houppermans, Chief Engineer, Link	(206)398-5134 (206)398-5125
Board	9/14/00	Action		

PROPOSED ACTION

This action authorizes the Executive Director to execute a contract with CH2M HILL for civil engineering final design services associated with the Central Link Light Rail project at-grade section in the Rainier Valley along Martin Luther King Jr. Way South from South Walden Street to South Boeing Access Road. This contract was originally two separate contracts for South Walden Street to South Holly Street (DS730) and South Holly Street to South Boeing Access Road (DS740). The selection process resulted in CH2M HILL being determined as the best qualified for each of the proposals, and a single contract was negotiated. The action establishes a contract amount of \$6,065,949 with a 10% contingency of \$606,595, for a total authorized amount not to exceed \$6,672,544.

KEY FEATURES

Highlights of Proposed Action:

- ◆ Authorizes the Executive Director to execute a contract with CH2M HILL for civil engineering final design services for two design segments in the Rainier Valley.
- ◆ Establishes a contract amount of \$6,065,949 with a 10% contingency of \$606,595, for a total authorized amount not to exceed \$6,672,544.
- ◆ Combines two design contracts into a single contract.
- ◆ Sets M/W/DBE participation for the combined contracts at 37.7%.

Discussion of Proposed Action:

Preliminary engineering for two design segments in the Rainier Valley, South Walden Street to South Holly Street (DS730) and South Holly Street to Boeing Access Road (DS740), has been completed. The next step in project implementation is to begin the final design phase.

Staff is seeking Board approval to contract with CH2M HILL to perform the civil final design for the Central Link Light Rail project at-grade section along Martin Luther King Jr. Way South from

South Walden Street to South Boeing Access Road. The civil engineering final design scope of services for this contract includes: preparation of plans, specifications and estimates (PS&E) for trackway, retaining walls and earthwork, geometric plans and profiles, roadway modifications, new utility services and relocations, grading and drainage, and structural, electrical and mechanical design for the stations. The final design services for systems engineering, traffic engineering, trackwork, geotechnical engineering, and architectural, landscaping and urban design will be provided by other consulting firms under separate contracts. The Civil Facilities Consultant (CFC) will coordinate all final design services for this contract.

On March 17, 2000, Sound Transit advertised and issued separate Requests for Proposals for two design segments in the Rainier Valley:

1. Request for Proposal No. RTA/LR 38-00, Civil Engineering Final Design Services, DS730 South Walden Street to South Holly Street
2. Request for Proposal No. RTA/LR 39-00, Civil Engineering Final Design Services, DS740 South Holly Street to South Boeing Access Road.

Sound Transit received seven proposals for each design segment, and of those, six were from firms submitting proposals for both design segments. Proposals were evaluated independently and interviews were conducted separately on each of the design segments.

CH2M HILL emerged from the evaluation processes as the best qualified to perform design services on both design segments. As a result of a single firm being identified for both contracts, staff negotiated a single contract for the two design segments. A combined contract allows Sound Transit to realize cost savings by the reduction of design efforts through economy of scale and combination of design tasks, a reduction of design coordination and review efforts with City agencies and public utilities, and through the reduction of redundant administration efforts. The combining of the design tasks under one contract will not affect the construction packaging. Independent contract document packages will be produced for both segments.

Proposers were requested to establish and detail a plan to utilize certified Minority, Women, and Disadvantaged Business Enterprises (M/W/DBE). No minimum level of participation was established, however disadvantaged business enterprise participation was a criterion used in evaluation of the final design proposals. CH2M HILL proposes to utilize M/W/DBE firms for 37.7% of the total dollar value of the contract work for both contracts combined.

BUDGET

Funding for this Scope of Work is included in Sound Move and in the FY2000 Capital Budget. The budget for completion of the tasks identified in this proposed action is identified within Sound Transit's 2000 Budget under Final Design. With the budget developed for the Central Link configuration approved by the Board on November 18, 1999, there is sufficient funding to complete the remaining civil engineering, final design, and civil construction work for the two design segments.

Total Line Segment Budget¹	Budget for this Task² (A)	Expenditures to Date (B)	Total Amount Requested³ (C)	Shortfall or Surplus (A-[B+C])
\$190,229,000	\$11,110,000	\$0	\$6,672,544	\$4,437,456

1. Total unburdened civil costs for design segments 730 (South Walden Street to South Holly Street) and 740 (South Holly Street to Boeing Access Road). Soft costs, ROW and system-wide elements are not included.
2. Budget for final design contracts for design segments 730 and 740.
3. Total amount requested includes contract amount of \$6,065,949 with a 10% contingency of \$606,595.

ALTERNATIVES

- Procurement of a different consultant team for final design services.
- Hire additional Sound Transit staff to perform these roles in support of the Light Rail Project implementation.

Both alternatives would result in substantial delay and added costs for the project. Significant time would be lost with a new procurement or staff recruiting process.

CONSEQUENCES OF DELAY

Entering into final design is important to meet the project schedule for the Central Link Light Rail system and to address a number of community concerns regarding the details of the final design. Delaying this procurement process would result in added time and costs.

REGIONAL PARTNERSHIP AND COOPERATION

N/A

PUBLIC INVOLVEMENT

N/A

LEGAL REVIEW

MBL 8/24/00

SOUND TRANSIT

MOTION NO. M2000-80

A motion of the Board of the Central Puget Sound Regional Transit Authority authorizing the Executive Director to execute a contract with CH2M HILL for civil engineering final design services associated with the Central Link Light Rail project at-grade segments in the Rainier Valley along Martin Luther King Jr. Way South from South Walden Street to South Boeing Access Road. The action establishes a contract amount of \$6,065,949 with a 10% contingency of \$606,595 for a total authorized amount not to exceed \$6,672,544.

Background:

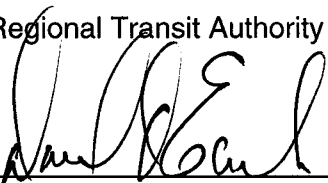
Staff is seeking Board approval to contract with CH2M HILL to perform the civil final design. The scope of services for the civil engineering final design contract for the Central Link Light Rail project at-grade section in the Rainier Valley along Martin Luther King Jr. Way South from South Walden Street to South Boeing Access Road includes: preparation of plans, specifications and estimates (PS&E) for trackway, retaining walls and earthwork, geometric plans and profiles, roadway modifications, new utility services and relocations, grading and drainage, and structural, electrical and mechanical design for the stations. The Civil Facilities Consultant (CFC) will coordinate all final design services for this contract.

CH2M HILL emerged from the evaluation processes as the best qualified to perform design services on both design segments. As a result of a single firm being identified for both contracts, staff negotiated a single contract for the two design segments. A combined contract allows Sound Transit to realize cost savings by the reduction of design efforts through economy of scale and combination of design tasks, a reduction of design coordination and review efforts with City agencies and public utilities, and through the reduction of redundant administrative efforts. The combining of the design tasks under one contract will not affect the construction packaging. Independent contract document packages will be produced for both segments.

Motion:

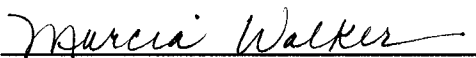
It is hereby moved by the Board of the Central Puget Sound Regional Transit Authority that the Executive Director is authorized to execute a contract with CH2M HILL for civil engineering final design services for the at-grade segments along Martin Luther King Jr. Way South from South Walden Street to South Boeing Access Road for the Central Link Light Rail Project for a contract amount of \$6,065,949 with a 10% contingency of \$606,595 for a total authorized amount not to exceed \$6,672,544.

Approved by the Board of the Central Puget Sound Regional Transit Authority at a regular meeting thereof on the 14th day of September, 2000.



David Earling
Board Chair

ATTEST:



Marcia Walker
Board Administrator

Exhibit A

MEMORANDUM OF UNDERSTANDING Relating to the Funding Generated by Sales Tax Exemption and Sale-Lease Back Transaction

THIS MEMORANDUM OF UNDERSTANDING is entered into this ____ day of July, 2000, by and between the National Railroad Passenger Corporation (“Amtrak”) and Central Puget Sound Regional Transit Authority (“Sound Transit”) to set forth the understanding of the parties regarding (i) the legal structure for Sound Transit’s acquisition of 58 coaches and cab cars and 11 locomotives (the “Rolling Stock”) for the Lakewood-to-Everett Commuter Rail Project and the exemption from Washington State sales and use taxes resulting from such legal structure, (ii) the potential for a future sale-lease back transaction with respect to the Rolling Stock, and (iii) the principles by which Amtrak and Sound Transit will allocate funding generated by such sales tax exemption and sale-lease back transaction, (iv) risk and cost allocation provisions; (v) other miscellaneous matters.

A. Legal Structure for Acquisition of Rolling Stock

Sound Transit wishes to enter into a lease/sublease transaction with Amtrak and Burlington Northern Santa Fe Railway (“BNSF”) so that Sound Transit’s acquisition of the Rolling Stock will be exempt from Washington State sales and use taxes in accordance with 49 USC §24301(k). Application of this Federal statute to a lease transaction is described in a February 16, 2000 letter to Claire Hesselholt from Preston Gates & Ellis LLP, attached hereto as Attachment A.

Subject to further discussions between the parties related to the effect of a bailment issue and simplifying the lease structure, Sound Transit and Amtrak agree that the legal structure for such leasing transaction shall be substantially as follows:

Lease and Sublease of Rolling Stock. Sound Transit will lease the Rolling Stock to Amtrak for a nominal rental. Under the Lease, Amtrak will have a lessee’s usual duties to maintain, repair and insure the Rolling Stock. (The maintenance and repair obligations of Amtrak set forth in the current form of the Maintenance Agreement between Amtrak and Sound Transit will be set forth instead in the Lease.) Amtrak will be permitted to sublease the Rolling Stock to BNSF. Amtrak will enter into a sublease with BNSF pursuant to which the Rolling Stock will be subleased by BNSF.

Operating Agreement between Sound Transit and BNSF. The Operating Agreement between BNSF and Sound Transit provides that BNSF will provide commuter rail service for Sound Transit in the central Puget Sound area. Consistent with the leasing structure given tentative approval by the Department of Revenue, Sound Transit will assign to Amtrak Sound Transit’s (i) rights under the Operating Agreement to receive commuter rail service and (ii) its obligations under the Operating Agreement to pay for such service.

Service Contract. Amtrak will enter into a Service Contract with Sound Transit, pursuant to which Amtrak will provide for Sound Transit the commuter rail services that BNSF has agreed to perform under the Operating Agreement that has been assigned to Amtrak. Under this Service Contract, Sound Transit will pay Amtrak for such services specified and (in accordance with the payment schedule set forth in the Operating Agreement). Additionally, Sound Transit will pay Amtrak's costs to maintain, repair and insure the Rolling Stock used in providing those services in accordance with the Maintenance Agreement. These payment obligations ensure that Sound Transit, pursuant to the Service Contract, will be paying the costs of maintenance, repair and insurance that the lease gives to Amtrak.

Also in the Service Contract, Sound Transit will have the right to require Amtrak to delegate to a third party designated by Sound Transit the maintenance and service functions after a period that coincides with the term under the current draft of the Maintenance Agreement. In connection with such delegation, Sound Transit would agree that Amtrak would have no liability for acts or omissions of the third party service provider designated by Sound Transit, and Sound Transit would make all necessary payments to such third party.

The transaction documents will provide that in the event of termination or expiration of the maintenance and operating responsibilities of Amtrak and BNSF, the Lease will be terminated.

B. Future Sale-Lease Back

Sound Transit has reserved the right to enter into a sale-lease back or similar financing agreement with respect to the Rolling Stock in the future. Amtrak agrees to cooperate with Sound Transit as may be reasonably necessary to accomplish such a financing transaction.

C. Use of Funds

The Parties hereby understand and agree that any funds generated from the sales tax exemption described in Section A will be used for projects that mutually benefit Pacific Northwest intercity rail passenger service, except as specifically set forth in Attachment B. Upon completion of the acquisition of Sound Transit Rolling Stock, Sound Transit shall immediately deposit into an Escrow Account all proceeds equal to the total sales and use tax savings generated by the use of Amtrak's tax exemption. The expenditure of funds generated in accordance with the transactions described in Sections A and B, above shall be in accordance with Attachment B hereto or subject to mutual agreement of the parties. In addition to completing the documents outlined in Section A above, the parties will agree in writing on a procedure for identification and mutual agreement of projects which will receive funding from the Escrow Account, the amount dedicated to each project, the project schedule, and cash flows.

D. Transaction Costs and Expenses

Sound Transit agrees to bear all costs associated with activities related to documenting the legal structures described in Sections A and B of this Memorandum of Understanding, including, but not limited to, Amtrak's transactional costs and legal fees. Sound Transit shall pay such costs and expenses whether or not the transactions contemplated under Sections A and B are finalized. Sound Transit shall reimburse Amtrak for such costs within thirty (30) days of receipt of an invoice from Amtrak.

E. Risk Allocation

1. Sound Transit agrees to defend, indemnify and hold harmless Amtrak, its officers, directors, employees, agents, servants, successors, assigns and subsidiaries, irrespective of any negligence or fault on their part, from and against any and all losses and liabilities, penalties, fines, forfeitures, demands, claims, causes of action, suits, costs and expenses incidental thereto (including the costs of defense and attorneys' fees), which any or all of them may hereafter incur, be responsible for or pay as a result of (1) injury or death of any person or damage to or loss (including loss of use) of any property, including property of the parties hereto, arising out of or in any degree directly or indirectly caused by or resulting from the services outlined in the BNSF Operating Agreement with Sound Transit to be assigned to Amtrak as described in Section A, above; and/or (2) violation of any Washington State sales and use tax laws resulting in a tax liability to Sound Transit or Amtrak; and/or (3) any adverse interpretation or change in Washington State sales and use tax laws which occur after execution of the final documents outlined Sections A and B above which result in a tax liability to Sound Transit or Amtrak.

2. Sound Transit agrees to provide Amtrak with either a letter of credit, and/or insurance protection, and/or some other form of guarantee acceptable to Amtrak to back up its indemnification, payment and other obligations provided hereunder and contemplated by the various legal structures set out under Sections A and B of this Memorandum of Understanding.

F. Board Approval

Amtrak's participation in any transaction outlined in this Memorandum of Understanding is subject to approval by Sound Transit and Amtrak's Board of Directors and formal approval by the Washington State Department of Revenue.

IN WITNESS WHEREOF, the parties hereto have set their hands as of the date above set forth.

**Central Puget Sound Regional
Transit Authority**

National Railroad Passenger Corporation

By:

By:

Title:

Title:

ATTACHMENT B

Proceeds from the sales tax exemption and any interest earned thereon will be expended as follows:

1. Immediately upon the deposit of funds from the sales tax exemption into the Escrow Account, Amtrak will withdraw an amount of \$2,000,000 to cover the following operating costs incurred by Amtrak West SBU:

a. King Street Yard Miscellaneous Maintenance Projects	\$250,000
b. King Street Station Miscellaneous Maintenance Projects	\$100,000
c. Service Facilities (Seattle Yard)	\$300,000
d. Tacoma, Edmonds & Everett Station Maintenance Projects	\$150,000
e. Training Development – Mechanical Right & Ready	\$100,000
f. Training Development – Service Standards – Stations	\$100,000
g. On-time Performance Enhancement (Tacoma to Everett)	\$500,000
h. Track Maintenance (Tacoma to Everett)	\$250,000
i. Switch Locomotive #565 – Maintenance and Repair	\$ 50,000
j. Station Staffing Enhancements (Tacoma, King Street, Edmonds & Everett)	<u>\$200,000</u>

Total Investment Costs (Operating) – PNW Corridor \$2,000,000

2. The balance of funds generated from the tax exemption, the future sale/leaseback transaction, and interest thereon will be used for track and signal improvements, capital and operating projects along Amtrak West and Sound Transit lines as mutually agreed by the parties, including, but not limited to the following three projects:
 - a. Partially fund additional costs associated with property acquisition, design, and additional pile driving due to soil conditions at the King Street Maintenance Facility.
 - b. Partially fill the funding gap in the King Street Station project to allow completion of final design and begin construction.
 - c. To backfill the money originally approved by the Amtrak Board of Directors to assist in the design and construction of Tukwila station in partnership with Sound Transit.