

**Report to the
BOARD OF AIRPORT COMMISSIONERS**

Approver: Jacob Adams III
Jacob Adams (Sep 28, 2023 16:44 PDT)
Jake Adams, Deputy Executive Director
Landside Access Modernization Program

Reviewer: Brian C. Ostler
Brian C. Ostler, City Attorney

Justin Erbacci
Justin Erbacci (Sep 28, 2023 17:07 PDT)
Justin Erbacci, Chief Executive Officer

Meeting Date

10/2/2023

Needs Council Approval: Y

Reviewed for/by	Date	Approval Status	By
Finance	8/31/2023	<input checked="" type="checkbox"/> Y <input type="checkbox"/> NA	JS
CEQA	8/22/2023	<input checked="" type="checkbox"/> Y	MO
Procurement	8/10/2023	<input checked="" type="checkbox"/> Y <input type="checkbox"/> Cond	LK
Guest Experience	8/10/2023	<input checked="" type="checkbox"/> Y	TB
Strategic Planning	8/10/2023	<input checked="" type="checkbox"/> Y	BNZ

SUBJECT

Request to approve a change order to Contract DA-5277 with LAX Integrated Express Solutions, LLC for the Landside Access Modernization Program's Automated People Mover Project at Los Angeles International Airport for the Global Roadways Claim pursuant to the terms outlined in this report, and appropriate funds to the owner's contingency.

RECOMMENDATIONS

Management RECOMMENDS that the Board of Airport Commissioners:

1. ADOPT the Staff Report.
2. DETERMINE that this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Article II, Section 2.i of the Los Angeles City CEQA Guidelines.
3. APPROVE a change order to Contract DA-5277 with LAX Integrated Express Solutions, LLC for Los Angeles World Airports for costs for extra work associated with Developer's Certified Updated Combined Claim for Roadways-Related Relief Events dated November 18, 2022 (Global Roadways Claim).
4. AUTHORIZE the Chief Executive Officer, or designee, to execute a change order with LAX Integrated Express Solutions, LLC for costs for extra work associated with the Global Roadways Claim, in the total amount of \$69,500,000, upon approval by the Los Angeles City Council.

5. APPROPRIATE funds for the change order described above in the amount of \$69,500,000.
6. FURTHER APPROPRIATE funds to the owner's contingency in the amount of \$30,000,000.

DISCUSSION

1. Purpose

LAX Integrated Express Solutions, LLC is the developer ("Developer") under the Design- Build-Finance-Operate-Maintain (DBFOM) Agreement for the Landside Access Modernization Program's (LAMP) Automated People Mover (APM) Project. The Developer has submitted various Relief Events claims where Los Angeles World Airports (LAWA) and the Developer have disagreed on the merit of these claims, including Developer's Global Roadways Claim. The Developer and LAWA (the Parties) negotiated these claims and agreed to Change Order 66 to settle all delay-related Relief Event Claims through December 8, 2022, and direct costs for various Relief Event Claims. LAWA also agreed as part of this settlement to resolve the incremental direct costs associated with certain roadway work and escalation costs related to the above delays. LAWA and LINXS have been negotiating the amount of incremental direct costs associated with the Developer's Global Roadways Claim and have recently reached agreement on terms to bilaterally settle a Compensation Amount for the claim. Los Angeles World Airports has acknowledged that the Developer has established justification to certain costs for Developer's Global Roadways Claim for its claims for Extra Work for both completed work and work not yet performed. Accordingly, staff proposes to issue a change order in the amount of \$69,500,000. Staff is also requesting appropriation of \$30,000,000 to LAWA's project contingency.

2. Prior Related Actions/History of Board Actions

- **April 16, 2015 – Resolution No. 25681**
The Board of Airport Commissioners (Board) requested that the Los Angeles City Council consider and approve an ordinance to allow use of the Alternate Project Delivery Methods and Competitive Sealed Proposal Selection Process for DBFOM and Construction Manager at Risk Contracts for delivery of select Capital Improvement Projects (CIP) related to LAMP at Los Angeles International Airport (LAX). On May 26, 2015, the City Council approved Ordinance No. 183585 authorizing the use of alternate project delivery methods as requested (Council File 14-0987).
- **March 17, 2016 – Resolution No. 25909**
The Board authorized the release of the APM Operating System Supplier Eligibility Determination for the APM Project at LAX.
- **February 16, 2017 – Resolution No. 26177**
The Board submitted a recommendation for City Council to approve an ordinance amending the Los Angeles Administrative Code to authorize the Board to allow use of certain requirements and procedures for procurements and contracts related to LAMP at LAX under Ordinance No. 183585 and clarified the intent of said ordinance with regard to contractor-provided project financing.

- **April 20, 2017 – Resolution No. 26220**
 The Board authorized LAWA to enter into proposal agreements with short-listed proposers for the LAMP APM Project at LAX. Such an agreement included the terms and conditions by which LAWA may purchase and use the work product from said short-listed proposers.
- **July 13, 2017 – Resolution No. 26301**
 The Board authorized staff to release a Request for Proposals to qualified short-listed firms to submit proposals to design, build, finance, operate, and maintain an APM for LAMP at LAX.
- **February 15, 2018 – Resolution No. 26431 (DA-5270)**
 The Board authorized LAWA to enter into an Early Works Agreement with the Developer, and the recommended Developer of the LAMP APM Project at LAX, to allow the recommended Developer to commence pre-construction activities in advance of final execution of the APM DBFOM agreement, and allocated funds for APM Early Works in the not-to-exceed amount of \$42,000,000.
- **April 5, 2018 – Resolution Nos. 26450 and 26451 (DA-5277)**
 The Board authorized the execution of a 30-year DBFOM agreement with the Developer for the LAMP APM at LAX in a not-to-exceed amount of \$4,895,750,000.
- **September 20, 2018 – Resolution No. 26601 (DA-5277)**
 The Board approved an appropriation of funds under the DBFOM agreement Contract DA-5277 to change the Guideway Alignment in the lump sum amounts of \$950,000 for design and \$13,000,000 for construction, to accommodate a potential additional station.
- **March 18, 2021 – Resolution No. 27229 (DA-5277)**
 The Board approved a change order in the amount of \$97,000,000 to Contract DA-5277 with the Developer for the LAMP APM Project at LAX to settle Relief Event No. 5; APM Station Design Criteria; and Relief Event No. 13, Electrical Duct Bank Conflict at East Intermodal Transportation Facility – Bent 91.
- **November 4, 2021 – Resolution No. 27372 (DA-5277)**
 The Board approved an appropriation of funds under the DBFOM agreement Contract DA-5277 to provide landscape, streetscape, and public realm scope, in the amount of \$15,996,512, to cover the necessary remaining work that exceeded the original allowance.
- **November 18, 2021 – Resolution No. 27383 (DA-5277)**
 The Board approved an appropriation of funds under the DBFOM agreement Contract DA-5277 to modify and install additional flight information displays for the LAMP APM Project at LAX, in an amount not to exceed \$5,623,931, to provide information for both operating control rooms and passengers.
- **August 18, 2022 – Resolution No. 27574 (DA-5277)**
 The Board approved Change Order No. 58 in the amount of \$5,150,063.77 to Contract DA-5277 with the Developer for the LAMP APM Project at LAX to settle Relief Event No. 10, Central Terminal Area Electrical Relocation, and Relief Event No. 39, Unknown

Geotechnical Condition at Los Angeles Department of Water and Power New Manhole 180.

- **March 2, 2023 – Resolution No. 27693 (DA-5277)**
The Board approved Change Order No. 66 in the amount of \$101,671,746 to Contract DA-5277 with the Developer for the LAMP APM Project at LAX, to settle all delay-related Relief Event Claims through December 8, 2022, and direct costs for various Relief Event Claims. LAWA also agreed as part of this settlement to resolve the incremental direct costs associated with certain roadway work and escalation costs related to the above delays.

3. Background

In April 2018, the Board approved a 30-year DBFOM Agreement with the Developer for the APM project at LAX. This agreement and the agreement for the Consolidated Rent-A-Car (ConRAC) Facility project were the first major Public Private Partnership (P3) infrastructure projects for LAWA and some of the largest contracts ever awarded in Los Angeles. The proposed design and construction cost for the APM project alone was approximately \$2.1 billion.

The APM is an extremely complex project that required excavation; deep foundation drilling; and column and superstructure construction throughout the 2.25-mile guideway alignment running through the Central Terminal Area at LAX, over Sepulveda Boulevard (Blvd.) and Century Blvd., over Metro's LAX/Crenshaw light rail line, and out to the ConRAC station near the 405 Freeway. A significant portion of the APM is located in areas not owned by LAWA where limited existing underground utility information was available - and when it was available it was often inaccurate. This presented numerous challenges regarding underground utility conflicts that had to be overcome at over 200 locations for the guideway support columns. Complex interfaces with numerous stakeholders, as well as the necessity for design and permit approvals from several different municipalities, added complexity to this project.

At the time, the use of the P3 delivery model was thought to have the ability to reduce much of LAWA's delivery risk, and thus very low project contingencies were budgeted for these projects. The project contingency for the APM project was established at only seven (7) percent (approximately \$145 million) instead of a more typical fifteen (15) to twenty (20) percent contingency (approximately \$315 million to \$420 million) usually allocated to projects of similar size and complexity. As the project progressed, it became apparent that the P3 model did not insulate LAWA from much of the design and construction risk, especially the risk of delays caused by authorities having jurisdiction, including the City of Los Angeles and others.

The Developer has submitted numerous Relief Event Claims, claiming both delay and direct cost impacts due to unknown underground utilities, overly stringent design parameters and betterments requested by authorities having jurisdiction (permitting agencies such as Los Angeles Bureau of Engineering, Los Angeles Department of Building and Safety, etc.), and delays in obtaining permits.

In March 2023, the Board approved Change Order No. 66 that settled all delay-related Relief Event Claims through December 8, 2022, settled direct costs for several Relief Event

Claims, agreed to resolve the total Incremental Costs associated with the Developer's Global Roadway Claim, agreed to resolve all of Developer's claimed delay-related escalation costs, and established a process to determine the amount of compensation LAWA would pay the Developer for such issues. The first step of the process was completed in April 2023, upon execution of the approved change order which resolved specific costs related to time-related overhead costs, Availability Payments, and direct costs for a particular guideway segment Claim and several Unidentified Underground Utility Claims.

The second step contemplated by Change Order No. 66 includes the process the Parties would utilize to determine the amount of compensation that LAWA would pay the Developer for: (a) the total Incremental Costs associated with the Global Roadways Relief Events Claim and (b) the Developer's delay-related escalation costs. The parties agreed to endeavor to complete the second step of the process by September 1, 2023. Change Order No. 66 also noted the Parties' intent to endeavor to resolve the Developer's separate Maintenance of Traffic Claims and Additional Management and Quality Assurance/ Quality Control Claims by December 31, 2023.

Pursuant to the second step of the Change Order No. 66 process, LAWA and the Developer have been negotiating in good faith to quantify the Global Roadways Claim Incremental Costs and the Delay related escalation costs.

LAWA's Consideration of Developer's Global Roadways Claim

The Developer submitted its certified Updated Combined Claim for Roadways-Related Relief Events in November of 2022 (Global Roadways Claim), claiming the roadways packages experienced various impacts such as an unapproved tract map, multiple reviews, and unforeseen comments from Authorities Having Jurisdiction. The Claim combines 42 Relief Events in which the Developer's asserted claimed incurred and future Extra Work costs amounting to \$106,032,787. The Developer also claimed entitlement to a 322-day time extension and \$227,291,944, in associated Delay Costs, however, these Delay Costs were settled previously within Change Order No. 66, as noted above.

Pursuant to Change Order No. 66, the Parties have held numerous joint sessions to negotiate the amount of incremental direct costs associated with the Developer's Global Roadways Claim. The Parties have recently agreed on the value of the Extra Work to settle the Developer's Global Roadways Claim, and LAWA has acknowledged the Developer has established justification for certain components of the Global Roadways Claim. This amount covers all Developer Claims for Extra Work associated with the Global Roadway Claim for both completed work and work not yet performed. Accordingly, staff proposes to issue a change order in the total amount of \$69,500,000.

LAWA's Consideration of Developer's Delay Related Escalation Cost Claim

The Developer has made various submissions in support of its Escalation Claim, with its initial such submission made informally in December 2020. In June of 2021, the Developer submitted its Relief Event No. 00132 for both Inefficiency and Escalation, with claimed estimated damages in the amount of approximately \$153,000,000. In May of 2022, the Developer updated its Relief Event No. 00132 with a revised estimated damages claim for both Inefficiency and Escalation of \$285,973,299, plus \$40,000,000 of potential additional costs related to its Operating Systems Supplier – Alstom.

Change Order No. 66 awarded an extension of time of 292 days from September 12, 2023, to June 30, 2024, with LAWA accepting responsibility for 200 days of the Delay attributable to the design and construction of certain road improvements and of guideway section 3GW2. Accordingly, the current LAWA-owned period of Delay on the Project extends through March 31, 2024. Pursuant to Change Order No. 66, the Parties agreed to resolve Developer's claim for escalation costs incurred as a result of the LAWA-caused delay through March 31, 2024 via a 'formulaic approach'.

The Parties have held a number of workshops and joint sessions to discuss the 'formulaic approach' and quantification of the Developers delay-related escalation costs. At this time, the Parties agree additional discussions are necessary and staff will bring this item to the Board for consideration at a future date.

4. Current Action/Rationale

Staff requests approval of: (a) change order to Contract DA-5277 for the LAMP APM Project at LAX to formalize a Compensation Amount in the total amount of \$69,500,000 for Extra Work costs associated with the Developer's Global Roadways Claim dated November 18, 2022, and (b) an increase to owner's contingency in the amount of \$30,000,000.

Staff believe that issuing the proposed change order is reasonable and in the best interest of the project.

Additional Project Contingency

As discussed above, the original project contingency for the APM Project was established at only seven (7) percent (approximately \$145 million) instead of a more typical fifteen (15) to twenty (20) percent contingency (approximately \$315 million to \$420 million) usually allocated to projects of similar size and complexity.

This original contingency amount was drawn down significantly by the \$97,000,000 claim settlement included in Change Order No. 35. Change orders for undisputed additional work and other relief event claim settlements further drew upon the owner's contingency such that Change Order No. 66 required its own appropriation of funds. The change order proposed here also requires specific appropriations. Accordingly, LAWA considers that appropriating \$30,000,000 for owner's contingency is in the best interest of the project to pay change orders for future unforeseen or undisputed additional work. The requested amount of \$30,000,000 was determined from the APM Project risk register that identifies and quantifies exposure to remaining risks for the project. As the identified risks are resolved the contingency amount is reduced accordingly.

Use of owner's contingency can only be used within the parameters the Board has previously approved, specifically that all change orders in excess of \$5,000,000 must be approved by the Board, and anything less than \$5,000,000 must be approved by the LAWA Chief Executive Officer.

5. Fiscal Impact

The APM is programmed in LAWA's 2018 Capital Improvement Plan (CIP), with a direct project budget of \$2,548,322,483 which includes hard costs, direct soft costs, project contingency, and developer-funded improvements. Los Angeles World Airports included

\$101,671,746 in the 2022 CIP for Change Order 66, which was approved by the Board on March 2, 2023. The approval of this item would result in an increase of an additional \$99,500,000 to the 2022 CIP, bringing the total budget value for the APM across both CIPs to \$2,749,494,229.

6. Alternatives Considered

- **Take No Action**

Taking no action is not recommended, as LAWA believes the proposed I change order provides a fair and reasonable compensation amount.

APPROPRIATIONS

Staff requests capital funds in the amount of \$99,500,000 be appropriated and allocated from the LAX Revenue Fund to WBS Element 1.15.08-700 (LAMP – Automated People Mover).

STANDARD PROVISIONS

1. Any activity (approval of bids, execution of contracts, allocation of funds, etc.) for which the underlying project has previously been evaluated for environmental significance and processed according to the requirements of the California Environmental Quality Act (CEQA) is exempt from further review pursuant to Article II, Section 2.i of the Los Angeles City CEQA Guidelines. The Landside Access Modernization Program Environmental Impact Report (EIR) was certified by the Board of Airport Commissioners for this project on March 2, 2017 (Resolution 26185).
2. The underlying contract was approved as to form by the City Attorney.
3. Actions taken on this item by the Board of Airport Commissioners will become final pursuant to the provisions of Los Angeles City Charter Section 373.
4. LINXS will comply with the applicable provisions of the Living Wage Ordinance and the Labor Code of the State of California (Prevailing Wage).
5. Procurement Services has reviewed this action (File No. 10042939):

For the Design Phase LINXS pledged: 22% for the SBE goal, 8% for the LBE goal, 3% and 3% for the DVBE goal. To date LINXS has achieved: 20.95% SBE, 58.82% LBE, 10.07% LSBE, and 2.83% DVBE.

For the Construction Phase LINXS pledged: 18% for the SBE goal, 7% for the LBE goal, 5% for the LSBE goal, and 3% for the DVBE goal. To-date LINXS has achieved: 28.33% SBE, 29.6% LBE, 14.87% LSBE, and 10.5% DVBE.

For the Operation and Maintenance Phase LINXS pledged: 17% for the SBE, 10% for the LBE goal, 5% for the LSBE goal, and 3% for the DVBE goal.

6. LINXS will comply with the provisions of the Affirmative Action Program.
7. LINXS has been assigned Business Tax Registration Certificate No. 0003042771-0001-0.

8. LINXS will comply with the provisions of the Child Support Obligations Ordinance.
9. LINXS has approved insurance documents, in the terms and amounts required, on file with Los Angeles World Airports.
10. Pursuant to Charter Section 1022, staff determined the work specified on the proposed contract can be performed more feasibly or economically by an Independent Contractor than by City employees.
11. LINXS has submitted the Contractor Responsibility Program Questionnaire and Pledge of Compliance and will comply with the provisions of the Contractor Responsibility Program.
12. LINXS is required to comply with the provisions of the First Source Hiring Program for all non-trade Airport jobs.
13. LINXS has submitted the Bidder Contributions CEC Form 55 and will comply with its Provisions.
14. LINXS has submitted the Municipal Lobbying Ordinance CEC Form 50 and will comply with its provisions.
15. LINXS will comply with the provisions of the Iran Contracting Act.