



DRAFT

FINANCE AND AUDIT COMMITTEE MEETING MINUTES

November 17, 2022

Webcast at:

www.hsr.ca.gov

The meeting of the California High-Speed Rail Authority (Authority) Finance and Audit Committee Meeting was called to order on November 17th at 8:30 A.M. via webinar. Board Members participated from remote locations.

Committee Members Present:

Mr. Tom Richards, Committee Chair
Mr. Ernest Camacho, Committee Member
Mr. Jim Ghielmetti, Committee Member

Staff Present:

Mr. Brian Kelly, Chief Executive Officer
Mr. Brian Annis, Chief Financial Officer
Mr. Daniel Horgan, Deputy Chief Operating Officer
Mr. Britton Snipes, Board Secretary

Public Comment

An opportunity for public comment was made at the outset of the meeting.

Item #1 – October Meeting Minutes

The October 20, 2022, Meeting Minutes were moved for approval by F&A Committee Member Ghielmetti and seconded by Committee Member Camacho. The meeting minutes were approved by all members present.

Item #2 – F&A Committee Chairman’s Remarks, Initiatives, and Updates

Committee Chair Richards asked to move the Central Valley Status Report Update by Mr. Horgan to the Board Meeting later in the day. This change was approved by all members present.

Item #3 – Executive Summary by Chief Financial Officer

Chief Financial officer Brian Annis presented various financial reports to the F&A Committee Members.

Question (Accounts Payable Aging and Disputes Report):

Member Camacho asked how are we doing with disputed invoices and how long does it take us to get those resolved?

Response:

Mr. Annis responded everything other than Dragados/Flatiron is pretty good, and is a small amount of money - under a million dollars. These other disputes are very minor and we are able to resolve them quickly. Again, the issue with Dragados is that they submit proposed change orders for some things that the authority might agree there is merit to, but we are in the process of negotiating the appropriate amount, or in other areas they may submit an invoice that we believe does not have merit, and it is a dispute. Some of these issues are being resolved with Dragados as we go, and some of them relate to change orders that are being executed. So, we do sometimes see a reduction in the Dragados cumulative dispute amount.

Question:

Member Camacho asked do you find that work stops when we have a disputed invoice in terms of impacting our forward progress?

Response:

Mr. Horgan responded no; we are working collaboratively with the contractors to resolve any of the issues.

Question:

Chair Richards asked what happens with regards to the process of settling the dispute and do those disputes impact the budget?

Response:

Mr. Kelly responded yes.

Question:

Chair Richards asked do the resolutions of the disputes, if we are paying more than was anticipated, that impacts our contingency fund?

Response:

Mr. Kelly responded that is correct, although where we do not think a settlement is something we can reasonably achieve, we have not been bashful about going to arbitration. We have five issues in arbitration with Dragados now. We are undertaking, for purposes of moving forward the program, looking at mediation options for those five issues. You will see in Mr. Annis's flash report a good example of how settling the issues equates to work moving along. The Board is aware that we had a major settlement with Dragados at the Hanford Viaduct Area and we advanced work in October at that site because we have moved through that issue. Work is progressing at that site, and you will see it tick up in our expenditures for that work for October. We expect that to continue. Of the other four big issues with Dragados, which we have talked to the Board about at length, three were resolved; so work is progressing in those three areas, and one of them is moved to arbitration. We expect to move work even for the one that is in arbitration, and we will work through those issues as we go.

Question:

Member Camacho asked of the \$130 million in disputed invoices, are any of those invoices as a result of time delays or are they construction related?

Response:

Mr. Horgan responded they are not related to the time impact.

Question:

Chair Richards asked are any of these disputes based upon the intent of Dragados to do a construction project in a certain way (different) than what they had proposed when they were responding to our procurement and subsequently found that what they were intending on doing was not workable?

Response:

Mr. Horgan responded no, none of these are related to alternative technical concepts.

Question (Federal Funds and State Match Liability):

Chair Richards asked for the EPA Brownfields figure, is that expenditure to date meaning through the end of September or October?

Response:

Mr. Annis responded that is through the end of September. This is primarily used in partnership with LA Metro doing some Brownfield work in Southern California around the Union Station facility.

Question:

Member Ghielmetti asked is that where it will be spent or intended to be spent?

Response:

Mr. Annis responded yes. They are doing Brownfield toxic studies around that facility.

Question:

Member Ghielmetti asked is Metro aware that it expires?

Response:

Mr. Annis responded yes.

Question (Contingency Summary):

Chair Richards asked with regards to future use of contingency, is there the expectation that we will completely have utilized it and you would be coming back asking the board for an additional allocation for contingency?

Response:

Mr. Annis responded that is correct.

Question:

Chair Richards asked when is that likely to happen?

Response:

Mr. Annis responded that we are working on it now. It could be as early as next month. We want to make sure we have solid numbers, but we are working to see if we can get it ready by December.

Question (Preliminary Numbers for December Report):

Chair Richards asked with regards to change orders, do you keep a ledger or some sort of schedule with regards to the details (change of scope, time delay) that we can look at?

Response:

Mr. Annis responded not exactly as you described. We do post on our website for the public as well our executed change orders with a description of what they are, and we do look at the details of the change orders as they are being negotiated. Take Hanford, for example. There is a lot of back and forth over quantities of units, and factors such as how much steel, how much concrete is needed. These are updated for the prices at the time of a negotiation so if steel is more expensive as you negotiate, that is included in the amount. Some of these negotiations are definitely coming in higher than the minimum or probable values that were initially estimated because the number of units may change, or the cost per units may change. There is not a real strict crosswalk back to the original estimates. We have at times asked our program folks to indicate what primarily was the driver of the cost issues, whether it might be inflation or a change in scope where there are more materials or a greater effort than what as originally assumed.

Mr. Kelly responded we do track all of the pending change orders that come in. Some of those have merit and we make merit determinations first. Those without merit come out. We do, for each of the CP's, track the pending change orders that are in front of us.

Chair Richards commented that if a change order is predicated on a change of scope (CP1 was one with the northern extension) that has commonly been referred to as a change order. It is a change order, but a change in scope means generally we are getting more than what we thought we were getting before and that is the extension. The reaction that both we and the public have is that that is a different kind of justification than the challenges we have where we have time delays and the other things that Mr. Annis was talking about. If inflation is a change in cost, I would not call that a change in scope.

Mr. Kelly responded that we are negotiating twelve key change orders which is just the method of execution to address scope changes, but all of them are scope changes. Virtually every structure that has been built on CP1 had a scope change from the initial awarding of the contract to the final bill. All of those were as a result of third-party requests for the structures to be a certain way, be it working with the city, working with the railroads, or others. The scope issues are what we are landing. This is where we are finally getting all the scope into the contracts and unfortunately, we execute those through a process called the change order. They are tied to post contract scope changes and that is what we are executing now. We are almost at the end of it with CP1.

Question:

Member Camacho asked are some of these scope changes the result of the design-build method of delivery in terms of the design changing? Since we did not have the total cost and as we developed more of the project, we changed some of the designs and those are factors we did not consider initially.

Response:

Mr. Kelly responded the best chronology is getting local agreements set early enough to incorporate into a contract for construction and design. For us, a lot of these came late. The bulk of the ones I am seeing are regarding negotiated matters between 2015 and 2018 that we now have to put into the contract and execute. Many of the things we are seeing on CP1 are just including final scope issues. For example, the City of Fresno wanting an overpass, or railroads wanting bridges going over freight railroads. Those all came post-contract. What we have done now is we have finalized those designs. We have now designed all of the structures that we need for the 119 miles. Those scopes are included in those designs and now it is about executing the contract to make sure they are incorporated. Most of them are post-contract award scope changes mostly pushed by third parties that we work with.

Having no further business, the meeting was adjourned at 9:15 A.M.

The Authority additionally posts on its website a link to a recording of the F&A meeting, which detail the discussion, questions, and answers from the meeting.