

CONSTRUCTION

COMMITTEE RECOMMENDATION

The Committee concurred with the staff recommendation to:

- A. accept the findings of the B231 Disputes Review Board (DRB) which supported and found merit in the Contractor's claim for cost reimbursement for the extra temporary decking over the station entrance; and
- B. approve Change Order No. 86 to Contract No. B231 with Tutor-Saliba/Perini, covering payment for extra temporary decking over the entrance to the Wilshire/Western Station in the Metro Red Line - Wilshire Corridor, in the amount of \$451,229, which increases the total contract value to \$60,357,947, which is within the MTA Board approved AFE amount of \$60,929,039; and
- C. DIRECTED STAFF to research over the next 30 days some alternatives to the Disputes Review Board, return to the Committee with options and AUTHORIZED Stan Phernambucq to make changes to the constitution of the DRB.

CC 4

August 4, 1995

CC 4



MEMO TO: CONSTRUCTION COMMITTEE

THROUGH: FRANKLIN E. WHITE

FROM: STANLEY G. PHERNAMBUCQ

Los Angeles County
Metropolitan
Transportation
Authority

SUBJECT: METRO RED LINE - WILSHIRE CORRIDOR
CONTRACT NO. B231, WILSHIRE/WESTERN STATION
CONTRACTOR: TUTOR-SALIBA/PERINI, JOINT VENTURE
CHANGE ORDER NO. B231-CO-86.00, DISPUTES REVIEW BOARD
FINDINGS ON CONTRACTOR'S CLAIM FOR PAYMENT FOR EXTRA
TEMPORARY DECKING OVER STATION ENTRANCE

818 West Seventh Street
Suite 300
Los Angeles, CA 90017

RECOMMENDATION

213.972.6000

It is recommended that the MTA Board:

- a) Accept the findings of the Contract No. B231 Disputes Review Board (DRB) which supported and found merit in the Contractor's claim for cost reimbursement for the extra temporary decking over the station entrance; and
- b) Approve Change Order No. B231-CO-86 to Contract No. B231 in the amount of \$451,229 for the extra temporary decking over the station entrance.

Mailing Address:

P.O. Box 194
Los Angeles, CA 90053

Accepting the DRB finding is considered to be the most cost effective method of settling this dispute. The Contract Value would be increased to \$60,357,947, which is within the MTA Board approved AFE amount of \$60,929,039. Cost recovery potential will be analyzed and pursued to the fullest legal extent allowable.

DBE PARTICIPATION

The DBE goal is 22%. It is anticipated that the Contractor will meet this goal.

ALTERNATIVES CONSIDERED

The MTA Board has the option to disapprove Change Order No. B231-CO-86. The Contractor will most likely pursue all other contractual and legal means available to attempt recovery of these costs.

IMPACT ON BUDGET AND OBJECTIVES

Funds for this change are available in the MTA Board approved Project Budget.

BACKGROUND

Contract Scope of Work: The construction of the Wilshire/Western Station and Crossover includes providing a temporary decking system to facilitate the passage of traffic over excavations during construction.

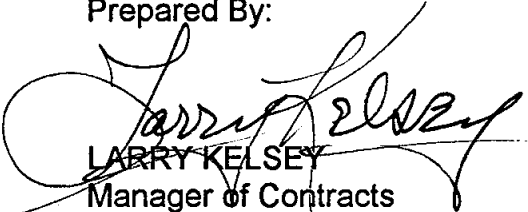
Invitation For Bid No. B231, low bid construction contract, was awarded by the MTA Board on January 23, 1991 for the bid amount of \$53,645,201 to the Tutor-Saliba/Perini Joint Venture. The Notice-to-Proceed was issued on February 11, 1991. The Contract is approximately 99% complete.

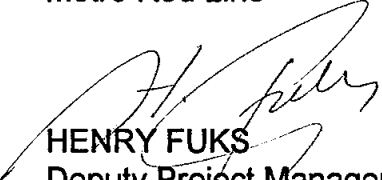
DRB Finding and Change Order No. B231-CO-86.00: The Contractor requested a change order to the Contract based upon his position that he was entitled to payment for the extra temporary decking that he constructed over the station entrance for the apparent purpose of staging his equipment and materials. This request was denied by the MTA.


Under the disputes provisions of the Contract, the Contractor then submitted a formal claim for the cost of the temporary entrance decking and when the claim was also denied, requested a hearing on the matter with the Contract's DRB. After presentations and arguments by both the MTA and the Contractor, the DRB deliberations (see Attachment C) resulted in a finding that supported the Contractor's position that the cost of the entrance decking should be reimbursable under the Contract.

Although the February 6, 1995 findings of the DRB are not binding upon either party, the recommendation is to accept the DRB finding and approve the resultant Change Order No. B231-CO-86.00. Accepting the DRB finding is considered to be the most cost effective method of settling this dispute. The change order modifies the Contract to provide additional funds to allow payment for temporary entrance decking.

Prepared By:


LARRY KELSEY
Manager of Contracts
Metro Red Line


HENRY FUKS
Deputy Project Manager, Construction
Metro Red Line


CHARLES W. STARK
Deputy Executive Officer, Construction
Metro Red Line

ATTACHMENT A CONTRACT VALUE STATUS

R81 Metro Red Line Seg-2
CHANGE ORDER : B231-CO-86.00

CONTRACTOR: TUTOR-SALIBA/PERINI J.V. - WILSHIRE/WESTERN STATION
CHANGE TITLE: FINAL QUANTITY ADJUSTMENT-DECKING

CONTRACT VALUE STATUS

1.	CONTRACT AWARD AMOUNT:	\$53,645,201.00
2.	PREVIOUSLY EXECUTED CHANGES:	\$6,093,516.48
3.	CURRENT CONTRACT VALUE: (1 + 2)	\$59,738,717.48
4.	AUTHORIZED WACN'S (NTE):	\$168,000.00
5.	OBLIGATED CONTRACT VALUE: (3 + 4)	\$59,906,717.48
6.	VALUE OF THIS CHANGE:	\$451,229.40
7.	ESTIMATED CONTRACT VALUE: (5 + 6)	\$60,357,946.88

AUTHORIZED FOR EXPENDITURE STATUS

INCREASE IN AFE REQUIRED/REQUESTED:

8.	MTA APPROVED AFE:	\$60,929,039.00	
9.	ESTIMATED CONTRACT VALUE: (Line 7)	\$60,357,946.88	Award + 13.58%
10.	REMAINING AFE (Actual 8-9)	\$571,092.12	\$0.00 For current actual costs
11.	OTHER PENDING CHANGES (merited)	\$202,107.80	
12.	REMAINING AFE (w/CHANGES 10-11)	\$368,984.32	\$0.00 For pending changes
13.	! TRENDS AND CONTINGENCIES (pending merit finding)	\$374,466.32	
14.	REMAINING AFE: (w/TRENDS 12-13)	(\$5,482.00)	\$5,482.00 For possible changes

CONTRACT BUDGET STATUS

15.	CURRENT CONTRACT BUDGET:	\$60,340,000.00	
16.	FORECAST CONTRACT VALUE: (9 + 11 + 13)	\$60,934,521.00	For all potential changes. To be funded from unallocated Project
17.	REMAINING CONTRACT BUDGET: (15-16)	(\$594,521.00)	contingency if necessary.

CONTRACT INCREASE PERCENTAGES

18.	% OF ORIGINAL AWARD VALUE (THIS CHANGE)	0.841%
19.	% OF ORIGINAL AWARD VALUE (MERITED CHANGES)	12.049%
20.	% OF ORIGINAL AWARD VALUE (ALL CHANGES)	13.588%
21.	% CONTRACT COMPLETE:	100%

REVIEWED BY MTA PROGRAM CONTROL: R. MORA, LEAD PROGRAM CONTROL 8550-5

DATE:

LIST OF AFFECTED SUBCONTRACTORS
CONTRACT NO. B231, WILSHIRE/WESTERN STATION
CHANGE ORDER NO. B231-CO-86.00
CONTRACTOR: TUTOR-SALIBA/PERINI, JV

AFFECTED SUBCONTRACTOR NAME	ADDRESS	CONTACT PERSON TELEPHONE NO.	DBE'S ETHNICITY	DESCRIPTION OF WORK TO BE DONE DISCIPLINE
None				

ATTACHMENT C

**FEBRUARY 6, 1995
DRB FINDINGS
(Applicable Finding Only)**

February 6, 1995

Contract B231
Wilshire/Western Station

DISPUTES REVIEW BOARD
ANALYSIS, CONCLUSIONS AND RECOMMENDATIONS

The "Owner" refers to the representative(s) of the Los Angeles County Transportation Commission; the "Contractor" to the representative of Tutor-Saliba-Perini, JV; the "Parties" to both. The "Board" refers to the Disputes Review Board.

The findings set out herein for claims under Contract B231 were derived from the Board's review of the pertinent items in Contract B231. It is the Board's understanding that the Parties agree that Contract B221 with respect to welding inspection and Contracts B221 and B211 with respect to resteel couplers contain no differences which either Party would introduce at a separate Board hearing. In the interest of time and expense, the Contractor submitted his claim to cover the several contracts.

The Board recognizes that the Owner must process each change order according to the Contract and its own policies. The Board's findings in no way impact such processing, which is outside the Board's authority. If the Owner, on further consideration, feels that separate hearings are called for, such hearings will be held.

The Parties submitted written arguments and documentation and met with Board in a hearing on January 10 and 11, 1995, for oral presentations and rebuttals. Subsequently and separately the Board met to review and discuss the submitted information.

DISPUTE: TEMPORARY DECKING FINAL QUANTITY

The Contractor contends that he should be paid for the temporary decking over the excavation for the entrance to the station at the contract unit price for Temporary Decking Systems.

The Owner denies payment on the basis that the decking over the entrance is not traffic decking but is temporary decking solely for the Contractor's convenience.

ANALYSIS

The dispute centers around the interpretation of two paragraphs of Section 01522, Temporary Decking Systems, Part 1-General; 1.1 Description, and 1.5 Measurement.

1.1 Description states that the work consists of "traffic decking to facilitate the passage of pedestrian, vehicular traffic and construction equipment over excavations."

The Owner maintains, as was explained by the writer of the specifications, that it was the intent of the specifications that temporary decking be exclusively traffic decking designed to carry public traffic as was done for Wilshire Blvd. and the contract bid quantity of 855,000 (SY) for Temporary Decking Systems did not include decking for the entrance structure. However, this was not clearly stated in the specifications nor was the temporary decking for the entrance structure, which was designed only to accommodate construction equipment, excluded from Temporary Decking Systems.

The Contractor utilized the station entrance decking for laydown and equipment.

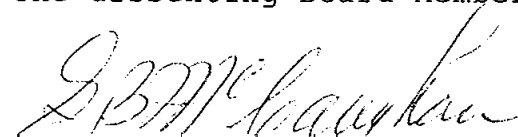
1.5 Measurement states that "Surface area of temporary decking measured for payment will be up to two feet beyond each outside face of the permanent subway structure." The station entrance is part of the subway structure. There is no mention of traffic decking nor is it stated that the Contractor will not be paid for any areas that are solely for his own convenience.

CONCLUSIONS and recommendations

A majority of the Board concludes that the temporary decking claimed for payment is within the 1.1 Description, is within the payment limits stated in 1.5 Measurement and is not covered by the exclusion clause in that paragraph.

A majority of the Board recommends that the Contractor be paid for the decking over the station entrance at the Contract unit price for Temporary Decking System.

The dissenting Board Member will offer his separate opinion.


Gregory B. McCaughan


Harry Sutcliffe

DONALD R. GOODKIND

Engineering Consultant

33582 Via Corvillian

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(714) 489-7822

2/6/95

DISSENT

DISPUTE: Temporary Decking Final Quantity

Analysis

Evaluation of this dispute rests on a determination as to whether the temporary decking constructed over the main entrance structure at the Wilshire/Western station merits payment in fulfillment of Specification Section 01522 — Temporary Decking Systems

Part 1 - General

1.1 Description — The work specified in the Section consists of designing, furnishing, installing, maintaining and removing traffic decking to facilitate the passage of pedestrian, vehicular traffic and construction equipment over excavations.

Comment. The temporary decking over the main entrance was not placed, oriented or sized to permit passage of traffic (except on a limited area adjacent to Wilshire Blvd. as a continuation of a temporary sidewalk). In fact the decked area was fenced to prevent just such movement.

1.2 Quality Assurance

C. The design shall conform to the following:

1. Design temporary decking and its supporting system to comply with AASHTO HB-14, HB20-44 loading and criteria indicated on the contract drawings.

Comment. As noted by Werner and Associates in Volume II Design Notes, "The entrance deck is not for the movement of traffic. Access and use are under the control of the Contractor." Although Werner used AASHTO live loadings in design, they were not applied in a manner required by AASHTO since "this deck will not carry traffic as it is not located in a public roadway." The design was intended to be satisfactory for use of the decking only by the Contractor.

2/6/95

Temporary Decking Final Quantity Evaluation
Page 2

1.5 Measurement

Surface area of temporary decking measured for payment will be up to two feet beyond each outside face of the permanent subway structure.

Comment. This provision is addressed to temporary decking which complied with Section 01522 requirements. There were many excavations for permanent subway structures with outside walls over which no temporary decking was required and, accordingly, no measurement for payment was made.

CONCLUSIONS AND RECOMMENDATION

The temporary decking over the main entrance was placed by TSP for its own convenience and/or to facilitate its construction operations. Section 01522 does not provide payment for this decking.

It is recommended that no payment be made to the contractor for temporary decking in dispute.

An exception for the portion used as a temporary sidewalk has been previously noted.

Donald S. Smit