

Revised Agenda Item No. 6

Board of Directors Metro Valley Study Session

**December 13, 2018
9:30 AM**

Location:

San Bernardino County Transportation Authority
First Floor Lobby Board Room
Santa Fe Depot, 1170 W. 3rd Street
San Bernardino, CA 92410

DISCUSSION

Project Delivery

6. Mt. Vernon Viaduct Highway Bridge Program High Cost Agreement, Proceed with Right of Way and Design-Build Stipend

That the following be reviewed and recommended for final approval by the Board of Directors, acting as the San Bernardino County Transportation Authority, at a regularly scheduled Board meeting:

A. Authorize the Executive Director or designee to approve and execute Contract No. 18-1001963 with the California Department of Transportation (Caltrans) upon General Counsel's approval as to form, for funding the Right-of-Way (ROW) phase for the Mt. Vernon Viaduct project where San Bernardino County Transportation Authority (SBCTA) will be responsible for the initial funding of the phase, with repayment of 88.53% of the costs from the Highway Bridge Program (HBP) starting in Federal Fiscal Year 2020/2021 at a not-to-exceed amount of \$20 million per year.

B. Authorize SBCTA staff to proceed with ROW and utility relocation activities for the Mt. Vernon Viaduct project upon federal authorization to proceed, including appraisals, making offers of just compensation, acquisitions, relocation assistance, demolition of existing structures, property management, disposition of excess property, environmental testing and remediation of properties identified in Attachment A, and other activities as needed to obtain necessary ROW for construction of the project and the relocation of utilities as required.

C. Authorize the Director of Project Delivery, or her designee, to add or delete such parcels to the list of properties in Attachment A as the Director determines from time to time are necessary for the Project, provided they are environmentally cleared, and to present updates to the list of necessary parcels at a future Board of Directors Metro Valley Study Session meeting as an informational item.

D. Approve the awarding of a stipend of \$175,000 to each unsuccessful responsive, responsible shortlisted proposer for Request for Proposals 18-1001966 for the Mt. Vernon Viaduct project Design-Build contract.

The item was revised to change recommendation D and the corresponding background as noted in bold.

Minute Action

REVISED AGENDA ITEM: 6

Date: December 13, 2018

Subject:

Mt. Vernon Viaduct Highway Bridge Program High Cost Agreement, Proceed with Right of Way and Design-Build Stipend

Recommendation:

That the following be reviewed and recommended for final approval by the Board of Directors, acting as the San Bernardino County Transportation Authority, at a regularly scheduled Board meeting:

A. Authorize the Executive Director or designee to approve and execute Contract No. 18-1001963 with the California Department of Transportation (Caltrans) upon General Counsel's approval as to form, for funding the Right-of-Way (ROW) phase for the Mt. Vernon Viaduct project where San Bernardino County Transportation Authority (SBCTA) will be responsible for the initial funding of the phase, with repayment of 88.53% of the costs from the Highway Bridge Program (HBP) starting in Federal Fiscal Year 2020/2021 at a not-to-exceed amount of \$20 million per year.

B. Authorize SBCTA staff to proceed with ROW and utility relocation activities for the Mt. Vernon Viaduct project upon federal authorization to proceed, including appraisals, making offers of just compensation, acquisitions, relocation assistance, demolition of existing structures, property management, disposition of excess property, environmental testing and remediation of properties identified in Attachment A, and other activities as needed to obtain necessary ROW for construction of the project and the relocation of utilities as required.

C. Authorize the Director of Project Delivery, or her designee, to add or delete such parcels to the list of properties in Attachment A as the Director determines from time to time are necessary for the Project, provided they are environmentally cleared, and to present updates to the list of necessary parcels at a future Board of Directors Metro Valley Study Session meeting as an informational item.

D. Approve the awarding of a stipend of \$175,000 to each unsuccessful responsive, responsible shortlisted proposer for Request for Proposals 18-1001966 for the Mt. Vernon Viaduct project Design-Build contract.

Background:

SBCTA has been actively working on the Mt. Vernon Viaduct project since becoming the lead agency in 2016. An environmental revalidation of the existing clearance from 2011 was completed earlier this year and a reevaluation of the current project scope was completed in October, 2018. SBCTA also assumed the preliminary design contract with AECOM from the City of San Bernardino last summer and has been working with them to advance the design concepts. SBCTA received design-build authority for this specific project through AB 1523 signed into law on July 31, 2017. This will allow the project schedule to be advanced by having a contractor available earlier to demolish and construct a new bridge. In conjunction with moving forward with the design-build delivery method, approval of the recommendations in this agenda item will allow work to proceed on the ROW phase of the project. Since the existing bridge sufficiency rating is 2 out of 100, advancing the delivery of this project is a high priority.

Entity: San Bernardino County Transportation Authority

Recommendation A:

The HBP program has a \$20 million reimbursement cap for any phase in any year. Any project with a phase above \$20 million is considered a high cost project and requires a special agreement with Caltrans to define the terms for when the federal funds will be reimbursed to the local agency. The agreement has a commitment for Caltrans to reimburse the agency with HBP funds, however, the local agency will need to spend the money first and will only be reimbursed up to \$20 million per year. For this project, based on discussions with Caltrans staff, both the ROW and construction phases are over \$20 million and will require a High Cost Agreement (HCA) to define the reimbursement terms. Caltrans staff has indicated that reimbursement funds would not be available until Federal Fiscal Year 2020/2021. In order for SBCTA to cover the costs of the ROW work, as well as for the construction phase, it is anticipated that short term borrowing will be required. Staff is currently working on the details of this loan package and it is anticipated to be brought forward for Board consideration within the next few months. Caltrans will reimburse these financing costs at 88.53% of the total cost with HBP funds. It is anticipated that the BNSF contribution to the project will cover the required match for both the ROW costs and the financing costs.

The template HCA attached to this agenda item for Board approval consists of a form letter to the local agency, in this case SBCTA, with a commitment by Caltrans to fund the project per an attached funding sheet. For this HCA, staff has drafted the anticipated funding sheet and submitted it to Caltrans for review and incorporation into the HCA. Once final agreement on the funding and cash flow is achieved between SBCTA and Caltrans, a final HCA with a project specific form letter to SBCTA and attached funding plan will be sent to SBCTA for review and approval. It is anticipated this process could take up to two months. As a result, staff is requesting the Board authorize the Executive Director or his designee to execute the final HCA after approval as to form by SBCTA's General Counsel, provided the final HCA is in substantially the form attached and consistent with the cash flow. This will allow earlier execution of the HCA. As the available HBP funds are based on a first come/first served basis, this will allow SBCTA to be in line for available funding sooner.

The current estimated costs for the ROW phase are higher than in the existing cooperative agreement with the City of San Bernardino (16-1001477); however, the ROW phase costs are anticipated to be paid by HBP funds and BNSF contribution funds. As a result the Measure I and City share costs for the overall project are still anticipated to be within the limits set within the cooperative agreement, even though the total project cost is higher.

Recommendation B:

In conjunction with the preparation of the HCA with Caltrans, staff has submitted a request for authorization to Caltrans to allow proceeding with the ROW and utility relocation phase of the project. Now that the environmental document revalidation has been completed and the ROW impacts have been identified, it is important to start the ROW work as it will take over a year to obtain the necessary rights needed for construction of the entire project. A listing of those parcels anticipated to be required for the project is included in Attachment A. As can be seen, the properties include both residential and business properties and vary from temporary construction easements to full acquisitions. Every effort will be made to minimize ROW impacts as much as possible.

The work involved in the ROW phase includes appraising the property, making offers of just compensation, negotiating settlements, working out any relocation that may be required, disposal of any excess property, and in some cases, a final environmental testing and demolition of the property in order for it to be cleared for use by the project. While it is hoped that settlements can be reached with all property owners, due to schedule constraints, there could be possible cases where eminent domain action may be required. Per an executed cooperative agreement with the City of San Bernardino, any resolutions of necessity would be considered for adoption by the SBCTA Board.

In addition to ROW acquisitions, there are numerous existing utilities on the project that will need to be relocated. Approval of these recommendations will allow work to commence on this as well. Since the project is being implemented through the design-build process, there will be specific milestones in the design-build contract as to when ROW will be available and when utility relocations will be completed. Failure to acquire and obtain possession of needed ROW or to relocate utilities will create significant risk to the design builder and delay claims to SBCTA.

It is anticipated that the authorization for ROW work will be obtained from Caltrans/Federal Highway Administration (FHWA) in early 2019. This authorization will be based on SBCTA advancing funding for the ROW phase until such time that reimbursement funds are available per the schedule in the executed HCA. While it is anticipated that the HCA will be executed within a month or two of authorization, there will be some funds that could be expended, and if no HCA were to be executed, it would expose SBCTA to not being reimbursed by Caltrans. It is not anticipated this is likely, but if that were to happen, the expenditures would be paid by City developer share funds and the City's share of Measure I Arterial Program funds. As stated above, there are sufficient funds in the current cooperative agreement with the City to cover the expected expenditures in that period if reimbursement is not received.

Recommendation C:

While the ROW impacts have been generally set, the current project design is only approximately 30% complete and a design builder will not be under contract until next summer. As a result, it is anticipated there may be adjustments to the final ROW footprint as the final design progresses. Staff is therefore requesting that the Director of Project Delivery, or her designee, be authorized to add or delete properties on the Attachment A Parcel Listing as necessary for the final design as the project progresses. Any property added to the list will require prior environmental clearance.

Recommendation D:

The procurement for a design-build contractor is currently underway. A request for qualifications has been issued and seven Statements of Qualifications have been received. Per prior Board approval, up to four teams will be shortlisted. Those firms that are shortlisted will develop proposals in response to Request for Proposals (RFP) 18-1001966, anticipated to be released in draft form in January 2019 and in final form March 2019. As part of the proposal process, significant design time is expended by each proposer to develop their design sufficiently for purposes of preparing an accurate bid. It is customary on a design-build procurement that a stipend be provided to the unsuccessful proposers to compensate them at least partially for their

investment in developing a preliminary design. A standard stipend ranges from 0.2-0.3% of the anticipated design-build contract amount. For the Mt. Vernon Viaduct project, the current estimated design-build contract is estimated to be in the range of \$65 million. Staff is therefore recommending a stipend be provided to each unsuccessful proposer on the project. **This stipend would only be given to teams that actually submit a responsive, responsible proposal, and there would either be a maximum of three unsuccessful teams or four if no design-build contract is awarded. Staff is recommending a stipend of \$175,000 per proposer for a total of \$525,000 for three teams or \$700,000 total for four teams.** Awarding this stipend at the 0.2 to 0.3% range of the estimated contract value would provide assurance to the design-build proposers that their time and energies in preparing their proposals will not be all at their own expense.

Staff recommends approval of all four recommendations.

Financial Impact:

This item is consistent with the Fiscal Year 2018/2019 Budget under Task No. 0860 Arterial Projects, Sub-Task No. 0827 Mount Vernon Viaduct.

Reviewed By:

This item is not scheduled for review by any other policy committee or technical advisory committee. SBCTA General Counsel and Procurement Manager have reviewed this item and the draft agreement.

Responsible Staff:

Dennis Saylor, Project Manager

Approved
Board of Directors Metro Valley Study Session
Date: December 13, 2018

Witnessed By: