

**THIS PRINT COVERS CALENDAR ITEM NO.: 14**

**SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

**DIVISION:** Central Subway Project

**BRIEF DESCRIPTION:**

Approving Modification No. 136 to Contract No. 1300, Third Street Light Rail Program Phase 2 - Central Subway Stations, Surface, Track and Systems with Tutor Perini Corporation, to resolve Contractor claims for costs of additional work resulting from design changes to the Fire Alarm and Deluge Systems at all three underground stations in the amount of \$6,976,834, for a modified contract amount of \$996,698,587.32.

**SUMMARY:**

- The SFMTA awarded Contract 1300 to Tutor Perini Corporation (TPC) in April 2013 to construct the Central Subway Stations, Surface, Track and Systems.
- TPC and subcontractors Fisk Electric (FEC), Best Contracting, and ACR Glass, filed Certified Contract Claim (CCC) No. 163 for \$11,969,598 seeking compensation for additional labor costs, delays, schedule impacts, and equipment and material costs arising from changes to Fire Alarm System designs, including the Emergency Voice Alarm Communications System (EVAC) and the Deluge System (vehicle undercarriage fixed fire protection system) at all three underground stations - Chinatown Station (CTS), Union Square Market Street Station (UMS) and Yerba Buena Moscone Center Station (YBM).
- The SFMTA engineers estimate for the changes is \$7,437,301, net of a partial credit for the base contract Deluge System equipment not already installed.
- The negotiated total value of Certified Contract Claim No. 163 is \$8,187,279. Of this amount, TPC was paid \$1,210,445 under Contract Modification No. 131, dated July 6, 2020.

**ENCLOSURES:**

1. SFMTA Board Resolution
2. Contract 1300 Modification No. 136
3. <https://www.sfmta.com/about-sfmta/reports/central-subway-final-seisseir> (Central Subway Final SEIS/SEIR and Mitigation Monitoring and Reporting Program)

**APPROVALS:**

DIRECTOR Jeffrey Timlin

SECRETARY Caroline Celaya

**DATE**

December 29, 2020

December 29, 2020

**ASSIGNED SFMTAB CALENDAR DATE:** January 5, 2021

**PURPOSE**

Approving Modification No. 136 to Contract No. 1300, Third Street Light Rail Program Phase 2 - Central Subway Stations, Surface, Track and Systems with Tutor Perini Corporation, to resolve Contractor claims for costs of additional work resulting from design changes to the Fire Alarm and Deluge Systems at all three underground stations in the amount of \$6,976,834, for a modified contract amount of \$996,698,587.32.

**STRATEGIC GOALS AND TRANSIT FIRST POLICY PRINCIPLES**

Approval of the proposed resolution will support the following SFMTA Strategic Plan Goals:

Goal 4: Create a workplace that delivers outstanding service.

Objective 4.5: Increase the efficiency and effectiveness of business processes and project delivery through the implementation of best practices.

This action supports the following SFMTA Transit First Policy Principles:

2. Public transit, including taxis and vanpools, is an economically and environmentally sound alternative to transportation by individual automobiles. Within San Francisco, travel by public transit, by bicycle and on foot must be an attractive alternative to travel by private automobile and public transit.
8. New transportation investment should be allocated to meet the demand for public transit generated by new public and private commercial and residential developments.

**DESCRIPTION**

The SFMTA awarded Contract 1300 to Tutor Perini Corporation (TPC) in April 2013 to construct the Central Subway Stations, Surface, Track and Systems.

The Contract 1300 Fire Alarm System design documents were found unacceptable to the San Francisco Fire Department (SFFD) and, therefore, defective and inconstructible based upon the occupancy rating of the underground stations. Concurrently, the Deluge System was also found to be noncompliant. The Deluge System Releasing Panels and associated conduits, and activation control systems including a fire alarm control panel, which activate the Deluge System (to flood the under carriage of the train) had to be redesigned. A complete redesign of the Union Square Market Street Station (UMS), Yerba Buena Moscone Station (YBM) and Chinatown Station (CTS) fire alarm systems was also required to incorporate the Emergency Voice Alarm Communications Systems (EVACs) into the system by removing the base contract horn strobes and replacing them with speaker strobes and removing the non- Underwriters Laboratories (UL) rated Deluge System and replacing with a UL rated compliant Deluge System.

Due to the SFMTA's designers' failure to provide a constructible design for the Fire Alarm System, TPC's subcontractor, FEC, received from its subcontractor, Rail Services Corporation (RSC), product submittals that could not be used due to the revised design. FEC ultimately terminated their contract with RSC and paid the balance owed under the RSC subcontract to cover retention, progress payments, and change orders.

In August 2020, TPC and subcontractors Fisk Electric (FEC), Best Contracting, and ACR Glass, submitted Certified Contract Claim No. 163 for additional labor costs, delays, schedule impacts, and equipment and material costs arising from changes to the Fire Alarm System, including the Emergency Voice Alarm Communications System (EVAC) and the Deluge System (vehicle undercarriage fixed fire protection system) at the three underground Central Subway stations.

The schedule inefficiencies and costs associated with the SFMTA's Designers' inconstructible and defective designs were not resolved until October 2020. FEC could not build the system pursuant to its bid. For YBM and UMS stations, the delays in receiving an approvable Fire Alarm System design precluded FEC from completing the necessary infrastructure using Polyvinyl Chloride (PVC) raceways embedded in the station's slabs and walls. By October 2020, the stations had been vastly constructed and the opportunity to install the necessary infrastructure was lost. Subsequently, FEC had to install surface mounted conduit racks, which per project specifications, must be galvanized rigid steel conduit (GRS). The costs to install GRS are vastly more than embedding the PVC raceways.

Costs included are those associated with a) providing revised Fire Alarm shop drawings for the SFMTA to review and obtain a stamp of approval by a Certified Professional Engineer, b) rework of previously installed conduit infrastructure and device locations from base bid horn strobe system to a new voice activated system, c) addition of revised fire alarm back boxes, conduit and cabling to all new devices as shown in the new design, d) furnishing and installing additional devices as shown in the new design, e) installation of Deluge releasing panels, conduit, wiring and devices as shown in the new design, and f) revising submitted and approved FEC conduit coordination drawings to align with new shop drawings.

Contractor claimed a total of \$11,969,598 in additional compensation for costs and impacts arising from and related to the changes to the Fire Alarm and Deluge Systems. The claim comprised FEC's certified claim of \$10,996,731 for uncompensated labor costs, delays, schedule impacts, equipment costs, and TPC's claim of \$972,868 in costs to support FEC's work.

The SFMTA's engineer's estimate for the additional work for the Fire Alarm and Deluge Systems totaled \$7,437,301 net of a credit of \$155,382 as partial credit for the base contract Deluge System equipment not already installed and \$1,210,445 paid under Contract Modification No.131.

Two negotiation sessions were held between TPC, their subcontractors and SFMTA's representatives. As set out in the following table, the negotiated total value of the claim is \$8,187,279, of which \$7,467,125.39 will compensate TPC for all subcontractor direct costs, and \$720,153.61 to compensate TPC's support of that additional work.

	<b>TPC Requested amount</b>	<b>Settlement Amount</b>	<b>Difference</b>	<b>%</b>
Inefficiencies arising from replacing PVC with GRS Conduits	\$1,713,173	\$1,200,000	\$ 513,173	30%
Fire Alarm EVACS – YBM	\$1,806,428	\$1,545,000	\$261,428	14%
Fire Alarm EVACS – UMS	\$3,666,964	\$2,300,000	\$1,366,964	37%
Fire Alarm EVACS – CTS	\$2,742,395	\$1,900,000	\$842,395	31%
Best Contracting YBM	\$32,987	\$30,000	\$2,987	9%
Best Contracting UMS	\$62,429.60	\$57,000	\$5,429.60	9%
ACR Glass	\$46,288	\$40,000	\$6,288	14%
TPC Support Costs	\$825,316.16	\$395,125.39	\$430,190.77	52%
Total Direct Cost (No TPC Mark Ups)	\$10,895,980.76	\$7,467,125.39	\$3,428,855.37	31%
<b>Total with Mark ups</b>	<b>\$11,969,598</b>	<b>\$8,187,279</b>	<b>\$3,782,319</b>	<b>32%</b>
CMOD 131 Adjustment		\$1,210,445		
<b>Net Total</b>		<b>\$6,976,834</b>		

## **SUPPORTING DOCUMENTATION**

The SFMTA reviewed TPC and its subcontractors' documents, including CCC No.163, SFMTA correspondence directed to the Contractor, Contractor Job Cost Reports, Direct Labor Rates, Direct Labor Hours, certified payroll records, relevant sections Contract 1300 (focused on compensable claims requirements stated in General Provisions including sections 6.04 C, and 6.04.B), Finding of Fact (FOF), the document that records the facts and the reasons for this contract modification, and the Evaluation of Merit (EOM), the document that records the reasons and circumstances for the change and makes a determination of merit for the change requested by the Contractor.

## **STAKEHOLDER ENGAGEMENT**

The proposed actions will facilitate the timely completion of the Project, which will benefit stakeholders. Extensive meetings were held with the San Francisco Fire Department (SFFD) and Fire Marshall resulting in compliance with current codes and standards and expediting approval and obtaining Certificate of Occupancy. Approval from this regulatory agency will allow operation and public use of this facility.

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## **ALTERNATIVES CONSIDERED**

The Board could decide to ask staff to re-negotiate these items. If renegotiation fails, then mediation could be attempted and if that fails, then litigation would be the final option.

## **ENVIRONMENTAL REVIEW**

The Central Subway Final Supplemental Environmental Impact Statement / Supplemental Environmental Impact Report (Central Subway SEIS/SEIR) evaluated the environmental impacts of the Central Subway project, including construction of the subway stations. On August 7, 2008, the San Francisco Planning Commission certified the Final SEIR (Case No. 1996.281E). On August 19, 2008, the SFMTA Board of Directors approved Resolution 08-150 adopting Central Subway Project Alternative 3B as the Locally Preferred Alternative, the California Environmental Quality Act (CEQA) Findings, Statement of Overriding Considerations, and the Mitigation Monitoring and Reporting Plan.

Modification No. 136 to Contract No. 1300 as described herein falls within the scope of the Central Subway SEIS/SEIR.

The Central Subway SEIS/SEIR is on file with the SFMTA Board of Directors and may be found in the records of the Planning Department at <https://sfplanning.org/> and 49 South Van Ness Avenue, Suite 1400 in San Francisco, and is incorporated herein by reference.

## **FUNDING IMPACT**

The source of funds to pay for this contract modification of \$6,976,834 will come from the SFMTA capital reserve funds.

## **OTHER APPROVALS RECEIVED OR STILL REQUIRED**

No other approvals are required.

The City Attorney's Office has reviewed this calendar item.

## **RECOMMENDATION**

Staff recommends that the SFMTA Board of Directors approve Modification No. 136 to Contract No. 1300, Third Street Light Rail Program Phase 2 - Central Subway Stations, Surface, Track and Systems with Tutor Perini Corporation, to resolve Contractor claims for costs of additional work resulting from design changes to the Fire Alarm and Deluge Systems at all three underground stations in the amount of \$6,976,834, for a modified contract amount of \$996,698,587.32.

SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

RESOLUTION NO. \_\_\_\_\_

WHEREAS, The SFMTA contracted with Tutor Perini Corporation (TPC) to construct the Central Subway Stations, Surface, Track and Systems under Contract No. 1300. FISK Electric (FEC), Best Contracting and ACR Glass are subcontractors to TPC that performed fire alarm work at all three underground stations; and,

WHEREAS, Changes to the Central Subway stations' fire and vehicle undercarriage fixed fire protection system (Deluge System) were necessary to make the system compliant with the Codes and Standards in use at present and to obtain approval of the Fire Marshall for beneficial occupancy; and,

WHEREAS, TPC submitted Certified Contract Claim No.163 seeking \$11,969,598 in compensation for additional labor costs, delays, schedule impacts, and equipment and material costs arising from changes to the Central Subway stations Fire Alarm and Deluge Systems; and,

WHEREAS, The SFMTA independently estimated the fair and reasonable costs of the additional work and effort, which informed the SFMTA's negotiations as included in the Summary Record of Negotiations; and,

WHEREAS, The full compensation to the Contractor and their Subcontractors for CCC #163 is \$8,187,279 of which \$1,210,445 was compensated under Contract Modification #131, resulting in a net compensation of \$6,976,834 by this Contract Modification #136; and,

WHEREAS, The Central Subway Final Supplemental Environmental Impact Statement/Supplemental Environmental Impact Report (Central Subway SEIS/SEIR) evaluated the environmental impacts of the Central Subway Project, including construction of the subway stations; on August 7, 2008, the San Francisco Planning Commission certified the Final SEIR (Case No. 1996.281E); on August 19, 2008, the SFMTA Board of Directors approved Resolution 08-150 adopting Central Subway Project Alternative 3B as the Locally Preferred Alternative, the CEQA Findings, Statement of Overriding Considerations, and the Mitigation Monitoring and Reporting Plan; and,

WHEREAS, Modification No. 136 to Contract No. 1300 described herein comes is within the scope of the Central Subway SEIS/SEIR; and,

WHEREAS, The Central Subway SEIS/SEIR is on file with the SFMTA Board of Directors and may be found in the records of the Planning Department at <https://sfplanning.org/> and 49 South Van Ness Avenue, Suite 1400 in San Francisco, and is incorporated herein by reference; now therefore, be it

RESOLVED, That the SFMTA Board has reviewed and considered the Central Subway Supplemental Environmental Impact Statement/Supplemental Environmental Impact Report (SEIS/SEIR) and record as a whole, and finds that the Central Subway SEIS/SEIR is adequate for the Board's use as the decision-making body for the actions taken herein relative to construction of the Project, and incorporates the California Environmental Quality Act (CEQA) findings by this reference as though set forth in this Resolution; and be it further

RESOLVED, That the SFMTA Board of Directors approves Modification No. 136 to Contract No. 1300, Third Street Light Rail Program Phase 2 - Central Subway Stations, Surface, Track and Systems with Tutor Perini Corporation, to resolve Contractor claims for costs of additional work resulting from design changes to the Fire Alarm and Deluge Systems at all three underground stations in the amount of \$6,976,834, for a modified contract amount of \$996,698,587.32.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of January 5, 2021.

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Secretary to the Board of Directors  
San Francisco Municipal Transportation Agency

**BILATERAL CONTRACT MODIFICATION NO. 136**

**SFMTA Contract No. 1300 Stations, Surface, Track & Systems**

**Contractor:** Tutor Perini Corporation  
530 Bush Street, Suite 302  
San Francisco, CA 94108

**Contract Modification No. 136 – STS: Fire Alarm and Deluge System Revisions**

This Bilateral Contract Modification No. 136 (“Modification”), resolves Contractor’s Certified Contract Claim No. 163 for additional labor costs, delays, schedule impacts, and equipment and material costs arising from changes to the Fire Alarm System, including changes to the Emergency Voice Alarm Communications system (EVAC) and the Deluge System (vehicle undercarriage fixed fire protection system) at all three underground stations.

The Contract is modified as follows:

1. **Compensation:** The following new Contract Pay Item is added to fully compensate Contractor for all claims arising from or related to the changes to the fire alarm system described in in this Modification and Certified Claim No.163:

Pay Item	Description	Agreed Amount
CM 136-01	STS: Fire Alarm and Deluge System Revisions.	\$ 6,976,834.00

Previous Contract Amount	\$ 989,721,753.32
Revised Contract Amount:	\$ 996,698,587.32

2. **Excluded Claims:** This Modification does not resolve Contractor’s claims for additional compensation for Contractor extended direct costs of support which are comprised of costs for Traffic Control, Survey, Quality Control, Stormwater Treatment Plan, Vibration, Dust, Noise and Settlement monitoring, General Maintenance; Toilets, Traffic Plans and Engineering, Permits. The SFMTA and Contractor each reserves all rights and defenses regarding the Excluded Claims.
3. **Claims Release:** Except as specifically stated herein, the compensation (time and cost) set forth in this Contract Modification comprises the total compensation due to Contractor and its subcontractors’ and suppliers, as a result of the events giving rise to the Contract Modification and for the Claims and Additional Work described herein, including any impact on unchanged Work. The execution of this Contract Modification constitutes an accord and satisfaction of any claim for additional compensation or time for the Additional Work and Claims described in this Contract Modification, and Contractor on behalf of itself, and all Subcontractors and Suppliers, specifically waives and releases any and all claims, rights or interest, including but not limited to legal and equitable claims for direct, indirect, and overhead costs, delay, impact, interest, disruption, loss of efficiency or other extraordinary or consequential costs arising from or related to the Work described in this Contract Modification 136, the Claims, and in Contractor’s Certified Claim No. 163 with exception and reservation of the Excluded Claims described in the preceding section of this Modification.



- 4. Except as specifically stated herein, all other terms and conditions of the Contract remain unchanged. Any modification of the Contract must be expressed and in conformance with the General Provisions and Special Provisions.

In Witness Whereof, this Modification has been executed in San Francisco, California as of this day \_\_\_\_\_, 2021.

**TUTOR PERINI CORPORATION**

**Accepted**

By:

\_\_\_\_\_  
 Patrick Jennings  
 Project Manager  
 Tutor Perini Corporation

**CITY AND COUNTY OF SAN FRANCISCO**

**Recommended**

By:

\_\_\_\_\_  
 Nadeem S. Tahir, P.E.  
 Deputy Director 1  
 Program Director, Central Subway Project  
 San Francisco Municipal Transportation Agency

**Approved**

By:

\_\_\_\_\_  
 Jeffrey Tumlin  
 Director of Transportation  
 San Francisco Municipal Transportation Agency

**Authorized By:**

Municipal Transportation Agency Board of Directors

Resolution No: \_\_\_\_\_

Adopted: \_\_\_\_\_

Attest: \_\_\_\_\_  
Secretary, Board of Directors

**APPROVED AS TO FORM:**

Dennis J. Herrera  
City Attorney

By:

\_\_\_\_\_  
 Robert K. Stone  
 Deputy City Attorney