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Delay has city paying \$15 million for change in rail plan

City officials made the deal in 2009, hoping for quick federal approval

By Kevin Dayton

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The city will agree to a new change order worth about \$15 million to pay the company holding the contract to build the first segment of the rail line because of delays in the start of construction, according to officials with the Honolulu Authority for Rapid Transportation.

That increase, along with a previously approved \$4 million change order, will boost the cost of the Kiewit Infrastructure West Co. design-build contract for the first segment of the project from an original price of nearly \$483 million to a new price of nearly \$502 million, according to HART documents.

The new price surfaced in a Dec. 27 letter from the city to the Federal Transit Administration that said the city decided to award the contract in 2009 to "demonstrate to the public that tangible progress was being made" on the project, funded in part by a surcharge to the state general excise tax. And the city was overly optimistic on how soon federal approval of its environmental impact statement would arrive.

Toru Hamayasu, HART interim executive director, said the amount of the new change order could increase if there are continued delays in the construction start for the West Oahu/Farrington Highway segment.

Kiewit bid to build the rail guideway based on a predetermined schedule, he said.

"Kiewit, with our request, mobilized the people so that essentially the equipment, the lease, whatever, all of those are accumulating," Hamayasu said. "Kiewit is incurring the cost."

The final cost of the latest change order will be resolved through negotiations later, after Kiewit has actually been cleared to begin construction, he said.

The first 6.5-mile section of the rail system begins in East Kapolei and ends at Pearl Highlands. The city has asked the FTA for a letter authorizing construction to begin on that and other portions of the guideway as early as next month.

City officials say the change order is technically not a "cost overrun" because it will not increase the overall \$5.27 billion cost for the 20-mile system.

That's because the \$5.27 billion total for the project includes more than \$860 million in contingency funding set aside to cope with change orders and other unexpected cost increases, and rail officials said the cost of the Kiewit change order will be covered by contingency funding.

The city previously agreed to a \$4 million increase in the Kiewit contract to cover insurance costs after a city-sponsored insurance program was delayed. HART officials said that insurance change order was covered by shifting funds from other areas of the rail project budget, and will not increase the overall cost of the system.

Tom Coffman, an author and a board member of the environmental group Hawaii's Thousand Friends, told the HART board Thursday that a change order in this case is essentially a "penalty" on the city for rushing the process to build rail, and then keeping the contractor on hold.

"It is taxpayers' money wasted based on their timetable not progressing as they had planned it out," Coffman said of the change orders. "They have rushed it, and it has resulted in additional cost in the form of insurance and the form of penalties from delay."

Hawaii's Thousand Friends has joined in a lawsuit in federal court that seeks to block construction until the city does a supplemental environmental impact statement for the project.

Former Mayor Mufi Hannemann praised the Kiewit contract in a news release in 2009, saying that Kiewit's proposal cost \$90 million less than the city had expected. Hannemann said the Kiewit contract would give a "big boost" to the sluggish local economy.

According to the Dec. 27 letter to the FTA, the city decided to award the contract for the first segment of the guideway in 2009 in part "to demonstrate to the public that tangible progress was being made with the revenues from the one-half percent (0.5 percent) surcharge on the State of Hawaii's General Excise Tax (GET) levied since January 1, 2007."

When the city solicited proposals for that first section of guideway in 2009, planners believed the city could win federal approval of the environmental impact statement for the rail project along with approval to begin final design work in early 2010, according to the letter.

That didn't happen. The city had to wait until early 2011 to obtain federal approval for the EIS, and only obtained approval to advance to final design a month ago, on Dec. 29, 2011.

Those delays prevented Kiewit from beginning construction, which in turn led to the change order.