

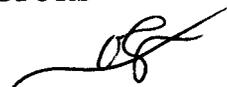


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JANUARY 10, 2008

TO: BOARD OF DIRECTORS

THROUGH: ROGER SNOBLE  
EXECUTIVE OFFICER 

FROM: <sup>for</sup> MICHAEL GREENWOOD  
DEPUTY EXECUTIVE OFFICER, OPERATIONS 

SUBJECT: MOTORIST AID AND TRAVELER INFORMATION SYSTEM (MATIS)

**ISSUE**

At the November 2007 Board meeting, staff presented a recommendation to award a contract for the development, deployment and operation of MATIS. During this discussion, Board members requested clarification regarding: 1) the type of contract being awarded; 2) the overall length of the contract; 3) the potential costs of operating MATIS; 4) a protest submitted by MyTransitPlus; and 5) revisions to the RFP evaluation criteria.

**BACKGROUND**

Type of Contract and Term

The contract recommended for award in support of MATIS, a fixed-price and indefinite quantity contract, contains both fixed price and fixed unit rate elements based on the nature of the work:

- A fixed price is applied to those elements of the work that have a well defined functional specification and identifiable performance risk and for which fair and reasonable fixed prices can be established at the time of contract award. The development of MATIS and the operation of the fleet monitoring services are firm fixed price items under the contract.
- A fixed unit rate is applied to indefinite quantity contracts when the elements of the work for which the precise level-of-effort or the exact quantity of services cannot be predicted at the time of contract award. The contract also includes indefinite quantity provisions which obligate the contractor to provide the services within the maximum quantities specified in the contract. Cost risk is managed by specifying the required services and fixing the rates at the time of contract award and then specifying a Not-to-Exceed (NTE) cost amount for each requirement. The agency is not obligated to pay more than the NTE amount and the NTE amount can only be modified by a

written contract modification. The fixed rates are established for the term of the contract. The call center and 511 system (automated phone and web services) are the fixed unit rate items included in MATIS.

The MATIS contract is also unique in having secured guaranteed revenues from advertisement. The revenue generating guarantee for MATIS are a result of allowing the Contractor to place unobtrusive and approved advertising and/or sponsorships on MATIS, primarily realized through the use of advertising on the 511 system. In addition to the guarantee, the contract requires the Contractor to provide SAFE with 40% of any revenues realized above the guaranteed revenues; thereby, providing potential additional revenues in the future. This potential revenue could be used to offset any additional costs incurred due to increased system usage.

The recommended term of the contract is for a base period of 6 years with two 2-year options that are exercisable solely by SAFE. The contract contains standard terms for termination for default and convenience. The base length of 6 years is recommended to provide service continuity and flexibility. The contract term also reduces uncertainties for SAFE, the contractor, public sector partners and the public. The term provides a level of certainty to interested parties and public sector partners that MATIS, and in particular 511, will be a viable long term service and therefore reduces their hesitation to participate. The term of this contract also enables the Contractor to amortize costs over a longer base thereby reducing the overall cost of development and operation. The ability to have defined set costs in future option years enables SAFE to make an informed decision regarding the future costs of operations.

### Managing MATIS Costs and Operations

The development of MATIS is a firm fixed priced element and will produce a system that can support the five-county region, comprised of Los Angeles, Orange, Riverside, San Bernardino and Ventura counties. Currently Orange and Ventura counties have stated that they are interested in partnering with Los Angeles in the development and operation of MATIS, specifically the 511 services. Other counties may join when they so choose, at which time any cost impact incurred as a result of those counties joining will be agreed upon. The operation of MATIS, in particular the call center and 511 system, does not lend itself to a firm fixed priced structure. The operation of the call center and 511 services is more conducive to a fixed unit rate application that will allow for the growth and maturation of the service without negatively impacting the quality and performance of the services provided nor the ability of the public, including our regional partners, to fully use MATIS. The following is a summary of the 511 system and call center operations:

- Traveler Information 511 System - Interactive Voice Response (IVR) & Web

511 will be an automated system designed to provide accurate, reliable, timely and useful information to the public. The goal is to provide information that will enable the traveler to make a more informed decision regarding their travel mode or pattern prior to or during their travel. 511 is comprised of an automated IVR phone service and a companion web service. The contract requires the IVR to handle up to 400,000 calls per month and the web service to handle up to 100,000 page hits per hour, with both growing at a 5% annual rate during the contract period. This volume of activity is

consistent with the activity of other successful 511 operations nationally. The 511 system will be capable of handling many more users with minimal one-time infrastructure investment and minimal impact to the on-going annual operations and maintenance costs. Attached is a summary of two scenarios that illustrate the potential impact of increased 511 usage.

To mitigate the impact of increased usage, staff will be monitoring 511 usage and will make changes, as appropriate. Both the IVR and web services will be monitored to ensure that the service is easy to use and the information is provided in an efficient and effective manner. Potential solutions include offloading IVR calls to the companion MATIS/511 web service, which operates at a lower cost and can accommodate increased usage more efficiently, and/or using other technologies to implement solutions to provide information to the users prior to them making a call or visiting the web site. In addition, to help mitigate the impact of an incident that may create a spike in the number of users, the IVR and web services are capable of providing automated messages to all users informing them of critical system-wide or important information upfront versus requiring the user to fully interact with the IVR or web, which will help reduce the overall burden on the system. Increased 511 usage may also generate additional revenues which could offset the increased costs of the additional usage. Finally, the ancillary benefits of relieving congestion and improving the overall transportation situation in Los Angeles County by providing valuable and useful information may balance the additional costs incurred as a result of increased usage.

- Call Center Usage

The call center will provide live operators to support call box and #399 calls, and if necessary 511 calls that require operator assistance. The MATIS contract will support up to 100,000 calls per month for the term of the contract. Currently, call box and #399 calls average from 7,500 to 10,000 calls per month. It is anticipated that call box calls will continue to decline or remain relatively low and #399 mobile call box calls may experience some growth during the term of this contract. The remaining call center call volume will allow some flexibility to meet 511 needs, including calls that cannot be effectively handled by the automated 511 IVR system. The additional volume will also be advantageous to assist the five-county region during a spike in calls due to a natural disaster or other event. Call activity will be monitored to determine if there is a capability of offloading calls thru improvements made to the 511 system (both IVR and web).

### Protest

A protest from MyTransitPlus, a subcontractor on a proposal submitted by TI Ventures, was received on November 23, 2007. The protest was received within the protest time frame and a response denying the protest, on the grounds that MyTransitPlus was not an interested party, was delivered on November 28, 2007. The issue of standing to protest an award has been addressed frequently within the federal contracting process, and SAFE's procedures are consistent. For example, 31 U.S.C. Section 3551(2) defines an *interested party* as "an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of the contract or by failure to award the contract." Section 7.1.2 of SAFE's protest procedure uses that same definition to define who is eligible to protest an award.

In order to qualify as an interested party under Section 7.1.2, a company must meet a two part test: 1) a party must prove they are either an actual or a prospective bidder or offeror, and 2) that they have an actual and direct economic interest in the outcome of the contract award being protested.

Actual bidders or offerors are those companies who submit bids or proposals to the government. Case law<sup>1</sup> exists in support of the position that prospective suppliers or subcontractors are not considered interested parties. Finally, under *Eagle Design & Management, Inc. v. The United States*, 62 Fed. Cl. 106, 2004 U.S. Claim LEXIS 244, it is clear that a subcontractor to an offeror is not itself an actual or prospective offeror, is not an interest party and therefore lacks standing to file a protest.

In response to staff's denial of its protest, on December 3, 2007, MyTransitPlus submitted an appeal to the CEO as provided for in the protest procedure. After reviewing the appeal and consulting with County Counsel, a response upholding the initial protest denial was issued on December 13, 2007. MyTransitPlus then submitted a letter on January 2, 2008 in response to the CEO's denial of the appeal. The agency's protest procedure states that the CEO's decision is final, therefore, no further action was taken on MyTransitPlus's post appeal letter.

It should be noted that MyTransitPlus's post appeal letter has taken issue with the content and conditions of the RFP by asserting that the terms, conditions and/or form of the proposed procurement action had been altered so substantially that SAFE should have started over by re-issuing the RFP. SAFE's protest procedures states very clearly that "A protest regarding the terms, conditions, or form of a proposed procurement action must be received by SAFE no later than ten calendar days after the date the IFB or RFP is advertised." MyTransitPlus participated in this procurement process as a subcontractor to TI Ventures, a joint venture company. It should be noted that when SAFE decided to modify the terms of the procurement, all three of the participating companies were notified of the proposed changes and given an opportunity to submit clarifying questions. TI Ventures submitted such a clarifying letter, which generated an amendment to the procurement. TI Ventures did not file a protest but rather submitted a revised proposal in accordance with the changes in the procurement process.

Finally, TI Ventures did not submit either a content or award-based protest. MyTransitPlus is a subcontractor to TI Ventures in this procurement. SAFE staff is confident that each of the three potential proposers had a fair and equal opportunity to ask questions, receive written responses and generally participate on a level playing field. There is no basis for the allegations or assertions made by MyTransitPlus, whose own prime contractor did not even participate in its protest submittal.

#### Revised RFP Evaluation Criteria

The original RFP was issued with an evaluation criteria consisting of a distribution of 70% technical and 30% cost. During the proposal evaluation process, staff determined that the assigned weights were incorrect given that the proposed technology was more developed

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<sup>1</sup> *PPG Indus. Inc.*, Comp. Gen. Dec. B-272126, 96-1 CPD, para. 285; *Polycon Corp.* 64 Comp. Gen. Dec. 523 (B-218304), 85-1 CPD, para. 567, recons. denied, 85-1 CPD para 714.

than originally understood by staff. Placing a 70% weighting on the technical evaluation factor was no longer justifiable. Staff also determined that the weight for the cost criterion underestimated the important role that price must be given in the evaluation process. Under agency procurement policies, staff must determine that a contract's price is fair and reasonable prior to contract award. Under the original weighting, the source selection process could not yield a contract award at a fair and reasonable price and therefore it was necessary to revise the assigned weighting. An amendment to the RFP was issued with the revised weighting consisting of a distribution of 50% technical and 50% cost. The amendment was sent to all Proposers with requests for new technical and cost proposals to be submitted for evaluation using the revised weighting. This revised weighting did not change the technical objective or requirements of the procurement and would not necessitate a modification in the composition of the proposal team. All Proposers submitted revised technical and cost proposals in response to the RFP amendment. This issue was also addressed as part of SAFE's denial of the protest and appeal response.

### **NEXT STEPS**

Staff will present a recommendation to the Board in January for the award of the MATIS contract to the IBI Group. If approved, staff will work on the development of MATIS and begin coordination efforts with various interested parties with a goal of implementing a baseline system within six months from contract award.

## ATTACHMENT A

### Potential Impact of Increased 511 Usage

	Contract Baseline	Scenario 1	Scenario 2
Monthly IVR Volume Year 1	400,000	400,000	600,000
Monthly IVR Volume Year 10	620,500	943,000	931,000
Hourly Page Hit Volume Year 1	100,000	125,000	125,000
Hourly Page Hit Volume Year 10	155,133	194,000	194,000
IVR One-Time Additional Infrastructure Cost	N/A	\$400,000	\$400,000
IVR Additional Annual Operational Cost	N/A	\$89,600	\$145,000
Web One-Time Additional Infrastructure Cost	N/A	\$225,000	\$225,000
Web Additional Annual Operational Cost	N/A	\$33,333	\$33,333
Total Estimated Additional 10-Year Contractual Cost	N/A	\$1.8 million	\$2.5 million

The chart above provides a summary of the potential impact of increased 511 usage. The Contract Baseline column provides the usage currently projected in MATIS.

- Scenario 1
  - IVR volume starts at the baseline amount but grows at 10% annually versus the baseline annual growth rate of 5%.
  - Web volume starts at 25% above the baseline projection and grows at the projected 5% annual rate.
  
- Scenario 2
  - IVR volume starts at 50% above the baseline projection and grows at the projected 5% annual rate.
  - Web volume starts at 25% above the baseline projection and grows at the projected 5% annual rate.

Under both Scenarios the additional cost impact to the contract can be accommodated using the recommended 10% contingency allocation.