



JULY 16, 2001

TO: BOARD OF DIRECTORS

FROM: BRUCE FEERER
DEO PROCUREMENT, P-2000 TIGER TEAM

SUBJECT: P-2000 CONTRACT CHANGE

Metropolitan
Transportation
Authority
A

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ISSUE

The contract with Siemens for production of P-2000 light rail vehicles (LRVs) provides for release of retention on the first eight LRVs when they have been finally accepted. Although the MTA now has more than eight P-2000s in revenue service they have not been finally accepted because certain fleet defects (which do not affect safety or operational performance) must be repaired. Siemens argues that payments are being unreasonably delayed. MTA Procurement staff has negotiated a compromise that will provide Siemens with some immediate cash flow but will allow the MTA to withhold the retention until 26 (twenty-six) LRV's are finally accepted. The CEO within staff authority has approved these changes. The changes match the interests of Siemens and the MTA because they will incentivize Siemens to deliver 26 contractually compliant LRV's (which we need for a full three car operation on the Blue Line and two car operation on the Green Line) while providing some immediate cash flow to Siemens.

BACKGROUND

The P-2000 Contract payment provisions are based on Siemens sequentially achieving twenty-three (A thru W) defined milestone events for each Light Rail Vehicle (LRV). Achievement of each milestone authorizes Siemens to invoice for a contractually defined percentage of each LRV's unit price, minus a contractually defined retention amount. Retention of a portion of each invoice is an MTA contract risk mitigation/ incentive device designed to encourage Siemens prompt completion of contract deliverables. The P-2000 retention rationale incentivized these four milestones: 1) the start of early production/ vehicle acceptance by releasing a portion of accumulated retainage at acceptance of the eighth LRV, 2) complete production/vehicle acceptance by releasing a portion of retainage at acceptance of the fifty-second LRV, 3) sustain Siemens support during the base two year warranty period and 4) sustain Siemens support through the five year warranty period.

The Contract payment schedule requires full completion of a milestone before payment except when "conditional acceptance" occurs. At this point partial milestone payment may be authorized.

DISCUSSION

It is in the best interests of the MTA to change the initial milestone for retention release and help Siemens with their “burdensome negative cash flow” position. This proposed contract change and partial milestone payment are within the authority of the contract administrator.

As previously reported, Siemens is more than three years behind their contractual delivery schedule. The early incentive for LRV delivery in the “retention” clause has not worked and is no longer effective for the MTA. Siemens asserts the extended contract duration has imposed a burdensome negative cash flow. Recognizing these concerns, discussions were initiated and have progressed over the last several months to reach a win-win position for each party. The MTA negotiating objective was to re-define the retention release procedure to better protect MTA interests while offering partial payment of the final milestone payment to ease Siemens cash flow problems. The following agreement was reached in early July:

MTA- will be required to release the initial portion of retention at the acceptance of the twenty-sixth LRV (vice eighth LRV).

SIEMENS- will be authorized to invoice for 85% of the final milestone payment for conditionally accepted cars. The remaining 15% can be invoiced at the completion of window/ paint blistering repair. At acceptance of the twenty-sixth LRV Siemens will receive 65% (vice 50%) of the cumulative retention amount. All other retention/ release milestones and requirements remain unchanged.

NEXT STEPS

Implement the contract change and authorize partial payment for authorized milestone “W” invoices.