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APRIL 1, 1997

Linda Bohlinger

TO: BOARD OF DIRECTORS

FROM: LINDA BOHLINGER, INTERIM CHIEF EXECUTIVE OFFICER

SUBJECT: APPROVE AN AMENDMENT TO CONTRACT FOR PROGRAMWIDE SERVICES

RECOMMENDATION

Approve Amendment No. 1 to Contract E0070 with the Engineering Management Consultant (EMC) for Programwide Engineering Services. Amendment No. 1 is a complete revision of this contract in response to Board direction, Inspector General audit findings, Arthur Andersen audit findings, and Senior Management staff requests.

Within Construction Committee authority: Yes No

ORGANIZATIONAL IMPACT

This action will allow for improved accountability of preliminary design, final design, design services during construction, and system start-up for all Metro Rail projects.

BUDGET IMPACTS

The recommended amendment does not impact the MTA Board approved Project or Fiscal Year Budget, the current contract budget, the Project Contingency, or the project Sources of Funds.

The forecast final cost for this contract is \$467,144,826, including in process Contract Work Orders (CWOs) and other anticipated changes.

Potential for Cost Recovery: Yes No

ALTERNATIVES CONSIDERED

The Board has the option to deny approval, however, this would mean that EMC would continue to perform under the current contract terms and conditions. The Board also has the option to direct solicitation for another general engineering contractor.

BACKGROUND

EMC has been under contract with MTA and its predecessor agency, LACTC, since May 1992. In November 1994, following a series of incidents which raised concern within the Authority regarding EMC's contractual performance, the Board of Directors commissioned Arthur Andersen to conduct a performance audit. Based on the results of that audit, an Engineering Improvement Plan (EIP) was developed. Many of the recommendations in the EIP relative to the EMC contract, have been implemented as the result of the negotiations for Amendment No. 1.

Over the past six months, staff has negotiated with the EMC to increase EMC's contractual responsibility and accountability for design services provided to the MTA. Highlights of negotiated agreements include:

- Scope of Services has been rewritten to establish clear and distinct requirements. Amended contract language now requires that the EMC be responsible for the work of its subcontractors and places the economic risk of performance upon the EMC.
- Errors and Omissions language has been clarified.
- Clear requirements have been established for closing out CWOs and the total contract.
- MTA Contractor Cost Guidelines were revised to provide improved cost-control.
- Contract language has been rewritten to add Retention and Liquidated Damages terms and conditions which provide penalties should the EMC work be deemed incomplete or substandard in performance for firm fixed price CWOs.
- Fee structure has been revised from a base and award fee structure to a fee structure commensurate with the types of work to be performed, as follows:
 - Program Oversight shall be performed on a cost reimbursable, 7% **fixed-fee** basis.
 - Design Services shall be performed on a cost reimbursable, 8% **fixed-fee** basis.
 - CWOs may be negotiated to be performed on a Lump Sum price basis, with a fee component of 12%. **Firm fixed priced** CWOs transfer the risk of performance to the EMC.
- EMC will continue to make an annual contribution towards MTA's Program Professional Liability Insurance Plan, and insurance language has been added where EMC contributes toward the deductible for claims arising from the Eastside Extension up to EMC's net profits earned from the Eastside Extension.
- As a result of a negotiation with MTA concerning professional liability insurance, MTA will retain \$1,000,000 from pending Award Fee invoices to be applied towards insurance contributions owed by EMC.

SMALL BUSINESS PARTICIPATION

The contract has a DBE participation goal of 27% and is approximately 50% complete. The current DBE participation reported by the consultant is 24.29%. MTA's Contract Compliance Unit is currently determining the accuracy of these figures through the survey audits.

ATTACHMENTS

Attachment 1 – Professional Services Contract Value Status

Attachment 2 – EMC Contract E0070 Amendment 1 - Revision Matrix

Prepared by: James Linkous, Contract Administration Manager
Joel Sandberg, Deputy Executive Officer, Engineering



Charles W. Stark
Interim Executive Officer, Construction

**ATTACHMENT 1
PROFESSIONAL SERVICES CONTRACT VALUE STATUS**

**E0070 - PARSONS-BRINKERHOFF/DMJM
TOTAL CONTRACT**

PROJECT CUMULATIVE CWO VALUE FOR CONTRACT E0070

1. TOTAL INITIAL CWO VALUES:	\$132,067,804
2. TOTAL PREVIOUS AMENDMENTS:	\$253,383,770
3. TOTAL CURRENT CONTRACT VALUE (1 + 2)	\$385,451,574
4. VALUE OF THIS AMENDMENT	\$0
5. PROPOSED BOARD APPROVED CONTRACT VALUE (3 + 4)	\$385,451,574
6. STAFF APPROVED CCN NTE VALUE	\$3,292,030
7. CCN NTE'S INCLUDED IN AMENDMENT	\$0
8. CCN NTE'S IN OUTSTANDING CCN'S (6-7)	\$3,292,030
9. NEW CONTRACT EXPENDITURE CEILING (5 + 8)	\$388,743,604

AUTHORIZATION FOR EXPENDITURE STATUS : TOTAL CONTRACT E0070

10. EXPENDED TO DATE	\$305,368,105	
11. UNEXPENDED CWO VALUE (9-10)	\$83,375,499	
12. NTE ALLOWANCE (Not Applied)	N/A	
13. PROPOSED AFE (5 + 12)	N/A	*
14. CURRENT AFE	\$400,468,796	
15. AFE ADJUSTMENT REQUIRED (13-14)	\$0	Not Required

BUDGET STATUS : TOTAL CONTRACT E0070

16. CURRENT CONTRACT BUDGET	\$458,666,325	
17. PROPOSED BOARD APPROVED CONTRACT VALUE	\$385,451,574	
18. OUTSTANDING CCN'S	\$24,875,343	as of 04/02/97
19. TRENDS AND CONTINGENCIES	\$56,817,909	
20. FORECAST FINAL COST (17 + 18 + 19)	\$467,144,826	as of 04/02/97

REVIEWED BY:

**ATTACHMENT 2
EMC CONTRACT E0070
AMENDMENT 1 - REVISION MATRIX**

04/03/97

<u>Recommendation</u>	<u>Contract Language</u>	<u>Source of Recommendation</u>	<u>Status</u>
The contract does not provide for clear accountability for design work performed by the Contractor and the Contractor's Subcontractors.	Part B, <u>GENERAL CONDITIONS, Performance Of Services</u> , states "The Contractor shall be fully responsible to the AUTHORITY for all acts and omissions of its own personnel, and of Subcontractors, Suppliers and their employees."	The Board	In Contract
	Part B, <u>GENERAL CONDITIONS, Professional Liability</u> , states "The Contractor shall be responsible for the professional quality, technical accuracy, completeness and coordination of all Work furnished by the Contractor (including the Work performed by Subcontractors on the basis provided herein) under the Contract."	The Board	In Contract
That the system of Advanced Work Authorizations be replaced by procedures that are provided for in, or added to, the professional services contracts.	Part B, <u>GENERAL CONDITIONS, Changes</u> , implements AB 1869 which sets forth change procedures requiring a merit determination by the Contract Administrator and MTA Legal Counsel prior to any change order under the contract.	IG	In Contract
We recommend that the MTA investigate opportunities to adjust the current cost-plus fee structure with more fixed component elements.	Part D, <u>COMPENSATION AND PAYMENT</u> , provide for lump sum Contract Work Orders.	Arthur Andersen	In Contract
Work orders will be specifically detailed so that all subsequent tasks performed during the period can be identified as included or excluded from the scope of the Contract Work Order.	Part A, <u>SCOPE OF SERVICES, Section 2.15, Project Implementation Plan</u> , now provides for the development of discrete Contract Work Orders resulting from the Plan. The details of the Project Implementation Plan will be used to establish a definitive Scope of Work for each Contract Work Order.	Arthur Andersen	In Contract
We recommend that the fee portion, which is added to the costs incurred by the EMC during preliminary engineering and design services during construction, be based upon a fixed-fee percentage negotiated between the parties of between 5% and 8%.	Part D, <u>COMPENSATION AND PAYMENT, Basis Of Compensation</u> , provides for cost reimbursement fixed-fee agreements for Contract Work Orders performed under the contract. Design Services were negotiated to be performed on a cost reimbursable, 8% fixed fee basis.	Arthur Andersen	In Contract

**ATTACHMENT 2
EMC CONTRACT E0070
AMENDMENT 1 - REVISION MATRIX**

04/03/97

<u>Recommendation</u>	<u>Contract Language</u>	<u>Source of Recommendation</u>	<u>Status</u>
The Engineering Management Consultant contract does not define the scope of services with necessary precision.	Part A, <u>SCOPE OF SERVICES</u> , has been revised to expand and improve the definition of both administrative and design requirements. The Scope of Services was revised by the MTA Deputy Project Managers, MTA Safety, MTA Quality Assurance and MTA Configuration Management.	Arthur Andersen	In Contract
Separate Contract Work Orders, Project Implementation Plans and budgets should be prepared as major new work tasks are identified, rather than performing the work as a CCR under an existing Contract Work Order.	Part C, <u>SPECIAL PROVISIONS, Ordering</u> , requires separate Contract Work Orders and Project Implementation Plans for each of the following: Annual Programwide Services, Preliminary Design, Final Design, Design During Construction and System Start Up.	Arthur Andersen	In Contract
The Engineering Management Consultant contract and the relevant Contract Work Order's do not contain the necessary precision.	Form of Contract, Article VI, CWOs shall include (1) a numerical numerator; (2) the Period of Performance; (3) Schedule with Milestones; (4) Deliverables; (5) the description of Work; (6) Contract Work Order Price (7) the identity of the AUTHORITY'S technical and CWO representative, and (8) the identity of the Contractor's technical and CWO representative.	Arthur Andersen	In Contract
Invoices issued against a Contract Work Order should clearly identify the work performed including deliverables.	Part D, <u>COMPENSATION AND PAYMENT</u> , provides for proper Contractor billing. Billings are required to reflect the Monthly Progress Report for each Contract Work Order. Billings will now require identification of scheduled milestones and % of completion.	MTA Staff	In Contract
The Engineering Management Contractor has no incentive to provide quality deliverables on time under cost reimbursement, CPFF, Contract Work Orders.	Part D, <u>COMPENSATION AND PAYMENT, Basis Of Compensation</u> , provides for AUTHORITY to retain 5% of the total Firm Fixed Price CWO value. Such amounts shall be retained until thirty (30) days after the AUTHORITY has determined the Contractor has completed and the AUTHORITY has accepted the Work under the FFP CWO.	MTA Staff	In Contract

**ATTACHMENT 2
EMC CONTRACT E0070
AMENDMENT 1 - REVISION MATRIX**

04/03/97

<u>Recommendation</u>	<u>Contract Language</u>	<u>Source of Recommendation</u>	<u>Status</u>
The current allocation method of the Engineering Management Consultant project office expenses does not permit MTA clear detailed visibility of incurred costs for administration services.	Part C, <u>SPECIAL PROVISIONS, Project Office Administration Expenses</u> , provides a separate Contract Work Order for project office administration expenses to include all direct labor and indirect costs for administration personnel and non-project other direct costs.	MTA Staff	In Contract
Does the contract provide for subcontracting and procurement procedures that reflect the MTA contracting and procurement procedures?	Part B, <u>GENERAL CONDITIONS, Subcontractors And Suppliers</u> , requires that the Contractor' Procurement Policies and Procedures, which include MTA Protest Procedures, be submitted to the AUTHORITY for review and acceptance.	MTA Staff	In Contract
Increase and define audit oversight of Contractor costs to validate cost incurred to aid projects in planning and cost control.	Part B, <u>GENERAL CONDITIONS, Audit</u> , defines audit activities for contract amendments, CWO revisions (changes), defective cost and pricing data and close-out.	MTA Staff	In Contract
Install audit software in MTA owned computers at Contractor's work place to gather cost data thus allowing Auditor' to perform cost audits without interfering with Contractor's daily work.	Part B, <u>GENERAL CONDITIONS, Audit Software</u> , provides for installation and implementation of computer assisted audit technique software for the purpose of providing quick access for verification of costs incurred and amounts billed to the AUTHORITY.	MTA Staff	In Contract

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MOTION BY MTA BOARDMEMBER SUPERVISOR GLORIA MOLINA

April 17, 1997

There is presently a significant backlog of contracts which have not been closed out due to lack of adequate resources in the Audit Division. Of the several audits which have been concluded, already hundreds of thousands of dollars have been identified as being owed to the Agency by consultants and contractors. As these contracts become more dated, our ability to collect funds owed the Agency becomes more remote due to the change in personnel and the difficulty in securing required documentation and explanation of audit issues. It is therefore in the best interest of the Agency to procure a plan to close out all completed contracts and provide for a timely follow-up procedure designed to retrieve outstanding debts identified in these ongoing audits.

I, THEREFORE, MOVE that the MTA Board direct the Internal Auditor to present a cure proposal to the Construction Committee at its May 1997 meeting that addresses the current audit backlog with recommendations on appropriate collection procedures required to secure any revenues owed the MTA.