



METROPOLITAN
TRANSPORTATION
COMMISSION

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Memorandum

TO: Commission

DATE: May 21, 2009

FR: Executive Director

W.I.

RE: TransLink[®] Contract: Commission Approval

- (i) Assignment Agreement and Related Transactions - MTC, Motorola, Inc.; Vix ERG Ltd.; and Cubic Transportation Systems, including Settlement of *MTC v. Motorola*, Case No. C 07-15576, 9th Cir (\$597,000)
- (ii) Contract Revisions: Change Order No. 118: Cubic (\$34.1 million)

At its May 8, 2009 meeting, the MTC Operations Committee referred the following two actions to the Commission for its approval:

- (i) An Assignment Agreement and Related Transactions among MTC, Motorola, ERG and Cubic, that will result, when all of the conditions in the agreement are met, in the assignment of the TransLink[®] Contract by Motorola to Cubic and the settlement of the *MTC v Motorola* lawsuit, including payment of MTC's attorneys' fees and costs; and
- (ii) A delegation of authority to the Executive Director or his designee to negotiate and enter into a new Conformed Contract, in the form of Change Order No. 118, between MTC and Cubic, and change orders to be added to the Contract after Assignment.

The Assignment Agreement provides that the assignment of the TransLink[®] Contract by Motorola to Cubic will occur when a number of closing conditions have been met. These closing conditions are:

- Purchase or license by Cubic from ERG of all assets required to complete the TransLink[®] Contract through its 2019 term
- Execution of a Change Order revising the Contract
- Agreement between MTC and Cubic on a satisfactory transition plan
- Achievement of BART Revenue Ready (reached on May 8)
- Resolution of the 4 outstanding claims between Motorola and MTC and settlement of *MTC v. Motorola* declaratory judgment action, with payment of MTC's attorneys' fees (\$138, 695)
- TransLink[®] Management Group approval (approved on April 27)
- FTA notification and opportunity to exercise its right to concur
- Commission approval

A draft Assignment Agreement, still under discussion with Cubic, ERG and Motorola, is attached to this memorandum. Unresolved terms and conditions are shaded. Staff asks that the Commission delegate to the Executive Director the authority to resolve the remaining differences, subject to the satisfaction of the closing conditions specified above.

The memorandum to the Operations Committee is attached to this memorandum. Staff reports the following changes since the May 8 Committee meeting:

The sum of \$597,000 (previously included in Change Order No. 118 for Third Party Vendor installation costs) has been moved to the Assignment Agreement as a payment to ERG in settlement of a claim regarding Third Party Load fees, thereby reducing the not-to-exceed amount for Change Order No. 118 to \$603,000 and reducing the total authorized amount for the Conformed Contract with Cubic to \$34.1 million. As noted in the Operations Committee memorandum, approximately \$20 million of the total amount authorized for the Conformed Contract will be funded through the San Francisco Municipal Transportation Agency (SFMTA) to deliver TransLink-only equipment for the Metro system, and \$14.7 million is for anticipated change orders for which funding is included in MTC's TransLink[®] project funding commitment in the adopted regional transportation plan (Transportation 2035). The negotiated revisions also provide for a total offset over the life of the Contract of \$8.4 million, including employer program revenue and a Contractor contribution of \$2 million to deliver a TransLink[®] application for the BART parking lots.

Staff recommends Commission approval of the Operations Committee recommendation, modified as discussed above:

- (i) An Assignment Agreement and Related Transactions among MTC, Motorola, ERG and Cubic, that will result, when all of the conditions in the agreement are met, in the assignment of the TransLink[®] Contract by Motorola to Cubic, the payment of a settlement in the amount of \$597,000 to ERG, and the settlement of the *MTC v Motorola* lawsuit, including payment of MTC's attorneys' fees and costs; and
- (ii) A delegation of authority to the Executive Director or his designee to negotiate and enter into a new Conformed Contract, in the form of Change Order No. 118, between MTC and Cubic, which includes the revisions described in this memorandum and its attachments, subject to the satisfaction of the closing conditions in the Assignment Agreement and effective upon the closing date of the Assignment. The total increase in the Contract amount represented by such Change Order shall not exceed \$603,000; an amount not to exceed \$33.5 million shall be added to the Contract by Change Orders entered into after the Assignment.

Staff will return to the Commission for direction in the event any of the closing conditions in the Assignment Agreement cannot be met.

Steve Heminger

Attachments (3)

SH:MJM

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REQUEST FOR COMMISSION APPROVAL

Summary of Assignment and Related Transactions Agreement

Work Item No.: 310-2700

Parties: MTC; Motorola, Inc.; ERG; Cubic Transportation Systems

Work Project Title: TransLink[®] Design Build Operate Maintain Conformed Contract for Bay Area fare collection system

Purpose of Agreement: To assign the TransLink[®] Contract from Motorola/ERG to Cubic, subject to the satisfaction of specified closing conditions.

Project Cost Not to Exceed: \$597,000 – settlement of Third Party Load Fee Claim

Funding Sources: CMAQ, STA Capital

Fiscal Impact: In MTC FY 2008-09 budget

Motion by Commission: That the Executive Director or his designee is authorized to negotiate and enter into an Assignment and Related Transactions Agreement, based on the draft Agreement presented to the Commission on May 27, 2009. The Executive Director or his designee is further authorized to make such revisions to the draft Agreement as he or she deems necessary and advisable to effect the assignment, subject to the satisfaction of the closing conditions set forth in the draft Agreement.

Further, the Chief Financial Officer is authorized to set aside funds up to \$597,000 for such Assignment and Related Transactions Agreement.

Commission:

Scott Haggerty, Chair

Approved: Date: May 27, 2009

REQUEST FOR COMMISSION APPROVAL

Summary of Proposed TransLink[®] Contract Novation – TransLink[®] Change Order 118

Work Item No.: 105-1221, 310-2700, 310-2704, 310-2707, 310-2734, 310-2722, 310-2740, 310-2752, 310-2728

Contractor: Cubic Transportation Systems
San Diego, CA

Work Project Title: TransLink[®] Design Build Operate Maintain Conformed Contract for Bay Area fare collection system

Purpose of Project: To complete the design and build of TransLink[®] in the San Francisco Bay Area and to operate and maintain the system through the term of the existing contract ending in November 2019.

Brief Scope of Work: Changes are as described in the Executive Director's memorandum dated May 1, 2009 and its attachments.

Project Cost Not to Exceed: \$603,000 this Change Order for change in price for establishment of Third Party Distributor locations (previously approved capital contract = \$75,751,819)

Funding Sources: Ongoing Contract - Section 5307, STP, CMAQ, Regional Measure 2 Capital, Regional Measure 2 Operating, STA Capital, STA Operating, STP Exchange. \$603,000 – CMAQ, STA Capital.

Fiscal Impact: Subject to approval of allocation of funding by the Executive Director

Motion by Commission: That the Executive Director or his designee is authorized to negotiate and enter into a Conformed Contract, Change Order No. 118, with Cubic Transportation System for the services described above and in the Executive Director's memorandum dated May 1, 2009, and the Chief Financial Officer is authorized to set aside funds up to \$603,000 for such Change Order Amendment.

Commission:

Scott Haggerty, Chair

Approved:

Date: May 27, 2009

REQUEST FOR COMMISSION APPROVAL

Summary of Proposed TransLink[®] Change Orders 0122, 0123, 0124, 0125

Work Item No.: 310-2700, 310-2740, 310-2728, 331-2653

Contractor: Cubic Transportation Systems
San Diego, CA

Work Project Title: TransLink[®] fare collection system

Purpose of Project: To complete the design and build of TransLink[®] in the San Francisco Bay Area and to operate and maintain the system through the term of the existing contract ending in November 2019.

Brief Scope of Work: *See below and in Executive Director's Memorandum dated May 1, 2009 and attachments for description*

Project Cost Not to Exceed: Change Order 0122: Employer Program - NTE \$2,500,000
CO 0123: Device Memory Upgrade: NTE \$5,000,000
CO 0124: Contactless Card Transition: NTE \$5,000,000
CO 0125: SFMTA Parking: UPP Pilot NTE \$1,000,000

Final amounts are subject to issuance of a Change Notice by MTC, submission by Contractor of a detailed cost or price analysis in accordance with Article 11.1.1 of the Conformed Contract, and agreement by the parties on terms of the Change Order(s).

Funding Sources: CO 0122: Regional Measure 2 Capital
CO 0123: Section 5307, STP, CMAQ, STA Capital, STP Exchange
CO 0124: Section 5307, STP, CMAQ, STA Capital, STP Exchange
CO 0125: ITS-OTMC SAFE

Fiscal Impact: Funding to come from previously programmed funds for TransLink[®].

Motion by Commission: That the Executive Director or his designee is authorized to negotiate and enter into Change Orders 0122, 0123, 0124, and 0125 with Cubic Transportation Systems for the services described above and in the Executive Director's memorandum dated May 1, 2009 and its attachments, and the Chief Financial Officer is authorized to set aside funds up to the amounts specified for such Change Orders.

Commission:

Scott Haggerty, Chair

Approved: Date: May 27, 2009

REQUEST FOR COMMISSION APPROVAL

Summary of Proposed TransLink[®] Change Order 0126

Work Item No.: 310-1700

Contractor: Cubic Transportation Systems
San Diego, CA

Work Project Title: TransLink[®] fare collection system

Purpose of Project: To complete the design and build of TransLink[®] in the San Francisco Bay Area and to operate and maintain the system through the term of the existing contract ending in November 2019.

Brief Scope of Work: Development and deployment of TransLink[®]-only fare gates and vending machines for the San Francisco Municipal Transportation Agency's (SFMTA) Muni Metro stations , and development of limited use TransLink[®] cards.

See Executive Director's Memorandum dated May 1, 2009 and attachments

Project Cost Not to Exceed: \$20,000,000.

Final amounts are subject to issuance of a Change Notice by MTC, submission by Contractor of a detailed cost or price analysis in accordance with Article 11.1.1 of the Conformed Contract, and agreement by the parties on terms of the Change Order(s).

Funding Sources: (Pending) SFMTA grant/cooperative agreement (Section 5307, Section 5309, ARRA, AB664, Regional Measure 2 Capital, Prop K, MTF Operating Funds, PTMISEA)

Fiscal Impact: None on MTC: fully funded by SFMTA

Motion by Commission: That the Executive Director or his designee is authorized to negotiate and enter into Change Order 0126, with Cubic Transportation Systems for the services described above and in the Executive Director's memorandum dated May 1, 2009 and its attachments, and the Chief Financial Officer is authorized to set aside funds up to the amount specified for such Change Order, subject to MTC budget amendment and MTC/SFMTA grant/cooperative agreement.

Commission:

Scott Haggerty, Chair

Approved: Date: May 27, 2009