



**Metro**

Metropolitan Transportation Authority

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**REVISED**

CONSTRUCTION COMMITTEE  
OCTOBER 21, 2004

PROJECT: METRO ORANGE LINE

CONTRACT: C0675 DESIGN/BUILD  
SHIMMICK CONSTRUCTION CO., INC./OBAYASHI  
CORPORATION, J.V.

ACTION: EXECUTE RECOVERY AGREEMENT FOR  
ORANGE LINE RECOVERY PLAN

RECOMMENDATION

Authorize the Chief Executive Officer to execute a Recovery Agreement to Contract No. C0675 Design/Build with Shimmick Construction Co., Inc./Obayashi Corp., J.V (SOJV) to recover schedule delays and settle time related claims in lieu of compensable time extensions for the Metro Orange Line Project in an amount not-to-exceed \$7.9 million as further described in Attachment B.

Within the Construction Committee Authority:  Yes  No  N/A

RATIONALE

The Metro Orange Line Project Design/Build Contractor's August 2004 schedule update forecasts that the Contract Substantial Completion milestone is five months behind the contractually specified completion of June 16, 2005. There are a multitude of reasons for the forecast delay, which includes MTA caused delays, Contractor caused delays as well as the California Court of Appeal stay of Project issued on August 2, 2004.

Staff believes it is important to move this project forward for the following reasons: MTA has already invested over \$170 million in this project. Continuing to move this project forward while completing the Court ordered environmental work, would cost only a fraction more, while the alternative of stopping or further delaying would have a significant added cost. Furthermore, the Orange Line is a key Air Quality Transportation Control Measure (TCM) identified in the SCAG Regional Transportation Plan, Regional Transportation Improvement Program (RTIP), and the AQMD clean air plans. As Los Angeles County is in a non-attainment area for ozone air quality, TCMs must be implemented in a timely manner to improve air quality. Failure to do so could result in the interruption in the flow of federal

transportation funds. SCAG indicated that the region would be in jeopardy of forfeiting federal funds if there is a delay in delivering TCMS such as the Orange Line. To achieve the earliest possible Orange Line completion date (August 2005), the Contractor must take actions to increase staff plus extend hours of operation. The Contractor would incrementally ramp up operations. It is unlikely that full operations would be reached prior to a Board decision on the revised environmental work required by court order. However, it is critical this work move forward now in an effort to minimize associated delay costs to the project.

MTA staff is recommending approval of a Recovery Plan which would pay the Design/Build Contractor to recover schedule and settle time related claims, as opposed to paying for delay costs beyond the MTA Board adopted August 2005 Revenue Operations Date (ROD) and adjudicating time related claims after the Project is completed. This preferred action would minimize the cost and schedule exposure for the MTA. The potential costs for delay are in the range of \$8 million to \$10 million. The Recovery Plan can be implemented at less cost than delaying the Project.

The Contractor has submitted a recovery plan that would mitigate the total delay impact and allow the MTA to maintain an August 2005 ROD. The Recovery Agreement recommended for approval includes Contract terms and conditions, which allow the Contractor flexibility to hire additional direct hire employees and subcontractors. To the extent existing Disadvantaged Business Enterprise (DBE) subcontractors do not have sufficient resources immediately available to support the effort, the Contractor would be allowed to utilize other available resources. Accordingly, the dollar amount of this Agreement will not be included in the total DBE goal. However, the Contractor will use best efforts in utilizing additional DBE subcontractors when possible. this will not reduce the original DBE dollar commitment made for the base scope of work. It also includes a settlement of all time related claims. Payment would be based on Contractor performance and the achievement of Contract Milestones to support an August 2005 ROD.

To minimize the recovery cost, the MTA has agreed to allow the Design/Build Contractor to finish some non-critical construction activities, such as landscaping, after revenue operations. In addition, the City of Los Angeles will be asked to allow the Design/Build Contractor to construct portions of seven busway intersections using a grind and overlay technique rather than full depth pavement replacement, which decreases the contractor's construction duration and lessens community construction impacts during reconstruction of intersections. With actions above, the recovery plan allows the MTA to maximize the mitigation opportunities while the window of opportunity still exists to recover schedule.

Previous Contract actions have been authorized to mitigate schedule delays attributable to the MTA. By March 30, 2004, the Contractor was reporting a delay of four months. At that time the Chief Executive Officer initiated schedule mitigation by issuing Change Order No. 48.01 for \$280,000 to initiate recovery of 28 calendar days for owner caused delays due to contaminated soils. In addition to Change Order No. 58.00 for \$300,000 to initiate recovery of 33 calendar days of delay associated with redesign of the busway pavement structural section for an increased Traffic Index. These actions were initiated to take advantage of optimal construction acceleration opportunities during the initial rough grading and intersection construction phase of the Project. By the end of July 2004, these actions as well

as those of the Contractor allowed the Contractor to successfully mitigate two of the four months of delay.

On August 2, 2004, the California Court of Appeals issued a stay (ordering MTA to immediately stop all work) to the Project and consequently the MTA issued an immediate suspension of work to the C0675 Design/Build Contractor. The suspension of work was lifted on August 26, 2004. While the direct impact of the suspension was 24 days there are numerous indirect effects of the suspension that caused the impact to greatly exceed the 24 days. Such indirect effects of the stay include: (1) rehiring of field crew, (2) retraining of new employees to replace employees lost due to the suspension, (3) cancellation of material orders and reordering of such materials. A key critical procurement of steel canopies for installation at the stations was suspended and the fabrication placement in the suppliers schedule has been significantly impacted (up to a projected three months). These cumulative impacts lead to the current forecast of a five-month delay in achieving the Contract Substantial Completion Milestone.

To minimize the overall schedule delay impact due to the Court ordered stay, the Chief Executive Officer issued Change Orders No. 72.001 and 72.01 in the cumulative amount of \$990,000 to the C0675 Design/Build Contractor for standby and safety work related to the MTA issued suspension of work. These actions allowed the Contractor to maintain some supervisory level workers and critical equipment on site. The cost for these Change Orders are not included in the agreement with the Contractor since these costs will be incurred regardless of whether the recovery plan is approved or not.

### **IMPACTS TO OTHER CONTRACTS**

Since this action is taken to accelerate Contract No. C0675 Design/Build scope which will mitigate the Design/Build Contractor's schedule, there are no other contracts impacted. This action may require additional overtime by City of Los Angeles inspection forces which must be paid for by MTA.

### **FINANCIAL IMPACT**

The cost of delay or the recovery plans, whichever is chosen, will be funded from the Orange Line Project Contingency. There is sufficient Project Contingency at this time and no increase to the Board approved life of project budget is requested. The cost elements within the total life of project budget will be reallocated to reflect the reduction of Project Contingency.

The funds for this contract action are available within the FY05 Capital Budget of \$174,932,887; within the budget Cost Center No. 8510 for Project 800112 Metro Orange Line Project and the FY05 Capital Budget (as increased by the Board in July 2004) of \$8,061,354 for Project 800114 Metro Orange Line Bikeway Project. The life of project budget for Project 800112 adopted by the Board in February 2003 is \$329,500,000. The life of the Project budget for Project 800114 as increased by the Board in July 2004 is \$10,637,860. This recommendation is within the current life of project budget for both projects. Since these are multi-year projects, the cost center manager and appropriate Executive Officer will be

accountable for budgeting both project costs in future years consistent with the MTA Board adopted total projects budgets. Funding sources for Project 800112 are a combination of Federal, State and local funding sources. Federal funds in Project 800112 are specifically earmarked for a portion of the Articulated Vehicle Procurement. Funding sources for Project 800114 are a combination of Federal and City of Los Angeles sources.

### COST RECOVERY

Potential for Cost Recovery:             Yes             No             N/A

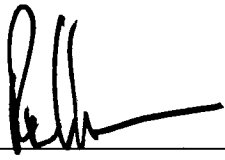
### ALTERNATIVES CONSIDERED

The MTA Board may reject the Recommendation and not approve the recovery plan for Contract No. C0675, but the Contractor will be entitled to both compensable and non-compensable time extensions. The planned August 2005 Revenue Operations Date will not be achieved and would likely slip to January 2006. In addition, MTA will incur additional staff and Construction Management consultant labor costs to manage Contract No. C0675 over the extended period of performance. Also, the time related claims would most likely have to be resolved individually within the legal system. It is estimated that these costs would be approximately the same, if not exceed, those recommended in the Recovery Agreement.

### ATTACHMENTS

- A      Procurement Summary
- A-1.   Procurement History
- A-2   List of Subcontractors
- B      Metro Orange Line Recovery Plan**

Prepared By: William R. Brown, Project Control Manager  
                  Roger F. Dames, Deputy Executive Officer, Project Manager.



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RICHARD THORPE  
CHIEF CAPITAL MANAEGMENT OFFICER  
CONSTRUCTION PROJECT MANAGEMENT



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ROGER SNOBLE  
CHIEF EXECUTIVE OFFICER

**BOARD REPORT ATTACHMENT A  
PROCUREMENT SUMMARY**

**Contract C0675 – San Fernando Valley  
East-West Corridor Bus Rapid Transit Project**

|     |  |  |   |
|-----|--|--|---|
| 1.  | Contract Number: C0675 Change Notice/Change Order - <b>TBD</b>                           |  |   |
| 2.  | Recommended Vendor:  | Shimmick Construction, Inc./Obayashi Corporation, JV |   |
| 3.  | Cost/Price Analysis Information: See Attachment A-1                                      |  |   |
|     | Bid/Proposed Price: <b>\$TBD</b>   | Recommended Price: <b>\$TBD</b>                      |   |
| 4.  | Contract Type: Fixed Price   |  |   |
| 5.  | Procurement Dates:   |  |   |
|     | Issued: <u><b>TBD</b></u>  |  |   |
|     | B. Advertised: N/A   |  |   |
|     | C. Pre-proposal Conference: N/A  |  |   |
|     | D. Proposal Due: N/A   |  |   |
|     | E. Pre-Qualification Completed: N/A  |  |   |
|     | F. Conflict of Interest Form Submitted to Ethics: Yes                                    |  |   |
| 6.  | Small Business Participation:  |  |   |
|     | A. Bid/Proposal Commitments:<br>25% DBE goal for Design<br>34% DBE goal for Construction | Date Small Business Evaluation Completed:<br>N/A     |   |
|     | Small Business Commitment:   | 27.83% Design<br>36.52% Construction                 |   |
| 7.  | Invitation for Bid/Request for Proposal Data:  |  |   |
|     | Notifications Sent:<br>N/A   | Bids/Proposals<br>Picked up: N/A                     | Bids/Proposals<br>Received: N/A               |
| 8.  | Evaluation Information:  |  |   |
|     | <b>Bidder/Proposer Names:</b> N/A  | <u>Bid/Proposal<br/>Amount:</u> N/A                  | <u>Best and Final Offer Amount:</u><br>\$ N/A |
|     | B. Evaluation Methodology: Cost Analysis and Technical Evaluation                        |  |   |
| 9.  | Protest Information:   |  |   |
|     | A. Protest Period End Date: N/A  |  |   |
|     | B. Protest Receipt Date: N/A   |  |   |
|     | C. Disposition of Protest Date: N/A  |  |   |
| 10. | Contract Administrator:<br>Robert P. Sechler   | Telephone Number:<br>213-922-7334                    |   |
| 11. | Project Manager:<br>Roger F. Dames   | Telephone Number:<br>213-922-7280                    |   |

**BOARD REPORT ATTACHMENT A-1  
PROCUREMENT HISTORY**

**A. Background on Contractor**

Shimmick-Obayashi is a joint venture of two firms. Shimmick Construction Company, founded in 1990, is a general engineering contractor based in Hayward, California. It has considerable experience in heavy public works construction, including the Alameda Corridor. Obayashi Corporation, founded in 1892, is an internationally known contractor based in Japan. Its relevant experience includes subways, dams, power plants, rail lines, bridges, highways, and design-build type contracts.

**B. Procurement Background**

Contract No. C0675 is a fixed price contract, state and locally funded, for a design-build delivery system for the San Fernando Valley East-West Metro Rapidway, plus a federally funded bike-way and pedestrian path, and up to eight (8) Contract Options under a Contractor-Controlled Insurance Program. Contract No. C0675 was awarded to Shimmick Construction Company, Inc./Obayashi Corporation, A Joint Venture (SOJV) on April 3, 2003 in the amount of \$150,717,038, which included five Contract Options. The Notice to Proceed (NTP) was issued on May 2, 2003, with a completion date 776 calendar days from the Commencement Date of May 2, 2003 set forth in the NTP.

**C. Proposal Evaluation**

N/A

**D. Cost/Price Analysis**

N/A

**BOARD REPORT ATTACHMENT A-2  
LIST OF SUBCONTRACTORS**

SMALL BUSINESS PARTICIPATION (CO675)

This Contract has a Disadvantaged Business Enterprise (DBE) participation goal of 27.83% for Design and a DBE goal of 36.52% for Construction. The Contract was awarded on April 3, 2003 and is approximately 97% complete for Design and 46% complete for Construction. Current DBE attainment<sup>1</sup> based on the relevant amount<sup>2</sup> is 24.56% for Design and 7.78% for Construction. Current DBE participation<sup>3</sup> based on total actual amount paid-to-date to Contractor and total actual amount paid-to-date to DBEs is 5.48% for Design and 17.96% for Construction.

DEOD is currently auditing the DBE progress shown below as reported by SOJV through the June 29, 2004 pay estimate. Currently, SOJV is not in compliance with the Dispute Resolution DBE requirements for this contract.

Design

|  |                 |
|--|-----------------|
| Original Award Amount (Design)                     | \$ 11,677,268   |
| Relevant Contract Amount <sup>2</sup> (Design)     | \$ 13,228,768   |
| Total Actual Amount Paid to Date to Prime (Design) | \$ 59,145,381** |

| DESIGN           |                   |                          |                             |                   |
|------------------|-------------------|--------------------------|-----------------------------|-------------------|
| Total Commitment | <u>% Complete</u> | Total Current Attainment | Total Current Participation | Compliance Status |
| 27.83%           | 97.46%            | 24.56%                   | 5.48%**                     | PERFORMING        |

| Subcontractor Name       | % Commitment | % Current Attainment | % Current Participation |
|--------------------------|--------------|----------------------|-------------------------|
| KATZ OKITSU & ASSOCIATES | 8.56%        | 6.58%                | 1.47%                   |
| TATSUMI & PARTNERS       | 6.74%        | 5.28%                | 1.18%                   |
| RICHARD CHONG            | 2.97%        | 3.82%                | 0.85%                   |
| WILLIAM YANG             | 0.81%        | 0.86%                | 0.19%                   |
| ASAHI SURVEYING          | 3.91%        | 3.40%                | 0.76%                   |
| ANTICH SURVEYING         | 1.96%        | 2.18%                | 0.49%                   |
| FPL & ASSOCIATES *       | 0.00%        | 0.19%                | 0.04%                   |
| SANCHEZ DESIGN           | 1.60%        | 0.02%                | 0.00%                   |
| THE SIERRA GROUP         | 1.28%        | 0.15%                | 0.03%                   |
| YX & ASSOCIATES *        | 0.00%        | 2.08%                | 0.47%                   |
| <b>TOTAL</b>             | 27.83%       | 24.56%               | 5.48%**                 |

\* DBE firms added to project by SOJV for additional DBE attainment.

\*\* Participation is currently calculated against paid-to-date for Design and Construction. Design payments must be broken out for more accurate reporting.

<sup>1</sup>Current Attainment = Total Actual Amount Paid-to-Date to DBE Subs ÷ Total Current Contract Amount

<sup>2</sup>Relevant Contract Amount = Original Contract Value + Contract Cost Modifications

<sup>3</sup>Current Participation = Total Actual Amount Paid-to-Date to DBE Subs ÷ Total Actual Amount Paid-to-Date to Prime



Construction

Original Award Amount (Construction) \$ 135,719,520  
 Relevant Contract Amount<sup>2</sup> (Construction) \$ 136,291,461 \*\*  
 Total Actual Amount Paid to Date to Prime (Construction) \$ 59,145,381\*\*\*

| <u>CONSTRUCTION</u>     |                   |                                 |                                    |                          |
|-------------------------|-------------------|---------------------------------|------------------------------------|--------------------------|
| <u>Total Commitment</u> | <u>% Complete</u> | <u>Total Current Attainment</u> | <u>Total Current Participation</u> | <u>Compliance Status</u> |
| 36.52%                  | 45.94%            | 7.78%                           | 17.96%                             | PERFORMING               |

| <u>Subcontractor Name</u>   | <u>% Commitment</u> | <u>% Current Attainment</u> | <u>% Current Participation</u> |
|-----------------------------|---------------------|-----------------------------|--------------------------------|
| ROMERO GENERAL CONSTRUCTION | 9.54%               | 0.90%                       | 2.08%                          |
| RAINBOW CONSTRUCTION        | 5.56%               | 4.16%                       | 9.58%                          |
| WESTERN PAVING              | 4.81%               | 0.43%                       | 0.99%                          |
| WC BROWN WELDING            | 4.76%               | 0.21%                       | 0.49%                          |
| ACE FENCE                   | 2.43%               | 0.21%                       | 0.49%                          |
| CUT CORE DEMOLITION         | 0.72%               | 0.61%                       | 1.42%                          |
| BCB STEEL                   | 0.59%               | 0.06%                       | 0.14%                          |
| CONRAD CONSTRUCTORS         | 0.22%               | 0.13%                       | 0.31%                          |
| BLUE SKY AKA UNITED TRAFFIC | 0.05%               | 0.05%                       | 0.11%                          |
| PW TRUCKING                 | 0.01%               | 0.10%                       | 0.22%                          |
| ROSE SUPPLY                 | 1.96%               | 0.38%                       | 0.88%                          |
| INDUSTRIAL WHOLESALE        | 0.80%               | 0.16%                       | 0.38%                          |
| LOOP MASTERS                | 0.16%               | 0.00%                       | 0.00%                          |
| DI CARLOS ASSOCIATES        | 0.66%               | 0.00%                       | 0.00%                          |
| IMPERIAL IRRIGATION         | 0.59%               | 0.00%                       | 0.00%                          |
| GALLO'S                     | 2.10%               | 0.00%                       | 0.00%                          |
| FAREAST LANDSCAPE           | 1.27%               | 0.00%                       | 0.00%                          |
| TRISTAR TRANSPORTATION      | 0.06%               | 0.00%                       | 0.00%                          |
| WESTERN PAVING              | 0.13%               | 0.00%                       | 0.00%                          |
| CUT CORE DEMOLITION         | 0.08%               | 0.00%                       | 0.00%                          |
| ABRATIQUE & ASSOCIATES *    | 0.00%               | 0.16%                       | 0.37%                          |
| MORGNER TECHNOLOGY MGT *    | 0.00%               | 0.02%                       | 0.05%                          |
| WAGNER ENGINEERING *        | 0.00%               | 0.20%                       | 0.45%                          |
| <b>TOTAL</b>                | <b>36.52%</b>       | <b>7.78%**</b>              | <b>17.96%***</b>               |

\* DBE firms added to project by SOJV for additional DBE attainment.

\*\* Relevant Contract Amount used to calculate attainment must be verified to ensure all DBE change order dollars have been properly reported.

\*\*\* Participation is currently calculated against paid-to-date for entire Design and Construction. Construction payments must be broken out for more accurate reporting.

<sup>1</sup>Current Attainment = Total Actual Amount Paid-to-Date to DBE Subs ÷ Total Current Contract Amount

<sup>2</sup>Relevant Contract Amount = Original Contract Value + Contract Cost Modifications affecting DBE scope of work

<sup>3</sup>Current Participation = Total Actual Amount Paid-to-Date to DBE Subs ÷ Total Actual Amount Paid-to-Date to Prime

BOARD REPORT ATTACHMENT B  
METRO ORANGE LINE RECOVERY PLAN

- Recovery Plan Cost \$5.9 - \$7.9 million
  
- Summary of Recovery Plan Proposal
  - Contractor commits to meeting July 29, 2005 Substantial Completion
  
  - Equal monthly payments to the Contractor totaling \$6.9 million with \$1.0 million in retention
  
  - If Contractor meets Milestones & Substantial Completion MTA releases \$1.0 million retention, and gives an additional Incentive Bonus of \$1.0 million.
  
  - If Contractor fails to meet Milestones & Substantial Completion deadline, Contractor loses all or a portion of the \$1.0 million in retention, plus the Incentive Bonus of \$1.0 million
  
  - Contractor commits to meeting original DBE dollar commitment, plus agrees to make best efforts to make additional DBE work available.
  
  - Landscaping is exempt from Substantial Completion deadline; landscape recovery would be addressed at a later date
  
  - Recovery Plan includes the following Milestones:
    - UFS @ Stations by March 4, 2005 (\$200,000)
  
    - Systems by July 1, 2005 (\$200,000)
  
    - Substantial Completion by July 29, 2005 (\$600,000)