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MTA BOARD
DECEMBER 13, 2004

PROJECT: METRO ORANGE LINE

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

ACTION: EXECUTE DELAY MITIGATION AGREEMENT FOR
THE ORANGE LINE

RECOMMENDATION

Authorize the Chief Executive Officer to execute a Delay Mitigation 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. This recommendation is made contingent upon the Board taking action to again adopt the Orange Line project as the preferred alternative when the revised environmental impact report is presented to the Board for consideration. If the Board does not select the Orange Line as the preferred alternative, the recommendation herein will be withdrawn from the agenda and not considered.

Within the Construction Committee Authority: Yes No N/A

RATIONALE

The Metro Orange Line Project Design/Build Contractor's October 2004 schedule update forecasts that the Contract Substantial Completion milestone is six months behind the contractually specified completion of June 16, 2005. There are multiple 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.

To achieve the earliest possible Orange Line completion date, the Contractor must take actions to increase staff plus extend hours of construction work. Staff believes this work should move forward as quickly as possible, in an effort to minimize associated delay costs to the project, construction impacts to the community, and provide service to the public at the earliest possible date.

MTA staff is recommending approval of a Delay Mitigation Agreement, which would pay the Design/Build Contractor to recover schedule and settle time-related claims, as opposed to paying for delay costs. 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.

Staff has negotiated a Delay Mitigation Agreement that would mitigate delay impacts and settle time-related claims for an amount not to exceed \$7.9 million. The Delay Mitigation 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.

In the Delay Mitigation Agreement, the Contractor agrees to substantively complete the project by August 26, 2005. If the contractor fails to meet that date, \$2 million of the \$7.9 million would be forfeited. Any disputes relative to the Contractor meeting the Substantial Completion Date would be settled by a Disputes Resolution Board up to the maximum amount of \$7.9 million. MTA would review progress on a monthly basis to assess the Contractor's progress towards achieving the revised Substantial Completion Date. Should MTA find that the Contractor is not making satisfactory progress, MTA may terminate the Agreement for cause. Any dispute resulting from MTA's termination of the Agreement would be determined by a Disputes Resolution Board up to the maximum amount of the Agreement.

To minimize the costs of this Agreement, the MTA would 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 assist in efforts to mitigate current project delays. With the actions above, the Delay Mitigation Agreement allows the MTA to maximize the mitigation opportunities while the window of opportunity still exists to recover schedule.

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 Delay Mitigation Agreement, 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

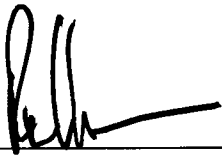
ALTERNATIVES CONSIDERED

The MTA Board may reject the Recommendation and not approve the Delay Mitigation Agreement 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 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 dispute and/or legal system. It is likely that these costs would exceed those recommended in the Delay Mitigation Agreement.

ATTACHMENTS

- A Procurement Summary
- A-1 Procurement History
- A-2 List of Subcontractors
- B Metro Orange Line Delay Mitigation Agreement

Prepared By: William R. Brown, Project Control Manager
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RICHARD THORPE
CHIEF CAPITAL MANAEGMENT OFFICER
CONSTRUCTION PROJECT MANAGEMENT



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 - TBD		
2.	Recommended Vendor:	Shimmick Construction, Inc./Obayashi Corporation, JV	
3.	Cost/Price Analysis Information: See Attachment A-1		
	Bid/Proposed Price: \$TBD	Recommended Price: \$TBD	
4.	Contract Type: Fixed Price		
5.	Procurement Dates:		
	Issued: TBD		
	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: 25% DBE goal for Design 34% DBE goal for Construction	Date Small Business Evaluation Completed: N/A	
	Small Business Commitment:	27.83% Design 36.52% Construction	
7.	Invitation for Bid/Request for Proposal Data:		
	Notifications Sent: N/A	Bids/Proposals Picked up: N/A	Bids/Proposals Received: N/A
8.	Evaluation Information:		
	Bidder/Proposer Names: N/A	<u>Bid/Proposal Amount:</u> N/A	<u>Best and Final Offer Amount:</u> \$ 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: Robert P. Sechler	Telephone Number: 213-922-7334	
11.	Project Manager: Roger F. Dames	Telephone Number: 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 attainment¹ based on the relevant amount² is 24.56% for Design and 7.78% for Construction. Current DBE participation³ 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 ² (Design)	\$ 13,228,768
Total Actual Amount Paid to Date to Prime (Design)	\$ 59,145,381**

DESIGN				
Total Commitment	% Complete	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%
TOTAL	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.

¹Current Attainment = Total Actual Amount Paid-to-Date to DBE Subs ÷ Total Current Contract Amount

²Relevant Contract Amount = Original Contract Value + Contract Cost Modifications

³Current 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 Amount² (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%
TOTAL	36.52%	7.78%**	17.96%***

* 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.

¹Current Attainment = Total Actual Amount Paid-to-Date to DBE Subs ÷ Total Current Contract Amount

²Relevant Contract Amount = Original Contract Value + Contract Cost Modifications affecting DBE scope of work

³Current Participation = Total Actual Amount Paid-to-Date to DBE Subs ÷ Total Actual Amount Paid-to-Date to Prime

ATTACHMENT B
Delay Mitigation Agreement

The following is a summary of terms and conditions for the proposed Delay Mitigation Agreement:

1. Contractor would substantially complete work on the milestones by the times described below.

Milestone No. 1 – UFS Station Access

- Completed by April 4, 2005

Milestone No. 2A – Division 8

- Striping for bus parking spaces under Milestone completed by February 15, 2005.

Milestone No. 2B – Division 8

- All other work at MTA Division 8 to be completed by August 26, 2005.

Milestone No. 3 – Busway Systems

- Traffic Signals and all Communication Systems complete by July 15, 2005.

Milestone No. 4A – Busway – Tujunga to Van Nuys

- Substantial completion from Tujunga to Van Nuys by July 29, 2005 (excluding landscaping).

Milestone No. 4B – Busway – Van Nuys to Warner Center

- Substantial Completion from Van Nuys to Warner Center by August 15, 2005 (excluding landscaping).
- Nine (9) hour work Contractor windows on busway scheduled one (1) week in advance.
- Landscape and other operations not critical to utilizing buses may be extended past August 15, 2005. However, nine (9) hour work window will be required for this work.

Milestone No. 4C – Project Substantial Completion

- All scope of work is substantially complete and available for its intended use by August 26, 2005, except for the one-year Reliability Demonstration Test (Milestone No. 5) and with landscaping being specifically excluded.
 - Nine (9) hour work windows scheduled one (1) week in advance up to actual Revenue Operations Date.
 - Landscape and other punchlist work not critical to utilizing buses may be extended past August 26, 2005.
2. Contractor to receive \$7.9 million in equal monthly payments to achieve the milestones listed above. Should the Contractor fail to achieve Milestone No. 4C – Project Substantial Completion by August 26, 2005, Contractor shall forfeit \$2 million of the \$7.9 million.
 3. MTA will review monthly, the Contractor’s progress on achieving the agreed upon milestones. If adequate progress is not being made, MTA can terminate the Agreement and all further payments.
 4. Contractor agrees that delays for rain shall be cumulative rather than monthly, as specified in the Contract, but only for the months (rainy season) identified in the Contract.
 5. Should the Courts order work to be stopped, no further payments will be made per this Agreement, and the Contractor agrees not to pursue any delay claims for time recovered up to the point of the court order.
 6. In recognition of MTA chargeable delays incurred to date, MTA granted via Contract Modification 46.01, a 78 day time extension and \$540,000 of delay compensation. This \$540,000 will be credited against the \$7.9 million due under the Delay Mitigation Agreement, and the time extensions granted will be superceded by the revised milestone dates stated above.

Note: All costs associated with acceleration of landscaping to be borne by the MTA. At this time, the MTA has decided not to include landscaping in the global Delay Mitigation Agreement. There will be additional costs associated with working around operations schedule and as such, all such costs will be in addition to this Agreement.