



CONSTRUCTION COMMITTEE
MARCH 17, 2005

SUBJECT: INDUSTRY REVIEW-ALTERNATIVE CONTRACTING

ACTION: RECEIVE AND FILE

RECOMMENDATION

Receive and file a report on a Proposed Alternative Contracting Approach for the Exposition Light Rail Project.

ISSUE

An alternative contracting approach involving a negotiated Design-Build contract package is under consideration for the Mid-City/Exposition LRT Project. Staff will be conducting an industry review to solicit comments on the proposed concept and the key terms and conditions to be incorporated into this proposed project contracting approach.

DISCUSSION

Metro is seeking a project delivery process that will benefit by having a Design-Build contractor involved early in the project development so that the design-builder can produce a cost-efficient engineering design thereby reducing the need for a significant contingency in the lump sum price for construction work.

The proposed procurement approach can best be described as Negotiated Design-Build procurement. This approach has been developed after considerable analysis and review. Included in this development process was a Peer Review of the proposed Conceptual Contracting and Procurement Plan. The Peer Review Panel consisted of Construction and Capital Projects directors and officials from four different public transit agencies that have had recent experience in developing new capital projects: Tri-Met in Portland, Oregon; Sound Transit in Seattle, Washington; the New York MTA; and the Regional Transportation Commission of Southern Nevada.

Under this approach the final construction price will be negotiated after contract award and following the completion of final design. Hence, this approach is described as Negotiated Design-Build procurement.

A key unique feature integral to this approach is the use of allowances. A design budget and a construction budget will be established, and will be set as the initial allowances for the work to be performed. The Design-Build contract will be awarded using a best value selection based on a technical proposal and a price proposal. The price proposal will consist primarily of a fixed design fee and a construction fee covering profit, general and administrative expenses, overhead compensation, subsistence and travel costs, taxes, licenses, and other related costs.

As part of our analysis, staff has compared Negotiated Design-Build to the traditional Design-Build. Benefits derived from a traditional Design-Build scenario may vary, but include the following concepts. The price for all Design-Build work is established up front on a competitive basis by bidders. Procurement options are flexible, meaning use of either a two-step (Qualifications and Low Bid) or best value (selection based on a set of criteria including price) procurement can be utilized.

However, a traditional Design-Build scenario raises other issues including the following. Due to the price being established before significant design is completed and before sufficient knowledge of risk areas and uncertainties are identified, the initial price bid may be unacceptably high due to bidders need to cover unknowns and contingencies. Early establishment of price can result in excessive change orders and price adjustments later in the process as a result of changing conditions and requirements during the final design process. Meeting expectations of community, stakeholders and owner requirements also can lead to changed conditions or at least varied interpretation of contracting requirements.

The Negotiated Design-Build project delivery system offers the following distinct advantages. Initially establishing allowances will avoid the use of contingencies. Deferring final construction price until substantial design work is completed should produce a cost-efficient engineering design and reduce the need for a significant contingency in the lump sum price for construction work. Metro and the design-builder would work together early in a non-confrontational environment (team approach) to consider various design alternatives and determine costs for design options early and receive a more accurate estimate of various cost alternatives prior to authorizing construction to proceed. In addition, the expectations of community, stakeholders and owner requirements are much more clear, resulting in the ability to price the work accordingly.

The proposed Negotiated Design-Build procurement also raises certain concerns as follows: It limits the procurement method to best value—two step low bid since proposers will not propose actual design and construction prices, only fees and indirect costs. This innovative approach has not been, to our knowledge, done before and could therefore discourage some proposers or raise questions regarding the risk associated with utilizing a new procurement approach. The establishment of design and construction allowances puts a high premium on the accuracy of the owners estimates (problems could result if allowances are unrealistically high or low). Significant issues in terms of delays and disruptions could arise

if the Design-Build firm and Metro cannot agree on a construction price, in which case Metro would bid the work out on a traditional low bid basis.

The aforementioned items are not an all inclusive list of considerations for project delivery, but do provide a framework for assisting in the determination of which method is best suited for a particular project. The staff has evaluated the overall advantages and disadvantages and determined the Negotiated Design-Build procurement best meets the project delivery objectives for the Exposition Light Rail Project.

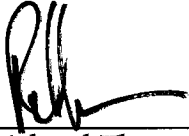
Staff intends to distribute a Detailed Procurement Plan for industry review, and to conduct conferences with design and construction firms and other interested parties. The comments and views of these parties will be taken into account in the development of the final Request For Proposal (RFP). Prior to issuance of the RFP, staff will bring back for Board or Joint Powers Authority approval, the final decision on moving forward with this procurement approach.

NEXT STEPS

The date of the initial Industry Review Meeting is currently planned for March 21, 2005, at 2:00 p.m. in the Board Room located on the third floor of the Gateway building.

Based on the industry review, the Detailed Procurement Plan will be refined for preparation of the detailed RFP, request for letters of interest, and request for Board or Joint Powers Authority approval to issue the RFP in July 2005, with contract award early next year. The contract award would be dependent on adoption of a Financial Plan and approval of the Final Environmental Impact Statement/Report (FEIS/FEIR).

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