



**MTA BOARD MEETING
MARCH 24, 2005**

SUBJECT: UNINTERRUPTIBLE POWER SUPPLY (UPS) BATTERY REPLACEMENT PROGRAM

ACTION: MODIFY CONTRACT FOR RED LINE SYSTEM UNINTERRUPTIBLE POWER SUPPLY BATTERIES

RECOMMENDATION

- A. Receive and File report notifying the Board that the Chief Executive Officer has awarded Contract No. OP39201648 to U.S. Energy Systems in the amount of \$375,000 to provide UPS batteries for the Red Line System as an immediate remedial measure in accordance with Public Utility Code Section 130235.
- B. The Board finds that there is only a single source of procurement for warranty replacement of Red Line System, Uninterruptible Power Supply (UPS) batteries and purchase is for the sole purpose of replacing the UPS batteries already in use. The Board hereby authorizes purchase of the UPS batteries pursuant to Public Utilities Code section 130237.

Requires Two-Thirds Vote

- C. Authorize the Chief Executive Officer to execute Modification No. 1 to Contract No. OP39201648 with U.S. Energy Systems to provide for removal, supply and installation of UPS batteries in the amount not to exceed \$1,125,000, increasing the Total Contract Value from \$375,000 to \$1,500,000.

RATIONALE

The Uninterruptible Power Supply (UPS) in the Red Line system provides backup power for emergency lighting, fire and life safety equipment, and communications in the event of city-wide power loss. The system facilitates safe evacuation of passengers and staff during an emergency on the subway system. The UPS equipment is a complex system of electronic controls, transformers, inverters, circuit boards, battery banks, and a battery charger. When battery or other system failures occur, it is essential that staff be capable of responding in the shortest possible time to minimize risks.

The UPS units for the Red Line system were originally delivered by Custom Power, Inc. (CPI) under Contract No. B795. CPI was terminated for default; however, the default was not due to problems with the batteries or the original battery supplier, Enersys Systems (formerly Exide). Enersys has been honoring the contract warranty for the battery portion of the UPS through its exclusive representative, U. S. Energy, even though Metro has no contractual ability to enforce the warranty. Under that warranty, U. S. Energy provides a pro-rata credit against the purchase of replacement batteries for batteries that fail between years 4 and 15 of the batteries' lives. Metro pays the remaining purchase price of the new battery after the credit is applied, under Contract No. OP39201648. The original equipment manufacturer is the only source willing to honor the battery warranty and the terms of the warranty under Contract No. OP39201648 are identical to those that would have been available under the B795 contract.

Until recently, Metro has been purchasing these replacement batteries under a blanket purchase order. However, it appears the failure rate and the cost of replacement is increasing substantially.

Under Public Utility Code Section 130235, the Chief Executive Officer authorized the base Contract No. OP39201648 to replace 165 jars (a jar is a collection of battery cells, usually 2 or 4) at a purchase price not-to-exceed \$375,000.

Staff anticipates further requirements if, and when, other batteries fail, but cannot predict when that will occur, nor the cost for replacement. However it is likely that each future battery replacement will exceed the statutory threshold that normally requires purchase by sealed bid. Because of the urgency and unpredictability of battery failures, staff recommends a blanket agreement to cover present and potential future incidents, allowing a rapid response, when needed. Staff is requesting Board authority to increase the value of the task order agreement to \$1,500,000 to cover future failures if, and when, they occur.

FINANCIAL IMPACT

Funding of \$439,500 for this product is included in the FY05 budget in cost center 3928, Wayside Systems Traction Power Maintenance under project number 300044, Rail Operations – Red Line. Since this is a multi-year contract, the cost center manager and Deputy Chief Executive Officer will be accountable for budgeting the cost in future years, including any option exercised.

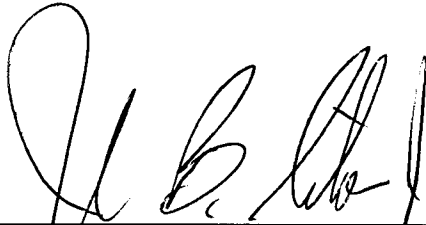
ALTERNATIVES CONSIDERED

These requirements could be filled, as they occur, through a series of single source procurements, however, this approach is not recommended since it adds unnecessary cycle time and adds to the risk brought about by each battery failure.

ATTACHMENTS

- A. Procurement Summary
- A-1 Procurement History
- A-2 List of Subcontractors

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David Vila, Contracts Administration Manager



John B. Catoe, Jr.
Deputy Chief Executive Officer



Roger Snoble
Chief Executive Officer

**BOARD REPORT ATTACHMENT A
PROCUREMENT SUMMARY**

UNINTERRUPTIBLE POWER SUPPLY BATTERIES

1.	Contract Number: OP39201648		
2.	Recommended Vendor: U.S. Energy Systems		
3.	Cost/Price Analysis Information:		
	A. Bid/Proposed Price: NTE \$1,125,000	Recommended Price: NTE \$1,125,000	
	B. Details of Significant Variances are in Attachment A-1.D		
4.	Contract Type: Task Order		
5.	Procurement Dates:		
	A. Issued: N/A		
	B. Advertised: N/A		
	C. Pre-proposal Conference: N/A		
	D. Proposals Due: N/A		
	E. Pre-Qualification Completed: N/A – Commercial Item		
	F. Conflict of Interest Form Submitted to Ethics: February 1, 2005		
6.	Small Business Participation:		
	A. Bid/Proposal Goal: 0%	Date Small Business Evaluation Completed: To be completed for each task order issued	
	B. Small Business Commitment: 0% Details are in Attachment A-2		
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:		
	A. Bidders/Proposers Names: U.S. Energy Systems, Inc.	<u>Bid/Proposal Amount:</u> N/A	<u>Best and Final Offer Amount:</u> \$
	B. Evaluation Methodology: N/A Details are in Attachment A-1.C		
9.	Protest Information:		
	A. Protest Period End Date: February 22, 2005		
	B. Protest Receipt Date: N/A		
	C. Disposition of Protest Date: N/A		
10.	Contract Administrator: Otto Ojong, Sr. Buyer	Telephone Number: 922-1454	
11.	Project Manager: Manfred Aistrich	Telephone Number: 922-3331	

**BOARD REPORT ATTACHMENT A-1
PROCUREMENT SUMMARY
UNINTERRUPTIBLE POWER SUPPLY BATTERIES**

A. Background on Contractor

U.S. Energy Corporate Headquarters is located at 9744 Wilshire Blvd., Ste 307 Beverly Hills, Ca 90210. Additionally the company has offices in Hayward CA., Sacramento CA., Phoenix AZ., Las Vegas NV. and Honolulu HI.

U.S. Energy was incorporated as a California Corporation, in 2003. U.S. Energy's primary business is in the Standby Power Industry focusing on stationary batteries, chargers, power electronics, and related accessories. U.S. Energy is the exclusive representative of Enersys Inc. for the Western Region. The company furnishes engineering, customer service, sales, service coordination/ management, and warranty for the region.

According to U.S. Energy, Enersys is the largest industrial battery manufacturer in the world with 22 factories. The company dates back to 1888, when its predecessor, The Electric Storage Battery Company (ESB) was founded.

U.S. Energy has had one contract with Metro, FY051131, and performed satisfactorily. The company also has contracts with Cingular, the City of LA, LADWP, Southern California Edison, PG&E, City of San Jose, City of Carson, SBC and Verizon.

B. Procurement Background

The CEO authorized staff to place a short turnaround, task order contract with U. S. Energy, to replace batteries that fail under warranty, under the authority granted him under PUC 130235, "Immediate Remedial Measures". Under this authority, the CEO can award a contract without observance of the PUC requirements for competitive sealed bidding, "Upon determining that immediate remedial measures to avert or alleviate damage to property, or to replace, repair, or restore damaged or destroyed property, of the commission are necessary in order to ensure that the facilities of the commission are available to serve the transportation needs of the general public."

C. Evaluation of Proposals

Proposals for individual Task Orders will be evaluated in accordance with Procurement Policies and Procedures, when submitted.

D. Cost/Price Analysis

Under this agreement, when a battery fails, staff requests a quotation for replacement including a calculation of the credit that applies under the B795 warranty, ensures the price is fair and reasonable, and issues a task order for immediate replacement. The price is considered reasonable if the purchase price of the battery before warranty credit is the same or better than the prevailing market price at the time the order is placed.

