




# EXPOSITION METRO LINE CONSTRUCTION AUTHORITY

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**DATE:** NOVEMBER 3, 2005

**TO:** BOARD OF DIRECTORS

**FROM:** RICHARD D. THORPE   
INTERIM CHIEF EXECUTIVE OFFICER

**ACTION:** APPROVE SUBCONTRACTOR IDENTIFICATION FOR MID-CITY/EXPOSITION CORRIDOR LIGHT RAIL TRANSIT PROJECT  
AUTHORITY RFP NO. 1-06

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## RECOMMENDATION

Approve Resolution No. 001 to permit the prime contractor under the Design-Build Contract for the Mid-City/Exposition Corridor Light Rail Transit Project (the "Contract") to enter into subcontracts for construction work using a competitive procurement process approved by the Authority.

## SUMMARY

The Subletting and Subcontracting Fair Practices Act, Public Contract Code Sections 4100 et seq. (the "Act"), requires prime contractors to identify their major subcontractors (i.e. contractors performing construction work or specialty fabrication and installation work in excess of ½ of 1% of the contract price) when submitting bids to a public agency for construction of public works. The Act provides that prime contractors may subcontract construction and specialty installation work only with subcontractors identified in the proposal, and otherwise must self-perform such work.

The Act was adopted prior to passage of legislation enabling public agencies to use design-build contracts, and certain requirements set forth in the Act are incompatible with design-build contracts since it is not possible for prime contractors to obtain sub-bids for construction work based on the level of design as of the date proposals are due. However, Section 4109 of the Act provides authorization for agencies to adopt procedures that allow a prime contractor to enter into major subcontracts after award of the prime contract, without having designated a subcontractor for such work in the original proposal, in cases of public necessity. Approval of the attached resolution is required to invoke this provision for the Design-Build Contract for the Mid-City/Exposition Light Rail Transit Project.

## **DISCUSSION**

The Authority has previously authorized use of a negotiated Design-Build Contract for design and construction of the Project, in order to serve the goals of expediting completion of the Project while obtaining cost-efficient engineering designs and reducing the need for a significant contingency. Under this project delivery methodology, the contractor will furnish the Project design and the parties will negotiate the price for performance of construction work as the design packages are completed. This methodology is incompatible with the requirement of the Act that major subcontractors be identified in the prime contractor's original proposal.

The Act specifically contemplates the possible need for alternative procedures under certain circumstances. A requirement for the prime contractor to select major construction subcontractors using a competitive process approved by the Authority will satisfy the purpose of the Act. It is therefore recommended that the Authority adopt a resolution allowing the Design-Build Contractor to enter into subcontracts following award of the Design-Build Contract, subject to the prime contractor's compliance with the procedure set forth in the attached Resolution.

## **FINANCIAL IMPACT**

There are no impacts to the Project Budget.

## **ATTACHMENT(S)**

- a. Resolution No. 001

## **ATTACHMENT**

RESOLUTION NO. 001

### **A RESOLUTION OF THE EXPOSITION METRO LINE CONSTRUCTION AUTHORITY REGARDING POLICY FOR SUBCONTRACTOR IDENTIFICATION FOR DESIGN-BUILD CONTRACT**

WHEREAS, the Exposition Metro Line Construction Authority has issued a procurement package requesting submission of proposals for a Design-Build Contract (Request for Proposals No. 1-06) for the Mid-City/Exposition Corridor Light Rail Transit Project (the "Project"); and

WHEREAS, the Design-Build Contract contemplates that pricing for construction of the Project will be negotiated for specific design packages following completion of each such package; and

WHEREAS, the Subletting and Subcontracting Fair Practices Act, Public Contract Code sections 4100 et seq. (the "Act"), requires prime contractors to identify their major subcontractors when submitting bids to a public agency for construction of public works; and

WHEREAS, the purpose of the Act as stated in Section 4101 is to prevent bid shopping, bid peddling and unfair competition and resulting poor quality of material and workmanship, insolvencies, loss of wages to employees and other evils; and

WHEREAS, Section 4109 of the Act permits a contractor to enter into subcontracts for work, without having designated a subcontractor for such work in the original proposal, in cases of public necessity.

NOW, THEREFORE, the Board finds as follows:

1. It is in the best interests of the Authority to use the negotiated design-build project delivery method for the Project, to serve the goals of expediting completion of the Project while obtaining cost-efficient engineering designs and reducing the need for a significant contingency.
2. The scope of the construction work to be performed pursuant to the proposed Design-Build Contract includes specialized work which the contractor will not be able to perform in-house, as well as work which is desirable to subcontract in order to allow additional firms the opportunity to participate in development of the Project.
3. Since the Design-Build Contract contemplates production of the Project design as the first phase of the contractor's work, plans and specifications will

not be available prior to submission of proposals. It will therefore be impossible for the contractor to obtain firm bids from subcontractors prior to submission of the contractor's bid so as to enable the prime contractor to identify subcontractors at time of proposal submission in accordance with the Act.

The Board hereby resolves as follows:

A. For the reasons set forth above, public necessity requires that the proposers for the Design-Build Contract be allowed to postpone identification of subcontractors who would otherwise be required to be identified under the Act at the time of proposal submission, subject to the prime contractor's compliance with the procedure set forth below.

B. The following procedure is hereby adopted by the Board, and shall be adhered to by the prime contractor under the Design-Build Contract in selecting its subcontractors:

The prime contractor will, prior to soliciting any bids for performance of work or labor or rendering of services in or about the construction of the Project or for special fabrication and installation of a portion of the work for the Project, submit to the Authority for its review and approval (which approval will not be unreasonably withheld) a reasonable procedure for competitive procurement of all such subcontracts (or combination of subcontracts with a single subcontractor) with a price in excess of 1/2 of 1% of the total Construction Allowance (as such term is defined in the Design-Build Contract). The prime contractor shall promptly notify the Authority in writing of the identity of each subcontractor selected.

The prime contractor shall not enter into any subcontracts (or combination of subcontracts with a single subcontractor) with a total price in excess of 1/2 of 1% of the Construction Allowance, except in accordance with the foregoing procedure. Once a subcontractor approved by the Authority has been selected for any such work, the prime contractor shall not have the right to make any substitution of such subcontractor except in accordance with the provisions of the Act.