



Exposition Metro Line
Construction Authority


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Los Angeles, CA 90017

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BuildExpo.org

6.a

DATE: JULY 6, 2006

TO: BOARD OF DIRECTORS

FROM: RICHARD D. THORPE 
CHIEF EXECUTIVE OFFICER

ACTION: AUTHORIZE THE CEO TO EXECUTE A CONTRACT WITH CARTER & BURGESS, INC., ON SUBSTANTIALLY THE SAME TERMS AS LACMTA CONTRACT MC067 FOR CONSTRUCTION MANAGEMENT SUPPORT SERVICES

RECOMMENDATION

Authorize the CEO to execute Contract 3-06, Construction Management Support Services with Carter & Burgess, Inc., on substantially the same terms as the Los Angeles County Metropolitan Transportation Authority (Metro) Contract MC067, for Construction Management Support Services for the Exposition Light Rail Transit Project, in an amount not-to-exceed \$8.6 million, with a period of performance for five years and beginning on the date set forth in the Notice-to-Proceed.

SUMMARY

With the recent award of the Design-Build Contract, it is critical that the Exposition Metro Line Construction Authority (Authority) obtain Construction Management Support Services from a qualified Construction Management firm to provide the technical expertise for effective oversight and management of the construction activities of the Design-Build Contractor. Metro Contract No. MC067 with Carter & Burgess, Inc., is specifically structured to provide the required support for Quality Management and Assurance, Cost Estimating, Resident Engineering services, Constructability Reviews, coordination of jurisdictional approvals and other Construction support functions. Carter

& Burgess, Inc. is qualified to perform this work based on its significant involvement on the Eastside Gold Line Extension Project and the Orange Line Project.

DISCUSSION

Carter & Burgess, Inc. was selected by Metro for award of Metro Contract No. MC067 Construction Management Support Services for the Eastside Gold Line Extension, the Orange Line, the Exposition Line, and other major capital projects, following a competitive consultant procurement involving four nationally recognized construction management consultant teams. This procurement followed all Federal and State laws and regulations governing procurement of Architectural and Engineering services.

The Authority's Administrative Code provides for procurement of goods and services without competition under limited conditions. Procurement of contracts may be made by non-competitive negotiation when the proposed Authority contract is for the same scope of work and contains substantially the same terms as a contract that was competitively procured and awarded by Metro. The MC067 contract meets these criteria and accepting the contractual rights for all terms, conditions, labor hour rates and provisions, is the most effective manner to ensure that the vital Construction Management Support Services can continue through completion of the Project by the Design-Build Contractor. A new procurement for these construction management services would require:

- Additional Authority administrative, management and legal costs
- Extensive and costly mobilization of new Construction Management (CM) staff
- Time-consuming and costly Project scope familiarization by new CM staff

Furthermore, construction management firms will be reluctant to expend significant proposal costs when the incumbent firm Carter & Burgess, Inc. would have a considerable technical advantage in a qualifications based procurement process. For these reasons and since the consultant is performing satisfactorily, a new procurement is not recommended.

The Scope of Services needed by the Authority include Design-Build (D-B) Contractor and Third Party (L.A. City, Caltrans, Utilities & Metro) construction coordination; Quality Management and Assurance, Resident Engineering services, Constructability Reviews, Cost Estimating, D-B construction contract management. These services will involve a Quality Assurance Manager, Cost Estimators, Quality Auditors, Construction Manager, Field Inspectors and Systems Construction Engineers. The consultant has proposed approximately \$9.06 million to perform this work over the course of the Project.

FINANCIAL IMPACT

The estimated costs of the proposed construction support services are within the Project's proposed budget of \$640 million.

NEXT STEPS

Upon approval, the CEO will execute Contract 3-06 on behalf of the Authority. Staff will negotiate annual work orders for the consultant consistent with the needs of the project. Any changes to the estimated scope of work that would result in an increase to the contract will be brought back to the Board for further consideration.

ATTACHMENT(S)

- A. Agreement for Construction Management Support Services

ATTACHMENT A

EXPOSITION METRO LINE CONSTRUCTION AUTHORITY AGREEMENT FOR CONSTRUCTION MANAGEMENT SUPPORT SERVICES CONTRACT NO: 3-06

This AGREEMENT FOR CONSTRUCTION MANAGEMENT SUPPORT SERVICES (the "Agreement") is made and entered into as of the ___ day of ___ 2006, by and between CARTER & BURGESS, INC. ("Contractor") and the EXPOSITION METRO LINE CONSTRUCTION AUTHORITY ("Authority"), a public agency duly formed and existing under the laws of the State of California, with reference to the following facts:

A. The Authority was established by Chapter 7 of Division 12.7 of the Public Utilities Code commencing with Section 132600, which became effective January 1, 2004, and has been authorized by State Legislation to design and build the Los Angeles-Exposition Metro Line light rail project ("Project").

B. The Authority desires to engage a qualified firm to perform construction management services with respect to the Project.

C. The Authority's Administrative Code Title III, Chapter 7, Section 1A. 9 permits the Authority to procure contracts by non-competitive negotiation if the contract is with a contractor who has entered into a contract with the Los Angeles County Metropolitan Transportation Authority ("Metro") for the Project, if (a) the proposed Authority contract is for the same scope of work as the other contract; (b) the proposed Authority contract contains substantially the same terms as the other contract; and (c) the other contract was competitively procured in accordance with requirements applicable to such other agency's procurements.

D. On or about September 11, 2003, Metro and the Contractor entered into that certain CONTRACT NO: MC067 (the "Metro CM Contract"), for Construction Management Support Services for major capital projects. The Metro CM Contract was competitively procured in accordance with requirements applicable to Metro procurements.

E. Contractor has offered to enter into a contract with the Authority for Construction Management Support Services for the Project, on substantially the same terms and conditions as the Metro CM Contract, and Authority wishes to accept such offer, all on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the above premises and of the mutual covenants hereinafter contained and for other good and valuable consideration, the

receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

ARTICLE I: CONTRACT DOCUMENTS

- A, The Contract Documents shall consist of this Agreement and the other documents identified in paragraph B of this Article I, provided that:
1. All references to "MTA" contained in the Contract Documents for the Metro CM Contract shall be deemed references to the Authority, except where the context otherwise requires.
 2. All references to MTA personnel shall be deemed references to the individual performing equivalent functions for the Authority, whether employed by the Authority, the MTA or a consultant.
 3. References to the MTA Administrative Code, policies and procedures shall be deemed references to equivalent provisions of the Authority's Administrative Code, policies and procedures.
 4. The Authority will not issue Contract Work Orders. Execution and delivery of this Agreement by Metro shall constitute authorization to proceed with Construction Management Support Services for the Project. References to Contract Work Orders shall be interpreted accordingly.
 5. If any question arises regarding how to interpret provisions of the Contract Documents affected by this paragraph A, Contractor shall submit a request for information, in writing, asking for such further written explanations as may be necessary. Contractor shall conform to the explanation provided.
- B. Except as otherwise specified herein, in the event of any conflict, the order of precedence of the Contract Documents shall be as follows:
1. This Agreement
 2. Supplemental Conditions (Metro CM Contract)
 3. Special Provisions (Metro CM Contract, excluding Special Provision 17)
 4. General Conditions (Metro CM Contract), as amended hereby
 5. Compensation and Payment Provisions (Metro CM Contract)
 6. Statement of Work (Metro CM Contract)
 7. DBE and EEO Programs (Adopted by the Authority). The DBE participation goal committed to by the Contractor is Twenty Percent (20%) of the Not-to-Exceed Amount.

- C. An Amendment or Change to the Contract Documents shall take its precedence from the term it amends. All other terms and condition shall remain unchanged.

ARTICLE II: DEFINITIONS

Capitalized terms, abbreviations and symbols used in the Contract Documents are defined in the Article in the General Condition entitled GLOSSARY OF TERMS. Additional terms may be defined in the Special Provisions or the Statement of Work.

ARTICLE III: WORK TO BE PERFORMED

Contractor shall perform Construction Management Support Services as outlined in the Statement of Work.

ARTICLE IV: COMPENSATION

Consideration for this Contract shall be in the amounts set forth in the Compensation and Payment Provisions, up to a Not-to-Exceed amount of \$_____ dollars. Except as provided in Article entitled Changes in the General Conditions, the Not-to-Exceed amount is the maximum compensation to be paid for the completion of all Work hereunder. Any costs incurred in excess of the Not-to-Exceed amount without prior written Amendment to the Contract shall not be considered Reimbursable Costs hereunder. Fully burdened labor rates by labor category and year are shown in the Compensation and Payment Provisions.

ARTICLE V: INVOICES

All invoices shall be submitted, in writing, to the Authority as follows:

Exposition Metro Line Construction Authority
Attn: Richard D. Thorpe
Chief Executive Officer
707 Wilshire Blvd.
Suite 3400
Los Angeles, CA 90017
Contract No. 3-06

Authority shall remit payment to the Contractor at the following address:

Carter & Burgess, Inc.
600 Wilshire Blvd.
Suite 1000
Los Angeles, CA 90017

The Application for Final Payment shall be marked **FINAL** and a copy sent to the Authority's Authorized Representative.

ARTICLE VI: PERIOD OF PERFORMANCE

The period of performance of this Contract shall be for a period of five years and begin on the date set forth in the Notice-to-Proceed issued by the Authority, unless this Contract is terminated earlier or extended by the Authority, in writing, as provided in the Contract.

ARTICLE VII: LIMITATION OF FUNDS

Funding for this Contract is based upon the availability of funds determined by the Authority's fiscal budget, which runs from July 1 through June 30 of each fiscal year. If funding is not approved for any subsequent fiscal year during which this Contract is in effect, Authority will issue a stop work notice.

ARTICLE VIII: ENTIRE AGREEMENT

This Contract includes this Agreement and all other Contract Documents identified in Article 1 (subject to the modifications identified in Article I), which constitute the complete and entire agreement between the Authority and Contractor and supersedes any prior representations, understandings, communications, agreements or proposals, oral or written.

ARTICLE IX: AMENDMENTS TO GENERAL CONDITIONS

The General Conditions are hereby amended to include the following additional provision:

GC-51 ADMINISTRATIVE CODE*

A. Applicability

This Article applies to all contracts.

B. Exposition Metro Line Construction Authority Administrative Code

Contractor warrants and represents that it has read and understands Title III, Contracting and Procurement, and Title II, Ethics, of the Exposition Metro Line Construction Authority Administrative Code (hereinafter "Administrative Code"), and will comply with each and every one of those requirements in accordance with their terms to the extent that they are applicable to contractors doing business with Exposition Metro Line Construction Authority (the "Authority"). All definitions used in the Administrative Code are hereby incorporated herein as though fully set forth.

Without reducing or affecting its obligation to comply with any and all provision of the Administrative Code, as applicable, Contractor specifically warrants, represents and covenants that it will:

1. Comply with:
 - a. Chapter 2, Specific Conflict of Interest Provisions, and
2. Not induce, attempt to induce, or solicit:
 - a. Board members to violate Chapter 2;
 - b. Authority employees to violate Chapter 2;
 - c. Either Board members or Authority employees to violate any other provision of the Administrative Code.

C. Compliance with §§1090 et seq. and §§87100 et seq. of the California Government Code

Contractor shall comply with all applicable provisions of §§1090 et seq. and §§87100 et seq. of the California Government Code. Without reducing or affecting its obligation to comply with any and all of said provisions, Contractor specifically covenants:

1. Contractor shall not cause or permit any member, officer, or employee of Authority to have any financial interest in the Contract;
2. Contractor shall not enter into any Subcontract involving services or property with a person or business prohibited from transacting such business with Authority;
3. Contractor warrants and represents that to its knowledge no Board member, officer, or employee of the Authority has any interest, whether contractual, non-contractual, financial or otherwise, in this Contract, or in the business or any other contract or transaction of the Contractor or any Subcontractor and that if any such interest comes to Contractor's knowledge at any time, Contractor shall make a full and complete disclosure of all such information in writing to Authority.

D. Campaign Contributions

Neither Contractor nor its Agents shall give or offer to give any campaign contribution to any member of the Authority's Board of Directors in violation of the California Government Code §§84300 et seq or of the Administrative Code. Contractor shall submit a Certification of

**CONTRACTOR
CARTER & BURGESS, INC.**

**EXPOSITION METRO LINE
CONSTRUCTION AUTHORITY**

BY: _____
TITLE

BY: _____
TITLE

SIGNATURE OF AUTHORIZED
OFFICIAL

DATE

TITLE

APPROVED AS TO FORM:

NOSSAMAN, GUTHNER, KNOX &
ELLIOTT, LLP
GENERAL COUNSEL

DATE

BY: _____

TAX ID NO.:

DATE

Campaign Contributions with all change orders of two hundred thousand dollars (\$200,000) or more.

ARTICLE X: AMENDMENTS TO SUPPLEMENTAL CONDITIONS

The Supplemental Conditions are hereby amended to include the following additional provision:

SC-20 SUSPENSION AND DEBARMENT*

A. Applicability

This article applies to federally funded contracts and subcontracts at any level expected to equal or exceed \$25,000 as well as any contract or subcontract (at any level) for Federally required auditing services.

B. This contract is a covered transaction for purposes of 49 CFR Part 29. As such, Contractor shall verify that none of the Contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

Contractor shall comply with 49 CFR 29, Subpart C, and shall include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

C. By entering into this Contract, Contractor certifies that it shall comply with the requirements of 49 CFR 29, Subpart C throughout the period of this Contract.

This certification is a material representation of fact relied upon by Authority. If it is later determined that Contractor knowingly rendered an erroneous certification, in addition to remedies available to Authority, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

IN WITNESS WHEREOF, the Contractor and the Authority have caused this instrument to be executed and delivered effective as of the day and year first above written.

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**EXPOSITION LIGHT RAIL TRANSIT PROJECT
CONSTRUCTION MANAGEMENT SUPPORT COSTS FY07-FY10**

Please provide a proposal, including resumes, staff costs and other direct charges for the positions listed below (in FTE's). The scope of work for the positions in this proposal is summarized below and more fully described in Metro Contract No. MC067. Overhead costs included in this proposal shall be as currently approved by Metro in MC067.

Scope Summary: Design Build (D-B) Contractor and Third Party (L.A. City, Caltrans, Utilities & Metro) construction coordination; Quality Management and Assurance, D-B submittal reviews, D-B RFI responses, Cost estimating, D-B construction invoice review and contract management; recommendations/responses to Authority technical questions, studies and analyses.

FY07 Final Design and Initial construction (12 months):

Quality Assurance Manager (.5) (Refer to Exhibit 1)
Cost Estimators (2)
Quality Engineer (.5)
Construction Manager (Propose both a candidate as identified as Project Manager and a candidate as identified as Resident Engineer per Schedule A in MC067).
Field Inspectors (1.5)

FY08 Construction 12 months:

Quality Assurance Manager (.5) (Refer to Exhibit 1)
Cost Estimators (1)
Quality Engineer
Field Inspectors (3)
Construction Manager (Propose both a candidate as identified as Project Manager and a candidate as identified as Resident Engineer per schedule A in MC067).

FY09 Construction 12 months:

Systems (Traction Power/Train Control) Construction Engineer (System Integration Engineer)
Quality Assurance Manager (.5) (Refer to Exhibit 1)
Quality Engineer
Field Inspectors (3)
Construction Manager (Propose both a candidate as identified as Project Manager and a candidate as identified as Resident Engineer per schedule A in MC067).

FY10 Construction 6 months, Testing & Acceptance 9 months:

Systems (Traction Power/Train Control) Construction Engineer

Quality Assurance Manager (.5) (Refer to Exhibit 1)

Quality Engineer

Field Inspectors (3)

Construction Manager (Propose both a candidate as identified as Project Manager and a candidate as identified as Resident Engineer per schedule A in MC067).

Carter Burgess management oversight, subcontractor administration, and accounting.