



Expo

Exposition Metro Line
Construction Authority


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DATE: SEPTEMBER 7, 2006

TO: BOARD OF DIRECTORS

FROM: RICHARD D. THORPE 
CHIEF EXECUTIVE OFFICER

ACTION: AUTHORIZE THE CEO TO APPROVE A CONTRACT FOR A CONTRACTOR CONTROLLED INSURANCE PROGRAM (CCIP) WITH FCI/FLUOR/PARSONS IN AN AMOUNT NOT-TO-EXCEED \$15,565,960

RECOMMENDATION

Authorize the Chief Executive Officer (CEO) to approve a contract authorization, under the terms of Contract No. 1-06, for a Contractor Controlled Insurance Program (CCIP) with FCI/Fluor/Parsons in an amount not-to-exceed \$15,565,960.

SUMMARY

At its meeting on March 2, 2006, the Board authorized the CEO to award Contract No. 1-06 to FCI/Fluor/Parsons, a Joint Venture. Compensation to the FFP falls under four distinct categories: 1) Design; 2) Insurance Costs; 3) Professional Services; and 4) Construction. Prior to the initiation of construction work, FFP and the Authority are required to establish a Lump-Sum-Fixed-Price (LSFP) for insurance. This insurance coverage must cover the project from issuance of the Notice-to-Proceed for the first construction package until the end of the project. FFP and the Authority have negotiated a mutually satisfactory agreement on the CCIP.

DISCUSSION

Construction insurance protects the Authority, the contractor/subcontractors and other parties, such as the City of Los Angeles, Metro and the City of Culver City, against losses that may arise during the course of the project. The proposed CCIP provides coverage for such risks as bodily injury and property damage to

third parties, contractor/subcontractor employee injuries, unanticipated environmental contamination and release, earthquake, fire and flood damage to structures under the course of construction. Without insurance, the contractors/subcontractors, the Authority and related entities, as well as the public-at-large would be subject to unlimited liability for these risks.

The initial insurance provisions in the Design/Build Request For Proposals (RFP) requested firm fixed pricing for a CCIP and professional liability insurance covering design. Most of the potential proposers responding to the RFP were unable to provide firm pricing for a CCIP, due to uncertain construction costs. Further, proposers were unable to lock down pricing from their insurance underwriters for a project with a construction start date up to a year away. Although the professional liability insurance was included with proposers' initial RFP submissions, the CCIP needed to be carved out of the proposal process and negotiated after award.

Concurrent with the decision to carve out the CCIP for subsequent negotiation, was an extensive effort with potential contractors to determine the broadest commercially available coverage at a reasonable price. During the proposal process, several design/build teams proposed modifications to the insurance provisions of the contract, such as changes in coverage limits, increases in deductibles and changes in the duration of coverage for completed work. Some of these suggestions were incorporated into the final proposal documents evaluated by the Authority. The changing insurance marketplace, availability, or lack thereof, of the original coverage and limits proposed to potential contractors, and insurance program structural changes that would afford more protections to the Authority necessitated these changes.

In addition, prior experience with construction projects has demonstrated that claims related to construction defects, or completed operations can develop several years after the commencement of revenue operations, thus necessitating the requirement of "extended reporting" or "tail" coverage, which would allow recourse for claims discovered after completion of a project.

The following are the coverage requirements for the Expo line project, as shown in Attachment A.

- Commercial General Liability
- Commercial Automobile Coverage
- Workers' Compensation
- Umbrella/Excess Liability Coverage
- Contractor's Pollution Liability
- Environmental Impairment Liability
- Railroad Protective Liability
- Builders' Risk Coverage

The Contractor's original insurance proposal included a lump sum cost of \$15,565,960, inclusive of all fixed, variable and administrative costs. Further negotiations with FFP may result in two modifications to the insurance requirements that could impact our final price. The first increases the acceptable deductible across the general liability and workers' compensation insurance policies to \$500,000. A market survey conducted by Hilb Rogel & Hobbs (HRH), FFP's insurance provider, indicated that it is not possible to obtain coverage with the \$100,000 deductible amount for Worker's Compensation and General Liability included under Contract No. 1-06. These amounts are commercially unavailable and a \$250,000 deductible was not available at a competitive price. Consequently, FFP proposed a \$500,000 deductible for these coverages. The second potential change moves payment of insurance costs up front rather than the time phased approach (i.e., payments over a four year period) anticipated in the RFP. Changing the payment structure would result in substantial savings to the Authority. However, there may be other issues associated with an upfront payment, so this issue is still being considered.

The final negotiated CCIP enables FFP to provide the required coverage for an amount not-to-exceed \$15,565,960. However, this will not preclude reducing the cost once the above issues are resolved. The elements consist of fixed cost (premiums) of \$7.9 million, estimated variable costs (such as deductibles and loss retention amounts) of \$6.95 million, and estimated administrative costs (e.g., broker fees, TPA) of \$0.7 million, as shown in Attachment B. Fixed costs are based upon known parameters (e.g., contractually required insurance coverage, project costs, personnel, etc.), whereas variable costs are based upon anticipated risk or loss exposure. Establishing the aforementioned CCIP shifts responsibility to the Contractor for the mitigation of expenses for all claims associated with the project, including Worker's Compensation, General Liability, Pollution, Environmental and Builder's Risk. Accordingly, any losses exceeding the loss retention amount under the CCIP are entirely the Contractor's responsibility.

FINANCIAL IMPACT

The negotiations for insurance coverage under Contract No. 1-06 resulted in a LSFP of \$15,565,960, which the CEO determined is fair and reasonable and in line with Expo's original budget estimate of \$15,460,750. There are sufficient funds in the FY07 Budget to cover this expenditure. Since this is a multi-year contract, the Project Manager and Chief Operations Officer will be accountable for budgeting the cost for future years.

NEXT STEPS

Upon Board approval of the LSFP contract with FFP for a CCIP in an amount Not-to-Exceed \$15,565,960, FFP will bind coverage for Construction Work and,

upon receipt of proof of insurance coverage from FFP, a Notice-to-Proceed for the first construction package will be issued by the Authority.

ATTACHMENT(S)

- A. Expo Insurance Requirements
- B. Insurance Program Cost Matrix (Options 1 and 2)

ATTACHMENT A

Expo Line Insurance Requirements · Construction Value: \$322.4 million

Coverages/Limits	Commercial General Liability	Commercial Automobile Liability	Workers' Compensation	Umbrella/Excess Liability	Contractor's Pollution Liability	Environmental Impairment Liability	Professional Liability
Occurrence Limit	\$2,000,000	\$2,000,000	Statutory	\$100,000,000	\$25,000,000	\$25,000,000	\$20,000,000
Aggregate Limit	\$4,000,000	\$2,000,000	\$2,000,000 EL	\$100,000,000	\$25,000,000	\$25,000,000	\$20,000,000

* Representation of Liability Coverage Only. Coverage For Builder's Risk Not Shown

ATTACHMENT B

COST MATRIX (Insurance & Variable Costs)

Coverage/ Costs	Estimated Fixed Costs	Estimated Variable Costs	Estimated Administrative Costs	Total Estimated Costs
Workers Compensation/General Liability	\$3,353,379	\$6,750,000	\$0	\$10,103,379
Umbrella/Excess Liability	\$1,969,325	\$0	\$0	\$ 1,969,325
Contractor's Pollution/Environmental Impairment Liability	\$ 593,256	\$ 100,000	\$0	\$ 693,256
Builder's Risk	\$2,000,000	\$ 100,000	\$0	\$ 2,100,000
HRH Broker Fee	\$0	0	\$700,000	\$ 700,000
Totals	\$7,915,960	\$6,950,000	\$700,000	\$15,565,960