



January 7, 2009

Dominick J. Gatto, P.E.
Director, Office of Program Management and Oversight
Federal Transit Administration
200 West Adams Street, Suite 320
Chicago, IL 60606-5253

Dear Mr. Gatto:

Thank you for providing us the report for the Procurement Systems Review conducted by Milligan and Associates in October 2008. Part of our ongoing commitment to provide a comprehensive system of transit in the Twin Cities Metropolitan area is to work in partnership with FTA to ensure high quality service and projects in a cost-effective manner that is compliant with the rules and regulations.

We found the PSR process and the resulting report very informative in many areas. For the most part, the Council agrees with the recommendations made and corrective action plans are detailed in the attached grantee response to the report. However, there are two areas noted where additional information is provided in an attempt to clarify the circumstances and activities of the procurement, which may substantially change the finding and the appropriate corrective action. It is our hope that the auditors and FTA will review these items and be open to further discussion or reconsideration.

Please review the enclosed responses and information. If you have any questions, please call Katie Shea, Director of Internal Audit at (651) 602-1450 or kathleen.shea@metc.state.mn.us. Thank you again for participating in this review with us and for your willingness to work with us in resolving the remaining issues.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tom Weaver', written over a horizontal line.

Tom Weaver
Regional Administrator

Cc: Lisa Joiner, Federal Transit Administration
Donna McCoy, Milligan and Associates
Brian Lamb, General Manager of Metro Transit
Chris Gran, Director of Metro Transit Purchasing
Micky Gutzmann, Manager of Central Procurement Unit
Katie Shea, Director of Internal Audit

www.metrocouncil.org

**PROCUREMENT SYSTEMS REVIEW:
METROPOLITAN COUNCIL OF THE TWIN CITIES**

GRANTEE RESPONSES

Report Dated October 2008

Report Received December 7, 2008

Responses Submitted January 7, 2009

Element (3) Written Protest Procedure

Metropolitan Council's protest procedures lack the following:

1. Guidance for vendors regarding the point in the process when the vendor can pursue a protest with FTA (after all administrative remedies have been exhausted).
2. Guidance for employees indicating the point in the process when protests should be communicated to the FTA by the Metropolitan Council and the extent of information to be provided.

Grantee Response

The Metropolitan Council will make the recommended changes to the written protest procedures.

Person Responsible: Brian Lamb, General Manager of Metro Transit
 Timeline: 30 days from the date of grantee responses

Element (6) Procurement Policies and Procedures

Upon review of the Council's policies and procedures manual, it was noted that they should be updated to include the following elements required by FTA's Third Party Contracting Circular:

1. Guidance on when time and materials contracts may be used;
2. Specific prohibition of unreasonable requirements;
3. Requirements for using brand name or equal;
4. Procedures for ensuring equitable distribution of micro-purchases;
5. Requirement that the files include documentation that prices are fair and reasonable;
6. Requirement that the files contain documentation for the business reason when all bids are rejected;
7. Reference updates for FTA's current Third Party Contracting Circular;
8. Provisions for addressing design/build contracts other than wastewater treatment facilities;
9. Policy for ensuring that bonding capacity meets FTA minimums;
10. Requirement that contracts above the small purchase threshold contain remedies for breach of contract; and
11. Requirement that revenue contracts be awarded utilizing competitive selection procedures.

Grantee Response

The Metropolitan Council will make the recommended changes in its Procurement Policies and Procedures.

Person Responsible: Brian Lamb, General Manager of Metro Transit
 Timeline: 30 days from the date of grantee responses

Element (7) Independent Cost Estimate

In two of the 41 files reviewed, the organization did not comply with the requirement to conduct an independent cost estimate (ICE) before receiving bids and proposals.

- For a request for proposal for engineering support services, the contract was awarded to LTK engineering. In that instance, the reviewer noted that the ICE was not dated, but the information contained in it appeared to indicate that it was performed after the proposals had been received. The Council must ensure that cost estimates are prepared as a “starting point” as indicated by the circular. In addition, if the ICE is later deemed to be unreasonable, the organization should include in its cost/price analysis a justification for the deviation from the estimate contained in the ICE.
- For the procurement of design services for a light rail booth awarded to URS, the file did not contain an ICE. The Council must ensure that an ICE is performed and included in the file. The consistent use of a checklist of items to be included in procurement files may assist the Council verify that all required elements are present.

Grantee Response

The Metropolitan Council would like to submit additional information related to these two files that may help to clarify the decision making that went into these procurements.

An ICE (Attachment A) for engineering support services was performed prior to receiving proposals although the cover page was not dated. The two documents that comprise the ICE are dated 1/9/04 and 5/17/06 respectively, prior to the proposal due date of 4/20/07, which supports the statement that the ICE was performed prior to receiving proposals.

An ICE for design of the light rail paint booth (Attachment B) was performed prior to receiving proposals and was part of the electronic procurement file but apparently was not contained in the paper procurement file. The existence of the ICE was referenced in procurement file in both the price analysis and in the document checklist.

Nonetheless, Metropolitan Council acknowledges that the documents were not appropriately dated and available in the procurement files provided to the auditors. Therefore, the following corrective action is proposed. Contract administrators will be reminded in ongoing training that all ICEs must be dated and paper copies included in the procurement file.

In addition, an administrative assistant will review each procurement file when the “notice to proceed” is issued. The file review will ensure that all documents on the checklist are completed and in the file and that the file is appropriately organized to facilitate easy document retrieval.

The Metropolitan Council is also pilot testing a document management system that would allow both procurement offices to maintain commonly indexed, paperless files. This would decrease the chances of individual forms or pieces of paper being misplaced or lost from a file. We would hope that this could become available for procurement in the next year.

Person Responsible: Brian Lamb, General Manager of Metro Transit
 Timeline: 30 days from the date of grantee responses

Element (21) Fair and Reasonable Price Determination [Micro-purchase]

Six of the 13 micro-purchases reviewed lacked documentation of a fair and reasonable price determination. These six micro-purchases were performed by the Contracts and Procurement Unit (CPU). Metropolitan Council should ensure that all employees responsible for procuring goods and services through micro-purchases document procedures performed to obtain a fair and reasonable price.

Grantee Response

The Contracts and Procurement Unit has already implemented an "FTA REQUIREMENTS APPLY TO THIS PURCHASE" sheet to accompany all micro-purchases and will be scanned into the SPL system along with the Information Technology Request (ITR) form. The Information System unit has been trained in this procedure and has already implemented it.

Person Responsible: Mick y Gutzmann, Manager of Contracts and Procurement Unit
Timeline: Completed

Element (29) Advertised/Publicized

Evidence of advertisement was missing from one of the 41 files reviewed.

Metropolitan Council should ensure that procurements are advertised as necessary and develop a checklist for file contents for the purpose of ensuring that all relevant documentation, including evidence of advertisement, is included in the file. This checklist should be submitted to FTA within 30 days of receipt of this draft report.

Grantee Response

The Metropolitan Council believes that this procurement was advertised, but the advertisement was not placed in the file as required. Therefore, the Council proposes the following corrective action. The Council's checklist of required file documentation includes evidence of advertisement. The Council will initiate a final administrative review of the procurement file (see element 7) to ensure that all required elements, including the advertisement, are included in the file.

Person Responsible: Brian Lamb, General Manager of Metro Transit

Timeline: 30 days from the date of the grantee responses

Element (38) Sole Source if Other Award is Infeasible

The following contracts were awarded as single bids:

1. Bombardier: \$43 million for coaches and cab cars on the NorthStar Line.
2. New Flyer: \$15 million for 25 60-foot articulated buses (with option for 40 more).
3. DMJM Harris: \$90 million for preliminary engineering and project management on the Central Corridor Line.
4. LTK Consulting: up to \$750,000 for on-call engineering services.

Grantee Response

The Metropolitan Council would like to provide additional information that may help to clarify decisions made on the aforementioned procurements.

Bombardier

Original RFPs were sent to the six firms that manufacture commuter railcars. Advertisements were placed in: Passenger Transport, Mass Transit Magazine, Progressive Railroad, Railway Age, State of Minnesota Register, and Contracting Opportunities on the Council's website. The four railcar manufacturers who did not attend the Pre-Proposal Conference were contacted and asked why they did not attend. Three of the four manufacturers made business decisions to not participate. One potential bidder, Colorado Railcar, expressed concern that their car would not meet the specifications in the RFP for height of the car. Metro Transit amended the specifications to allow for the Colorado Rail car and made other changes in response to Colorado Railcar's comments, and encouraged the company to report any further problems with the specifications. No more concerns were reported, but ultimately Colorado Rail declined to bid, and Bombardier was awarded the contract.

New Flyer

There are only two American producers of sixty-foot articulated buses, New Flyer and North American Bus Industries (NABI). When only New Flyer submitted a bid, the Director of Metro Transit Procurement contacted NABI on 6/6/06 and inquired about why they had not bid. NABI responded that they were currently focused on BRT and coach buses for the European market and were not interested in producing articulated buses at that time. That left New Flyer as the sole producer available for the contract.

DMJM Harris

FTA was involved in the decision making about the DMJM Harris contract for preliminary engineering on the Central Corridor Rail project from the time the contract was first put out for bid in December 2006. With the deadline tentatively set for February 6, DMJM Harris was the only proposer. At that point, FTA told the Council that the FEIS could not be performed with the remaining work in the contract; it must be separate. The

Council withdrew the RFP, re-worked it and reissued two RFPs, one for the FEIS and one for engineering on March 8, 2007. Proposals were due on April 12. Again, DMJM Harris was the only proposer for the engineering contract.

After a panel evaluation and project interviews, on June 13, the Metropolitan Council authorized staff to negotiate and execute the Agreement for Engineering Services for the Central Corridor, which staff planned to complete by June 20. However, on June 26, FTA Region V begins to express concerns about the contract, including:

- Conflict of interest if DMJM has any relationship to the FEIS, which was separately contracted to HDR.
- A process that was not fully open and competitive per FTA requirements, and
- Conflict of interest for Dennis Probst, a Project Manager for DMJM Harris who was formerly the Chair of the Central Corridor Committee (a volunteer position).

Correspondence between the FTA and the Council on these issues continued for the next several weeks until the FTA's Marisol Simon issued the FTA's decision about federal participation in the contract on August 1, 2007. In that letter, a copy of which is enclosed (Attachment C), Simon states, "FTA does not find that the procurement violated the requirement for full and open competition, or that Mr. Probst's earlier participation in the project constitutes a conflict of interest." The letter also states that if HDR reports directly to the Council and not to DMJM (which is the project structure), there would be no organizational conflict of interest going forward. With FTA's assent, Metro Transit moved forward with the contract.

The auditors' decision to include this procurement as an example of a non-competitive procurement is in direct opposition to the prior decision of FTA on which the Council relied when moving forward with the DMJM Harris contract and should be removed as a finding.

LTK Consulting

This contract provides for on-call engineering services for the Hiawatha Light Rail Train Line (HLRT). The auditors noted that the wide array of services might have affected potential bidders' decisions. The Council did re-evaluate the scope of work, but did not revise it out of operational concerns that the various engineering disciplines must be provided by one contractor. It is typically the case for HLRT on-call needs that several engineering disciplines are required under a single work order. The Council's rail operations, maintenance, and systems departments determined that one contractor (rather than multiple contractors) are required in order to ensure there is clear and complete responsibility for performance of the integrated services.

In each of these four procurements, the Council documented its analysis for determining whether or not there was adequate competition. In each case, the Council's analysis determined that the specifications were not unduly restrictive, that other bidders could have participated, and therefore there was adequate competition. Each file contained a price analysis which documented that a fair and reasonable price was established, even with a single bidder on the contract.

Corrective Action and Schedule

Although the grantee believes that the questioned procedures were made in conformance with FTA requirements, the Metropolitan Council shares with FTA the goal of ensuring a procurement process that emphasizes fair and open competition. Therefore, the Council proposes the following corrective actions to better ensure the appropriate competitive environment for future procurements.

1. In the future, for all large procurements, the responsible Procurement team will hold a strategy session to prepare a pre-solicitation solicitation plan for purposes of maximizing full and open competition. This plan will identify potential bidders, advertising and other methods to notify potential bidders, review the specification and other solicitation requirements to ensure the competition is not unduly restricted, and discuss the possibility of separating the specification into separate procurements to increase overall competition. The pre-solicitation plan document will be retained in the procurement file for future reference.
2. Determinations of the adequacy of competition for Metro Transit Procurement will be performed by the Manager of Contracts and Procurement Unit and visa versa to ensure that there is complete objectivity in the review process of single bid procurements so that all possible means can be explored to emphasize full and open competition in transit procurements.
3. For any single bid procurements where it is deemed that competition was adequate, a report will be submitted to the FTA, including documentation of the competitive process followed and the determination made about the adequacy of competition by the Council.

Person Responsible: Brian Lamb, General Manager of Metro Transit
 Timeline: 60 days

Element (39) Cost Analysis Required [Sole Source]

Four deficiencies were noted for proprietary software purchases that were made to accompany systems already in place at the Council. The files contained justification that a sole source procurement was necessary. However, a cost analysis was not performed to ensure that the cost charged by the vendor was fair and necessary.

Grantee Response

The Contracts and Procurement Unit (CPU) requires an Independent Cost Estimate (ICE) or Cost Analysis be completed for all FTA funded projects at the time of the Contract Initiation Memo (CIM) or Information Technology Request (ITR). A solicitation will not proceed to advertisement without an ICE being completed. To ensure this, CPU will implement a procurement contract log system (checklist) to ensure that contract file requirements are met. The logs will be used for quality assurance of each file prior to issuing a notice to proceed. Staff will be trained on how to use the contract log system.

Person Responsible: Micky Gutzmann, Manager of Contracts and Procurement Unit
Timeline: Contract log implemented and training completed by February 1, 2009.

Element (44) Out of Scope Changes

In one of the 41 files reviewed (Fuel tank addition contract awarded to American Liberty), there were several change orders awarded but no cost analyses were noted in the file.

Grantee Response

The Council ensures that a cost analysis, as well as an independent cost estimate (ICE), is performed for each change order and that those documents are part of the contract administration file. In the subject contract, a cost analysis and ICE were performed for each of the 22 change orders awarded and these documents are contained in the contract administration file. The Council maintains change order documents in the contract administration file and not in the procurement file, as change order activity is a contract administration function. The Council has interpreted FTA requirements to allow the official contract file to be divided into two parts (contract procurement and contract administration). However, in a miscommunication with the audit team, we did not provide the contract administration file to the auditors, which contained the change order documentation, although we did provide a listing of change orders for each contract.

The Council would be willing to provide the additional file information to revisit this matter and determine if this deficiency may be an error of communication, rather than a procurement process error, if that would be agreeable to the reviewers and the FTA.

Person Responsible: Brian Lamb, General Manager of Metro Transit
Timeline: 30 days from the date of grantee responses

Element (50) Piggybacking

Neither of the 2 files reviewed contained documentation verifying that options were exercised within the confines of the original contract. For one of the arrangements, the Council purchased buses from Gillig by piggybacking onto a contract that was originally with RGRTA in Rochester, NY. The contract had been executed between Gillig and RGRTA, but was cancelled by RGRTA. The procurement file did not contain documentation of the existence of an assignability clause in the original contract or certification of the remaining available options. The reassignment of options from a cancelled contract is an unusual occurrence that may require further research by FTA.

Grantee Response

Metropolitan Council's Office of General Counsel advises that there was no assignment of options in this arrangement. Rather, the Council took an assignment of the entire

contract. As a matter of law, contracts are assignable. Rochester was unable to complete the contract. Gillig had the buses and Metro Transit had an immediate need for buses to respond quickly to the I35W bridge collapse.

Additional information can be furnished to FTA at their request regarding this contract or the buses procured.

Person Responsible: Mark Thompson, Acting General Counsel
Timeline: N/A

Element (56) Clauses

Four vehicle procurements were reviewed and the following were noted with respect to two of them.

- The Council purchased buses from Gillig through a contract originally with RGRTA. Rochester had performed the Buy America certification, which the Council depended on rather than performing its own.
- The file for the procurement of MCI coaches contained no evidence of the pre-award Buy America certification having been performed, other than a memorandum in the file indicating such.

Grantee Response

In the future, the Council will ensure that it performs all pre-award and post-delivery audits required by 49 CFR Part 663 itself and that those audits are properly documented and placed in the procurement file. Project and contract managers of rolling stock procurements will be reminded that all Buy America certifications must be done by Council staff and documentation retained in the procurement file.

Person Responsible: Brian Lamb, General Manager of Metro Transit
Timeline: 30 days from the date of grantee response

ATTACHMENT A:

INDEPENDENT COST ESTIMATE

ENGINEERING SUPPORT SERVICES

HIAWATHA LIGHT RAIL

Independent Cost Estimate
On Civil Engineering Services Contract 07P041

Competitive rates established in similar
procurement in 2004.

These rates were established three and one-half
years ago. Therefore, I would expect that
the hourly rates for each discipline proposed
would be three to four percent higher per
year. Which translates to the option year
hourly rates for 2007 & 2008, as indicated on
the attached rates proposed in 2004.

John Jones.

Mike Schudauer - Northstar

Kimley-Horn & Passia

MP Consultants

LTK

Design contract for LRT

Rail Mgt Consultant

- Kimley-Horn

- Bentline

Contract No. 03P084

Exhibit B To Contract
Contractor Fee Schedule

Hourly rates for various LTK Engineering Services personnel are specified in the attached LTK price proposal dated January 9, 2004.

LTK
LTK Engineering Services

Member of The Klauder Group

January 9, 2004

100 West Butler Avenue
Ambler, PA 19002
215-542-0700
215-542-7676 FAX

Mr. Chris Gran
RFP Administrator
Metro Transit
515 North Cleveland Avenue
St. Paul, MN 55114-1878

Subject: LRT Systems Procurement No. 6465
Ref: Metro Transit request of LTK, December 31, 2003

Dear Mr. Gran:

Attached are the completed forms that you requested via your fax of December 31. As directed, the rates shown are all-inclusive of overhead and fee for LTK, as well as for our subconsultants. As John Gustafson discussed with you earlier this week, we have made minor modifications to the forms to be more descriptive of the positions. In addition, in the typical work order form, we have differentiated between electrical and structural engineering, as the rates for these two disciplines may be quite different, depending on the element specialty.

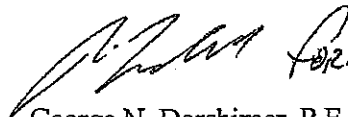
Our fully burdened rates include an assumed escalation rate of 3% for calendar year 2005 and 4% for each calendar year thereafter.

We recognize that cost is a factor in your deliberations. In this submittal, we have provided costs for the senior staff presented in our proposal. Nevertheless, in identifying staff to propose for individual task orders, we will be sensitive to cost, and will propose the most cost-effective team for each assignment without sacrificing work quality. With the approval of the Metro Transit Project Manager, tasks that do not require senior engineer involvement will be assigned to more junior staff, and we will perform as much of the work as possible with local LTK and subconsultant staff to minimize travel costs.

We look forward to continuing our relationship with Metro Transit in this important assignment. Should you further questions or require additional clarification, please contact Mr. Gustafson at 206-288-1795, or Mr. Apanian at 612-215-8256.

Sincerely,

LTK ENGINEERING SERVICES



George N. Dorshimer, P.E.
President

GND/

Enclosures

cc: J. Gustafson, S. Apanian, S. Knorr, C. Schmidt

LTK ENGINEERING SERVICES

METROPOLITAN COUNCIL

On-Call Systems Engineering Services for Hiawatha Light Rail Transit System
PRICE PROPOSAL

Discipline	Name	Specialty Role	Firm	Option Years				
				2004	2005	2006	2007	2008
LRVs	John Prosper	Lead/Electrical	LTK	\$110	\$113	\$118	\$123	\$128
	Cliff Woodbury	Structural	LTK	\$206	\$212	\$220	\$229	\$238
	George Hud	Structural	LTK	\$140	\$144	\$150	\$156	\$162
	Fran Nelson	Structural	LTK	\$121	\$125	\$130	\$135	\$140
	Dave Sanders	Electrical	LTK	\$179	\$184	\$191	\$199	\$207
	Brandon Johnson	Mechanical	LTK	\$81	\$83	\$86	\$89	\$93
	Mike Levin	HVAC	LTK	\$134	\$138	\$144	\$150	\$156
	Steve Roman	Specialty	LTK	\$168	\$173	\$180	\$187	\$194
Traction Power and Distribution	Ted Manning	Lead	LTK	\$145	\$149	\$155	\$161	\$167
	Ralph Thomas	Traction Power Systems	LTK	\$158	\$163	\$170	\$177	\$184
	Tristan Kneschke	Traction Power Systems	LTK	\$176	\$181	\$188	\$196	\$204
	Andrew Frano	Structural	BC	\$108	\$111	\$115	\$120	\$125
Overhead Contact System	Ian Hayes	OCS Engineering	LTK	\$180	\$185	\$192	\$200	\$208
	Andy Gillespie	OCS Engineering	LTK	\$143	\$147	\$153	\$159	\$165
Signals	Steve Lemberg	Lead	LTK	\$138	\$142	\$148	\$154	\$160
	Bob Abbott	Signal Engineering	LTK	\$179	\$184	\$191	\$199	\$207
	Bob Schultz	Signal Engineering	LTK	\$144	\$148	\$154	\$160	\$166
Communications	Ben Auxer	Comm. Eng./ CC	ACEx	\$153	\$158	\$164	\$171	\$178
	Walter Bembry	Comm. Eng.	LTK	\$112	\$115	\$120	\$125	\$130
	Susan Howard	Comm. Eng.	LTK	\$116	\$119	\$124	\$129	\$134
Fare Collection	Pete Comps	Lead	LTK	\$163	\$168	\$175	\$182	\$189
Systemwide Electrical	Jim DeSanto	Engineering	LTK	\$135	\$139	\$145	\$151	\$157
	Robert Marvin	Engineering	P&A	\$115	\$118	\$123	\$128	\$133
Facility Maintenance	Steve Apanian	Lead	LTK	\$154	\$159	\$165	\$172	\$179
	Scott Farnsworth	Engineering	LTK	\$167	\$172	\$179	\$186	\$193
	Mike Hall	Engineering	LTK	\$138	\$142	\$148	\$154	\$160
	Alex Safyan	Mechanical	P&A	\$115	\$118	\$123	\$128	\$133
	Ken Anderson	Site Civil	PCE	\$93	\$96	\$100	\$104	\$108
	Marysue Abel	Structural	BC	\$113	\$116	\$121	\$126	\$131
Maintenance Equipment	Scott Farnsworth	Engineering	LTK	\$167	\$172	\$179	\$186	\$193
	Mike Hall	Engineering	LTK	\$138	\$142	\$148	\$154	\$160
Corrosion Control	Ed Wetzel	Corrosion Eng'g	LTK	\$144	\$148	\$154	\$160	\$166
	Drew Haiko	Corrosion Eng'g	LTK	\$82	\$84	\$87	\$90	\$94
Miscellaneous	John Gustafson	Project Director	LTK	\$218	\$225	\$234	\$243	\$253
	Steve Apanian	Project Management	LTK	\$154	\$159	\$165	\$172	\$179
	Mike Long	QA/QC	LTK	\$165	\$170	\$177	\$184	\$191
	Mike Ringrose	Systems Integration	LTK	\$121	\$125	\$130	\$135	\$140
	Lori Blackwell	Drafting	LTK	\$87	\$90	\$94	\$98	\$102
	Bob Yarbrough	Survey	EVS	\$103	\$106	\$110	\$114	\$119
	Lance Newman	Utilities	PCE	\$93	\$96	\$100	\$104	\$108

Contract No. 03P084

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Sincerely,

LTK ENGINEERING SERVICES



George N. Dorshimer, P.E.
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cc: J. Gustafson, S. Apanian, S. Knorr, C. Schmidt

LTK ENGINEERING SERVICES

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	Drew Haiko	Corrosion Eng'g	LTK	\$82	\$84	\$87	\$90	\$94
Miscellaneous	John Gustafson	Project Director	LTK	\$218	\$225	\$234	\$243	\$253
	Steve Apanian	Project Management	LTK	\$154	\$159	\$165	\$172	\$179
	Mike Long	QA/QC	LTK	\$165	\$170	\$177	\$184	\$191
	Mike Ringrose	Systems Integration	LTK	\$121	\$125	\$130	\$135	\$140
	Lori Blackwell	Drafting	LTK	\$87	\$90	\$94	\$98	\$102
	Bob Yarbrough	Survey	EVS	\$103	\$106	\$110	\$114	\$119
	Lance Newman	Utilities	PCE	\$93	\$96	\$100	\$104	\$108

RECEIVED - DMC

JUN 08 2006

SEQ. #

Contract #2006-0135

**NORTHSTAR CORRIDOR DEVELOPMENT AUTHORITY
AGREEMENT FOR PROJECT MANAGEMENT CONSULTING SERVICES
WITH KIMLEY-HORN AND ASSOCIATES, INC.**

THIS AGREEMENT is made by and between the Northstar Corridor Development Authority, Anoka County Government Center, 2100 3rd Avenue, Anoka, Minnesota 55303 (hereinafter referred to as "NCDA") and Kimley-Horn and Associates, Inc, 2550 University Avenue West, Suite 345N, St. Paul, MN 55114 (hereinafter referred to as the "Consultant").

WHEREAS, the NCDA is in need of project management services to assist the Northstar Project Office in overseeing and managing the procurement and construction of the Northstar Corridor Rail Project; and

WHEREAS, on December 22, 2005, the NCDA issued a Request for Proposals (RFP) for professional services of a firm capable of providing project management services; and

WHEREAS, on March 2, 2006, the Consultant was selected as best meeting the needs of the NCDA based on an evaluation of written proposals, oral interviews and reference checks; and

WHEREAS, the parties have negotiated the terms and conditions of this Agreement and the NCDA has determined that the Consultant's compensation set forth in this Agreement is fair and reasonable; and

WHEREAS, the NCDA, on April 6, 2006, authorized the NCDA Chair to execute an agreement with the Consultant to provide project management consulting services; and

WHEREAS, the Minnesota Department of Transportation has approved this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, agreements and payment set forth in this Agreement, the parties agree as follows:

A. Term

Notwithstanding the date of the signatures of the parties to this Agreement, the term of this Agreement shall commence on execution and, unless earlier terminated pursuant to this Agreement, shall terminate on December 31, 2009 or upon commencement of revenue operation of Northstar commuter rail, whichever is later. The Consultant shall not commence work until the NCDA's Authorized Representative issues a written notice to proceed.

B. Duties of the Consultant

1. Nature and Timing of Duties

The Consultant shall serve as an independent consultant to the NCDA with respect to all services described in this Agreement. The Consultant shall provide the various professional and consulting services to the

FIXED HOURLY RATES

Northstar Corridor Rail Project				April 3, 2006
Project Management Consultant Services				
Cost Proposal Summary				
Firm	Total Hours	Total Labor Cost	Direct Expenses	Total Cost
Kimley-Horn and Associates, Inc. (KHA)	23,046	\$ 2,820,865	\$ 84,620	\$ 2,905,265
DMJM Harris (DMJM)	15,875	\$ 2,513,082	\$ 191,462	\$ 2,704,544
LTK Engineering Services Inc. (LTK)	16,299	\$ 2,537,252	\$ 319,423	\$ 2,856,674
Mass Transit Consultants (MTC)	11,210	\$ 1,990,283	\$ 13,303	\$ 1,943,586
MP Consultants (MPC)	1,400	\$ 175,684	\$ 7,027	\$ 182,711
SRF Consulting Group Inc. (SRF)	0	\$ -	\$ -	\$ -
Totals	67,629	\$ 9,376,966	\$ 615,835	\$ 9,992,801
Contingency				\$ 500,000
Total Contract Amount				\$ 10,492,801
Disadvantaged Business Participation (w/o contingency)				
Total DBE Hours	12,610			
DBE Participation (Percent of Total Hours)	18.6%			
Total DBE Costs	\$ 1,526,297			
DBE Participation (Percent of Total Cost)	15.3%			

Northstar Corridor Rail Project							April 9, 2008
Project Management Consultant Services							
Rate Schedule							
Staff Member	Firm	Role	Projected Annual Salary Increase	2004 Hourly Rate	2007 Hourly Rate	2010 Hourly Rate	2013 Hourly Rate
Danielson	KHA	PM	4%	\$ 189.02	\$ 196.58	\$ 204.45	\$ 212.62
Hermann	KHA	Stations	4%	\$ 182.15	\$ 189.84	\$ 197.83	\$ 206.15
Witzig	KHA	Environmental	4%	\$ 178.03	\$ 185.15	\$ 192.56	\$ 200.26
Monis	KHA	Stations	4%	\$ 175.68	\$ 182.71	\$ 190.01	\$ 197.62
Gohl	KHA	Field Oversight	4%	\$ 85.47	\$ 88.69	\$ 92.45	\$ 96.15
Peterson	KHA	CAD	4%	\$ 110.58	\$ 114.98	\$ 119.58	\$ 124.37
Rasmussen	KHA	Office Eng	4%	\$ 76.06	\$ 79.12	\$ 82.29	\$ 85.58
Bishop	KHA	Field Oversight	4%	\$ 134.90	\$ 140.90	\$ 145.91	\$ 151.74
Hemington	KHA	Field Oversight	4%	\$ 166.49	\$ 172.83	\$ 179.42	\$ 186.28
Loyneff	KHA	QA Manager	4%	\$ 88.82	\$ 92.77	\$ 96.88	\$ 101.16
Hackbarth	DMJM	DPM	4%	\$ 211.80	\$ 220.35	\$ 229.17	\$ 238.33
Baker	DMJM	Finance	4%	\$ 261.51	\$ 272.03	\$ 282.93	\$ 294.21
Blaine	DMJM	Market Pac	4%	\$ 134.35	\$ 139.72	\$ 145.31	\$ 151.12
Culligan	DMJM	Controls	4%	\$ 189.85	\$ 197.85	\$ 206.27	\$ 215.12
Issacson	DMJM	Schedule	4%	\$ 111.00	\$ 115.44	\$ 120.08	\$ 124.89
Heckman	DMJM	Safety	4%	\$ 177.24	\$ 184.44	\$ 191.81	\$ 199.49
Mlynarski	DMJM	Sr Advisor	4%	\$ 225.89	\$ 234.82	\$ 244.32	\$ 254.09
Paylick	DMJM	BNSF/Track	4%	\$ 102.11	\$ 106.19	\$ 110.44	\$ 114.86
Merrill	DMJM	Change Mgmt	4%	\$ 120.97	\$ 125.81	\$ 130.84	\$ 136.07
Wolsfeld	DMJM	Sr Advisor	4%	N/C	N/C	N/C	N/C
Myrdakos	DMJM	Schedule	4%	\$ 80.70	\$ 84.33	\$ 88.10	\$ 92.02
Apanian	LTK	LRT	4%	\$ 170.02	\$ 176.82	\$ 183.80	\$ 191.25
Carlson	LTK	Vehicle Admn	4%	\$ 54.85	\$ 57.04	\$ 59.32	\$ 61.69
Comps	LTK	Fare Collect	4%	\$ 172.78	\$ 179.68	\$ 186.86	\$ 194.34
Cribbaugh	LTK	BNSF/Track	4%	\$ 157.68	\$ 163.99	\$ 170.55	\$ 177.37
Lemberg	LTK	Field Oversight	4%	\$ 148.80	\$ 154.47	\$ 160.37	\$ 166.49
Miller	LTK	Systems	4%	\$ 101.98	\$ 106.04	\$ 110.28	\$ 114.69
Ringrose	LTK	Field Oversight	4%	\$ 127.50	\$ 133.02	\$ 138.74	\$ 144.67
Dierito	LTK	Vehicles	4%	\$ 185.11	\$ 192.51	\$ 200.21	\$ 208.22
Johnson	LTK	Vehicles	4%	\$ 86.38	\$ 89.84	\$ 93.43	\$ 97.17
Prosper	LTK	Vehicles	4%	\$ 119.28	\$ 124.08	\$ 129.12	\$ 134.19
Dawonkowski	MTC	Field Oversight	4%	\$ 108.35	\$ 112.88	\$ 117.49	\$ 122.28
Pate	MTC	Utilities	4%	\$ 117.02	\$ 121.70	\$ 126.57	\$ 131.63
Mendez-Plansky	MPCcons	Field Oversight	4%	\$ 116.89	\$ 121.57	\$ 126.43	\$ 131.49
Handy	MPCcons	Field Oversight	4%	\$ 110.28	\$ 114.68	\$ 119.27	\$ 124.04
Moore	SRF	Field Oversight	4%	\$ 101.29	\$ 105.44	\$ 109.88	\$ 114.64
Pericelli	DMJM	Schedule	4%	\$111.48			
Category Rates (for those not specifically named above)							
Principal			3%	\$ 181.04	\$ 196.77	\$ 202.87	\$ 208.76
Proj Mgr / Sr Eng			3%	\$ 182.12	\$ 189.99	\$ 197.99	\$ 206.15
Scheduling Eng			3%	\$ 164.44	\$ 169.07	\$ 173.85	\$ 178.76
Resident/Project Eng			4%	\$ 135.41	\$ 140.83	\$ 146.46	\$ 152.32
Estimator/Admin/Env Eng			4%	\$ 128.52	\$ 133.66	\$ 139.01	\$ 144.57
Sr CAD Designer			4%	\$ 110.00	\$ 114.40	\$ 118.96	\$ 123.74
Engineer II			5%	\$ 100.00	\$ 105.00	\$ 110.25	\$ 115.76
Project Accountant			4%	\$ 95.00	\$ 99.80	\$ 104.75	\$ 109.86
Elect/Mech Inspector			5%	\$ 82.88	\$ 87.52	\$ 92.40	\$ 97.52
Chil Inspector			5%	\$ 81.28	\$ 85.82	\$ 90.61	\$ 95.64
Sr Analyst			5%	\$ 80.00	\$ 84.50	\$ 89.23	\$ 94.19
Engineer / Technician (Analyst)			5%	\$ 80.19	\$ 84.20	\$ 88.41	\$ 92.83
Cliental Staff			4%	\$ 59.04	\$ 61.40	\$ 63.86	\$ 66.41
Scheduling Eng			4%	\$ 111.48	\$ 115.94	\$ 120.58	\$ 125.40

Northstar Corridor Rail Project
Project Management Consultant Services

April 15, 2009

Costs by Year

Firm	2006	2007	2008	2009	Total
Kimley-Horn and Associates, Inc. (KHA)	\$ 697,118	\$ 639,584	\$ 749,005	\$ 678,881	\$ 2,764,608
DMJM Norris (DMJN)	\$ 209,895	\$ 816,675	\$ 670,822	\$ 415,790	\$ 2,513,182
LTK Engineering Services Inc. (LTK)	\$ 484,488	\$ 632,854	\$ 877,842	\$ 387,148	\$ 2,382,332
Mass Transit Consultants (MTC)	\$ 304,021	\$ 427,514	\$ 444,815	\$ 169,133	\$ 1,345,523
MPC Consultants (MPC)	\$ -	\$ 81,270	\$ 81,281	\$ 20,463	\$ 182,994
SRF Consulting Group Inc. (SRF)	\$ -	\$ -	\$ -	\$ -	\$ -
Labor Totals	\$ 1,565,521	\$ 2,069,776	\$ 2,422,064	\$ 1,640,505	\$ 9,378,936
Expenses	\$ 229,861	\$ 163,712	\$ 163,712	\$ 64,550	\$ 515,835
Yearly Totals	\$ 1,795,382	\$ 2,233,488	\$ 2,585,776	\$ 1,705,055	\$ 9,992,801

Northstar Corridor Rail Project											April 3, 2008	
Project Management Consultant Services												
Hours by Task												
			200	300	410	420	500	610	620	630	640	
Staff Member	Firm	Role	Project Management	Administration & Finance	Project Controls	Scheduling	Implementation & Compliance	Contract Administration	Shop Drawings / Submittals	Change Orders	Record Drawings	Totals
Danielsen	KHA	PM	3,224	461	230	230	0	230	0	230	0	4,606
Hermans	KHA	Stations	122	306	245	61	0	184	122	122	61	1,221
Witzig	KHA	Environmental	0	74	74	0	1,334	0	0	0	0	1,482
Monte	KHA	Stations	0	0	0	0	0	0	0	0	0	0
Goh	KHA	Field Oversight	0	0	249	249	0	3,861	249	249	100	4,976
CH2M Inspector	KHA	Field Oversight	0	0	0	0	0	0	0	0	0	0
Admin	KHA	Admin	0	2,298	574	0	0	0	0	0	0	2,872
Weiland Insp	KHA	Field Oversight	0	0	0	0	0	0	0	0	0	0
Peterson	KHA	CM	0	0	0	0	0	0	861	340	68	1,309
Rasmussen	KHA	Office Eng	0	655	655	0	655	1,688	1,688	555	0	3,551
Bishop	KHA	Field Oversight	0	0	0	0	0	0	0	0	0	0
Struct Inspector	KHA	Field Oversight	0	0	0	0	0	0	0	0	0	0
Hartington	KHA	Field Oversight	0	0	15	0	61	141	29	29	0	256
Levensh	KHA	QA Manager	431	144	144	0	0	0	0	0	0	719
Hackbarth	DMJM	PM	1,440	720	480	240	0	1,440	0	480	0	4,400
Baker	DMJM	Finance	0	718	0	0	0	0	0	0	0	718
Bains	DMJM	Mktg/Pub	0	0	0	0	0	0	0	0	0	0
Culligan	DMJM	Controls	0	67	517	0	0	0	0	0	0	574
Issacson	DMJM	Schedule	0	0	0	893	0	0	0	0	0	893
Heckman	DMJM	Safety	0	0	0	0	0	0	0	0	0	0
Mlynski	DMJM	Sr Advisor	0	0	0	0	0	94	10	0	0	104
Parick	DMJM	RSR/Track	0	0	0	0	0	0	0	2,300	0	4,600
Merrill	DMJM	Change Mgmt	0	460	1,840	0	0	0	0	0	0	4,160
Wolfe	DMJM	Sr Advisor	4	0	0	0	0	0	0	0	0	4
Mintakes	DMJM	Schedule	0	0	0	4,182	0	0	0	0	0	4,182
Aronson, Steve	LTK	LRT	311	311	155	0	0	457	166	166	0	1,555
Carlson, Stacy	LTK	Vehicle Admin	0	0	0	0	0	0	0	0	0	0
Compa, Pete	LTK	Proc Collect	0	0	0	0	0	606	76	76	0	758
Crabtree, Tom	LTK	RSR/Track	0	0	192	192	0	2,581	383	383	0	3,830
Lambert, Steve	LTK	LRT	0	0	0	156	0	2,333	311	311	0	3,110
Muller, Kevin	LTK	CAD	0	0	0	0	0	0	0	0	0	0
Ringrose, Michael	LTK	Trackwork	0	0	0	0	0	96	0	0	0	96
DiBello, Dominic	LTK	Vehicles	155	0	76	76	0	930	166	166	0	1,555
Johnson, Brandon	LTK	Vehicles	0	0	0	0	0	0	0	0	0	0
Prosper, John	LTK	Vehicles	0	0	0	0	0	4,316	609	270	0	5,395
Dzwonkowski, Ken	NYC	Inspector	0	0	260	260	0	3,324	841	260	0	5,685
Patel, Jai	NYC	Inspector	0	0	200	200	0	3,543	841	551	0	5,805
Mendez-Plansky	MPCCons	Inspector	0	0	70	70	0	810	210	140	0	1,400
Sr Mech Eng	MPCCons	Inspector	0	0	0	0	0	0	0	0	0	0
Handy	MPCCons	Inspector	0	0	0	0	0	0	0	0	0	0
CAD Tech	MPCCons	CAD	0	0	0	0	0	0	0	0	0	0
Moore	SRF	Inspector	0	0	0	0	0	0	0	0	0	0
Total Hours			5,487	6,104	5,976	5,711	1,940	27,544	6,806	6,633	223	67,629

Northstar Corridor Rail Project											April 3, 2008	
Project Management Consultant Services												
Labor Costs by Task												
			200	300	410	420	600	610	620	630	640	
Staff Member	Firm	Rate	796 Hourly Rate	Project Management	Administrative & Finance	Project Controls	Scheduling	Environmental Compliance	Construction Contract Administration	Shop Drawings / Submittals	Change Orders	Record Drawings
Danielson	KHA	PM	\$ 189.02	\$ 641,140	\$ 91,691	\$ 45,796	\$ 45,796	\$ -	\$ 45,796	\$ -	\$ 45,796	\$ -
Hermann	KHA	Station	\$ 182.15	\$ 24,366	\$ 60,965	\$ 48,772	\$ 12,183	\$ -	\$ 36,579	\$ 24,366	\$ 24,366	\$ 12,183
Witzig	KHA	Engineer/Inf	\$ 179.03	\$ -	\$ 19,808	\$ 13,926	\$ -	\$ 250,637	\$ -	\$ -	\$ -	\$ -
Mois	KHA	Station	\$ 175.88	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Gohl	KHA	Field Oversight	\$ 85.47	\$ -	\$ -	\$ 22,893	\$ 22,893	\$ -	\$ 357,134	\$ 22,893	\$ 22,893	\$ 9,167
C&I Inspector	KHA	Field Oversight	\$ 81.25	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Adrian	KHA	Admin	\$ 81.98	\$ -	\$ 151,004	\$ 57,951	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Wahlund Insp	KHA	Field Oversight	\$ 81.25	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Peterson	KHA	CAD	\$ 110.58	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 114,947	\$ 41,053	\$ 8,211
Rasmussen	KHA	Office Eng	\$ 73.88	\$ -	\$ 45,120	\$ 45,120	\$ -	\$ 45,120	\$ 135,368	\$ 135,368	\$ 45,120	\$ -
Bishop	KHA	Field Oversight	\$ 134.90	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Struct Inspector	KHA	Field Oversight	\$ 67.87	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Harrison	KHA	Field Oversight	\$ 158.49	\$ -	\$ -	\$ 2,184	\$ -	\$ 8,737	\$ 24,077	\$ 4,368	\$ 4,368	\$ -
Layrett	KHA	QA Manager	\$ 98.82	\$ 45,376	\$ 15,125	\$ 15,125	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Hackbart	DMJM	PM	\$ 211.88	\$ 328,050	\$ 163,045	\$ 108,697	\$ 64,348	\$ -	\$ 328,050	\$ -	\$ 108,697	\$ -
Baker	DMJM	Planner	\$ 251.61	\$ -	\$ 192,465	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Blaine	DMJM	Multi Fac	\$ 134.35	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Oulligan	DMJM	Contract	\$ 199.85	\$ -	\$ 12,064	\$ 108,675	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Issacson	DMJM	Schedule	\$ 143.86	\$ -	\$ -	\$ -	\$ 103,606	\$ -	\$ -	\$ -	\$ -	\$ -
Hickman	DMJM	Safety	\$ 177.34	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Nijmowski	DMJM	Sr Advisor	\$ 225.89	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Pawick	DMJM	BMSG/Track	\$ 102.11	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 10,129	\$ 1,125	\$ -	\$ -
Mans	DMJM	Change Mgmt	\$ 120.97	\$ -	\$ 69,700	\$ 298,601	\$ -	\$ -	\$ -	\$ -	\$ 298,601	\$ -
Wolefeld	DMJM	Sr Advisor	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Mysirkes	DMJM	Schedule	\$ 80.70	\$ -	\$ -	\$ -	\$ 401,157	\$ -	\$ -	\$ -	\$ -	\$ -
Apanan, Steve	LTK	LRT	\$ 170.82	\$ 55,081	\$ 65,861	\$ 27,940	\$ -	\$ -	\$ 63,821	\$ 27,940	\$ 27,940	\$ -
Carson, Stacy	LTK	Vehicle Admin	\$ 84.85	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Comps, Pats	LTK	Fare Collect	\$ 172.76	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 108,676	\$ 13,710	\$ 13,710	\$ -
Crabough, Tom	LTK	BMSG/Track	\$ 187.86	\$ -	\$ -	\$ 31,893	\$ 31,893	\$ -	\$ 445,505	\$ 63,796	\$ 63,796	\$ -
Lemberg, Steve	LTK	Field Oversight	\$ 148.80	\$ -	\$ -	\$ -	\$ 24,092	\$ -	\$ 561,378	\$ 48,184	\$ 48,184	\$ -
Miller, Kevin	LTK	Systems	\$ 101.96	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Ringosa, Michael	LTK	Field Oversight	\$ 127.90	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 13,025	\$ -	\$ -	\$ -
D'Elia, Dominic	LTK	Vehicle	\$ 183.11	\$ 30,230	\$ -	\$ 15,115	\$ 15,115	\$ -	\$ 181,363	\$ 30,230	\$ 30,230	\$ -
Johnson, Brandon	LTK	Vehicle	\$ 88.36	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Prosper, John	LTK	Vehicle	\$ 119.29	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 648,676	\$ 102,850	\$ 34,285	\$ -
Ozmonkowski, Ken	MYG	Field Oversight	\$ 108.25	\$ -	\$ -	\$ 31,978	\$ 31,978	\$ -	\$ 447,691	\$ 85,934	\$ 31,978	\$ -
Pallei, Jitu	MYG	URBS	\$ 117.82	\$ -	\$ -	\$ 34,536	\$ 34,536	\$ -	\$ 448,971	\$ 103,609	\$ 89,072	\$ -
Mander-Piansky	MPCONS	Field Oversight	\$ 118.89	\$ -	\$ -	\$ 8,784	\$ 8,784	\$ -	\$ 114,194	\$ 26,363	\$ 17,656	\$ -
Sr Mech Eng	MPCONS	Field Oversight	\$ 92.25	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Handy	MPCONS	Field Oversight	\$ 110.28	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
CAD Tech	MPCONS	CAD	\$ 44.17	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Moore	BRP	Field Oversight	\$ 101.29	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Task Subtotals				\$ 1,123,104	\$ 661,707	\$ 838,898	\$ 786,372	\$ 304,554	\$ 3,690,325	\$ 815,682	\$ 927,369	\$ 29,581
Total Labor Costs												\$ 9,376,466

ATTACHMENT B:
INDEPENDENT COST ESTIMATE
DESIGN OF LIGHT RAIL BOOTH

Design Cost Estimate For: 62651
(Project Manager Estimate)

Project Name: Design - LRT O & M Paint Booth Modifications

Hourly Rates: 1 \$150.00 4 \$100.00 7 \$80.00
 2 \$110.00 5 \$110.00 8 \$70.00
 3 \$110.00 6 \$120.00

Design Phase:	1 2 3 4 5 6 7 8								Totals	
	Principle	Project Manager	Structural	Architect/ L. Architect	Mechanical	Electrical	Drafting Technician	Clerical Staff	Hrs	
Evaluation of Current Conditions	2	2	2	2	2	2	2	2	12	\$1,400.00
45% Base Plan	2	4	12	32	20	16	40		128	\$12,580.00
Design Review		2	2	2	2	2	2		10	\$1,100.00
90% Plans and Specs	2	6	8	32	32	16	32		128	\$13,040.00
Design Review		2	2	2	2	2	2		10	\$1,100.00
Bid Documents & Bid Support		4	6	8	8	8	8	20	62	\$5,780.00
Construction Support		6	6	12	12	8	4	4	48	\$5,080.00
Misc. Meetings	2	8	2	6	4	4			26	\$2,920.00
Record Drawings		4	4	4	4	4	16		36	\$3,480.00
									458	\$46,480.00

Sub Total: 458 \$46,480.00

Direct Expenses - Subconsultants

\$150.00
 \$0.00 Total: \$150.00

Reimbursable Expenses

Mileage \$100.00
 Printing, Copying \$50.00
 Deliveries \$100.00

Total: \$250.00

Grand Total \$46,880.00

ATTACHMENT C:
FTA LETTER ON DMJM HARRIS
CONTRACT FINDINGS

Aug. 2. 2007 1:40PM
 AUG 02 2007 1:28PM

METRO TRANSIT EXEC 612 349 7503
 FTH IRU-US CHICAGO

No. 2940 P. 3
 3128880351

P. 2



U.S. Department
 of Transportation
 Federal Transit
 Administration

REGION V
 Illinois, Indiana,
 Michigan, Minnesota,
 Ohio, Wisconsin

200 West Adams Street
 Suite 920
 Chicago, IL 60606-5263
 312-353-2789
 312-686-0351 (fax)

August 1, 2007

Brian J. Lamb
 General Manager
 Metro Transit
 560 Sixth Avenue North
 Minneapolis, MN 55411

RE: Central Corridor Light Rail Transit Engineering Services Contract

Dear Mr. Lamb:

This letter is the Federal Transit Administration's (FTA) decision regarding federal participation in the Central Corridor Light Rail Transit Engineering Services (ES) contract that Metropolitan Council (MC) is proposing to enter into with DMJM Harris (DMJM). FTA has reviewed the documentation that MC provided on July 24, 2007, and July 30, 2007, in response to FTA's questions dated July 20, 2007, and has concluded that FTA can participate in the contract. However, this participation is based on the accuracy of the information provided to FTA by MC. Should FTA subsequently discover that information provided by MC was not accurate, FTA reserves its right to reexamine its participation.

FTA undertook its analysis of the subject contract to satisfy itself of three outstanding issues. FTA needed to determine that the contract did not violate FTA's requirement that all third party procurements provide for full and open competition, 49 Code of Federal Regulations (CFR) Section 18.36(c)(1). The review also focused on the structure of the contract to ensure that the contract did not represent a premature commitment to a particular course of action prior to the completion of the National Environmental Policy Act (NEPA) process, as well as that it did not violate the Council for Environmental Quality (CEQ) conflict of interest requirements regarding the preparation of environmental documents.

Regarding the first issue, FTA questioned whether the procurement met the requirements for full and open competition for a number of reasons. FTA was concerned that MC received only one proposal for a contract of this size and scope when the MC had indicated that it sent out 212 RFPs

Aug. 2, 2007 1:40PM
Aug 02 2007 1:28PM

METRO TRANSIT EXEC 612 349 7503
FTA TRD-05 CHICAGO

No. 2940 P. 4
3128860351

P. 3

via email. Additionally, FTA was concerned that DMJM's earlier involvement in the Central Corridor Light Rail Transit Project (the "Project") might have enabled the company to acquire information that would give it an unfair competitive advantage. In addition, since Mr. Denny Probst, DMJM's Project Manager, had also chaired all the public meetings of the Central Corridor Coordinating Committee (CCCC) involved in selecting the locally preferred alternative¹, FTA wanted to make sure that his role did not present either a real or apparent conflict of interest under 49 CFR Section 18.36(b)(3) for DMJM. Based on the information MC has provided, FTA does not find that the procurement violated the requirement for full and open competition, or that Mr. Probst's earlier participation in the Project constitutes an actual conflict of interest.

Notwithstanding FTA's decision to participate in this contract, we remain concerned, given the complexity of the procurement, with the relatively short time allotted for the receipt of initial offers. Even more troubling was the very short time established for receipt of proposals after the Requests for Proposals (RFP) was amended. In the future, FTA strongly encourages MC to give potential offerors more time to respond to solicitations, especially in Brooks Act procurement such as this one. FTA is also troubled that MC did not contact more than three potential offerors to inquire why the parties chose not to respond to the solicitation, as well as MC's lack of adequate documentation in its procurement file formalizing the process to support its determination that there were no barriers limiting competition. In general, when a Grantee only receives one bid for a procurement of this size, FTA expects the Grantee to contact a representative sampling of the potential bidders. The procurement file should contain documentation regarding those contacts, stating the date when the contact was made, the questions asked and the responses explaining why the bidder chose not to bid. Those contacts are generally made by the contracting office that controls the procurement, not the Project Director, whose presence may have a chilling effect on the answers. Other individuals involved in the project, especially those at the executive level, should not interject themselves in the procurement process, as it can be deemed improper if they are not typically a part of the process.

With respect to the second issue, FTA agrees that signing the contract would not violate 40 CFR Section 1506.1 or 23 CFR Section 771.113(a) provided that the MC does not issue a "notice to proceed" with any work other than preliminary engineering, prior to the completion of the NEPA process (i.e., the signing of an environmental Record of Decision).

With respect to the third issue, FTA agrees that there would be no NEPA conflict of interest as long as the NEPA contractor (HDR) reports only to the MC, and not to DMJM in conducting the NEPA review and preparing all NEPA and related environmental documents and signs the attached disclosure statement in accordance with 40 CFR Section 1506.5(c). Also, it is FTA's understanding that DMJM will only be limited to providing engineering and cost information to HDR (environmental consultant) and MC. DMJM will not be participating in any scoping activities related to the NEPA work.

FTA appreciates MC's patience as FTA worked through the variety of complex issues associated

¹ The CCCC was also responsible for voting and making a formal recommendation to MC on the locally preferred alternative. The fact that Mr. Probst was not paid in his position as Chair of CCCC is irrelevant to the conflict of interest analysis.

Aug. 2. 2007 1:41PM
AUG 02 2007 1:25PM

METRO TRANSIT EXEC 612 349 7503
FIR INU-05 CHICAGO

No. 2940 P. 5
3128960351 p. 4

with the ES contract and it will strive in the future to deliver more timely reviews. Also, if MC has any questions about the procurement process or any other matter pertaining to the New Starts process, please contact our office prior to taking any future actions. Should you have any questions regarding this letter, please feel free to contact me or any member of my staff.

Sincerely,



Marisol Simon
Regional Administrator

Enclosure

Regional Administrator

Aug. 2, 2007 1:41PM
AUG 02 2007 11:28AMMETRO TRANSIT EXEC 612 349 7503
FIM IKU-UB LMLCHUUNo. 2940 P. 6
3128860351

P. 5

**Disclosure Statement on Conflict of Interest
Associated with the Preparation of Documents
Required by the National Environmental Policy Act or
the Act's Implementing Regulations**

I, the undersigned, am an officer of <firm>, a consulting firm which has entered into, or will enter into, a contract with <grantee> to provide professional services for the preparation of an environmental impact statement (EIS) on <name of project> (Project). The EIS is being prepared by <grantee> and the Federal Transit Administration to comply with the National Environmental Policy Act (NEPA) and its implementing regulations (40 CFR Parts 1500-1508 and 23 CFR Part 771). The NEPA regulations of the Council on Environmental Quality (CEQ) require that contractors preparing EISs execute a disclosure statement disclosing the firm's interest, if any, in the outcome of the NEPA process. (40 CFR §1506.5(c))

Accordingly, <firm> states that it has no financial or other interest in the outcome of the NEPA review of the Project. <Firm> will not acquire nor accept a financial or other interest in the outcome of the NEPA review of the Project until either one of two events has occurred: (1) FTA has issued a Record of Decision on the Project in accordance with 40 CFR §1505.2; or (2) the firm's involvement in preparing NEPA documents for the Project has ended.

Although <firm> has no promise of future work or other interest in the outcome of the proposal, the CEQ guidance memorandum entitled Forty Most Asked Questions Concerning CEQ's NEPA Regulations, 23 March 1981, states that the firm may "later bid in competition with others for future work on the project if the proposed action is approved." (Question 17b.)

The CEQ guidance memorandum also indicates that the disclosure statement of a consulting firm that has been involved in developing initial data and plans for a project should "state the scope and extent of the firm's prior involvement to expose any potential conflicts of interest that may exist." (Question 17a.) Prior to the initiation of the NEPA process for the Project, <firm> assisted <grantee> in conducting the planning-level Alternatives Analysis <or Major Investment Study> that is required by FTA regulations for New Starts projects (49 CFR Part 611) and that identified the need for the Project
<omit this paragraph if not relevant.>

Signature

Date

Name

Title