



## Agenda Item 4b

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TO: Clipper® Executive Board

DATE: March 13, 2017

FR: Carol Kuester

RE: Proposed Clipper® Contract Extension

### Background

The Next Generation Clipper (C2) System Integrator Industry Review Draft request for proposal (RFP) was published on January 27, 2017, with the requirement that the vendor selected to perform the C2 contract (the “C2 Contractor”) will assume operation and maintenance of C1 (“C1 O&M”) while C2 is being designed and implemented. Since the current Clipper contractor, Cubic Transportation Systems, Inc. (Cubic), has a clear competitive advantage over other vendors for this work element, it will not be scored as a selection evaluation factor along with the other work required under the C2 RFP. Under the terms of the draft RFP, C1 O&M will be evaluated separately based on soundness of technical approach, cost effectiveness and cost realism, and MTC reserves the right not to award C1 O&M to the C2 Contractor.

Because of the complexity of designing a C2 fare collection system serving 22 transit operators there will be a period during design and implementation of C2 in which C1 O&M will have to be performed. Thus, at the request of the Clipper Executive Board, Clipper staff has been developing a Change Order to the current Contract with Cubic to extend C1 O&M for up to 5 years in order to assure a smooth customer transition to C2.

### Key Terms of Contract Extension

The proposed contract change order would guarantee two (2) additional years of O&M past the term of the current contract, and would also have the following key terms:

- A five-year extension of the current O&M term beginning November 3, 2019 that may be terminated by MTC if the selected C2 Contractor performs C1 O&M under the C2 Contract or, in whole or in part, before the end of the extension term;
- No change in existing O&M requirements or payment terms for the first year;
- At least one year and up to four years of continued O&M work by Cubic on as-needed basis, paid for by Time & Materials (T&M), capped at the monthly average cost of the first year extension, excluding any rent increases beyond Cubic’s current lease term;
- Cubic waives rights to recover costs for termination for convenience for any portion of the work terminated with at least one year notice by MTC, except for termination prior to the end of Year 2 and certain lease termination costs;
- Key Performance Indicators (KPIs) will be enforced for all portions of C1 O&M that remain intact during the T&M extension years; and
- Cubic will maintain the system in a state of good repair pursuant to the current Contract.

The proposed contract extension is based on the assumption that due to the complexity and age of the C1 backend and software, a technically sound proposal for C1 O&M from a vendor other than Cubic is likely to be substantially more expensive than a Cubic proposal or the C1 Contract's current cost. If proposals show otherwise, MTC anticipates that the selected C2 contractor would perform C1 O&M, and the proposed Contract Change Order would be terminated.

### **Summary**

MTC, as the contracting agency, has been negotiating the change order with Cubic, and transit operator staff have been briefed on the main points and key terms of the change order. MTC staff plans to return to the Clipper® Executive Board in April 2017 to obtain approval for the Contract Change Order with Cubic and will continue to update the Executive Board of any new developments.



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Carol Kuester