



Agenda Item 3a

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TO: Clipper® Executive Board

DATE: April 10, 2017

FR: Carol Kuester

RE: Contract Change Order – Five Year Operation and Maintenance Extension: Cubic Transportation Systems (Cubic) (\$25,000,000 annually)

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. Under the terms of the RFP, the proposal to perform C1 O&M will not be scored with the rest of the proposal in order to level the playing field between the incumbent and other vendors. However, it will be evaluated for soundness of the technical approach, price realism, and cost effectiveness. If the vendor selected as C2 system integrator also submits a sound, realistic, cost effective proposal for C1 O&M, the C2 contract will include C1 O&M. However, at the request of the Clipper® Executive Board, Clipper® staff have negotiated 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. MTC and the operators reserve the right not to award C1 O&M to the C2 Contractor, in which case the contract extension with Cubic will be implemented.

Scope of Work

The proposed contract change order has the following key terms:

- An extension of the current O&M term beginning November 3, 2019 of not less than two and up to five years, that will be terminated by MTC if the incumbent Contractor is selected as the C2 Contractor and will provide C1 O&M under the terms of the C2 Contract or if the selected C2 Contractor performs C1 O&M under the C2 Contract;
- The existing, federally-required contract clause providing for the termination of the extension for convenience of MTC may be exercised at any time, by written notice, but if MTC provides at least one year advance notice of termination, Cubic’s termination cost recovery is limited to early rent termination costs;
- No change in existing O&M requirements or payment terms for the first year, to be extended to the second year, if the final project schedule for C2 calls for C2 revenue-generating transactions to start after November 2021;
- The remaining years (Years 3-5), if any, to be paid for on a Time & Materials (T&M) basis, capped at the monthly average cost of the first year extension, excluding any rent increases beyond Cubic’s current lease term;
- Key Performance Indicators (KPIs) will continue in full force and effect for Year 1 and any other year in which the current scope of work remains intact; after that, only those KPIs related to specific O&M services to be performed by Cubic in their entirety will be subject to KPIs;

- Cubic agrees to reasonably cooperate in good faith with the C2 Contractor in the event of a transition; and
- Cubic will maintain the system in a state of good repair pursuant to the current Contract during Year 1 and any additional year performed under the current contract terms, after which asset replacement will be paid for by MTC, unless caused by Contractor's failure to perform maintenance.

The proposed contract extension is a sole source contract, based on Cubic's unique capability performing the C1 O&M work on the existing system; however, if C2 proposals show otherwise, MTC anticipates that the selected C2 contractor would perform C1 O&M, and the proposed Contract Change Order would be terminated.

During negotiations, transit operator representatives have been kept apprised of and reviewed the key terms and conditions of the proposed contract change order and were invited to participate in the most recent negotiations with Cubic.

Response to Previous Board Questions

- Contract permits termination in part, if MTC wants another vendor to perform certain work. If terminated with less than one year notice, termination costs would be due under federally-mandated termination for convenience provision;
- Cubic was asked to accept a six month "grace period" for no termination costs; they declined, based on the number of contracts, including their leases that operate on one year terms.

Summary

Staff recommends that the Clipper® Executive Board approve MTC Change Order No. 0218 with Cubic Transportation Systems, Inc., in an amount specified in the attached summary.



Carol Kuester

REQUEST FOR CLIPPER® EXECUTIVE BOARD APPROVAL
Summary of Contract Change Order

Contractor:	Cubic Transportation Systems, Inc.
Work Project Title:	Five Year Operation and Maintenance Extension
Purpose of Amendment:	Extend Operation and Maintenance under the current Clipper® Contract terms and conditions for up to five years.
Brief Scope of Work:	Current Clipper® Contract Operations and Maintenance for up to five years unless Contractor is selected as C2 Contractor or another Contractor is selected to perform C1 Operations and Maintenance.
Project Cost Not to Exceed:	\$25,000,000 annually (this Change Order)
Funding Source:	Participating Operator funds, STP, CMAQ, STA, STP Exchange, Regional Measure 2 Operating
Fiscal Impact:	Funds subject to availability in each FY MTC agency budget. Participating Operators will cover a portion of the costs per the Clipper® Amended and Restated Memorandum of Understanding.
Motion:	That a Contract Change Order with Cubic Transportation Systems, Inc., for the purposes described herein and in the Executive Director's memorandum dated April 10, 2017, is hereby approved by the Clipper® Executive Board.
Clipper® Executive Board:	<hr/>
	Denis Mulligan, Chair
Approved:	Date: April 17, 2017