



## Board Report

File #: 2020-0782, File Type: Contract

Agenda Number: 22.

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### OPERATIONS, SAFETY, AND CUSTOMER EXPERIENCE COMMITTEE JANUARY 21, 2021

**SUBJECT: UNLEADED FUEL**

**ACTION: RATIFY EXPENDITURES AND APPROVE CONTRACT MODIFICATION**

#### **RECOMMENDATION**

AUTHORIZE the CEO to:

- A. RATIFY expenditures in excess of the total contract award of \$3,863,300 for unleaded gasoline from Pinnacle Petroleum for Metro's non-revenue vehicle fleet increasing the Contract No. FY34649000 total contract value from \$9,717,450 to \$13,580,750.
  
- B. EXECUTE Modification No. 3 in the amount of \$6,485,975 to include ratified funding in paragraph A above, and to extend the contract period of performance to June 30, 2021 for an additional \$2,622,675, increasing the total contract value from \$13,580,750 to \$16,203,425.

**Requires Two-Thirds Vote**

#### **ISSUE**

The original contract was to provide up to approximately five million gallons of unleaded gasoline for 60 months at prevailing Oil Price Information Service (OPIS) pricing with the application of state and federal taxes and fees associated with unleaded gasoline. The contract is an Indefinite Delivery Indefinite Quantity (IDIQ) for a two-year base, inclusive of sales taxes for a not-to-exceed amount of \$3,886,980, and three one-year options for a not-to-exceed amount of \$5,830,470 for a total not-to-exceed amount \$9,717,450.

#### **DISCUSSION**

In July 2017 the Board awarded a 60-month Contract for unleaded gasoline to Pinnacle for \$9,717,450. Pinnacle was required to provide unleaded gasoline for Metro's non-revenue vehicles (automobiles, trucks, vans, and equipment). The ratification is due to inadequate staff monitoring, unforeseen fluctuations and increases in fuel variables over the past 2 years related to the federal and state fuel taxes and fees, Oil Price Information Service (OPIS) fee per gallon, and its fuel

supplier. The unexpected pandemic has also impacted the supply and demand for fuel. The fuel industry has experienced a reduction in fuel production due to state emergency shutdowns, thus, increasing fuel prices due to low production. Many fuel refineries have closed, and are temporarily closing, which has also impacted the fuel supplier's ability to obtain competitive fuel prices. In Metro's solicitation price form of December 2016, for the unleaded fuel acquisition, staff inadvertently failed to include two of the many state and federal fees and taxes which represented an understatement of approximately thirty-four cents (\$0.34) per gallon.

Staff became aware of these issues in October 2020 and reached out to the fuel supplier and internal Metro departments to ascertain the reasons for increases in fuel costs and to discuss and implement the appropriate preventive measures to ensure unplanned and unauthorized expenditures would not re-occur.

### Corrective Actions

Metro's immediate corrective actions include, but are not limited to:

- Issuance of a new solicitation for Metro's unleaded gas requirements for open competition.
- Prior to the issuance of a new solicitation, Metro will reach out to the unleaded gasoline and overall commodities industry, via a Request for Interest and Qualification (RFIQ), to solicit specific industry knowledge and inputs relative to Metro's development of the new solicitation.
- The new solicitation will require that supplier's invoices are clear and reflect the gallons of fuel received by location to allow for the required reconciliation of fuel received against expenditures by location and projected demand.
- Internally, in addition to Metro's internal accounts payable and procurement departments, the user department, Non-revenue Vehicle Operations, will be required to be integral to the review and approve processes for all fuel supplier invoices, track against their projected demand, independent cost estimate, and the total contract value.
- Vendor/Contract Management will adhere to proper total contract value monitoring to ensure that upon reaching seventy percent (70%) of total actual costs (invoiced costs) proper coordination with the supplier and Metro's designated project manager (PM) will occur to take proper steps to use allocated Contract Modification Authority or re-solicit the Contract and return to the Board for approval.
- Internally, Metro will review all other commodity inventory contracts to ensure that the appropriate invoice reviews are established and followed when matched against the contract terms and values.
- Internally, staff will consult with all internal commodity User Depts involved in the acquisition and operational use of various fuel and oil types, lubricants, renewable/compressed natural gas, electrification, and new forms of energy to create synergy within the Agency in the acquisition and sharing of updated and critical commodities industry information, knowledge, regulatory/compliance local, state, and federal requirements, indices, fees and taxes information.

### DETERMINATION OF SAFETY IMPACT

There are no safety impacts for this authorization.

### **FINANCIAL IMPACT**

Adoption of Modification No. 3 for Contract No. FY34649000 would have a budget impact of \$2,622,675 to the agency. Additionally, funding in the amount of \$3,863,300 in FY21 is required to ratify the contract due to unforeseen fluctuations and fuel variables over the past 2 years related to the federal and state fuel taxes and fees. Funding will come from within the adopted Operations and Maintenance budget. The project manager, in conjunction with the Contract Administrator, and the Accounting department will be responsible for monitoring performance, compliance, costs, and resources in support of this task.

Since this is a multi-year project, the program manager, cost center manager, and Chief Operations Officer will ensure all project resources are budgeted in future fiscal years.

#### **Impact to Budget**

The source of funds for this action will be Federal, State and Local funds including sales tax and fares. Allocation of these funds maximizes their intended use given approved funding guidelines and provisions.

### **IMPLEMENTATION OF STRATEGIC PLAN GOALS**

Approval of this recommendation supports the following Metro Strategic Plan Goal 2, Deliver outstanding trip experience for all users of the transportation system.

### **ALTERNATIVES CONSIDERED**

The alternative is not to approve the ratification. This approach is not recommended. A new procurement will start immediately with an anticipated award recommendation to be presented to Metro Board in June 2021.

### **NEXT STEPS**

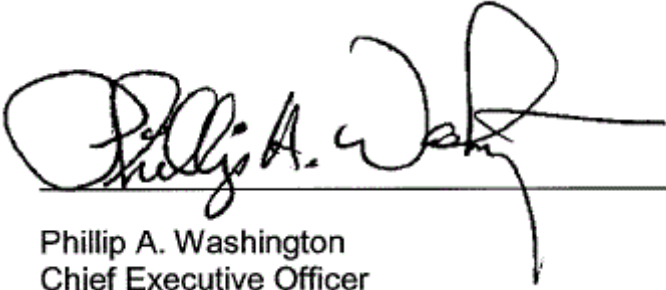
Upon approval, staff will execute Modification No. 3 to Contract No. FY34649000 to Pinnacle Petroleum to continue supplying unleaded gasoline for Metro's fleet to June 30, 2021. Also, Metro will begin the outreach process to the unleaded gasoline and overall commodities industry, via a Request for Interest and Qualification (RFIQ), to solicit industry specific industry knowledge and inputs relative to Metro's development of the new solicitation.

### **ATTACHMENTS**

Attachment A - Procurement Summary  
Attachment B - DEOD Summary  
Attachment C - Contract Modification Change Log

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Phillip A. Washington  
Chief Executive Officer

## PROCUREMENT SUMMARY

CONTRACT NO. FY34649000

## UNLEADED GASOLINE

1.	<b>Contract Number:</b> FY34649000		
2.	<b>Contractor:</b> Pinnacle Petroleum, Inc		
3.	<b>Mod. Work Description:</b> Ratify unauthorized expenditures and increase Contract Value		
4.	<b>Contract Work Description:</b> Provide unleaded fuel to various Metro division locations for non-revenue vehicles		
5.	<b>The following data is current as of:</b> 12/9/20		
6.	<b>Contract Completion Status</b>		<b>Financial Status</b>
	<b>Contract Awarded:</b>	7-20-17	<b>Contract Award Amount:</b> \$ 9,717,450.00
	<b>Notice to Proceed (NTP):</b>	9-15-17	<b>Total of Modifications Approved:</b>
	<b>Original Complete Date:</b>	9-15-22	<b>Pending Modifications (including this action):</b> \$ 6,485,975.00
	<b>Current Est. Complete Date:</b>	10-30-22	<b>Current Contract Value (with this action):</b> \$16,203,425.00
7.	<b>Contract Administrator:</b> Juelene Close		<b>Telephone Number:</b> 213-922-1066
8.	<b>Project Manager:</b> Daniel Ramirez		<b>Telephone Number:</b> (213) 922-5797

**A. Procurement Background**

This Board Action is to ratify an action and approve Contract Modification No. 3 in support of Metro Operations' non-revenue vehicles for unleaded gasoline for the following:

- To ratify unauthorized expenditures in excess of the total contract award of \$3,863,300, increasing the total contract value from \$9,717,450 to \$13,580,750.
- To execute Modification No. 3 for \$6,485,975, inclusive of \$3,863,300 for ratified unauthorized expenditures and to extend the contract period of performance to June 30, 2021, for an additional \$2,622,675, increasing the total contract value from \$13,580,750 to \$16,203,425.

This Contract Modification No. 3 will be processed in accordance with Metro's Acquisition Policy and the contract type is an Indefinite Delivery/Indefinite Quantity (IDIQ).

On July 20, 2017, the Board approved a contract to Pinnacle Petroleum, Inc., as the lowest responsive and responsible bidder to supply unleaded fuel to various bus, rail and non-revenue vehicle departments in the amount of \$9,717,450, inclusive of two year base, inclusive of sales tax, for a not to exceed amount of \$3,886,980, and three one-year options for a not to exceed amount of \$5,830,470 for a total period of performance of 60 months from September 17, 2017 to September 16, 2022.

## **B. Price/Cost Analysis**

Modification No. 3 in the amount of \$6,485,975 is based upon extending the contract performance, thus increasing the total contract value by \$2,622,675; and based upon unauthorized expenditures in the amount of \$3,863,300 due to unforeseen fluctuations and increases in fuel variables over the past 2 years related to the federal and state fuel taxes and fees, Oil Price Information Service (OPIS) fee per gallon, and its fuel supplier.

Upon staff conducting a cost analysis of the price fluctuations related to the past two years, two of the many state and federal fees and taxes were inadvertently omitted from the solicitation price form in December 2016 which represented an understatement of approximately thirty-four cents (\$0.34) per gallon.

The unexpected COVID-19 pandemic has also impacted the supply and demand for fuel causing a reduction in fuel production due to state emergency shutdowns, thus, increasing fuel prices due to low production. Many fuel refineries have closed, and are temporarily closing, which have also impacted the fuel supplier's ability to obtain competitive fuel prices; thus causing a 30% increase from its 2016 bid price. Staff conducted research with OPIS fuel index rates and mandated fees, verifying cost increases and confirmed the price increase for upcoming months is fair and reasonable.

Based upon staff's extensive research with industry resources identifying trends in commodities related to COVID-10 pandemic, fluctuating price indexes from OPIS, review of all federal mandated fees and taxes charges, the projected fuel increases identified during this economic slow-down has been determined to be fair and reasonable.

DEOD SUMMARY

UNLEADED FUEL/FY34649

**A. Small Business Participation**

The Diversity and Economic Opportunity Department (DEOD) did not recommend a Small Business Enterprise (SBE) goal for this solicitation due to a lack of subcontracting opportunities. As confirmed by the Project Manager, this project involves providing and delivering unleaded gasoline to the underground storage tanks located at the bus divisions. Pinnacle Petroleum, Inc. did not make an SBE commitment. It is expected that Pinnacle is providing these services with its own workforce.

**B. Living Wage and Service Contract Worker Retention Policy Applicability**

A review of the current service contract indicates that the Living Wage and Service Contract Worker Retention Policy (LW/SCWRP) was not applicable at the time of award. Therefore, the LW/SCWRP is not applicable to this modification.

**C. Prevailing Wage Applicability**

Prevailing wage is not applicable to this modification.

**D. Project Labor Agreement/Construction Careers Policy**

Project Labor Agreement/Construction Careers Policy is not applicable to this Contract. Project Labor Agreement/Construction Careers Policy is applicable only to construction contracts that have a construction contract value in excess of \$2.5 million.

**CONTRACT MODIFICATION/CHANGE ORDER LOG**  
**UNLEADED GASOLINE – CONTRACT NO. FY34649000**

<b>Mod. no.</b>	<b>Description</b>	<b>Status (approved or pending)</b>	<b>Date</b>	<b>\$ Amount</b>
1	Exercise Option 1 – 12 months additional service	Approved	08/27/19	\$ .00
2	Extending period of performance	Approved	11/10/20	\$ .00
<b>3</b>	<b>Ratify \$3,863,300 in Unauthorized Expenditures and extend period of performance for an additional \$2,622,675.</b>	<b>Pending</b>	<b>Open</b>	<b>\$ 6,485,975.00</b>
	<b>Modification Total:</b>			\$ 6,485,975.00
	<b>Original Contract:</b>	Approved	9/17/17	\$ 9,717,450.00
	<b>Total:</b>			<b>\$16,203,425.00</b>