

**Board Report**

File #: 2022-0038, **File Type:** Contract**Agenda Number:** 17.

**OPERATIONS, SAFETY, AND CUSTOMER EXPERIENCE COMMITTEE
MARCH 17, 2022****SUBJECT: FENCE REPAIR AND INSTALLATION SERVICES FOR METRO RAIL RIGHTS-OF-WAY, FACILITIES AND PARCEL PROPERTIES****ACTION: APPROVE CONTRACT MODIFICATION****RECOMMENDATION**

AUTHORIZE the Chief Executive Officer to execute Modification No. 11 to Contract No. OP4056400OP for Fence Repair and Installation Services for Metro Rail Rights-of-Way, Facilities and Parcel Properties with AZ Construction Inc, DBA Ace Fence Co., in the amount of \$865,000, increasing the total contract value from \$3,196,800 to \$4,061,800, and extending the period of performance from May 1, 2022, through October 31, 2022. Modification No. 11 also includes an as-needed option to extend the contract period of performance up to six (6) months through April 30, 2023 and increase the total contract value up to an additional \$390,000 for a total contract not to exceed amount of \$4,451,800, pending lawsuit resolution.

ISSUE

On May 27, 2021, Metro Board of Directors authorized the Chief Executive Officer to award a firm fixed unit rate Contract No. OP1788370008370 to Deco Fence Company, to provide fence repair and maintenance services effective July 1, 2021, subject to resolution of a protest followed by litigation. Staff has not proceeded with an award of the contract to the low bidder, Deco Fence, due to a lawsuit that was filed by Izurieta Fence Co., a competing bidder on the contract. That lawsuit is pending in the Los Angeles County Superior Court, however, no trial date has been set.

The existing contract five-year term with Ace Fence Co. to provide fence repair and installation services has been extended with an expiration date of April 30, 2022. To ensure service continuity providing safe, timely and quality services for as-needed safety sensitive fencing repair and installation services system-wide, a modification for the existing contract with Ace Fence Co. is required effective May 1, 2022.

BACKGROUND

The lawsuit filed by Izurieta Fence Co., a competing bidder on Contract No. OP1788370008370 seeks to enjoin the award of the contract to Deco Fence based upon Izurieta's allegations of Deco Fence's lack of appropriate licenses. That lawsuit is pending in the Los Angeles County Superior

Court, however, no trial date has been set. Therefore, a modification for the existing Contract No. OP4056400OP with Ace Fence Co. is required effective May 1, 2022, to ensure service continuity providing the critical as-needed safety sensitive fencing repair and installation services system-wide.

Under this existing contract with Ace Fence Co., the contractor is required to provide timely fencing repair services in response to as-needed inquiries and service requests of damaged fence due to vandalism, forced entries, vehicular accidents, and in support of Metro's Construction projects to ensure safety and security incidents are addressed.

DISCUSSION

In order to meet Metro's security needs, multiple types of fencing are required on Metro's active and inactive railroad rights-of-way (ROWs), electrified railroad yards, traction power substations, storage yards and other Metro rail operating properties. Timely fencing repair services are necessary to prevent the public from accessing restricted areas and placing themselves at the risk of being hit by trains, being electrocuted by third rail or high-power electrical lines, to mitigate illegal dumping and to protect Metro properties from theft, vandalism and forced entries.

As of July 2021, to-date, the contractor responded to 124 incidents requiring fencing repair and replacement due to vandalism, trespassing and homeless encampments, with a total cost of \$368,000. In addition, under this contract, the contractor will be performing major fencing improvements replacing the perimeter chain link fence with security grade fencing for the employee parking lots at Metro Bus Division 1 as well as the yard fencing for Metro Bus Divisions 2 and 18. While the security grade fencing materials are acquired outside this contract, Ace Fence Co. will be installing the security fencing for a total cost of \$450,000. Therefore, there is insufficient funds remaining within the existing contract, requiring approval of modification No. 11 to increase contract authority and extend the period of performance effective May 1, 2022.

These actions are necessary to ensure timely response to as-needed safety sensitive fencing repair inquiries, protect Metro employees and properties from theft and unauthorized access, and allow sufficient time to perform the necessary fencing improvements and complete installation of perimeter security fencing at Metro Bus Divisions 1, 2 and 18, while improving the overall safety and security conditions.

DETERMINATION OF SAFETY IMPACT

The approval of this item will ensure continuity of maintenance services with timely response to as-needed fencing repair and installation services, in an effort to provide safe, on-time and reliable services system-wide.

FINANCIAL IMPACT

Funding of \$289,000 for the remainder of FY22 is allocated under cost center 8370 - Facilities Contracted Maintenance Services, account 50308, Service Contract Maintenance, under various projects.

Since this is a multi-year contract, the cost center manager and Deputy Chief Operations Officer (Interim), Maintenance and Engineering will be accountable for budgeting the cost in future years.

Impact to Budget

The current source of funds for this action includes Fares, proposition A/C, Measure M, and State Transportation Assistance. These funding sources maximize allowable project funding use given approved funding provisions and guidelines.

EQUITY PLATFORM

Metro ensures the fence repair and installation services program provides timely, uninterrupted and continual services under Title VI of the Civil Rights Act of 1964 through proper service maintenance of fencing and safer passage to public transit, that positively impacts underserved communities inflicted by greater levels of vandalism and aid with community beautification initiatives.

Under the existing contract, a 100% SBE commitment was made by the prime. Ace Fence Co. is a Metro certified SBE and is meeting their commitment with a 100% SBE participation.

IMPLEMENTATION OF STRATEGIC PLAN GOALS

This board action supports Strategic Goal 5: Provide responsive, accountable, and trustworthy governance within the Metro organization. Performing timely as-needed fencing repair and installation services will ensure providing safe environment to our patrons, accessibility and service reliability, and enhancing customers' overall experience.

ALTERNATIVES CONSIDERED

The Board may elect not to approve this recommendation. This option is not recommended as it would result in a gap in service impacting Metro's system safety, operations and customer experience.

NEXT STEPS

Upon approval by the Board, staff will execute Modification No. 11 to Contract No. OP4056400OP with AZ Construction Inc, DBA Ace Fence Co., to continue providing as-needed safety sensitive fencing repair and installation services system-wide effective May 1, 2022, through October 31, 2022, and extending the contract thereafter on an as-needed basis up to six (6) months through April 30, 2023, pending lawsuit resolution

In an effort to further enhance service efficiency and cost effectiveness with a focus on safety and customer experience, staff will be conducting an in-depth feasibility review and cost-benefit analysis of all possible alternatives to provide safe, timely, reliable and cost-effective fencing repair and maintenance services. The analysis will review and evaluate the existing practices, available resources, and recommend options along with proposed resources for hiring and training of any additional personnel, and purchase of additional equipment, vehicles and supplies, as necessary.

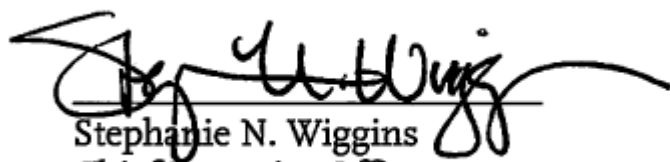
Staff's assessment will utilize an equity lens to ensure that all efforts relative to fencing repair and maintenance are justifiable and responsive to customer needs, Metro policies and board directives.

ATTACHMENTS

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

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Stephanie N. Wiggins
Chief Executive Officer

PROCUREMENT SUMMARY

FENCE REPAIR AND INSTALLATION SERVICES FOR METRO RAIL RIGHTS-OF-WAY, FACILITIES AND PARCEL PROPERTIES/OP4056400OP

| | | | |
|----|--|----------|---|
| 1. | Contract Number: OP4156400OP | | |
| 2. | Contractor: AZ Construction, Inc. dba Ace Fence Company | | |
| 3. | Mod. Work Description: Increase contract authority | | |
| 4. | Contract Work Description: Provide as-needed fencing repair and installation services system-wide | | |
| 5. | The following data is current as of: 3/1/22 | | |
| 6. | Contract Completion Status | | Financial Status |
| | Contract Awarded: | 2/25/16 | Contract Award Amount: \$1,000,800 |
| | Notice to Proceed (NTP): | N/A | Total of Modification Approved: \$2,196,000 |
| | Original Complete Date: | 4/30/22 | Pending Modification(s) (including this action): \$1,255,000 |
| | Current Est. Complete Date: | 10/31/22 | Current Contract Value (with this action): \$4,451,800 |
| 7. | Contract Administrator: Aielyn Dumaua | | Telephone Number: (213) 922-7320 |
| 8. | Project Manager: Alberto Garcia | | Telephone Number: (213) 922-6760 |

A. Procurement Background

This Board Action is to approve Modification Nos. 11 and 12 to Contract No. OP4056400OP with AZ Construction, Inc. dba Ace Fence Company to continue to provide as-needed fencing repair and installation services system-wide.

This contract modification will be processed in accordance with Metro's Acquisition Policy and the contract type is firm fixed unit rate.

In February 2016, Metro awarded a five-year contract to AZ Construction, Inc. dba Ace Fence Company to provide as needed fencing repair and installation services for Metro owned rail rights-of way, facilities, and parcel properties.

Refer to Attachment B – Contract Modification/Change Order Log.

B. Cost/Price Analysis

California Prevailing Wage requirements are applicable to this Contract. The recommended price has been determined to be fair and reasonable based on price analysis. Negotiated rates for the extended term are lower than current market rates for similar services. Therefore, the recommended increase in contract authority is in the best interest of Metro.

| Proposed Amount | Metro ICE | Modification Amount |
|------------------------|------------------|----------------------------|
| \$1,255,000 | \$1,255,000 | \$1,255,000 |

CONTRACT MODIFICATION/CHANGE ORDER LOG

FENCE REPAIR AND INSTALLATION SERVICES FOR METRO RAIL RIGHTS-OF-WAY, FACILITIES AND PARCEL PROPERTIES/OP4056400P

| Mod. No. | Description | Date | Amount |
|-----------------|--|----------------|---------------------|
| 1. | Amend the statement of Work to add new locations | 6/3/16 | \$ 0 |
| 2 | Increase contract authority of the three-year base term to cover needed fencing repair and installation services in support of Metro's construction and maintenance safety related projects | 6/28/18 | \$ 1,250,000 |
| 3 | Exercise Option Year One | 6/28/18 | \$ 593,200 |
| 4 | Exercise Option Year Two | 3/13/20 | \$ 352,800 |
| 5 | Extend period of performance by one year | 12/30/20 | \$ 0 |
| 6 | Extend period of performance by two months | 6/30/21 | \$ 0 |
| 7 | Extend period of performance by one month | 8/31/21 | \$ 0 |
| 8 | Extend period of performance by three months | 9/30/21 | \$ 0 |
| 9 | Extend period of performance by two months | 12/30/21 | \$ 0 |
| 10 | Extend period of performance by two months | 1/31/22 | \$ 0 |
| 11 | Increase contract authority to continue to provide as needed fencing repair and installation services and extend the period of performance by six months | PENDING | \$ 865,000 |
| 12 | Increase contract authority to continue to provide as needed fencing repair and installation services and extend the period of performance by six months, as necessary pending lawsuit resolution | PENDING | \$ 390,000 |
| | Modification Total: | | \$ 3,451,000 |
| | Original Contract: | 2/25/16 | \$ 1,000,800 |
| | Total Contract Value: | | \$ 4,451,800 |

DEOD SUMMARY

FENCE REPAIR AND INSTALLATION SERVICES/OP4056400OP

A. Small Business Participation

Small Business Enterprise (SBE) Prime AZ Construction, Inc., dba Ace Fence Company (Ace) made a 100% SBE commitment. The project is 80.40% complete. With 100% current SBE participation, AZ Construction, Inc. is meeting its commitment and is compliant with the SBE Program.

| | | | |
|----------------------------------|--------------------|-------------------------------------|--------------------|
| Small Business Commitment | SBE 100.00% | Small Business Participation | SBE 100.00% |
|----------------------------------|--------------------|-------------------------------------|--------------------|

| | SBE Contractors | % Committed | Current Participation¹ |
|----|---|--------------------|--|
| 1. | AZ Construction, Inc. (dba Ace Fence Company) (SBE Prime) | 100.00% | 100.00% |
| | Total | 100.00% | 100.00% |

¹Current Participation = Total Actual amount Paid-to-Date to SBE firms ÷ Total Actual Amount Paid-to-date to Prime.

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 requirements are applicable to this project. DEOD will continue to monitor contractors' compliance with the State of California Department of Industrial Relations (DIR), California Labor Code, and, if federally funded, the U S Department of Labor (DOL) Davis Bacon and Related Acts (DBRA).

D. Project Labor Agreement/Construction Careers Policy

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