



Board Report

File #: 2023-0163, File Type: Budget

Agenda Number: 23.

CONSTRUCTION COMMITTEE SEPTEMBER 21, 2023

SUBJECT: CONSTRUCTION MANAGEMENT SUPPORT SERVICES FOR METRO CAPITAL PROJECTS

ACTION: APPROVE RECOMMENDATIONS

RECOMMENDATION

AUTHORIZE:

- A. an increase to the total authorized funding for Contract No. AE76301MC081 with Zephyr Rail, for pending and future task orders to provide Construction Management Support Services (CMSS), in an amount not to exceed \$5,750,000.00, increasing the total contract value from \$3,519,211 to \$9,269,211; and
- B. the Chief Executive Officer to execute individual Task Orders (TOs) and Contract Modifications within the Board approved contract funding amount.

ISSUE

In October 2021, the Metro Board awarded contract AE76301MC081 to Zephyr Rail, a Metro Small Business Enterprise and female-owned firm, for CMSS for Capital Projects in an amount of \$3,519,211 for a term of three years, inclusive of two one-year options. Staff has awarded task orders totaling \$2,773,000 and now has approximately \$746,211 of the authorized funding remaining. The amount remaining is not sufficient to support capital projects that are currently in planning or under contract.

BACKGROUND

The primary role of Zephyr Rail is to provide skilled and qualified staff to augment Metro staff in the performance of construction management services for Metro's capital projects as well as adjacent projects and joint development. Both Metro and Zephyr Rail staff work side-by-side in Integrated Project Management Offices (IPMO). In essence, the Zephyr Rail contract allows Metro to augment Metro construction management staff efficiently and effectively as required, so that the proper resources required to manage a contract are available to Metro both in terms of staff availability and

technical expertise. This contract is funded solely through Board approved life of project budgets or annual project budgets, and funds are authorized by issuing separate task orders for various projects using labor classifications and rates set forth in the contract. This method of funding and task allocation under the contract results in more efficient cost and schedule management, since task orders and modifications to existing task orders are negotiated and issued as the work or changed work is identified and defined. Metro prepares a scope of work and an estimate of hours for each task order or modification, and Zephyr Rail subsequently provides a proposal. If there is a discrepancy, Metro and Zephyr Rail will fact-find and negotiate the hours. After an agreement, the task order is issued, and the work proceeds.

DISCUSSION

The initial \$3,519,211 contract award was calculated based on three years of small to midsize task orders, primarily for Resident Engineers, Office Engineers, Inspectors, and night-time oversight on construction job sites for capital projects. However, due to the technical expertise of Zephyr Rail's staff, their team has also been able to assist Metro with other needs, such as constructability reviews, cost and schedule analysis, and railroad flagging operations. Zephyr Rail's services are also being used to support projects funded by departments outside of Program Management. For example, Zephyr Rail was able to provide inspection support for Metro Facilities grouting and repairs within the Red Line tunnel, and oversight for adjacent development construction along multiple rail lines. Metro construction management is currently supporting 102 projects related to joint development, adjacent development, and overhead and underground utilities, a project workload that is anticipated to grow to over 140 projects in the next two years. Therefore, due to the substantial growth of the adjacent and joint development efforts, many of which support Metro and the City of Los Angeles' affordable housing goals, and Zephyr's ability to support additional transportation projects, the contract value and construction modification authority were consumed at a more rapid pace than anticipated at the time of award.

Budget forecasts project future needs with a total value of \$5,750,000 in staff augmentation for projects related to adjacent projects, joint development, and underground and overhead utility coordination work. A listing of the current task orders, proposed projects, and a forecasted task order estimate is included in Attachment B. As shown in the attachment, the requested contract value is \$9,269,211.

DETERMINATION OF SAFETY IMPACT

This action will have no detrimental impacts on safety.

FINANCIAL IMPACT

Task Orders will be issued and funded from the associated budgets. The funding source differs depending on the individual project. The contract task orders can only be issued when there is sufficient funding within the approved budget for each respective project.

Since this is a multi-year contract, the cost center manager and Chief Program Management Officer will be responsible and accountable for budgeting the cost of the annual work program for the current and future fiscal years for the term of the contract, including any option(s) exercised.

Impact to Budget

Funding for this action will come from various sources eligible for rail facilities capital expenditures and major construction projects funded with specific grant and local sales tax sources. Additional funding will be provided from private third-party adjacent developments and adjacent utility projects which Metro bills on a case-by-case basis, reflecting their impact to Metro's ROW. The annual budget for these projects has been able to provide significant funds which enable Metro to execute task orders to the contract for the staffing (CMSS) needed. Due to a broader push for development near Metro Transit, there has been a significant increase in construction impacting Metro's property. Based on data tracked since FY20, we have seen a trend with an increase in the total amount of projects year-over-year by approximately 30%.

EQUITY PLATFORM

Proper safety and inspection is critical to reduce the potential impact of interruption to service which would negatively affect our ridership. This contract will continue to support ongoing maintenance of the bus and rail systems to ensure reliability and reduce disruption to the system so many Angelenos rely on for their means of transportation in the region. Further, this contract is being awarded to a company that qualifies as a Small Business within the Small Business Enterprise Program. To ensure maximum opportunity for participation in this contract, Metro staff performed extensive outreach to the small business community, including those within the Disadvantaged Veterans Business Enterprise and the Small Business Enterprise programs. The solicitation was advertised through periodicals of general circulation, posted on Metro's Vendor Portal, and an e-mail notice to small businesses with applicable NAICS codes. The Construction Management Team presented at TBAC and attended meetings with the Small Business Community to further define the experience and background for this solicitation. The Proposal Evaluation Team was comprised of department personnel that were age, race, and gender diverse. DEOD established a goal of 27% SBE and 3% DVBE. The selected firm committed to achieving a 69% SBE goal and 5% DVBE.

IMPLEMENTATION OF STRATEGIC PLAN GOALS

The Project is consistent with the following Metro Vision 2028 Goals and Objectives:

Goal 1: Providing high-quality mobility options that enable people to spend less time traveling.

Goal 3: Enhance communities and lives through mobility and access to opportunity.

Goal 4: Transform LA County through regional collaboration and national leadership.

ALTERNATIVES CONSIDERED

The Board may elect to discontinue using Zephyr Rail for CMSS. Staff does not recommend this alternative as the construction projects are in various degrees of completion and the loss of staff would cause these projects to be significantly impacted.

Another alternative would be to hire Metro staff to perform the required services. This alternative is also not recommended since the intent of the CMSS is to augment Metro staff in terms of technical expertise and availability of personnel. CMSS is typically required on a periodic or short-term basis to accommodate for peak workloads or specific tasks over the life of the projects. Further, for some projects, the specific technical expertise required may not be available within the ranks of Metro staff, whereas the CMSS consultant can provide the technical expertise on an as-needed basis.

NEXT STEPS

Upon Board approval, staff will issue a contract modification and issue task orders, as needed.

ATTACHMENTS

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

Prepared by: Michelle McFadden, Deputy Executive Officer, Project Management, (213) 922-3026
John Jaramillo, Director, Project Management, (213) 418-3149
Brad Owen, Interim Senior Executive Officer, Project Management, (213) 418-3143
Debra Avila, Deputy Chief Vendor/Contracts Management Officer, (213) 418-3051

Reviewed by:
Sameh Ghaly, Interim Chief Program Management Officer, (213) 418-3369



Stephanie N. Wiggins
Chief Executive Officer

PROCUREMENT SUMMARY

CONSTRUCTION MANAGEMENT SUPPORT SERVICES- CAPITAL PROJECTS / CONTRACT
NO. AE76301MC081000

1.	Contract Number: AE76301MC081000			
2.	Contractor: Zephyr Rail			
3.	Mod. Work Description: Increase the Contract not-to-exceed funding amount.			
4.	Work Description: Construction Management Support Services- Capital Projects, that will continue to support Metro in the performance of Metro's responsibilities for multiple Capital Projects.			
5.	The following data is current as of: June 22, 2023			
6.	Contract Completion Status:		Financial Status:	
	Award Date:	October 28, 2021	Board Approved NTE Amount:	\$3,519,211.94
	Notice to Proceed (NTP):	N/A	Total Contract Modification Authority (CMA):	\$351,921.19
	Original Completion Date:	December 1, 2026	Value of Task Orders and Mods. to Task Orders Issued to Date:	\$2,773,000.63
	Current Est. Complete Date:	December 1, 2026	Remaining Board Approved Amount:	\$746,211.31
7.	Contract Administrator: Chelsea Bajorunas		Telephone Number: (213) 922-5344	
8.	Project Manager: Michelle McFadden Quinn		Telephone Number: (213) 418-3026	

A. Contract Action Summary

On October 21, 2021, the Board of Directors approved award of Contract No. AE76301MC081000, Construction Management Support Services- Capital Projects to Zephyr Rail, in the amount not-to-exceed (NTE) \$3,519,211.94, to support the design reviews, construction management, and administration of the construction contract(s) and to ensure that the construction of various projects are administered and completed in compliance with contract requirements and government regulations. Additionally, this contract supports constructability and pre-construction activities for projects in the planning phase that are in the process of transitioning to Program Management. The Period of Performance for the Contract is three (3) years, through October 2024, plus two (2) one (1) year options to be exercised at Metro's sole discretion. This action is to increase the authorized funding for this Contract in a not-to-exceed amount of \$5,750,000, increasing the total authorized funding from \$3,519,211.94 to \$9,269,211.00.

Eight (8) Task Orders and Seven (7) Task Order Modifications have been executed to date. Furthermore, two (2) Administrative Contract Modifications for zero dollars have also been executed to date.

Since this is a multi-year contract, the Chief Program Management Officer and the Project Managers for the various projects are responsible for budgeting costs in future years, including the exercise of any options.

The total contract amount will be the aggregate value of all Task Orders and Modifications issued to the Construction Management Support Services (CMSS) Consultant through the term of the contract.

Contract No. AE76301MC081000 is a cost-plus fixed fee (CPFF) Contract.

B. Cost/Price Analysis

The negotiated cost and fixed fee or lump sum price for future Task Orders will be determined to be fair and reasonable based upon fact finding, technical evaluation, cost analysis, and negotiations, before issuing the Task Orders authorizing the work to the CMSS Consultant. Task Orders will be processed in accordance with Metro's Acquisition Policy and Procedures. A cost analysis will be performed for each Task Order, considering the Independent Cost Estimate, technical analysis utilizing labor, and indirect cost rates established in the Contract.

TASK ORDER/MODIFICATIONS LOG

CONSTRUCTION MANAGEMENT SUPPORT SERVICES- CAPITAL PROJECTS / CONTRACT
NO. AE76301MC081000

Mod./Task Order (TO) No.	Description	Status (Approved or Pending)	Date	Original Contract Amount	Task Order Amount	Board Approved CMA
N/A	Initial Award		10/28/21	\$3,519,211.94		\$351,921.19
Approved Task Orders						
TO-001	Senior Inspector and Office Engineer for Various Adjacent Projects	Approved	3/9/22		\$493,856.99	
TO-002	Senior Inspector for C1146 State of Good Repair	Approved	3/11/22		\$392,775.00	
TO-003	Highway Program Coordinator	Approved	3/28/22		\$175,136.00	
TO-004	EB SR-91 Atlantic Ave to Cherry Ave – Constructability Review	Approved	5/23/22		\$96,270.00	
TO-005	Senior Inspector for Vermont/Santa Monica Joint Development Project	Approved	5/26/22		\$64,760.00	
TO-006	WB SR-91 Alondra Boulevard to Shoemaker Ave - Constructability Review	Approved	6/14/22		\$115,354.00	
TO-007	NoHo to Pasadena BRT Program Support	Approved	11/21/22		\$812,779.00	
TO-008	Harbor Gateway Transit Center Construction Support	Approved	4/26/23		\$212,247.00	
	Subtotal of Approved Task Orders				\$2,363,177.99	

Mod./Task Order (TO) No.	Description	Status (Approved or Pending)	Date	Original Contract Amount	Task Order Amount	Board Approved CMA
Approved Modifications to Task Orders						
MOD-00001	Modification to Add Labor Classification-Program Coordinator	Approved	3/21/22		\$0.00	
MOD-00002	Add Existing Contract Positions to Subs	Approved	8/24/22		\$0.00	
TO-001 MOD 1	Senior Inspector and Office Engineer for Various Adjacent Projects – Additional LOE and Extended POP	Approved	3/3/23		\$351,125.00	
TO-002 MOD 1	Senior Inspector for C1146 State of Good Repair - Period of Performance (POP) Extension to June 30, 2023	Approved	3/21/22		\$0.00	
TO-002 MOD 2	Senior Inspector for C1146 State of Good Repair – Additional LOE	Approved	5/4/23		\$98,404.00	
TO-004 MOD 1	EB SR-91 Atlantic Ave to Cherry Ave – Constructability Review-POP Extension to June 30, 2023	Approved	2/7/23		\$0.00	
TO-004 MOD 2	EB SR-91 Atlantic Ave to Cherry Ave – Constructability Review- Deductive Modification and POP Extension	Approved	6/9/23		(\$10,227.14)	
TO-005 MOD 1	Senior Inspector for Vermont/Santa Monica Joint Development Project - POP Extension to	Approved	1/26/23		\$0.00	

Mod./Task Order (TO) No.	Description	Status (Approved or Pending)	Date	Original Contract Amount	Task Order Amount	Board Approved CMA
	December 31, 2023					
TO-006 MOD 1	WB SR-91 Alondra Boulevard to Shoemaker Ave – Constructability Review – Deductive Mod and POP Extension	Approved	6/9/23		(\$29,479.22)	
	Subtotal of Approved Modifications to Task Orders				\$409,822.64	
Pending Task Orders and Modifications to Task Orders						
TO-TBD	Adjacent Development and Utilities	Pending	TBD		\$2,300,000.00	
TO-TBD	State of Good Repair Inspections	Pending	TBD		\$2,300,000.00	
TO-TBD	Joint Development Inspections	Pending	TBD		\$1,150,000.00	
	Subtotal of Pending Task Orders and Modifications to Task Orders				\$5,750,000.00	
	Total Task Orders Approved & Modifications to Task Orders				\$2,773,000.63	
	CMA Authorized by the Board and Remaining					\$351,921.19
	Pending Task Orders				\$5,750,000.00	
	This Board Action			\$5,750,000.00		
	Revised Contract Total (Original Contract Amount + This Board Action)			\$9,269,211.00		

DEOD SUMMARY

CONSTRUCTION MANAGEMENT SUPPORT SERVICES FOR METRO CAPITAL
PROJECTS / AE76301MC081**A. Small Business Participation**

Zephyr Rail. (Zephyr), an SBE Prime, made an overall 69% Small Business Enterprise (SBE) and a 5% Disabled Veterans Business Enterprise (DVBE) commitment on this On-Call Task Order contract. Based on payments, the contract is 43% complete and the current SBE/DVBE participation is 78.25% and 0.00%, respectively, exceeding the SBE commitment by 9.58% and representing a 5% DVBE shortfall.

To date, eight (8) Task orders (TO) have been awarded. Zephyr contends that the reason for the DVBE shortfall is because Metro has not made a request for the scope of services to be provided by the two DVBE firms, Conaway Geomatics and NSI Engineering. Zephyr indicated that its team consists of 11 subconsultants, three (3) of which are SBE certified, but only three (3) non-certified have been involved in the limited task orders Zephyr has received thus far. Zephyr reported that they are optimistic that upcoming task orders will allow the engagement of these firms. Zephyr further contends they are committed to providing equal opportunities for all team members but will be particularly focused on their DVBE partners.

Zephyr has submitted a shortfall mitigation plan and staff will continue to track and monitor its efforts to meet or exceed their commitments.

Small Business Commitment	69% SBE 5% DVBE	Small Business Participation	78.58% SBE 0% DVBE
----------------------------------	----------------------------	-------------------------------------	-------------------------------

	SBE Subcontractors	% Committed	Current Participation¹
1.	Zephyr UAS, Inc. (SB Prime)	TBD	78.58%
2.	AIX Consulting	TBD	TBD
3.	GCM Consulting, Inc.	TBD	TBD
4.	Ramos Consulting Services	TBD	TBD
	Total	69%	78.58%

	DVBE Subcontractors	% Committed	Current Participation¹
1.	Conaway Geomatics, Inc.	TBD	TBD
2.	NSI Engineering, Inc.	TBD	TBD
	Total	5%	0%

¹Current Participation = Total Actual amount Paid-to-Date to DBE 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.