

**PROCUREMENT PACKAGE
October 2021**



This picture depicts the Cherry Valley Road Bridge which was originally constructed in 1906 and carries two active electrified tracks of the Hempstead Branch, located between the Nassau Boulevard and Garden City Stations in Nassau County. This month's Procurement Package contains an item for the removal and replacement of this bridge.

PROCUREMENTS

The Procurement Agenda this month includes two procurement actions for a proposed expenditure of \$44.6M

Staff Summary

Subject Request for Authorization to Award Procurement Actions					
Department Contracts					
Department Head Name & Title David K. Cannon, Vice President					
Department Head Signature <i>David K. Cannon</i>					
Board Action					
Order	To	Date	Approval	Info	Other
1	MNR & LIRR Joint Committee	10/18/21	X		
2	Board	10/20/21	X		

Date: October 15, 2021			
Internal Approvals			
	Approval		Approval
X	Deputy Chief Development Officer, Delivery	X	President
X	Deputy Chief Development Officer, Development	X	Executive Vice President & General Counsel

PURPOSE

To obtain the approval of the Board to award two procurement actions and, to inform the Metro-North and Long Island Rail Road Committees of these procurement actions.

DISCUSSION

MTA Construction & Development proposes to award a Competitive Procurement in the following category:

<u>Schedules Requiring Two-Thirds Vote</u>	<u># of Actions</u>	<u>\$ Amount</u>
C. Competitive Requests for Proposals (Award of Purchase/Public Work Contracts)	<u>1</u>	<u>\$16,663,538.40</u>
	SUBTOTAL 1	\$16,663,538.40
<u>Schedules Requiring Majority Vote</u>	<u># of Actions</u>	<u>\$ Amount</u>
H. Modifications to Personal and Miscellaneous Service Contracts	<u>1</u>	<u>\$27,966,042.00</u>
	SUBTOTAL 2	\$27,966,042.00
	TOTAL 3	\$44,629,580.40

Budget Impact:

The approval of these procurement actions will obligate the capital funds in the amounts listed. Funds are available in the capital budget for this purpose.

Recommendation:

The procurement actions be approved as proposed. (The items are included in the resolution of approval at the beginning of the Procurement Section.)

MTA Construction & Development

BOARD RESOLUTION

WHEREAS, in accordance with Sections 1265-a of the Public Authorities Law and the All Agency Procurement Guidelines, the Board authorizes the award of certain non-competitive purchase and public works contracts, and the solicitation and award of request for proposals in regard to purchase and public work contracts; and

WHEREAS, in accordance with the All Agency Procurement Guidelines, the Board authorizes the award of certain non-competitive miscellaneous service and miscellaneous procurement contracts, certain change orders to purchase, public work, and miscellaneous service and miscellaneous procurement contracts;

WHEREAS, in accordance with Section 2879 of the Public Authorities Law and the All-Agency Guidelines for Procurement of Services, the Board authorizes the award of certain service contracts and certain change orders to service contracts.

NOW, the Board resolves as follows:

1. As to each purchase and public work contract set forth in annexed Schedule A, the Board declares competitive bidding to be impractical or inappropriate for the reasons specified therein and authorizes the execution of each such contract.
2. As to each request for proposals (for purchase and public work contracts) set forth in Schedule B for which authorization to solicit proposals is requested, for the reasons specified therein, the Board declares competitive bidding to be impractical or inappropriate, declares it is in the public interest to solicit competitive request for proposals and authorizes the solicitation of such proposals.
3. As to each request for proposals (for purchase and public work contracts set forth in Schedule C for which a recommendation is made to award the contract), the Board authorizes the execution of said contract.
4. As to each action set forth in Schedule D, the Board declares competitive bidding impractical or inappropriate for the reasons specified therein, and ratifies each action for which ratification is requested.
5. The Board authorizes the execution of each of the following for which Board authorization is required: i) the miscellaneous procurement contracts set forth in Schedule E; ii) the personal service contracts set forth in Schedule F; iii) the miscellaneous service contracts set forth in Schedule G; iv) the modifications to personal/miscellaneous service contracts set forth in Schedule H; v) the contract modifications to purchase and public work contracts set forth in Schedule I; vi) the modifications to miscellaneous procurement contracts set forth in Schedule J.
6. The Board ratifies each action taken set forth in Schedule K for which ratification is requested.

OCTOBER 2021

LIST OF COMPETITIVE PROCUREMENTS FOR BOARD APPROVAL

Procurements Requiring Two-Thirds Vote:

**Schedule C. Competitive Requests for Proposals (Award of Purchase/Public Work Contracts)
(Staff Summaries required for all items greater than \$1M)**

- | | | | |
|----|---|------------------------|--------------------------------------|
| 1. | Railroad Construction Company, Inc.
Contract No. 6375
720 days | \$16,663,538.40 | <u>Staff Summary Attached</u> |
|----|---|------------------------|--------------------------------------|

MTA Construction and Development requests Board approval to award a competitively solicited and negotiated design-build contract for the removal and replacement of the Cherry Valley Avenue Bridge located in Garden City on the Long Island Railroad's Hempstead Branch.

Procurements Requiring Majority Vote:

**Schedule H. Modifications to Personal and Miscellaneous Service Contracts
(Staff Summaries required for all items greater than \$1M)**

- | | | | |
|----|--|------------------------|--------------------------------------|
| 2. | AECOM USA, Inc. d/b/a URS Corporation NY
Contract No. 98-0001-01.51 | \$27,966,042.00 | <u>Staff Summary Attached</u> |
|----|--|------------------------|--------------------------------------|

MTA Construction and Development requests Board approval to award a modification to the contract for

1. Additional funding to cover the anticipated costs associated with the remaining fourteen months (November 1, 2021 – December 31, 2022) of a two year option that was previously exercised by C&D
2. The inclusion of an eighteen month option (January 1, 2023 - June 30, 2024) to provide ESA project close-out services. This Modification also seeks funding this Option 2 in the not-to-exceed amount of \$7,500,000.



Staff Summary

Item No. 1

Dept & Dept Head Paul Dietlin, LIRR Business Unit, Delivery Department					
Contracts Department Ian Goldrich					
Board Reviews					
Order	To	Date	Approval	Info	Other
1	MNR & LIRR Joint Committee	10/18/21	X		
2	Board	10/20/21	X		
Internal Approvals					
	Approval		Approval		
	Deputy Chief, Development		President		
	Deputy Chief, Delivery		Executive Vice President & General Counsel		

SUMMARY INFORMATION	
Vendor Name Railroad Construction Company, Inc.	Contract Number 6375
Description Design-Build Services for the Cherry Valley Road Bridge Removal & Replacement	
Total Amount \$16,663,538.40 - Award \$300,000 - Stipends	
Contract Term 720 Days	
Option(s) included in Total Amount? <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A	
Renewal? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Procurement Type <input checked="" type="checkbox"/> Competitive <input type="checkbox"/> Non-competitive	
Solicitation Type <input checked="" type="checkbox"/> RFP <input type="checkbox"/> Bid <input type="checkbox"/> Other:	
Funding Source <input type="checkbox"/> Operating <input checked="" type="checkbox"/> Capital <input checked="" type="checkbox"/> Federal <input type="checkbox"/> Other:	

PURPOSE/RECOMMENDATION

MTA Construction & Development (“C&D”) requests Board approval to award a competitively solicited and negotiated design-build contract to Railroad Construction Company, Inc. for the removal and replacement of the Cherry Valley Avenue Bridge located in Garden City on the Long Island Railroad’s (“LIRR”) Hempstead Branch in the amount of \$16,663,538.40 and for a duration of 720 days. In accordance with MTA policy regarding the use of design-build, and to enhance competition and defray proposal costs, this solicitation included stipends in the amount of \$50,000 to be paid to each of the unsuccessful proposers whose proposal met defined proposal standards. Accordingly, C&D requests that the Board also approve the payment of stipends to each of the six unsuccessful proposers for a total amount of \$300,000.

DISCUSSION

The Cherry Valley Road Bridge was originally constructed in 1906 as a two-bay single span bridge supported by three non-redundant girders carrying two active electrified tracks of the Hempstead Branch, located between the Nassau Boulevard and Garden City Stations in Nassau County. The bridge exhibits a variety of deficiencies due to weathering and bridge strikes, and will only get worse as time moves on. The potential for further significant deterioration exists which could cause severe service interruptions, which would greatly inconvenience the surrounding communities along the Hempstead Branch. If the bridge is not replaced, LIRR will increasingly incur significant emergency repair costs, the necessity of slowing traffic and even periodic track closures that will have a severe impact on operations.

A one-step Request for Proposal (“RFP”) was used to solicit this Contract. The requirements were publicly advertised in the New York State Contract Reporter, N.Y. Daily News, and on the MTA website. In response to the RFP, proposals were received from the following seven entities:

- BOVE-GCCOM Construction Co., Inc. JV (“BOVE-GCCOM”) – a joint venture consisting of BOVE and GCCOM Construction Co., Inc.
- ECCO III Enterprises, Inc.
- MLJ/J-Track JV -a joint venture consisting of MLJ Contracting Corp. and J-Track, LLC
- Perfetto Contracting Co., Inc.
- Posillico Inc.
- Railroad Construction Company, Inc. (“RCC”)
- Walsh Construction Co.

The proposals were evaluated and scored by a Selection Committee consisting of representatives from C&D and LIRR, utilizing pre-established selection criterion considering the following factors: Technical Approach; Planning and Scheduling; Qualifications and Experience; and Cost. After evaluating the technical and cost proposals, the Selection Committee determined RCC and BOVE-GCCOM to be the two top ranked proposers. While the other proposers adhered to the technical requirements, RCC’s and BOVE-GCCOM’s proposals demonstrated superior means and methods and an increased likelihood for adherence to the schedule and decreased risk associated with maintaining operations.

The Selection Committee then invited BOVE-GCCOM and RCC for oral presentations and to discuss technical clarifications and confirm each firm’s overall understanding of the project. Both firms demonstrated a thorough and comprehensive understanding of the project and adequately responded to all questions. Following the discussions, Best and Final Offers (“BAFOs”) were requested from both BOVE-GCCOM and RCC, requesting clarifications of technical items and pricing, along with revised pricing based on the clarifications obtained through oral presentations and technical discussions. The results of the BAFOs were as follows:

BOVE-GCCOM	\$16,482,000
RCC	\$16,849,178

After review of the BAFOs, the Selection Committee unanimously determined that the proposal submitted by RCC was the most advantageous to the MTA and provided best value. RCC’s unique technical solution for jacking the existing bridge during the five major weekend outages greatly reduces schedule risks associated with the project and mitigates the impact on the public. Finally, RCC has extensive experience and a successful track record with the completion of similar heavy civil construction and delivering similar capital projects on schedule and within budget.

C&D entered into post BAFO negotiations with RCC with an eye towards reducing RCC’s pricing. At the conclusion of negotiations, the parties agreed to an overall price reduction of \$185,639.60, resulting in a final negotiated cost of \$16,663,538.40. A cost and price analysis was performed and it was determined that the negotiated price is fair and reasonable.

RCC has been found to be responsible.

D/M/WBE INFORMATION

The MTA Department of Diversity and Civil Rights (DDCR) has established 20% DBE goals for this contract. Although this is a design-build contract with some undefined scope of work, RCC is projecting to meet the required 20% DBE Goal. RCC has achieved the assigned D/M/WBE goals on previous completed MTA contracts.

IMPACT ON FUNDING

Federal funding for this project is included in the MTA’s 2020– 2024 Capital Program Budget.

ALTERNATIVES

There are no alternatives, as MTA currently lacks the available resources to undertake the design and construction of this bridge.

Vendor Name (& Location) AECOM USA, Inc. d/b/a URS Corporation New York (NY, NY)	Contract Number 98-0001-01	AWO/Modification # 51
Description Program Management Consultant Services	Original Contract Amount:	\$ 28,556,710
	Original Option Amounts:	\$ 135,535,290
	Original Board Approved Amount:	\$ 164,092,000
Contract Term (including Options, if any): October 5, 1998 – December 31, 2022	Prior Modifications (includes exercised Options):	\$ 770,031,334
Option(s) included in Total Amount? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	Prior Budgetary Increases:	\$ -0-
Procurement Type <input checked="" type="checkbox"/> Competitive <input type="checkbox"/> Non-competitive	Current Amount:	\$ 934,123,334
Solicitation Type <input checked="" type="checkbox"/> RFP <input type="checkbox"/> Bid <input checked="" type="checkbox"/> Other: Modification	This Request	\$ 27,966,042
Funding Source <input type="checkbox"/> Operating <input checked="" type="checkbox"/> Capital <input checked="" type="checkbox"/> Federal <input type="checkbox"/> Other:	% of This Request to Current Amount:	2.9%
Requesting Dept/Div & Dept/Div Head Name: East Side Access, Rob Troup, SVP & Senior Program Executive	% of Modifications (including This Request) to Original Amount:	358%

Discussion:

This contract (the “Contract”) is for program management consultant services in support of the East Side Access (“ESA”) project. MTA Construction and Development Company (“C&D”) requests Board approval for Modification No. 51 to the Contract, which seeks:

1. Additional funding in the not-to-exceed amount of \$20,466,042, to cover the anticipated costs associated with the remaining fourteen months (November 1, 2021 – December 31, 2022) of a two year option (“Current Option”) that was previously exercised by C&D;
2. The inclusion of an option (“Close-Out Option”) for the period commencing on January 1, 2023 until final close-out of all ESA contracts for the not-to-exceed amount of \$7,500,000.

The terms of this Contract require AECOM USA, Inc. (“AECOM”) to provide program management and construction consulting services for the ESA Project. These services are integral to the success of the ESA project and performs such essential work as providing consultant personnel to supplement and support C&D staff, serving as C&D’s authorized representative on certain construction contracts, overseeing and inspecting the work being performed on the project construction sites, managing the contract schedule and budget and conducting important administrative functions.

In May 2019, the Board approved C&D’s request to incorporate the Current Option (January 1, 2020 – December 31, 2022) into the terms of the Contract and approved funding for the associated two year option period in the not-to-exceed amount of \$33,966,042. As a result of unanticipated construction contract delays and additions to the original Current Option scope of the services, the funding was drawn down much faster than originally anticipated. Fourteen months currently remain in the Current Option period and only \$2,265,783 remains in funding. This amount is not enough to fund the remainder of the Current Option period and terminating this Contract would have a detrimental effect on the project.

Some of the unanticipated construction delays and scope additions that led to the increase in costs during the Current Option period include:

- Delays in the completion of Contracts CM007 and CM014B.

Schedule H Modifications to Personal and Miscellaneous Service Contracts

Item Number 2

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- The award of a new contract CM030 which provides for retail fit out and utility upgrades, the addition of retail space through the elimination of unneeded ticketing and public phone areas, implementation of security enhancements, and upgraded digital advertising and customer information displays.
- Delays and costs associated with JPMorgan Chase's construction of its new office at 270 Park Avenue, and other development projects that impact the ESA project.
- The addition of scope that was originally intended to be performed by LIRR or Amtrak forces, but ultimately could not be provided by either railroad.

Recognizing that the costs associated with this Contract have exceeded initial estimates, that AECOM is, in part, responsible for both the successes and missteps of this project, but also that AECOM's services are critical to timely completion of the ESA project, C&D has negotiated certain cost concessions with AECOM for this contract extension. Some of those key concessions include:

- AECOM was entitled by contract to a 2-3% yearly escalation on salaries. AECOM has agreed to 1% escalation for 2021 and no escalation for 2022.
- AECOM is entitled to charge their standard overhead rate by Contract. AECOM acquired URS Corporation of New York who was the consultant under this Contract in October 2014. AECOM has agreed to except and continues to bill C&D at the URS overhead rate of 99.14% as opposed to their much higher overhead rate they would normally be entitled to under this Contract.
- AECOM was entitled by contract to a 8.6% fixed fee for all labor and has agreed to a reduction to 4% for project management personnel and 5.5% for construction management personnel.
- AECOM was entitled by contract to an administrative fee of 4.5% for subconsultants performing service in support of construction work and agreed to reduce this fee to 3.5% and the subsequent elimination of this fee in its entirety.
- AECOM has agreed to provide additional services in support of management of the Manhattan construction contracts at no cost to the MTA
- AECOM has agreed that no additional compensation for closeout related activities beyond what's included in the Close-Out option agreed upon below will be requested.

These concessions result in \$26M savings to the MTA over the course of this contract.

In addition, C&D is seeking Board approval to add an option to the Contract in the not-to-exceed amount of \$7.5M. This option will allow C&D to unilaterally extend the Contract term past the ESA revenue service date so that AECOM can assist in providing close-out services such as resolving close-out quality issues, resolving open contract claims and the administration of final payments on open ESA contracts.

AECOM submitted a cost proposal in the amount \$21,897,312 for the additional funding needed for the remainder of the Current Option period and \$7,566,669 for the additional Close-out Option period. Negotiations were held and the parties agreed to a not-to-exceed cost of \$20,466,042 for the remainder of Current Option and a not-to-exceed amount of \$7,500,000 the Close-out Option. Notably, \$1M of the Current Option amount is allocated to an incentive which will only be paid if certain agreed-to milestones leading to timely revenue service is achieved. In addition, failure to timely achieve revenue service will lead to a credit to the MTA in the amount of \$3.7M.

In connection with a previous contract awarded to AECOM, AECOM was found to be responsible notwithstanding significant adverse information ("SAI") pursuant to the All-Agency Responsibility Guidelines and such responsibility finding was approved by the MTA Chair/CEO in consultation with the MTA General Counsel in February 2021. No new SAI has been found relating to AECOM and AECOM has been found responsible. A Contractor Compliance Program with AECOM and the MTA is currently in place.