



June 14, 2023

To: Finance and Administration Committee

From: Darrell E. Johnson, Chief Executive Officer

Subject: Purchase Order for 91 Express Lanes Back-Office System Source Code Verification

Overview

In March 2022, Cofiroute USA, LLC deployed a new back-office system on the 91 Express Lanes. As part of the contractual requirements, an agreement with an escrow agent is required to hold the back-office system source code. To protect the investments the Orange County Transportation Authority and the Riverside County Transportation Commission have made to the back-office system, source code verification is being requested for the items held in escrow and for future major functionality releases deposited in escrow. A source code verification provides assurance that the material deposited in escrow is correct and complete by ensuring that the deposit can be rebuilt into a working application. Board of Directors' approval is requested for NCC Group Escrow Associates, LLC, to provide source code verifications for the 91 Express Lanes back-office system.

Recommendation

Authorize the Chief Executive Officer to negotiate and execute sole source Purchase Order No. C32478 between the Orange County Transportation Authority and NCC Group Escrow Associates, LLC, in the amount of \$102,500, for verifications of the 91 Express Lanes back-office system source code for a three-year and seven-month term.

Background

The 91 Express Lanes (91 EL) is a four-lane, 18-mile tolled facility in the median of the State Route 91 (SR-91) between the State Route 55 (SR-55) in Anaheim and Interstate 15 (I-15) interchange in Riverside. The Orange County Transportation Authority (OCTA) operates the portion of the 91 Express Lanes that extends from SR-55 to the Orange County/Riverside County line, and the

Riverside County Transportation Commission (RCTC) operates the remaining portion into Riverside County.

In January 2020, a three-party agreement was executed amongst OCTA, RCTC, and Cofiroute USA, LLC (CUSA), in the amount of \$72,982,804, to provide the back-office system (BOS) and customer service center operations services for the 91 EL in Orange and Riverside Counties, for an initial term of seven years with two, three-year option terms. The designated share for OCTA is \$35,420,566, with \$7,124,546 attributed to the design, development, and implementation of the BOS. RCTC's designated share is nearly the same.

As part of CUSA's contractual requirements, CUSA was required to enter into an agreement with an escrow agent to hold the source code for the new 91 EL BOS in order to give both OCTA and RCTC (Agencies) legal access to the intellectual property (IP) material in the event the three-party agreement terminates, if CUSA declares bankruptcy, it is dissolved, liquidated, or can no longer provide the services under the agreement. CUSA selected NCC Group Escrow Associates, LLC (NCC) to serve as the escrow agent to house the intellectual property deposits.

As the escrow agent, NCC conducts media checks when a deposit has been submitted to ensure that the deposit is virus-free and accessible. However, this process does not provide any assurance that the source code is correct, complete, and can be rebuilt into a working application. Due to the significant investments the Agencies have made to the 91 EL BOS, the Agencies believe it would be in their best interest that a more in-depth verification be performed as a safeguard should a situation arise where CUSA can no longer perform the services under the three-party agreement. In order to affect that, staff recommends that an entry level verification can be conducted by NCC to ensure that the source code mirrors the production application, so that the deposit is the most complete and correct version. In addition, it ensures that all associated files and documents are deposited along with the source code. NCC will witness and document the build process and produce a detailed report to describe what is required to achieve a successful build. This report becomes invaluable in terms of business continuity as it allows a successor to gain an understanding of the application should the situation arise.

A verification will be performed with each major release of upgraded BOS functionalities. The cost of the verification will be shared equally between the Agencies. OCTA will seek reimbursement from RCTC for its share of the cost.

Procurement Approach

The procurement was handled in accordance with OCTA’s Board of Directors (Board)-approved policies and procedures for a sole source procurement.

NCC is the escrow agent that holds the source code for the BOS for the 91 EL. NCC must perform the source code verification as part of the contractual requirements agreed to by Agencies. Therefore, NCC meets OCTA’s criteria for a sole source procurement, and based on its technical ability and financial status, the firm is deemed responsible.

NCC’s proposal was reviewed by staff from the Contracts Administration and Materials Management (Camm) and Express Lanes Programs departments to ensure compliance with the contract terms and conditions, as well as the technical requirements.

In accordance with OCTA’s sole source procurement procedures, a sole source over \$50,000 requires OCTA’s Internal Audit (IA) Department to conduct a price review of the vendor’s proposed pricing. NCC did not provide a detailed cost breakdown. Instead, IA compared the rates proposed by NCC to comparable contract between NCC and the North Texas Tollway Authority. IA calculated the agreed upon procedures (AUP) rate by escalating the pricing from the comparable contract using the increases in compensation costs for civilian workers for the 12-month periods ending March 2022 and March 2023, which were obtained from the United States Bureau of Labor Statistics’ Employment Cost Index Summary. As a result, the proposed amount for OCTA is less than the calculated AUP amount. In addition, the quoted price is consistent with the OCTA project manager’s independent cost estimate. Therefore, the quoted price is deemed fair and reasonable.

	Proposed Rate	Comparable Agreement	AUP Rate	Quantity	Proposed Amount	AUP Amount
Entry Level Verifications (EVL)	\$20,500	\$18,950	\$20,753	4	\$82,000	\$83,012

Fiscal Impact

Funding to Purchase Order No. C32478 is included in OCTA’s Fiscal Year 2022-23 Budget, 91 EL Account No. 0036-7629-B0001-F36, and is funded through toll revenues.

Summary

Staff recommends the Board of Directors authorize the Chief Executive Officer to negotiate and execute sole source Purchase Order No. C32478 between the Orange County Transportation Authority and NCC Group Escrow Associates, LLC, in the amount of \$102,500, for verifications of the 91 Express Lanes back-office system source code for a three-year and seven-month term.

Attachment

None.

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