

BENJAMIN R. TRACHTMAN
MARC A. TRACHTMAN
RYAN M. CRAIG
TIMOTHY M. SMITH
KEVIN L. HENDERSON
MATHEW J. VANDE WYDEVEN
KEVIN C. PEGAN
KELLI A. TRACHTMAN
JULIE A. HAMLIN
DANIEL S. SHIMELL
KELSEY E. QUIST
JEFFREY E. FLYNN

23046 AVENIDA DE LA CARLOTA, SUITE 300
LAGUNA HILLS, CA 92653
TELEPHONE (949) 282-0100
FACSIMILE (949) 282-0111
www.trachtmanlaw.com

March 17, 2017

**TRANSMITTAL OF BID PROTEST FOR
AUTHORITY'S BOARD OF DIRECTORS REVIEW**

VIA HAND DELIVERY

Board of Directors
Orange County Transportation Authority
Contracts Administration and
Materials Management Department
600 South Main Street, 4th Floor
Orange, CA 92868

Attention: BID PROTEST

Re: Metrolink Parking Structure at the Orange Transportation Center
Invitation for Bids No. 6-1521
Notice of Bid Protest of Bomel Construction Co., Inc.
Our Client : Bomel Construction Co., Inc.
Our File No. : 999-1732


Dear Board of Directors:

Pursuant to the CAMM Policy Manual, Section 12, please find attached my client's Bid Protest submitted to the OCTA for the above-referenced project, the February 16, 2017 CAMM Response/Rejection of Bomel Construction Co., Inc.'s ("Bomel") bid protest, Bomel's February 24, 2017 Appeal to CEO Darrell Johnson and Mr. Johnson's March 8, 2017 Response/Rejection to Bomel's CEO Appeal. NOTE: Bomel did not have notice of nor receive Mr. Johnson's March 8, 2017 Response/Rejection until **March 14, 2017** via the attached email from Marjorie Morris-Threats. Accordingly, the five (5) day deadline to serve this Appeal to the Board must extend to Monday, March 20, 2017 given that March 19, 2017 falls on a Sunday.

Per Section 12, we look forward to receiving notice of the Board Meeting Hearing Date and toward our opportunity to be heard on this issue.

Very truly yours,

TRACHTMAN & TRACHTMAN, LLP


Benjamin R. Trachtman

BRT:sas
Enclosures
cc: Mr. Jim Ure (via e-mail w/enclosures)

Exhibit A

TRACHTMAN & TRACHTMAN, LLP
ATTORNEYS AT LAW

BENJAMIN R. TRACHTMAN
MARC A. TRACHTMAN
RYAN M. CRAIG
TIMOTHY M. SMITH
KEVIN L. HENDERSON
MATHEW J. VANDE WYDEVEN
KEVIN C. PEGAN
KELLI A. TRACHTMAN
JULIE A. HAMLIN
DANIEL S. SHIMELL
KELSEY E. QUIST
JEFFREY E. FLYNN

23046 AVENIDA DE LA CARLOTA, SUITE 300
LAGUNA HILLS, CA 92653
TELEPHONE (949) 282-0100
FACSIMILE (949) 282-0111
www.trachtmanlaw.com

February 9, 2017

NOTICE OF BID PROTEST

VIA HAND DELIVERY

Orange County Transportation Authority
Contracts Administration and
Materials Management Department
600 South Main Street, 4th Floor
Orange, CA 92868
Attention: BID PROTEST

Re: Metrolink Parking Structure at the Orange Transportation Center
Invitation for Bids No. 6-1521
Notice of Bid Protest of Bomel Construction Co., Inc.
Our Client : Bomel Construction Co., Inc.
Our File No. : 999-1732

To Whom It May Concern:

This office represents BOMEL CONSTRUCTION CO., INC. ("BOMEL"), the apparent lowest bidder for the above-referenced project. The purpose of this letter is to respectfully initiate BOMEL's protest of the Orange County Transportation Authority's ("OCTA") February 3, 2017 written rejection of BOMEL's bid and to specifically request that OCTA award this contract to BOMEL.

BOMEL's main ground for protest is that OCTA's erroneous rejection of BOMEL's bid would result in OCTA "awarding the contract to an entity other than the lowest responsive and responsible bidder." [November, 17, 2016, Instructions To Bidders, Section I, Subsection R. Contract Award]. In this regard, we provide you with the factual basis along with the legal authority and analysis to demonstrate that there is no legal nor legitimate basis to reject BOMEL's bid because BOMEL is the lowest responsive and responsible bidder.

Under California's public contracting laws, if OCTA awards the contract at all, it is required to award the contract to the lowest responsive and responsible bidder. (See *Public Contract Code* Section 20128; and *Kajima/Ray Wilson v. Los Angeles County Metropolitan Transportation Authority* (2000) 23 Cal.4th 305.) A responsive bid is one that conforms to the **material** [emphasis added] terms of the bid package. *Menefee v. County of Fresno* (1985) 163 Cal.App.3d 1175. A bid is "responsive", if it promises to do what the bidding instructions

demand. Responsiveness can be determined from the face of the bid. *Taylor Bus Services, Inc. v. San Diego Board of Education* (1987) 195 Cal.App.3d 1331, 1341-42.

I. BOMEL'S BID WAS ENTIRELY RESPONSIVE

In every way, shape or form, BOMEL's bid was responsive to the terms of the bid package. BOMEL's bid promised to do what the bidding instructions demanded. Further, BOMEL's bid conformed to all material terms of the bid package.

In particular, BOMEL demonstrated that it would provide all of the labor, materials, equipment and services to complete the project in accordance with the project's Specifications. BOMEL also complied with the project's DBE requirements while providing the lowest price out of all of the bidders. Relative to the elevator issue, which serves as the basis of your rejection of BOMEL's bid, BOMEL specifically promised to supply the project with an elevator that met the project's specifications and within the framework of the Specifications that dealt with product substitutions.

In your February 3, 2017 written rejection of BOMEL's bid, you took the position that BOMEL's bid was not responsive because BOMEL "failed to submit a written request [including supporting documentation] to substitute an Excelsior elevator [prior to December 12, 2016], for the Mitsubishi elevator [Model: IDH-S-H1 Hydraulic] specified in IFB 6-1521, Section VIII, Project Specifications – Exhibit B, Section 14-2010 "Passenger Elevators." In essence, you have found BOMEL's bid non-responsive because BOMEL (a) did not list Mitsubishi Electric ("Mitsubishi") as its elevator subcontractor who would provide the specified subject IDH-S-H1 Hydraulic elevator; or (b) if BOMEL was not going to provide the specified elevator model manufactured by Mitsubishi, BOMEL was required, before bid submission, to obtain pre-approval for a substituted/"or-equal" elevator product before listing said "or equal" elevator product and vendor.

To begin with, we are talking about the elevator for the project. In BOMEL's significant parking structure experience, the elevator for its parking structure projects is a garden-variety product that provides a very utilitarian purpose. There are a myriad of vendors who manufacture these mundane products. There is nothing about this particular parking structure, from a design or constructability perspective, which could possibly require the attributes of a particular elevator model over numerous alternative/available substituted/"or equal" products in the market.

In actuality, the elevator product is no different than the lighting fixtures, the bollards, the asphalt mix or the myriad of other garden-variety parking structure components that provide for "or equal" products to be submitted in lieu of the specific product contained in the Specifications. If the elevator product was such a key component, as opposed to any other ordinary component, the specifications should have alerted the bidders to pay particular attention to the purported heightened design concern. For example, on page ii of the "Notice Inviting Sealed Bids", the OCTA alerted the bidders that "due to the project site constructability constraints, all bidders are advised to pay special attention to the requirements of the successful bidder to submit a crane lifting plan and temporary shoring system plan (See Exhibit B – Project Specifications). There was no such "NOTICE" relating to the passenger elevators.

The Elevator Specification itself did not require pre-approval (before bid submission) of the "or equal" proposed product. Rather, similar to the other 277 instances where the words "or

equal" appear in the Specifications [BOMEL performed a word search count for these words], there was no such requirement to deviate from the longstanding construction custom and practice of submitting substituted or "or equal" products after contract signing.

Moreover, the Specifications themselves contain numerous recitations/references for the successful bidder to submit such substitutions **after award of the contract**. [To name a few: Section 01 2000 Project Meetings, Subsection 1.03, PRE-CONSTRUCTION CONFERENCE, subsubsection F(7) where the "Agenda" discusses among other things, "Procedures and Processing of field, decisions, submittals, **substitutions...**" Sections 01 4000 (QUALITY CONTROL) and 01 6000 (PRODUCT REQUIREMENTS)]. Significantly, it is not reasonably possible that OCTA intended that every single proposed substitution, for any of the hundreds of component products, be submitted and pre-approved prior to submission of the bids. If such were true, that would render the plethora of express Substitution/Submittal Specifications completely nugatory and would violate all accepted customs and practices and construction industry standards for submittals of substituted products.

Given the foregoing, if the Elevator was so critical at the outset, to distinguish itself from the myriad of other products, OCTA should have worded the Elevator Specification to state something akin to, "All or equal elevator submissions must be pre-approved prior to the bid to comply with this Specification." The Specification did not have that express requirement and is therefore indicative that pre-approval of the elevator product was not a "material term of the bid package."

Regarding the elevator bids that BOMEL received, BOMEL received three (3) such bids. The following entities submitted bids: Mitsubishi (\$692,150); Excelsior Elevator ("Excelsior"), who BOMEL listed (\$570,160 or \$121,990 less than Mitsubishi); and GSM Elevator Service (\$596,398). Mitsubishi's bid was received the day before the bid, GSM 1 hour 15 minutes prior to bid deadline, and Excelsior's bid was received 1 hour before the bid submission deadline so it was not possible to submit an "or equal request" prior to the bid. Excelsior's bid was one of the few DBE bids received and BOMEL worked hard to evaluate and incorporate their bid in those few minutes to maximize the DBE participation as required in the specifications. **[These bids are attached hereto as Exhibit "A."]**

Most significantly, each and every one of these bids, including Mitsubishi's, was proposed as an "or equal" substitution. In other words, even Mitsubishi's own bid submission did not include the specified model IDH-S-H1 product.

Why were the bids submitted this way? Because the subject elevator product in your Specifications did not comply with the project's own very specific "Buy America" requirements [Addendum No. 2, Attachment A] as required by 49 U.S.C. Section 5323(j)(1) and applicable regulations in 49 CFR Part 661. The subject IDH-S-H1 model was constructed of components that were manufactured in countries outside the U.S.A. Therefore, the specified elevator model failed to meet the project's overall specifications. As a result, every elevator subcontractor's bid for this project, including Mitsubishi itself, contained a qualification that the product to be supplied would be "or equal."

Based on the foregoing, given the fact your elevator Specification boiled down to being solely an "or equal" specification, because the specified elevator, as constituted, could not be supplied based on the Buy America ban, BOMEL's elevator listing could not be properly

classified as non-responsive. Rather, it was completely responsive as Excelsior's bid was qualified as "or equal." Further, there was nothing in the Specification that could be reasonably interpreted to require that each and every "or equal" proposed product substitution (of all types) be approved prior to bid submission nor any express requirement that the elevator proposed substitution be approved prior to bid submission.

From a practical perspective, as stated above, pre-approval of the "or equal" elevator cannot possibly be a **material term of the bid** package. Why not? Because BOMEL provided the necessary security (its Bid Bond) and specifically guaranteed that BOMEL would perform the contract based on its bid price. Based on the numerous articulated post-award product substitution Specifications, which provided for post-award or equal product submittals, if BOMEL could not satisfy the Project Engineer that Excelsior's product was equivalent to the non-conforming Mitsubishi specified elevator, BOMEL would simply take whatever action, and assume all additional costs associated therewith, to meet the Specification. In such a scenario, if BOMEL needed to procure a new vendor, BOMEL took on all financial risk to do so. Given that BOMEL assumed all risk of Excelsior's product being determined as not an equivalent, failure to obtain pre-approval of the elevator product substitution cannot reasonably be considered a material term of the bid package.

II. OCTA HAS THE POWER TO WAIVE NON-MATERIAL OR INCONSEQUENTIAL IRREGULARITIES/DEVIATIONS.

As stated above, a bid is "responsive", if it promises to do what the bidding instructions demand. Responsiveness can be determined from the face of the bid. *Taylor Bus Services, Inc. v. San Diego Board of Education* (1987) 195 Cal.App.3d 1331, 1341-42.

Public entities may waive inconsequential deviations from contract specifications. Here, OCTA specifically reserved "the right to accept or reject any and all bids, or any item or part thereof, or to waive any informalities or irregularities in bids." [November, 17, 2016, Instructions To Bidders, Section I, Subsection T. Authority's Rights]. To be considered "inconsequential", the deviation must neither give the bidder an unfair competitive advantage nor otherwise defeat goals of ensuring economy and preventing corruption in the public contracting process. *Ghilotti Construction Company v. City of Richmond* (1996) 45 Cal.App.4th 897, review denied.

III. BOMEL GAINED NO UNFAIR ADVANTAGE VIA ITS INCONSEQUENTIAL AND WAIVEABLE IRREGULARITY.

Even assuming arguendo that BOMEL's elevator subcontractor bid did not strictly comply with the pre-bid substitution requirement expressed in your bid rejection, which BOMEL denies was legitimately required, in every single material aspect, BOMEL's bid was completely responsive to the plans and specifications. According to the Court in *Ghilotti Construction Company v. City of Richmond* (1996) 45 Cal.App.4th 909, the purpose of competitive bidding statutes is to: "eliminate favoritism, fraud and corruption; avoid misuse of public funds; and stimulate advantageous market place competition." Furthermore, such statutes are enacted to protect the public interest by securing the best work at the lowest practicable prices. *Domar Electric, Inc. v. City of Los Angeles* (1994) 9 Cal.4th 161.

The *Ghilotti* court pointed out:

A basic rule of competitive bidding is that bids must conform to specifications, and that if a bid does not so conform, it may not be accepted. However, it is further well established that a bid which substantially conforms to a call for bids may, though it is not strictly responsive, ***be accepted if the variance cannot have affected the amount of the bid or given a bidder an advantage or benefit not allowed other bidders***, or in other words, if the variance is inconsequential. (Quoting 47 Ops.Cal.Atty.Gen. 129 (1966).) *Ghilotti* at p. 904-905. [Emphasis Added.]

It is well settled that contracting entities may waive inconsequential deviations from bid specifications. In determining whether a deviation is inconsequential, Courts consider whether the deviation:

- Affects the amount of the bid;
- Gives the bidder an unfair competitive advantage;
- Influences potential bidders to refrain from bidding;
- Affects the contracting entity's ability to compare bids; and
- Defeats the goals of ensuring economy and preventing corruption.

See *Ghilotti* at 906.

Applying the *Ghilotti* factors to our case conspicuously reveals that BOMEL's variance, if it can be legitimately viewed as such under the circumstances, was completely inconsequential and immaterial.

Focusing on the *Ghilotti* factors, BOMEL assumed the risk to have Excelsior's product approved after contract formation. BOMEL also relied on the fact that the elevator substitution submittal would be evaluated pursuant to the Specifications' post-contract award comprehensive submittal scheme. BOMEL's actions were inconsequential and immaterial because its elevator sub bid could not, and in fact, "did not affect the amount of the bid." Further, there was no objective unfair competitive advantage to BOMEL by allowing BOMEL to rely on the post-award submittal process to approve the Excelsior elevator as equivalent. Given that the elevator specification effectively requested nothing but "or equal" submissions, BOMEL surmises that none of the bidders submitted requests for pre-approval of elevators within their bids. Along these same lines, if no bidder had submitted pre-approval requests for the elevator, then there was no impact on OCTA's ability to compare bids. Additionally, and obviously, no legitimate argument could be made that the goals of economy and preventing corruption are impacted.

Again, as the 2nd & 3rd bids were rejected, the public is saving over \$1.5 million dollars by having one of the preeminent parking structure contractors perform this job. This consideration is precisely why the law allows for waiver of immaterial and/or inconsequential deviations in bids.

IV. CONCLUSION

Based on the foregoing, BOMEL respectfully requests that OCTA retract its decision to reject BOMEL's bid. Further, BOMEL further requests, as the lowest responsive and responsible bidder, OCTA award the contract to BOMEL.

In the interim, should you wish to discuss this matter, arrange for a meeting and/or otherwise communicate with us, please give me a call. We look forward to receiving your response.

Very truly yours,

TRACHTMAN & TRACHTMAN, LLP



Benjamin R. Trachtman

BRT:sas

Enclosures

cc: Mr. Jim Ure (via e-mail w/o enclosures)
Ms. Marjorie Morris Threats, Senior Contracts Administrator (via e-mail w/encs)

Mitsubishi

Project Name: OCTA Metrolink Parking Structure
Date: 1/10/16

5900-A Katella Ave.
Cypress, CA 90630
T: 714.220.4743
California Lic. No. 791291
DIR: 1000009624
E: Todd.holman@meus.nea.com

Multiple GCs- SoCal
Attn: Mr./Ms. Estimating

RE: Proposal for: Two (2) Vendor-Provided Hoisted Hydraulic Elevators

Price: Six Hundred Ninety Two Thousand One Hundred and Fifty Dollars (\$692,150)

HYDRAULIC ELEVATOR PROPOSAL

Our base bid includes vendor-provided hydraulic elevators to meet Buy America requirements.

MITSUBISHI ELECTRIC US, INC., ELEVATOR & ESCALATOR DIVISION (MEUS) is pleased to present our proposal to install the equipment listed above.

For direct plunger hydraulic elevators our base bid price includes drilling from a pit with poured floor and walls and block-out in pit floor per MEUS requirements with access for truck-mounted drill rig. Please initial where indicated to add one of the fixed price alternatives to your base bid.

- _____ Alternate 1: Per Elevator: Add \$1100.00 to drill from dirt grade (up to 4 ft. above finished pit floor).
Initial here
- _____ Alternate 2: Per Elevator: Add \$200/foot x (elevator rise + 7 feet) for limited access drilling.
Initial here
- _____ Alternate 3: Per Hour: Add \$152/hour for Operator or Standby Time to allow work by others inside of
Initial here elevator hoistways.

Our proposal is valid for one hundred twenty (120) days from the above date and includes all of the following pages. Please review them carefully. Should you have any questions, please do not hesitate to contact us.

- Page 2: Job Specific Clarifications
Page 3: Proposed Elevator Specifications
Page 4: Standard Bid Clarifications
Page 5: Price, Terms and Conditions

If this proposal is acceptable to you and you agree to undertake good faith negotiations with us, please execute and return one (1) copy of this proposal along with a 25% initial payment and we will begin engineering drawings immediately. This bid proposal is conditioned upon setting a one-piece Jack at time of drilling. Please be advised that we will require a fully executed subcontract agreement or this proposal signed along with your initial payment prior to scheduling and ordering these items. Drilling and Jack manufacturing will require approximately 8 weeks lead-time from time of executed agreement.

Thank you for this opportunity to work with you on this project.

Sincerely,

Todd Holman
Sales Representative

Project Name: OCTA Metrolink Parking Structure
Date: 1/10/16

JOB SPECIFIC CLARIFICATIONS

1. This proposal is based on Mitsubishi installing vendor package elevators to meet the Buy America requirement.
2. This proposal is based on a 2017 installation.
3. Lead-times are as follows: Shop drawings: 10-14 weeks, Manufacturing: 16-18 weeks, Installation: 7-8 weeks per elevator assuming 1 crew. If multiple crews are available, installation will be 10 weeks total.
4. Referencing specification section 14 2010-3/7, 2.01, C., all components will not be manufactured by same entity.
5. Pricing is based on holed hydraulic elevators.
6. Door type is single speed center opening not double leaf as specified.
7. Pricing includes 150 FPM in lieu of 200 FPM as specified.
8. 98% of this elevator package will be manufactured in the USA. Guide rails and some miscellaneous fasteners will be manufactured in Canada.
9. Drilling: We include use of our dirt auger and truck rig and drilling through a block out in the plt slab. Proper access for truck-mounted rig to be provided by others. Should use of a drill rig other than our truck-mounted rig be required, should water, rock or difficult soil be encountered, or if we are required to drill from dirt grade, additional reimbursement will be required. Soil removal is not included. Water to facilitate drilling and any dewatering shall be provided by others at no cost to MEUS.
10. Minimum machine room requirements per elevator are 115 square feet, 12'-11" x 8'-7" with a 3'-6" minimum door.
11. Flooring is by others.
12. Security mirror shown in drawing A4.3 is by others.
13. Glass panel doors are not UL Fire Rated.
14. The proposal is based on provisions included in Addendums #1-5.

ITEM	DESCRIPTION	QTY	ADD OR DEDUCT AMOUNT/ Unit	TOTAL
Oil Cooler	We recommend an oil cooler for these elevators if there will be heavy use.	2	ADD \$10,000	ADD \$20,000

Project Name:

OCTA Metrolink Parking Structure

Date:

1/10/16

PROPOSED ELEVATOR SPECIFICATIONS

Elevator #/:	1	2
Units:	1	1
Series:	Vendor Product	Vendor Product
Type:	Holed Hydraulic	Holed Hydraulic
Capacity:	4000 lb.	4000 lb.
Loading Class	A	A
Speed:	150 FPM	150 FPM
Travel:	44'-6"	43'-0"
Stops:	5	5
Door Operator:	GAL MOVFR	GAL MOVFR
Group Operation:	Simplex	Simplex
Opening Arrangement:	In-Line	In-Line
F/R Openings:	5F/0R	5F/0R
Platform Size:	8'-0" x 6'-2"	8'-0" x 6'-2"
Hoistway Entrance Style:	Single Speed Center Opening	Single Speed Center Opening
Hoistway Entrance Size:	4'-0" x 7'-0"	4'-0" x 7'-0"
Hoistway Entrance Jamb/Door Finish:	Glass w/ Stainless Steel #4 finish ✓	Glass w/ Stainless Steel #4 finish
Hoistway Entrance Sill:	Aluminum ✓	Aluminum
M/R Location:	Adjacent ✓	Adjacent
Motor Starter:	Solid State ✓	Solid State
Cab Type:	Cab Shell with Applied Panels ✓	Cab Shell with Applied Panels
Panel Finish:	Stainless Steel #4 ✓	Stainless Steel #4
Ceiling Design and Finish:	LED Downlight / Stainless Steel #4	LED Downlight / Stainless Steel #4
Cab Fronts and Doors Finish:	Glass w/ Stainless Steel #4 finish	Glass w/ Stainless Steel #4 finish
Cab Height (ft):	8'	8'
Handrail Type:	1 1/2" Diameter / Stainless Steel	1 1/2" Diameter / Stainless Steel
Handrail Location:	Rear Wall	Rear Wall
Guide Shoes:	Roller Guides	Roller Guides
Car Operation Panel (COP):	Only Main	Only Main
COP Type:	Applied	Applied
Security Operation:	No	No
Hall Station Quantity and Finish:	5 x Stainless Steel #4	5 x Stainless Steel #4
Hall Push Button :	Standard Illuminating	Standard Illuminating
Hall Lantern or Car Direction Indicator:	In Car Lantern and Hall Position Indicators	In Car Lantern and Hall Position Indicators
Door Protection:	Infrared Light Ray	Infrared Light Ray
Jack Protection:	PVC	PVC
Battery Lowering Device:	Yes	Yes
MEUS/EED Oil Cooler:	No	No
Oil Heater:	No	No
Pads & Hooks:	Yes	Yes
Pit Ladder:	No	No
Hoistway Dimensions (W x D):	10'-8" x 7'-0"	10'-8" x 7'-0"
Warranty Maintenance:	12 Months	12 Months

Project Name:

OCTA Metrolink Parking Structure

Date:

1/10/16

STANDARD BID CLARIFICATIONS

Standard Exclusions:

1. Composite cleanup crew participation not included.
2. CRT displays are not included.
3. Escalator Cladding. Weight can be no more than 4 lbs/square foot.
4. GFCI duplex outlets, lights and light switches in each machine or control room, control spaces, equipment areas, or elsewhere if required by code, by others.
5. Operator time for use of platform by other trades is not included. Work by other trades is to be coordinated so as not to interfere with MEUS progress, off hours if necessary. Use of platform must be accompanied by an operator, provided by MEUS at current billing rates.
6. Off-site storage, double-handling or relocation of materials once in place is an extra, including any corresponding extension of time.
7. Remote monitoring provisions of any product are not included.
8. Remote wiring in excess of 30' from the hoistway is not included.
9. Remote conduit.
10. Temporary use is not included. Maintenance and extension of warranty of "temporary" or "variance" elevators is not included and will be reimbursed at our current daily interim use rates. Protection of cabs/entrances not included. Cleanup, refurbishment, rebalancing, readjusting and re-inspection costs not included.
11. Equipment is furnished with on board diagnostics. Testing devices and or any other external diagnostic/adjusting tools not included.
12. Standard MEUS O&M manuals, as-builts, diagrams to be provided. Single line wiring diagrams not included.
13. Occupant Evacuation Elevator provisions not considered/included unless specifically added to our proposal.
14. Overtime inspection/testing/standby time.
15. Oxygen monitoring devices for confined spaces, as defined by OSHA, if required.

Work to be provided by others:

1. Bench marks and finish floor elevations in each elevator lobby are to be provided by others.
2. Block-outs, cut-outs and all other elevator related penetrations and associated materials by others. MEUS to provide location on shop drawings. Block-out will be in floor of poured pit.
3. Building shoring or structural supports by others.
4. Cab flooring by others.
5. Cord readers, if required, shall be provided and installed by others.
6. Compaction and slurry, if required, by others.
7. Disconnect: Permanent disconnects, supply, piping and wire with final termination at elevator controller or auxiliary panel by others.
8. Disconnect: Sizing and fusing of disconnect based on elevator equipment electrical loads by others.
9. Divider beams and structural attachment points for rail brackets are by others and will be located as needed on our shop drawings.
10. Dumpsters shall be provided by others. We will deposit trash in dumpster and will keep work area clean.
11. Electrical power provided by others shall be three-phase power (if temporary, must be of same characteristics as permanent). Electrical power provided by others for skip and welding operation shall be 220-volt single-phase power. Electrical power provided by others for escalators shall be 480-volt, three-phase power.
12. Emergency telephone shall have a dedicated line terminating in the elevator control room provided by others.
13. Fire Caulking, Fire-proofing of elevator penetrations by others.
14. Grouting of entrance sills and/or entrance frames by others.
15. Hoistway screens, full-height, where required, by others.
16. Pearl weave to protect each entrance. Sketch to be provided upon request.
17. Hoist beams and sheave beam support by others. Hoist beam requires 5000lbs maximum live load; shall be located across the width of the hoistway, center of guide rail; and shall be removed by others if overhead clearance cannot accommodate a permanent beam.
18. Hoisting of equipment provided by others.
19. MEUS requires minimum 42" clear machine room door for Hydraulic Elevator installations.
20. Patching or fireproofing of elevator penetrations or to drywall inside the hoistway is by others and clean-up of debris caused by this activity by others.
21. Pit ladder by others unless otherwise noted.
22. Remote conduit by others.
23. Safety barricades: Removable, OSHA-compliant protection (barricade shoe-boards) at front of hoistway by others.
24. Temporary working platform in overhead shall be provided by others for commencement of guide rails and traction machine installation for MRLs.
25. Trenching and backfilling for underground hydraulic lines is by others.
26. Additional support in front wall of hoistway for all entrances in shaft walls exceeding 15'-0".

Clarifications:

1. Cab final finish weight to be assumed within MEUS standards unless otherwise noted.
2. Compensation chains with interwoven sash cords are provided for MRLs.
3. Drilling: We include use of our dirt auger and truck rig and drilling through a block out in the pit slab. Proper access for truck-mounted rig to be provided by others. Should use of a drill rig other than our truck-mounted rig be required, should vibrator, rock or difficult soil be encountered, or if we are required to drill from dirt grade, additional reimbursement will be required. Soil removal is not included. Water to facilitate drilling and any dewatering shall be provided by others at no cost to MEUS.
4. Fixtures (hall and car): Standard Helvetica medium font engraving unless otherwise noted.
5. Hoistway access key switches with faceplates are provided. If a access switches without faceplates are provided, others shall provide fire rated access panels to gain maintenance access to these switches and retain fire rating.
6. Inspections: MEUS has included the cost of one inspection per elevator with the AHJ for a Permit to Operate. Costs for repeat or canceled inspections caused by the failures of others shall be reimbursed. Fire/Life Safety or other testing is not included.
7. One piece jacks, if included, must be installed prior to the construction inhibiting our ability to do so, and shall be hoisted by others unless mutually agreed upon otherwise. If a multi piece jack is required due to inaccessibility and has not specifically included, the additional cost shall be reimbursed accordingly.
8. Parking within four blocks to be provided at no cost.
9. Maximum story drift that can be accommodated for escalators is 2 3/4".
10. Protection: Cabs/Entrances: MEUS provides factory standard plastic protective coating only.
11. Punchlist: Punchlist must be issued to MEUS while on-site. MEUS will accept one consolidated Punchlist ONLY. Multiple punchlists may result in additional charges including remobilization costs where applicable. MEUS shall have no less than thirty (30) days to comply.
12. PVC casing for the underground plunger is included in our proposal. No other secondary containment, union guard or any other special filter has been included, unless otherwise noted by MEUS/EEO.
13. Shop drawings cannot commence until cab design or specified weight for cab interior is provided. Fabrication will not begin until all drawings have been approved and a mutually agreeable subcontract has been fully executed. MEUS will provide standard job specific shop drawings. We reserve the right not to provide additional details should they be requested.
14. Staging area shall be provided within twenty feet of hoistway and machine room.
15. Suitable storage in a dry, protected location shall be provided adjacent to the elevator hoistways at street access level. Offsite storage, double handling or relocation of materials once placed is an extra, including any corresponding extension of time.
16. General conditions fee (in addition to OH and P) to be added to all change orders.
17. Mfg. leadtimes commence upon receipt of approved drawings, samples, and clear RFI responses/clarifications.
18. Cab interior finish weight allowances are limited and may vary based on different product types.

Scheduling:

1. Standard lead-times are as follows:
Shop Drawings: 12-14 weeks (Large project may require more time)
Mfg/Delivery: Hydraulic: 14-20 weeks Traction: 26-34 weeks
Escalators: 24-40 weeks
2. Construction schedule shall be mutually developed, duration based (not calendar based), dependant upon prompt return of shop drawings within three weeks, shall include hoistway and machine room ready dates and timely completion of other trades conditions pursuant to mutually agreed upon milestone dates however durations shall not include inspection lead-times. As such there shall be no Time is of the Essence language.
3. MEUS reserves the right to modify durations for engineering, manufacturing, delivery and installation as the result of any changes to schedules provided by Customer.
4. Pre-Inspection Checklist will be provided and must be verified complete prior to scheduling inspection. Re-Inspection or cancellation fees due to failure of others to perform shall be reimbursed.
5. Pre-Mobilization Checklist will be provided and must be verified complete prior to mobilization. Delayed completion of checklist requirements shall cause installation durations to adjust accordingly. Costs associated with work inefficiencies or out of sequence work caused by the delay or interference by other trades or building progress shall be reimbursed. Any remobilization due to jobsite delays shall be charged at the rate of \$2500 per each two-man crew for each occurrence and may take up to three weeks.

Other:

1. MEUS bid proposal includes scope based on elevator/escalator specifications only. MEUS has not reviewed related specifications such as Electrical, Mechanical, etc. Any special provisions identified in other specification sections have not been included in this proposal.
2. Elevator/escalator equipment has been quoted based on a normal, indoor operating environment. No weather-proofing or water-proofing of equipment has been included unless specifically identified in this proposal. It is assumed that equipment will be protected from exposure to sun, rain, dust, ocean air or other weather elements by building structure. Should an elevator or escalator landing be exposed to weather, covering/overhang or similar protection and floor sloped to direct any water runoff away from the hoistway/hoistway must be provided by others to prohibit weather and sun exposure to elevator/escalator equipment.
3. MEAS/BE requirements cannot be guaranteed however we will use our best efforts to meet stipulated percentages.

Project Name: OCTA Metrolink Parking Structure
Date: 1/10/16

PRICE, TERMS AND CONDITIONS

1. **Arbitration:** All disputes or controversies relating to this Agreement which the parties do not resolve in good faith within ten days after either party notifies the other of its desire to arbitrate such disputes or controversies shall be settled by arbitration by a single arbitrator in accordance with the then standard prevailing construction rules, as modified or supplemented by this article, of the American Arbitration Association ("AAA"). The arbitration shall be held in Orange County, California. The arbitration award shall be in writing and shall specify the factual and legal bases of such award. The arbitration award shall be final and binding, and a judgment consistent therewith may be entered by any court of competent jurisdiction. The parties agree that the arbitration award shall be treated confidentially, and the parties shall not, except as otherwise required by law or court order, disclose the arbitration award to any third party, excluding personnel in their affiliated companies and their attorneys and accountants with a need to know, provided that such recipients agree to be bound by the same restrictions as are contained in this Agreement. The arbitrator shall not have the power to render an award of punitive damages. Each party shall bear its own costs and expenses of arbitration, but the losing party shall pay all costs of the arbitration proceedings including the fee of the arbitrator. To the extent of any conflict, this article shall supersede and control AAA rules.
2. **Delays, Default and Back Charges:** In the event of any delays cumulatively in excess of ninety days caused by Owner, Contractor, lender, architect, engineer, other subcontractors, and/or their respective agents or employees, MEUS shall be entitled to equitable adjustment in the bid amount for additional costs (including reasonable profit and overhead.) Contractor/Owner shall notify MEUS and allow a reasonable period of time, no less than three (3) working days, for MEUS to commence correction of any failure to perform, any requirement in the Agreement, deficiency in the Work or unexcused delay before Contractor/Owner withholds any payment, assesses any damages or incurs any costs or expenses chargeable to MEUS. All such back charges shall be limited to actual out of pocket costs and expenses directly caused by MEUS and substantiated with appropriate documentation as commercially reasonable.
3. **Force Majeure:** MEUS shall not be liable for any loss, damage or injury for any delay in or failure of MEUS' performance of any of its obligations, terms, covenants or conditions under the Agreement due to any cause beyond its control, including but not limited to acts of God, governmental authority or other force majeure cause or labor dispute which interrupts or interferes with the normal operations of MEUS under the Agreement. MEUS' performance of the terms of this Agreement shall be automatically excused for the period such cause continues, although MEUS shall notify Contractor/Owner promptly after MEUS has actual knowledge of a Force Majeure event, and following the cessation thereof, this Agreement shall continue in full force and effect.
4. **Indemnity:** MEUS shall defend and indemnify the Indemnified Parties only from third party claims and legal actions alleging negligence, willful misconduct or other legal fault of MEUS resulting from its performance of the Work under the Agreement, provided that such third party claim, damage, loss or expense arises from personal injury, death or damage to tangible property. MEUS' obligations to defend, indemnify and save-harmless shall be subject to the Indemnified Parties providing prompt notice to MEUS of all Claims and the commencement of any suit, action or proceeding in respect of which Indemnity may be sought. MEUS shall have full authority and control of the selection of counsel and the defense of all Claims. Provided that MEUS diligently defends such Claims, MEUS shall not be liable for any legal fees or expenses incurred by the Indemnified Parties or the settlement of any Claim that is effected without the prior consent of MEUS. The Indemnified Parties shall cooperate at the request and cost of MEUS in the defense of all Claims for which indemnification is sought. MEUS' indemnification obligation shall not apply to any claims, liabilities or damages arising from the negligence, willful misconduct or other legal fault of any Indemnified Party. From and after delivery to job site of any materials, tools or equipment covered by or required to complete Work hereby, the Contractor and Owner shall assume, pay for and indemnify MEUS against any and all damages to or loss or destruction of such materials by any cause whatsoever, except causes directly attributable to the negligence of MEUS' employees or agent(s) irrespective of whether the same may then be in any way and to any extent erected, completed or accepted, and whether any part of the purchase price hereunder shall have then been accrued.
5. **Patent Indemnification:** MEUS shall defend and indemnify Indemnified Parties from and against any liability arising out of any claim that MEUS' equipment installed pursuant to the Contract infringe a valid United States patent or copyright; provided that (a) Indemnified Parties shall give MEUS prompt notice thereof and reasonable cooperation, information and assistance in connection therewith and (b) MEUS shall have sole control and authority with respect to defense, settlement or compromise thereof.
6. **Limited Warranty:** MEUS warrants that equipment installed shall be free from defects in material and workmanship for the specified warranty period and shall begin after the acceptance of the Work or use by Contractor or Owner, whichever occurs first, at which time an MEUS Warranty Form will be signed. MEUS' warranty shall be limited to the repair or replacement of any defective Work or parts for which a claim is made within the specified warranty period, at MEUS' sole option. Warranty repairs and parts replaced are warranted for 12 months after the date of the repair or replacement, provided that MEUS continues to perform the maintenance of the elevators and/or escalators. Otherwise, Warranty repairs and replacements are warranted only through the expiration of the original warranty period. Replaced parts become the property of MEUS. This limited warranty shall not apply if MEUS has not been paid in full for its Work; or to elevators or escalators that have been repaired other than by, or with the authorization of, MEUS and using its approved procedures; that have been subjected to vandalism, misuse, abuse, improper or insufficient maintenance, negligence or accident, improper operation; that have been damaged by excessive physical or electrical stress, normal wear, tear and use; or that have had their serial number or any part thereof altered, defaced or removed. MEUS MAKES NO OTHER WARRANTIES OF ANY KIND WHATSOEVER WITH RESPECT TO THE WORK, THE ELEVATORS AND/OR ESCALATORS, AND HEREBY EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
7. **Lien and Claims:** MEUS shall have the unrestricted right to file a lien or claim on its own behalf in accordance with California law, and shall have thirty (30) days in which to bond or otherwise deal with any lien recorded against the Project by any of its subcontractors or sub-subcontractors or their employees. Title to equipment shall pass to Contractor or Owner upon receipt of payment therefore; and risk of loss or damage shall pass upon installation or storage on-site. MEUS reserves the right to lien any sums unpaid.
8. **LIMITATION OF LIABILITY:** MEUS SHALL NOT BE LIABLE TO CONTRACTOR OR OWNER FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF USE OR PROFITS) OF ANY KIND WHATSOEVER ARISING OUT OF OR RELATED TO THE AGREEMENT, ANY BREACH THEREOF, ANY BREACH OF WARRANTY or LIQUIDATED DAMAGES, except for such sums actually paid by Contractor/Owner and only to the extent directly caused by MEUS. IN NO EVENT SHALL MEUS BE LIABLE FOR ANY DAMAGES IN EXCESS OF THE CONTRACT PRICE.
9. **No Liquidated Damages:** MEUS shall not be responsible for any liquidated damages or penalties, or any other type of Owner or Contractor assessed damages, and any recovery against MEUS for uncured breach of contract or delay shall be limited to damages directly caused by MEUS and proven and substantiated.
10. **Notices:** Any notice, consent, approval, authorization or other information required to be given by either party under the Agreement shall be in writing and shall be given or made by personal delivery, by facsimile, by private delivery service with documentation of receipt to the intended recipient thereof or by registered or certified mail, return receipt requested, with all postage prepaid, to the other party at the address specified in the Agreement or to such other address as is specified by notice given in accordance with this section. Notice shall be deemed received on the date of receipt or the date on which receipt is refused. In the event notice is given by facsimile, a copy of such facsimile shall be sent to the recipient thereof in accordance with the provisions of this article (other than by facsimile) within two days after such fax was transmitted.
11. **Payment, Retention, Right to Stop Work and Interest:** MEUS requires a 25% initial payment upon receipt of acceptance of this Agreement, Letter of Intent or subcontract agreement. Preparation for work will not begin without this initial payment. MEUS will submit progress payments for engineering, material receipt/delivery, and other pre-mobilization or work sequencing costs and may bill in advance for projects with a duration of less than (60) days. Retention, if any, shall be reduced to 5% of contract price once work is 50% complete. Change-orders must be paid in full — no retention shall be withheld. Owner's withholding of or failure to make any payments to Contractor for reasons not related to deficient Work by MEUS shall not excuse Contractor from timely making all payments due and to pay the final retention no later than 30 days after MEUS' final invoice date following completion of its Work. Under no circumstances will elevator be handed over for final acceptance/public use if less than 90% of contract price has been paid or if any change-order remains unpaid. Change Orders timely submitted but not yet paid shall not delay payment of final balance on original contract price or retention. Any past due amounts shall bear interest at 11/2% per month or the highest rate permitted by applicable law, whichever is less, until repaid in full. All costs of collection of any unpaid invoice or enforcement of any terms of this Agreement, including attorneys' fees and litigation and arbitration costs, incurred by prevailing party shall be the liability of and paid by the other party.
12. **State of California:** These terms shall be governed by and construed according to the laws of the State of California.
13. **UNLESS AGREED TO OTHERWISE BY BOTH PARTIES,** the Bid Proposal in its entirety, inclusive of those Terms & Conditions, constitutes the Entire Agreement. This Agreement, as to its subject matter, exclusively and completely states the rights, duties and obligations of the parties and supersedes all prior and contemporaneous representations, letters, proposals, discussions and understandings (oral and written) or by between the parties. This Agreement may only be amended in writing and signed by both parties. The parties agree that the predominant purpose of this Agreement is to establish terms for the procurement of the Services/Work described herein. The parties, by their representatives signing below, agree with the terms of this Agreement and further certify that their respective signatories are duly authorized to execute this Agreement. In the event of any conflict between this Bid Proposal and any other contract documents the terms of this Bid Proposal shall govern and control. OTHERWISE, this proposal reflects the basic terms and conditions of the proposed Agreement, and MEUS and Contractor expect that the definitive Agreement which is to be negotiated will be generally consistent with this proposal.

Project Name:

OCTA Metrolink Parking Structure

Date:

1/10/16

If this proposal is acceptable to you and you agree to undertake good faith negotiations with us, please execute and return one (1) copy of this proposal along with a 25% Initial payment to begin engineering drawings immediately.

MITSUBISHI ELECTRIC US, INC.
ELEVATOR & ESCALATOR DIVISION

By: _____

Print Name, Date & Title

(CUSTOMER/CONTRACTOR NAME)
(Address if different than above)

By: _____

Print Name, Date & Title

Excelsior

1961 Blair Avenue
Santa Ana, CA 92705
Office: (949) 757-1688
Fax: (949) 757-1689

EXCELSIOR ELEVATOR

Contractor's License No. 733576, Type C-11

→ Yes by America
January 12, 2017

PROJECT ESTIMATOR

Subject: Bid for Elevator Work – Division 14 – Hydraulic Elevator Only

Re: METROLINK PARKING STRUCTURE - OCTA

We are please to submit a quotation for the elevator scope of work for the above reference project. Please be advised our bid for the work outlined for Division 14 as conditioned below is:

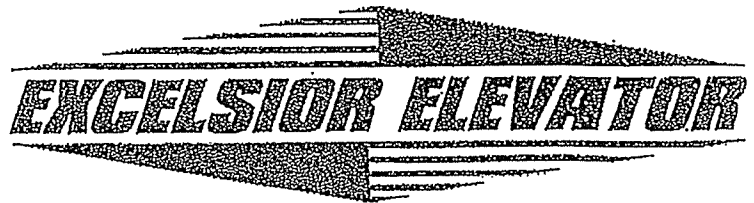
Five Hundred Seventy Thousand One Hundred Sixty and 00/100 Dollars. (\$570,160.00)

Our bid is conditioned on the following clarifications:

1. We are a qualified WOSB/MBE/WBE/SBE/DBE contractor, Certified by the MTA and the State of CA.
2. Payment Terms: 25% down payment, 15% due upon submission of shop drawings, 15% due upon acceptance of shop drawings, 15% shall be due upon delivery of equipment, and the balance shall be progressed billed with 5% retention.
3. Our bid is based upon providing Excelsior Elevator standard equipment and standard submittal package as outlined on the attached "Outline of Equipment." Elevator shall be accepted on an "as equal" basis. Submittal lead time is approximately four to six weeks after contract is executed and initial 25% down payment is received.
4. All sections of this proposal must be acknowledged and initialed – This includes standard work by others, scope of work, general clarifications, and terms and conditions.
5. All work specified in any "Related Work" portion of the elevator specification is considered to be work to be performed by other trades and not included in our bid.
6. All items listed on our "Standard Work by Others" list are not included in our bid.
7. Our quote includes our standard insurance. Any additional insurance shall be at additional costs. OCIP and CCIP participation shall be at no cost and/or deduction of contract price to Excelsior.
8. If any bonds are required, they will be provided at additional costs (our standard bond rate).
9. Quote is good for ninety (90) days.

Sincerely,
Excelsior Elevator Corporation

Matthew Rough
Sales Manager



"Standard Work by Others"

The following work is to be completed by the owner and/or general contractor at no cost to Excelsior Elevator. Failure to provide the items in our "Standard Work by Others" will result in delays and additional work beyond our scope and will require a change order to remedy any issues.

HOISTWAY

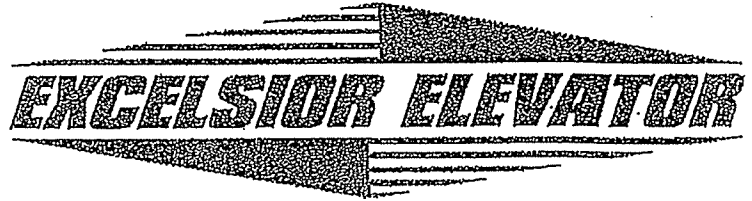
1. Legal hoistway of proper size, plumb within one inch per 100 feet, and pit of proper depth.
2. A 2 foot, 6 inch square block out in elevator pit floor, to be filled when plunger assembly has been installed. (Applies to direct acting in-ground jack only)
3. Removal of excess material from the digging of elevator plunger assembly hole that will be drilled by elevator contractor when pit is poured and before any further construction above lowest landing is started.
4. Supports for rail fastenings at intervals where specified by Excelsior Elevator Corporation, including separator beams, between hoistways. Rail backing, or rail supports, is excluded.
5. Sump pump in pit, water clarifier, or holding tank by others.
6. All screens, railings, fences, steps and ladders if required.
7. Hoistway guards and barricades.
8. Venting of hoistway as required by governing code.
9. All necessary sleeves, or machine beam pockets and supports, as required by installation.
10. Sill supports and grouting after sills are in place.
11. GFCI outlet in pit
12. The temperature at the top of the hoistway shall be maintained between 32 F and 104F. The humidity levels shall not exceed 95% non-condensing.
13. Install a permanent light fixture at the top of the hoistway. It shall not have less than 200-lux. The light switch is to be located in the hoistway.
14. Install a permanent light fixture at the entrance of the top landing. It shall not have less than 200-lux. The light switch is to be located close to the elevator entrance.

MACHINE ROOM

15. Suitable machine room with legal access and clearances properly heated and ventilated. Temperature shall not exceed 104 F, per code. Recommended temperature shall not exceed 95 F. Machine room door to be self-closing, self-locking.
16. Telephone instrument supplied, but phone line to controller, and dial tone by others.
17. 120VAC - 15 AMP fused disconnect on a dedicated circuit for each elevator connected to controller(s) in elevator machine room for car lights and accessories. (On a separate breaker from items 11 and 15)
18. 3-pole fused or shunt trip mainline switch in machine room for each elevator with feeders connected to each controller. (Pull ground wire all the way to controller, or use bonded EMT)
19. GFCI outlet in machine room
20. If required, cab air conditioning requires a separate feeder circuit (amps and voltage depend on the type of A/C unit).

GENERAL

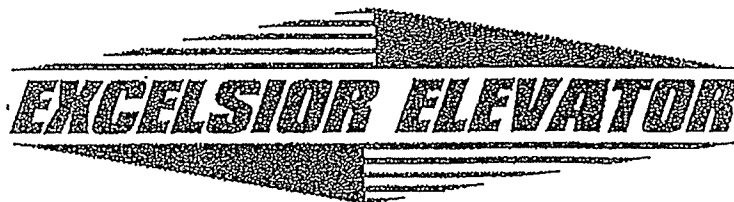
21. On-Site storage area (approximately 30 feet x 30 feet per elevator) no more than 50 feet from the elevator shaft.
22. Rough openings for elevator entrances in front walls, as indicated by Excelsior Elevator Corporation final approved drawings, at all floors, or optionally, the front wall shall not be erected until the entrances have been set in place.
23. All cutting of walls, floors or partitions together with all repairs, grouting, patching and painting as made necessary by such cutting or changes. Grouting of entrance frames and sills is excluded.
24. Temporary power (220/480VAC) for operation of temporary hoist and tools.
25. Guarded lights, light switch, and GFI convenience outlets in elevator machine room and elevator pit where required.
26. Smoke / heat detectors, sprinklers with guards, associated wiring and fire extinguishers by others.
27. Finished cab flooring by others, and is excluded.
28. Any vandal resistant film is excluded.
29. Any security features such as card readers shall be supplied by others. We will coordinate to install.



30. Trenching and backfill, if the oil feed line is run underground from pit to machine room, the floor of which should not be poured until pipe is in place, unless other provision has been made with Excelsior Elevator Corporation
31. All other equipment necessary and not otherwise called for in the elevator contract.

GENERAL CLARIFICATIONS

1. Final elevator electrical requirements shall be based upon final elevator engineering. Building electrical system will be modified as necessary by the GC to match the final elevator requirements.
2. Additional building support for rail brackets is required and not included in our bid. General Contractor is responsible for providing us any necessary support for the rail brackets.
3. General Contractor shall provide 3-phase power to the elevator machine rooms prior to installation of the elevator.
4. All cutting, patching & fire-proofing shall be the responsibility of the General Contractor and is not included in our bid.
5. Any modification to the building structure or building systems that is required in order to install the equipment is not included. Our bid is based upon hoistway dimensions per specifications and drawings.
6. All work specified in any "Related Work" portion of the specification is considered to be work to be performed by other trades and not included in our bid.
7. Our bid includes only mobilizations onto the jobsite based on an agreed upon schedule. Any demobilization and re-mobilizations above and beyond the approved schedule shall be at additional cost. Acceleration of the schedule shall also be at additional cost.
8. General Contractor is responsible to provide us with adequate roll-able (by plank or pavement), clear, secure and dry space to store the equipment. This laydown area shall be adjacent to the appropriate elevators. Any moving of this equipment other than for installation shall be done at an additional cost.
9. Temporary use of elevators is not included unless specified. All protection and repairs if necessary due to temporary use shall be at additional cost. If an operator is required, one shall be provided at our standard rates.
10. Our quote includes one final inspection. If re-inspection is necessary due to issues that are not Excelsior's responsibility, the cost of the re-inspection and Excelsior's time shall be paid by others.
11. All work is to be performed during Excelsior's normal working hours. If project schedule accelerates and overtime is required, it shall be billed at our standard overtime rates.
12. If parking fees are required, they shall be at additional costs.
13. The work will involve excavation and drilling to accommodate the new equipment and installation of the new equipment. Work includes a steel outer cylinder to help prevent hole collapse. The price quoted is based upon using standard hoisting and drilling equipment for removal and excavation through normal soil and installation of the new equipment. The price quoted is also based upon *two (2) days of drilling and equipment set up per elevator*. If any physical obstruction, hindrance or cave in, other than normal soil is encountered or additional drilling time beyond the two day limit is required, we shall be provided with authorization to proceed with the excavation utilizing any additional special hoisting or excavating equipment required. Excelsior Elevator Corporation shall be reimbursed for all additional costs incurred subsequent to encountering the physical obstruction or hindrance, including the costs of the special equipment, at our normal billing rates.
14. If necessary, HDPE Casings are excluded and shall be provided and installed by others.



Project Name: Metrolink Parking Structure
 Project City: Orange, CA
 Drawing Submittal: 4 – 6 weeks
 Delivery After approvals: 14 - 18 weeks
 Samples: TBD

Elevators 1 & 2

1) Quantity Required:	Two (2)	16) H/W Frame Finish:	Stainless Steel
2) Type of Elevator:	Hydraulic – In Ground	17) Sills:	Aluminum
3) Design Type:	Passenger	18) Car Wall Panel Finish:	Stainless Steel
4) Capacity:	4,000 #	19) Lighting:	Two (2) Light Troughs
5) Speed:	150 FPM	20) Cab Height:	8'-0"
6) Travel:	44'-6" maximum	21) Fixture Finish:	Stainless Steel
7) Landings:	Five (5)	22) Fixture Style:	Standard
8) Openings:	Five (5) Inline	23) Car Operating Panel	Main Only
9) Floor Designation:	B2, B1, 1, 2, 3	24) Lanterns:	Hall Only
10) Controller:	Microprocessor Soft Start	25) Position Indicators:	Car Only
11) Operation:	Simplex	26) Door Operator:	Mfg's Std. Closed Loop
12) Power Supply:	480V 3ph 60hz	27) Door Protection:	Infrared Screen
13) Entrance Size:	4'-0" x 7'-0"	28) Machine Rm Location:	Adjacent @ B2 Landing
14) Door Type:	Center Opening	29) Warranty Only:	12 Months
15) H/W Door Finish:	Stainless Steel w/Glass		

ADDITIONAL INFORMATION:

TERMS AND CONDITIONS

EXCELSIOR ELEVATOR

1. The work shall be performed for the sum stated on front and all sales or use taxes imposed.
2. In addition to the agreed price, you shall pay to us any future applicable tax imposed on us in connection with the performance of the work described.
3. This quotation is subject to change or withdrawal by us prior to acceptance.
4. We warrant to you that the work performed by us hereunder shall be free from defects, not inherent in the quality required or permitted, in material and workmanship for one (1) year from the date of substantial completion. Our duty and your remedy under this warranty are limited to our correcting any such defect you report to us within the warranty period by, at our option, repair or replacement, provided all payments due under the terms of this contract have been made in full. All parts used for repair or replacement under this warranty shall be good quality and furnished on an exchange basis. Printed circuit boards used for replacement parts under this warranty may be refurbished boards. Exchanged parts become our property.
5. We shall perform the work during our regular working hours of our regular working days unless otherwise agreed in writing. You shall be responsible for providing suitable storage space at the site for our material.
6. You shall obtain title to all the equipment furnished hereunder when final payment for such material is received by us. In addition, you shall be granted a license to use any software incorporated into any such equipment solely for operating such equipment.
7. Any drawings, illustrations or descriptive matter furnished with the proposal are submitted only to show the general style, arrangement and dimensions of the equipment.
8. Payments shall be made as follows: Twenty-Five percent (25%) of the price shall be paid as a down payment. Twenty-five percent (25%) after we have completed processing your equipment requirements, and orders are placed; the balance shall be paid on completion if the work is completed. We will not release the elevator for use until 100% of the contract price is paid. If the work is not completed within a thirty day period, monthly progress payments shall be made based on the value of any equipment ready or delivered, if any, and labor performed through the end of the month less a five percent (5%) retainage and the aggregate of previous payments. The retainage shall be paid when the work is completed. We reserve the right to discontinue our work, including work and services covered under the maintenance agreement referenced on this contract, at any time until payments shall have been made as agreed and we have assurance satisfactory to us that subsequent payments will be made when due. Payments not received within thirty (30) days of the date of invoice shall be subject to interest accrued at the rate of eighteen percent (18%) per annum or at the maximum rate allowed by applicable law, whichever is less. We shall also be entitled to reimbursement from you of the expenses, including attorney's fees, incurred in collecting any overdue payments.
9. Any material removed by us in the performance of the work shall become our property.
10. Our performance is conditioned upon your securing any required governmental approvals for the installation of any equipment provided hereunder and your providing our workmen with adequate electrical power at no cost to us with a safe place in which to work, and we reserve the right to discontinue our work in the building whenever in our opinion working conditions are unsafe. If overtime work is mutually agreed upon and performed, an additional charge thereof, at our usual rates for such work, shall be added to the contract price. The performance of our work hereunder is conditioned on your performing the preparatory work and supplying the necessary data specified on the front of this proposal or in the attached specification, if any. Should we be required to make an unscheduled return to your site to begin or complete the work due to your request, acts or omissions, then such return visits shall be subject to additional charges at our current labor rates.
11. We shall retain a security interest in all material furnished hereunder and not paid for in full. You agree that a copy of this Agreement may be used as a financing statement for the purpose of placing upon public record our interest in any material furnished hereunder, and you agree to execute any other document reasonably requested by us for that purpose.
12. Except insofar as your equipment may be covered by an Excelsior Elevator Corporation maintenance or service contract, it is agreed that we will make no examination of your equipment other than that necessary to do the work described in this contract and assume no responsibility for any part of your equipment except that upon which work has been done under this contract.
13. Neither you nor we shall be liable to the other party hereto for any loss, damage or delay due to any cause beyond your or our reasonable control, including, but not limited to, acts of government, strikes, lockouts, fire, explosion, theft, floods, riot, civil commotion, war, malicious mischief, or act of God; provided, however, that, should loss of or damage to our material or work occur at the site, you shall compensate us therefore, unless such loss or damage results from our acts or omissions.
14. We do not agree to bear the cost of repairs or replacements due to vandalism, abuse, misuse, neglect, normal wear and tear, modifications not performed by us, improper or insufficient maintenance by others, or any cause beyond our control.
15. We shall conduct, at our own expense, the entire defense of any claim, suit or action alleging that, without further combination, the use by you of any equipment provided hereunder directly infringes any patent, but only on the conditions that (a) we receive prompt written notice of such claim, suit or action and full opportunity to assume the sole defense thereof, including settlement and appeals, and all information available to you for such defense; (b) said equipment is made according to a specification or design furnished by us; and (c) the claim, suit or action is brought against you. Provided all of the foregoing conditions have been met, we shall, at our own expense, either settle said claim, suit or action or shall pay all damages excluding consequential damages and costs awarded by the court therein and, if the use or resale of such equipment is finally enjoined, we shall at our option, (i) procure for you the right use of the equipment, (ii) replace the equipment with equivalent non-infringing equipment, (iii) modify the equipment so it becomes non-infringing but equivalent, or (iv) remove the equipment and refund the purchase price (if any) less a reasonable allowance for use, damage or obsolescence.
16. Under no circumstances shall we be liable for any special, indirect or consequential damages of any kind including, but not limited to, loss of profit, loss of good will, loss of business opportunity, additional financing costs, or loss of use of any equipment or property, whether in contract, in tort (including negligence), in warranty or otherwise.
17. Your remedies set forth herein are exclusive and our liability with respect to any contract, or anything done in connection therewith such as performance or breach thereof, or from the manufacture, sale, delivery, installation, repair or use of any equipment furnished under this contract, whether in contract, in tort (including negligence), shall not exceed the price for the equipment or services rendered.
18. It is agreed that after completion of our work, you shall be responsible for ensuring that the operation of any equipment furnished hereunder is periodically inspected. The interval between such inspections shall not be longer than what may be required by the applicable governing safety code.
19. By accepting delivery of parts incorporating software you agree that the transaction is not a sale of such software but merely a license to use such software solely for operating the unit(s) for which the parts were provided, not to copy or let others copy such software for any purpose whatsoever, to keep such software in confidence as a trade secret, and not to transfer possession of such part to others except as a part of a transfer of ownership of the equipment in which such part is installed, provided that you inform us in writing about such ownership transfer and the transferee agrees in writing to abide by the above license terms prior to any such transfer.
20. Our work shall not include the identification, detection, abatement, encapsulation or removal of asbestos, polychlorinated biphenyl (PCB), or products or materials containing asbestos, PCB's or other hazardous substances. In the event we encounter any such product or materials in the course of performing work, we shall have the right to discontinue our work and remove our employees from the project until you have taken the appropriate action to abate, encapsulate or remove such products or materials, and any hazards connected therewith, or until it is determined that no hazard exists (as the case may require). We shall receive an extension of time to complete the work hereunder and compensation for delays encountered as a result of such situation.
21. This Agreement constitutes the entire understanding between the parties regarding the subject matter hereof and may not be modified by any terms on your order form or any other document, and supersedes any prior written or oral communication relating to the same subject. Any amendment or modifications to this Agreement shall not be binding upon either party unless agreed to in writing by an authorized representative of each party. Both parties agree that any form issued by you that contains any terms that are inconsistent with those contained herein shall not modify this Agreement, nor shall it constitute an acceptance of any additional terms.



Los Angeles County
Metropolitan Transportation Authority

One Gateway Plaza
Los Angeles, CA 90012-2952

213-922-2000 Tel
metro.net

Metro

CALIFORNIA UNIFIED CERTIFICATION PROGRAM



October 24, 2014

CUCP #33783
Metro File # 3042

Lina Rough
Excelsior Elevator Corp.
1961 Blair Ave.
Santa Ana, CA 92705

RE: Disadvantaged Business Enterprise Certification

Dear Mrs. Rough:

We are pleased to advise you that after careful review of your application and supporting documentation, the Los Angeles County Metropolitan Transportation Authority (Metro) has determined that your firm meets the eligibility standards to be certified as a Disadvantaged Business Enterprise (DBE) as required under the U.S. Department of Transportation (U.S. DOT) Regulation 49 CFR Part 26, as amended. This certification will be recognized by all of the U.S. DOT recipients in California. Your firm will be listed in the California Unified Certification Program (CUCP) database of certified DBEs under the following specific areas of expertise that you have identified on the NAICS codes form of the application package:

NAICS (2007)	Description
238290	Other Building Equipment Contractors
811310	Commercial and Industrial Machinery and Equipment Repair and Maintenance

Your DBE certification applies only for the above codes. You may review your firm's information in the CUCP DBE database which can be accessed at the CUCP's website at www.californiaucp.org. Any additions and revisions must be submitted to Metro for review and approval.

In order to ensure your continued DBE status, you are required to submit an annual No Change Declaration Form (which will be sent to you) along with supporting documentation. If no changes are noted, then your DBE status remains current. If there are changes, Metro will review to determine continued DBE eligibility. Please note, your DBE status remains in effect unless Metro notifies you otherwise.

Should any changes occur that could affect your certification status prior to receipt of the No Change Declaration Form, such as changes in your firm's name, business/mailing address, ownership, management or control, or failure to meet the applicable business size standards or personal net worth standard, please notify Metro immediately. Failure to submit forms and/or change of information will be deemed a failure to cooperate under Section 26.109 of the Regulations.

Metro reserves the right to withdraw this certification if at any time it is determined that it was knowingly obtained by false, misleading, or incorrect information. Your DBE certification is subject to review at any time. The firm thereby consents to the examination of its books, records and documents by Metro.

Congratulations, and thank you for your interest in the DBE program. Should you have any questions, please contact us at 213-922-2600. For information on Metro contracting opportunities, please visit our website at www.metro.net.

Sincerely,

Tina Giles-Potter
Certification Consultant – SBEUS
Diversity & Economic Opportunity Department

For copies of Lina Rough's application, contact Excelsior Elevator Corp.



Metro

Los Angeles County
Metropolitan Transportation Authority

One Gateway Plaza
Los Angeles, CA 90012-2952

213.922.2000 Tel
metro.net

October 24, 2014

Metro File # 3042

Lina Rough
Excelsior Elevator Corp.
1961 Blair Ave.
Santa Ana, CA 92705

Re: Small Business Enterprise Certification

Dear Mrs. Rough:

We are pleased to advise you that after careful review of your application and supporting documentation, the Los Angeles County Metropolitan Transportation Authority (Metro) has determined that your firm meets the eligibility standards to be certified as a Small Business Enterprise (SBE) as required under Metro's SBE Program. Your firm will be listed in Metro's SBE database of certified SBEs under the following specific areas of expertise:

NAICS (2007)	Description
238290	Other Building Equipment Contractors
811310	Commercial and Industrial Machinery and Equipment Repair and Maintenance

Your SBE certification is good for five years from the date of this letter and applies only for the above NAICS 2007 codes. Any additions and revisions must be submitted to Metro for review and approval.

After the five-year certification period, your entire file will be reviewed in order to ascertain continued SBE certification status. You will be notified of the pending SBE status review and any documentation updates necessary prior to the expiration date.

Also, should any changes occur that could affect your certification status prior to receipt of the renewal application, such as changes in your firm's name, business/mailing address, ownership, management or control, or failure to meet the applicable business size standards or personal net worth standard, please notify Metro immediately.

Metro reserves the right to withdraw this certification if at any time it is determined that it was knowingly obtained by false, misleading, or incorrect information. Your SBE certification is subject to review at any time. The firm thereby consents to the examination of its books, records, and documents by Metro.

Congratulations, and thank you for your interest in Metro's SBE Program. Should you have any questions, please contact us at 213-922-2600. For information on Metro contracting opportunities, please visit our website at www.metro.net.

Sincerely,

Tina Giles-Potter
Certification Consultant, SBEUS
Diversity & Economic Opportunity Department

GMS Elevator Service

7142



401 BORREGO COURT
SAN DIMAS, CA 91773
909.599.3904 PH
909.394.7388 FX
info@gmselevator.com

Lic. #672856

Date: January 12, 2017

Project: Metrolink Parking Structure
At the Orange Transportation Center
Address: 130 N. Lemon Street
City, State & Zip: Orange, CA

Contractor: Bomel Construction Co., Inc.
8195 E. Kaiser Blvd.
Anaheim, CA 92808
(714) 921-1660 Ph.

GMS Elevator Services, Inc. is pleased to confirm our quotation in the amount of (\$596,398.00) Five Hundred Ninety Six Thousand Three Hundred Ninety Eight Dollars and 00/100 for the above referenced project. This price is based upon AIA A401 (1987 edition) contract terms shown, the work by others clause shown and the description elevator equipment shown. No other documentation has been noted.

Clarifications

- Furnish and Install (2) Hydraulic Passenger Elevators.
- We must receive 90% of the total contract before we can call for inspection and turn the elevator over for use.
- At this time all elevator equipment has approximately a 16-20 week lead time from receipt of approvals.
- ~~GMS Elevator is not a listed manufacturer and is supplying this proposal as equal.~~
- Contractor must provide all architectural and structural plans and specifications to GMS Elevator, for GMS to proceed with production of any shop drawings and product submittals.
- GMS Elevator reserves the right to withdraw this bid at anytime.
- All Bonding Excluded from above mentioned price.
- If this project has an OCIP (Owner Controlled Insurance Policy) or WRAP Insurance policy, GMS Elevator will offer NO credit or deduction of any kind to pay for this policy. GMS Elevator will NOT be liable for any deductibles or claims against OCIP.
- If a Waiver of Subrogation is required for this project an additional \$500 will be added to this proposal.
- DIR Registration # 1000008514
- Price valid for 120 days from today's date January 12, 2017.

Thank you for the opportunity to quote you pricing for this project, if you decide to accept our quote we look forward to working with you.

Respectfully,
GMS Elevator Services, Inc.

Ronell John

ACCEPTED:

BY _____
(Type or Print Name)

(Signature)

TITLE _____

DATE _____

SUBMITTED FOR:
GMS ELEVATOR SERVICES, Inc.

BY _____
Ronell John, Project Engineer

ACCEPTED FOR:
GMS ELEVATOR SERVICES, Inc

BY _____
Pamela Simpkins, Vice-President

DATE _____

This offer, when accepted by you and countersigned by an officer of GMS Elevator Services, Inc. (GMS E.S.), will be the entire agreement of the parties. This offer, if accepted on any other form or document or if terms are amended, shall not be binding on GMS E.S. unless countersigned by an officer of GMS E.S..

The price for the elevator work is specifically based on the AIA Document 401 (1987 edition) as Modified by the following provisions which will take precedence and control in the event of any conflict.

Please Note: The G. C. shall not impose liquidated damages upon GMS E.S., including liquidated damages that the G.C. has assessed against it by the owner and is seeking to pass on to GMS E.S. We will not insure, defend or indemnify to any greater extent than our liability as limited by workers compensation or other statutory provisions.

Contract Addendum: The following specific provisions shall take precedence and control in the event of any conflict between provisions and other provisions to the parties' subcontract.

Indemnity: GMS Elevator Services, Inc. shall indemnify and hold harmless the General Contractor from and against all damages arising out of or resulting from performance of the Work, provided that such damages are attributable to bodily injury, sickness, disease or death, or injury to or destruction of tangible property (other than the work itself) but only to the extent the primary cause of such damages is the negligent acts or omissions of GMS Elevator Services, its subcontractors, employees or agents. GMS Elevator Services reserves all rights to contribution or indemnity not inconsistent with this provision.

Payment: Payments to GMS Elevator Services, Inc. for the value of its work performed; including 10% upon placing order for the elevator equipment, material upon delivery and labor (less retainage, not to exceed 10%) are due fifteen days after the General Contractor's receipt of GMS Elevator Services, Inc. pay applications, less any amounts being withheld from the General Contractor by the owner due to some deficiency on the part of GMS Elevator Services, Inc.. GMS Elevator Services, Inc. shall be entitled to interest on any late payments in the amount of one and one-half percent per month, calculated from the expiration of the fifteen-day period until fully paid.

Clean Up: No Back-charge for clean-up cost may be imposed against GMS Elevator Services, Inc., unless GMS Elevator Services, Inc. has failed to clean-up its work as directed after having received a minimum of 48 hours prior notice in writing advising GMS Elevator Services, Inc. of its need to perform clean up work.

Delays/Interference/Acceleration: GMS Elevator Services, Inc. does not waive its rights to seek additional time and/or damages from the General Contractor as the result of delays, interference and/or acceleration of the work caused by others or by events beyond the control of GMS Elevator Services, Inc. GMS Elevator Services, Inc. agrees to give notice to the General Contractor in writing of any delays, interference, or acceleration which it believes entitled it to and extension of time and/or damages within ten days after such delays, interference, or acceleration begins.

Changes To The Work: GMS Elevator Services, Inc. may not be directed to perform any work in addition to the original scope of the work without first receiving a fully executed change order covering such additional work, adjusting contract price and time for completion as appropriate.

Arbitration: Any controversy or claim arising out of or related to the parties' subcontract, or breach thereof, shall be settled by arbitration to be held in Los Angeles, California in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator (s) may be entered in any court having jurisdiction thereof. The giving of prior notices or the seeking of preliminary determination of responsibility by third parties shall not be conditions precedent to submitting a claim to arbitration. The prevailing party in any such arbitration shall recover from the other party its responsible attorney's fees, costs and expenses incurred in the arbitration. Nothing in this paragraph shall be construed to prevent GMS Elevator Service, Inc. from availing itself of its rights afforded by California's mechanic's lien statutes.

Labor: GMS Elevator Services, Inc. is signatory to a collective bargaining agreement with the International Union of Elevator Constructors. GMS Elevator Services, Inc. will provide union labor with the full expectation that such labor will work in harmony with others. GMS Elevator Services, Inc. does not agree to any labor provision inconsistent with the terms of its existing collective bargaining agreement and does not agree to become signatory to any additional collective bargaining agreement.

Temporary Use Of Elevators: If General Contractors desires prior to final acceptance to have elevators temporarily available for use by General Contractor, the Owner, other subcontractors and suppliers, or other third parties, then General Contractor agrees to pay for such use at GMS Elevator Services Inc. standard rates and pursuant to GMS Elevator Service, Inc. standard Temporary Acceptance form, which General Contractor shall sign in advance of use of uncompleted equipment. In such Temporary Acceptance form, General Contractor shall acknowledge (a) its responsibility for any liability arising from the operation or use of the equipment including accidents, no matter how caused, and (b) its responsibility for the provisions of all necessary protection, power and operational requirements for the use and operation of the equipment.

Lien Waivers: GMS Elevator Services does not waive its right to avail itself of the remedies afforded it by California mechanic lien statutes. The execution of a lien waiver shall only operate to bar a lien claim by GMS Elevator Services upon GMS Elevator Services', Inc. receipt of the funds for which the lien waiver is given.

Contract Documents: The only contract documents from the general contract which are incorporated into GMS Elevator Services', Inc. contract with the general Contractor are those plans and specifications that specifically address the scope of GMS Elevator Services' work.

Liquidated Damages: The General Contractor, Inc. shall not impose liquidated damages upon GMS Elevator Services, including liquidated damages that the General Contractor has had assessed against it by the owner and is seeking to pass on to GMS Elevator Services, Inc..

Standard Billing: GMS Elevator Services, Inc. standard billing is as follows:

30% billing acceptance of proposal/Drilling and Submittals	30% billing delivery of rough materials
20% billing delivery of finish Material	10% due before inspection
10% due net 30 inspection / acceptance by Elevator Inspection Division	

This bid has been based on our standard team labor rate, which consists of a journey level Mechanic and an Elevator Mechanic's Helper. In the event that this job is or becomes a Davis-Bacon project, it will become necessary for GMS Elevator Services, Inc. to revise our labor rates to reflect the Department of Labor's not recognizing the "Helper" classification. Although the same team will be used, GMS Elevator Services will have to pay both the Mechanic and Helper the same wage. GMS Elevator Services, Inc. will not be responsible for additional costs due to Davis-Bacon project.

Inspections: We have included the cost for one (1) State Inspection for the elevator permit. In the event that the elevator does not pass this inspection due to deficiencies on the part of the General Contractor, a change order will be required to cover these costs. Also, please be advised that if the elevator fails to pass State inspection, it may take as long as four (4) weeks to re-schedule.

Shop Drawings: We have included Structural Calculations and details for DSA approval (Or LA CITY DBS) unless otherwise noted. If this project is or becomes under the jurisdiction of OSHPD, GMS Elevator Services, Inc. shall be reimbursed for any Calculations/ Details that will need to be provided for approval. GMS Elevator will include the cost of one correction to the elevator shop drawings. If the architect/ DSA requires ANY additional engineering beyond our standard shop drawings and calculations, this will be paid for by others.

OCIP/Insurances: If this project has an OCIP (Owner Controlled Insurance Policy) or WRAP Insurance policy, GMS Elevator will offer NO credit or deduction of any kind to pay for this policy. GMS Elevator will NOT be liable for any deductibles or claims against OCIP. If a Waiver of Subrogation is required for this project an additional \$500 will be added to this proposal.

WORK BY OTHERS

A. General Work Specified Elsewhere:

1. Complete and legal hoistway, pit and machine room sized to fit GMS equipment, including proper overhead and machine room height and pit depth, access ladders, drains, lights and waterproofing as required by code.
2. Clear and safe access to elevator hoist way to deliver all equipment and man site. GMS will require clear access within site to hoistway to complete work.
3. Supports for guide rail bracket attachment in pit, at each floor and top of hoistway. Intermediate rail supports (tube steel, etc.) to maintain spacing between brackets of not more than fourteen (14) feet vertically. Horizontally, supports shall be within twelve (12) inches of the clear hoistway line and located on centerline of car rail. Pit floor capable of supporting foundations to carry imposed cylinder and equipment loads.
4. Fixture blockouts and equipment blockouts and chases as required for proper installation.
5. Grouting and finish work around fixtures and entrance assemblies including entrance sills and jack assembly.
6. Cast in anchors, inserts and sleeves, if required, including installation.
7. Barricades and barriers as required by code.
8. Car flooring including installation. Elevator contractor shall provide proper recess for finished flooring as indicated.
9. Finish painting including frames and doors unless otherwise specified.
10. Trenching and backfilling as required.
11. Soil Removal
12. Divider screens between adjacent hoistways unless otherwise specified.
13. Channel Jambes for freight elevators.
14. Smoke seals, if required.
15. Backfilling of elevator hole, and material for the backfill.
16. Structural sill support angle material.

B. Electrical Work Specified Elsewhere:

1. Power feeders including installation to each starter or controller; provide mainline switch or fused disconnect located as directed, 3-phase, 60-cycle.
2. Single phase power feeders to each car lighting and exhaust blower, including individual 20 amp circuit breakers at location shown on elevator layout and installation drawings.
3. Conduit including wiring runs and junction boxes for remote indicator and control panels if required. Final hookup by elevator contractor.
4. Temporary power of the same characteristics as permanent power for equipment testing and adjustment, if required.
5. Smoke sensors or product of combustion sensors in elevator lobby except Fire Control Floor; circuits to controller. Final hookup to elevator controller by elevator contractor.
6. Telephone line including final hookup to controller terminals and to telephone instruments unless otherwise specified.
7. Standby power, if required, including installation and hookup of emergency power and lighting supply capable of absorbing regenerative power; contact on normal/standby transfer switches to elevator controller.
8. Pit and equipment area lighting, switches and convenience outlets.
9. Building safety systems, when required, instruments and accessories by others.

EQUIPMENT DESCRIPTION

A. Elevator System Description

TYPE:	Hydraulic Passenger Elevator
APPLICATION:	Direct Plunger Application
CAPACITY:	4000 lbs.
QUANTITY:	(2) Two
SPEED:	150 fpm
OPERATION:	Microprocessor Non-Proprietary Selective Collective
	• Simplex Operation
	• Fire Services Phase 1 & 2
	• Battery Lowering
	• Top and Bottom Access Switches
FIXTURES:	Vandal Resistant Swing Return Car Operating Panel
	Vandal Resistant Car Riding Lanterns
	Vandal Resistant Hall Stations and Hall Lanterns
HOISTWAY SIZE:	10'8"w x 7'0"d
PLATFORM:	8'0"w x 6'2"d
CAB HEIGHT:	9'0" *REQUIRES 13'6" CLR OH

CLEAR CEILING HEIGHT:	8'0"
CAB CONSTRUCTION:	Metal
PUMP UNIT:	Submersible Type
POWER SUPPLY:	*Confirmation 208V/220V/480V, 3-phase power
TRAVEL:	44'6"
EQUIPMENT ROOM:	Adjacent / Across Hall at the lowest level (*Please Note: Minimum machine room size is 6'0" x 6'6". If machine room is to be remote, underground/overhead runs for the remote machine room must be coordinated prior to installation of slab walls, etc. Clear access must be available above the ceiling or metal/concrete raceways in the flooring for oil line and wiring ducts from machine room. Trenching/patching will be and backfilling by others.)
STOPS / OPENINGS:	5 Openings Inline
HOISTWAY DOORS:	Automatic Operation GAL - MOVFR <ul style="list-style-type: none"> • Type: Center Parting • Opening Size: 4'0" x 7'0" • Infrared Sensing Edge manufactured by GAL

B. Elevator Finish Description

CAR FINISH:	The walls will be made from 14-gauge sheet metal with factory prime finish. Wall pans will have vent slots at top and bottom per code and will have 3/16" sound deadening mastic on the outside. Wall panels will be made from 1/2" fire rated particleboard that will be faced with Stainless Steel #4 finish. There will be (3) panels on the rear wall and (2) panels on each side wall.
CAR DOOR:	Stainless Steel #4
FRONT RETURN:	Stainless Steel #4
HANDRAIL:	The rear wall and Side walls will have (1) 1-1/2" diameter tube rail of brushed stainless steel.
CAB BASE & REVEAL:	Stainless Steel #4
COULUMS & HEADERS:	Stainless Steel #4
CANOPY:	Car canopy to be constructed of 12 gauge cold roll sheet metal with a reflective white finish and incorporates a hinged emergency escape hatch. Six Section Down-light Ceiling faced and edged with Stainless Steel #4
CEILING:	Stainless Steel #4
HOISTWAY ENTRANCES:	Stainless Steel #4
HOISTWAY DOORS:	Stainless Steel #4
CAR SILL:	Extruded Aluminum
HOISTWAY SILL:	Extruded Aluminum
FIXTURES FACEPLATES:	Stainless Steel #4

Additional Features

- Tee-ralls
- Gulde Shoes
- Emergency Lighting
- Rupture Valve & Gate Valve
- Low Oil Feature
- Braille Per Code
- Single Speed Fan
- ADA hands-free phone
- Pit ladder

By Others

- All Trenching, Backfill, and backfill material to be done by others.
- All Smoke Detectors and Heat Detectors by Others.
- Hoisting beam to be supplied and installed by others.
- It is the responsibility of the G.C. to layout the 4 corners of the pit for the drill and any survey needs on-site.
- All wiring for card reader system by others. Please Note: All card reader systems must be complete and operational before State of California will allow elevator inspection.
- All drilling spoil removal/movement to be completed by others.
- All grouting to be done by others. All grouting to be completed around entrances between rough opening and GMS

- actual jamb.
- All finished flooring by others.

Term of Contract Maintenance

- (12) Twelve Months Regular Time Callback, per elevator.

BID ATTACHMENT A: EXCLUSIONS

14 2010 – Passenger Elevators

- 2.01 B. Bid as equal.
 - 2.02 B. 1. GMS to supply non-proprietary equipment, taking into account buy American requirement.
 - 2.02 B. 10. Max speed of 150 fpm → ✓
 - 2.04 E. Please provide clarification what emergency power provisions are required, GMS has included cost of Battery lowering units on each elevator.
 - 2.05 B. 3. Card Readers and related system to be supplied by others. ?
 - 2.06 A. By others.
 - 3.02 A. No testing of any kind can be completed on temporary power.
- GMS does ✓*

14 2705 – Elevator Cabs and Holstway Doors

- 2.02 A. 6. Finished floors by others
- 2.01 A. 12. Baked Enamel excluded, Stainless Steel #4 to be provided.
- 2.02 A. 10. Please provide clarification, GMS has supplied pricing for a 9'0" ceiling with an 8'0" clear inside. ?
- 2.02 A. 15. GMS will supply the Dowlight type ceiling per A4.3

BID ATTACHMENT B: DRILLING PROCEDURES/CLAUSE

It is imperative that proper coordination is made to complete the elevator drilling and installation of specified casing. Please find below a description of standard installation as included in the contract price.

GMS has included in our bid an allowance for drilling the elevator jack hole(s) using standard equipment and having clear access to the hole. Please note it is imperative that the pit is not dug out and there are no trenches impeding clear access for the truck mounted drill rig. This allowance is based on encountering soil free that is from rock, sand, water, caving or any other unusual obstructions or conditions. The standard rock clause applies.

Typical Drilling Procedure/Requirements:

- Contact GMS Elevator Services when the site has been graded and pad certification has been made.
- Please note it is imperative that the pit is not dug out and there are no trenches impeding clear access for the truck mounted drill rig.
- GMS Elevator Services will site check the project and contact the drilling company to schedule. Please be advised drilling appointments can take 4-7 days to schedule.
- Four corners of elevator pit are to be laid out by the general contractor, as it is not the responsibility of GMS Elevator to layout the elevator holstway location.
- Any trench plate that is required to obtain clear access for a truck mounted drill rig is the responsibility of the general contractor.
- Should it be determined that back-fill material, other than the soil removed from the hole, be used that material will be provided by others. Upon request GMS Elevator will assist with installation of approved back-fill material provided by others. Should you wish to back-fill hole at a later date, GMS Elevator Services will pin casing plumb. Any back-fill material installed by others and not under the supervision of GMS Elevator is the responsibility of the contractor.

Drilling and installing the specified outer casing prior to the holstway construction will eliminate the need for a specialized smaller drill rig, bending of re-bar, and any potential damage to footings. Should you wish to utilize a specialized smaller rig after the pit has been poured and pit walls have been excavated additional charges will apply.

STANDARD DRILLING HOLE CLAUSE

This allowance is based on encountering soil free from rock, sand, water, caving or any other unusual obstructions or conditions. Should any of these be encountered the contract price shall be increased by the amount of additional labor at our standard billing rate and the cost of any additional materials, plus fifteen (15) percent.

GMS Elevator Services will drill elevator hole from grade and install a PVC outer casing. The PVC will be

capped. After GMS Elevator has installed the PVC casing the pit can be excavated and poured without causing damage to the PVC outer casing. Drilling and installing the PVC outer casing prior to the hoistway construction will eliminate the need for a specialized smaller drill rig, bending of re-bar, and any potential damage to footings.

Submitted By: Ronell Jobe



AFFILIATED AGENCIES

*Orange County
Transit District*

*Local Transportation
Authority*

*Service Authority for
Freeway Emergencies*

*Consolidated Transportation
Service Agency*

*Congestion Management
Agency*

*Service Authority for
Abandoned Vehicles*

February 16, 2017

Benjamin R. Trachtman
Trachtman & Trachtman, LLP
23046 Avenida De La Carlota
Suite 300
Laguna Hills, CA 92653

**RE: IFB 6-1521 "Construction of the Metrolink Parking Structure at the
Orange Transportation Center" – Response to Protest Submitted by
Bomel Construction Co., Inc.**

Dear Mr. Trachtman:

Please accept this letter as the Orange County Transportation Authority's (OCTA) response to the bid protest submitted by Bomel Construction Co., Inc. (Bomel) on February 9, 2017 for Invitation for Bids (IFB) 6-1521 "Construction of the Metrolink Parking Structure at the Orange Transportation Center (Project).

As detailed in Bomel's protest, Bomel's main ground for the protest is that to award to any other entity other than Bomel would result in an award to other than the lowest responsive and responsible bidder. Unfortunately, this assertion is incorrect. OCTA has determined that Bomel's bid was not responsive to the IFB requirements as it failed to follow material procedures set forth in the IFB. Specifically, specifying in its bid and confirming after bid submittal that it would be installing an elevator that was not determined under the procedures set forth in the IFB to be "equal" to the specified elevator.

It does not matter whether in Bomel's opinion the elevator for the Project is a "garden-variety" or "mundane" product. The IFB clearly set forth that OCTA, under applicable State law and Federal Transit Administration regulations, was specifying a specific product or its "equal". OCTA is allowed, in the context of public works projects, to specify specific products by brand name and model so long as it allows for an "equal" product to be used. This "equal" determination is not a determination that is left up to a bidder's decision. It is a determination that OCTA as the owner and bidding authority is required to make. As such, OCTA's IFB provided a process and a time frame by which a bidder who wished to substitute a product can do so by submitting the required backup documentation

in order to allow OCTA and its designer, not the bidder, to make said determination.

Bomel failed to follow that process and committed to bidding an elevator that had not been determined to be an "equal" product under the requirements of the IFB. Additionally, Bomel personnel confirmed this fact to OCTA staff after the submission of its bid. Bomel's failure to follow that process is not immaterial as Bomel asserts. Moreover, Bomel's assertion that it did not gain an unfair advantage by specifying a non-equal product is contrary to the facts. Bomel's own protest letter evidences this. The Excelsior elevator specified by Bomel was \$121,990 less than the specified Mitsubishi elevator. Bomel's listing of this elevator without a determination of "equal" being made by OCTA does put all other bidders at a disadvantage.

In summary, Bomel failed to follow the required process contained in the IFB for specifying an "equal" product. Bomel has the obligation to review the IFB in its entirety and conform its bid with the IFB's requirements. Bomel failed to do so. Accordingly, OCTA denies Bomel's protest.

Should you have any questions regarding this letter, please feel free to contact Marjorie Morris-Threats, Senior Contract Administrator at (714) 560-5633 or by e-mail at mthreats@octa.net.

Sincerely,



Virginia Abadessa,

Director

Contracts Administration and Materials Management

Cc: Lora Cross, Project Manager
Contract File

Sent via E-mail to Btrachtman@trachtmanlaw.com and Jure@bomelconstruction.com and U.S.
Certified Mail

TRACHTMAN & TRACHTMAN, LLP
ATTORNEYS AT LAW

BENJAMIN R. TRACHTMAN
MARC A. TRACHTMAN
RYAN M. CRAIG
TIMOTHY M. SMITH
KEVIN L. HENDERSON
MATHEW J. VANDE WYDEVEN
KEVIN C. PEGAN
KELLI A. TRACHTMAN
JULIE A. HAMLIN
DANIEL S. SHIMELL
KELSEY E. QUIST
JEFFREY E. FLYNN

23046 AVENIDA DE LA CARLOTA, SUITE 300
LAGUNA HILLS, CA 92653
TELEPHONE (949) 282-0100
FACSIMILE (949) 282-0111
www.trachtmanlaw.com

February 24, 2017

TRANSMITTAL OF BID PROTEST
FOR CHIEF EXECUTIVE OFFICER
REVIEW

VIA HAND DELIVERY

Mr. Darrell Johnson, CEO
Orange County Transportation Authority
Contracts Administration and
Materials Management Department
600 South Main Street, 4th Floor
Orange, CA 92868
Attention: BID PROTEST

Re: **Metrolink Parking Structure at the Orange Transportation Center**
Invitation for Bids No. 6-1521
Notice of Bid Protest of Bomel Construction Co., Inc.
Our Client : Bomel Construction Co., Inc.
Our File No. : 999-1732

Dear Mr. Johnson:

Pursuant to the CAMM Policy Manual, Section 11, please find attached my client's Bid Protest submitted to the OCTA for the above-referenced project and the February 16, 2017 CAMM Response/Rejection of Bomel Construction Co., Inc.'s ("Bomel") bid protest. Please pay particular attention to the following fundamental positions in our Bid Protest that the CAMM staff failed to appreciate nor address:

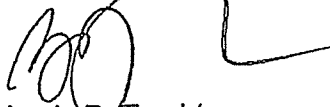
First, there are provisions for submitting "or equal" product substitutions in both the pre-bid instructions and the construction specifications (which govern post-award performance). In fact, in the construction specifications, the words "or equal" appear over 278 times to guide the successful contractor to make post-contract award product substitutions, which is a standard practice in all construction projects -- including this one. While there are pre-bid instructions dealing with requests for "or equal" product substitutions, there is absolutely no language that says all product substitutions for this project must be submitted and approved before bid opening. Further, there was no guidance/language identifying which products must be pre-approved prior to bid opening versus which ones can be approved during the normal course of construction (e.g., the 278 instances where this process is referred to). CAMM's rejection seems to stand for the proposition that no post-contract product substitution requests will be considered despite the Specifications, and longstanding construction custom and practice expressly stating otherwise.

OCTA
Mr. Darrell Johnson
Metrolink Parking Structure – IFB No. 6-1521
February 24, 2017
Page 2 of 2

Second, while two of the other bidders, W.M. Klorman and Largo Concrete, named Mitsubishi Electric ("Mitsubishi") as the elevator subcontractor, these bidders did NOT (and could not) agree to furnish the specified Model IDH-S-H1 because that model is manufactured in Mexico and violated the project's Buy America requirement. Mitsubishi's elevator bid proposal, which was also bid to Bomel, was based on an "or equal" product manufactured by a vendor other than Mitsubishi. Further, none of these other bidders, just like Bomel, obtained pre-bid opening approval for the "or equal" elevator product that Mitsubishi was going to be supplying to the project. In sum, whether the "or equal" elevator product was going to be supplied by Mitsubishi or Excelsior (Bomel's subcontractor), it was going to require "or equal" approval once the contract was awarded. CAMM cannot credibly state that Bomel's bid was non-responsive in this situation.

Very truly yours,

TRACHTMAN & TRACHTMAN, LLP



Benjamin R. Trachtman

BRT:sas

Enclosures

cc: Mr. Jim Ure (via e-mail w/ enclosures)