ALAMEDA COUNTY
CONGESTION MANAGEMENT AGENCY

1333 BROADWAY, SUITE 220 • OAKLAND, CA 94612 • PHONE: (510) 836-2560 • FAX: (510) 836-2185
E-MAIL: mail@accma.ca.gov • WEB SITE: accma.ca.gov

ADDENDUM NO. 1

RAPID BUS PROJECT - TELEGRAPH
PROJECT NO. 03-05

June 23, 2005

Dear Contractor:

This addendum is being issued to the contract for the Rapid Bus Project – Telegraph, Project No. 03-05.

Submit bids for this work with the understanding and full consideration of this addendum. The revisions declared in this addendum are an essential part of the contract.

Bids for this work will be opened on **Thursday, July 14, 2005 at 2 P.M.**

This addendum is being issued to revise the Notice to Contractors, Special Provisions, Proposal and Contract. The following items indicate additions and/or deletions to the above referenced documents, and are hereby made a part thereof and are subject to all applicable requirements hereunder as if originally shown and/or specified.

The documents of this project are hereby changed as follows:

I. Special Provisions

1) Title Sheet – Revise Bid Opening Date to **Thursday, July 14, 2005, 2:00 P.M.** (PST).

2) Title Sheet – Revise Pre-Bid Meeting to Thursday, June 23, 2005, at 10:00 AM.

   Note: CMA will hold a second pre-bid meeting on Tuesday, June 28, 2005 at 10:00 A.M. to answer questions and to provide minutes of the pre-bid meeting that was held on June 23rd. Minutes of both meetings will be distributed to all planholders.

3) Notice to Contractor – Change Bid Opening Date in first paragraph to 2:00 PM (PST), Thursday, July 14, 2005.

4) Notice to Contractor – Change the third bullet in the fifth paragraph to read:

   If the Additive Bid Items are awarded, an additional 30 working days will be allowed.

5) Proposal Form – DBE Good Faith Effort. Add the attached description for Good Faith Effort.

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To Proposal and Contract book holders:

- Indicate receipt of this addendum by completing the addenda certification form in your proposal.
- Submit bids in the Proposal and Contract book you now possess.
- Inform subcontractors and suppliers as necessary.

If you are not a Proposal and Contract book holder, but request a book to bid on this project, you must comply with the requirements of this letter before submitting your bid.

In addition, attached is a List of DBE Contractors.

This office is sending this addendum via fax and mail to Proposal and Contract book holders to ensure that each receives it.

Sincerely,

FRANK FURGER, DEPUTY DIRECTOR
Alameda County Congestion Management Agency

Attachment (List of DBE Contractors)

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GOOD FAITH EFFORT TO ATTAIN THE DBE GOAL

It is the CMA's intent and policy to fulfill its Goal for DBE Participation. If a Prime Contractor has failed to meet the applicable DBE Goal, the CMA must determine whether the Prime Contractor actively and aggressively sought to meet the DBE Goal. The efforts employed by the Prime Contractor should be those that one could reasonably expect a bidder to take if the bidder were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract Goal, and the CMA shall consider the quality, quantity and intensity of the different kinds of efforts that the bidder has made. Efforts that are merely pro forma shall not be deemed a Good Faith Effort by the Prime Contractor. Regardless of a Prime Contractor's motivation, efforts that could not reasonably be expected to produce a level of DBE Participation sufficient to meet the DBE Goal are not Good Faith Efforts as required by this Program.

A. Good Faith Effort Criteria. A Prime Contractor shall provide evidence of the extent to which it took the following actions in order to establish that it made a reasonable Good Faith Effort to meet the CMA's applicable DBE Contract Goal:

1. Attending pre-bid meetings scheduled by the CMA to inform all bidders of the DBE Program requirements for the project for which the contract will be awarded.

2. Identifying specific items of work to be performed by DBEs in order to increase the likelihood of meeting the DBE Goal, including breaking down contracts into constructable units. his includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation.

3. Providing written notice of interest in soliciting bids on the contract to DBEs. Written notice shall specify which items of work the Prime Contractor has identified pursuant to paragraph 2. This notice shall be provided to DBEs not less than 10 calendar days prior to the opening of Bids, or pursuant to the notice period set forth in the specifications for a given Contract. These solicitations shall include a description of the specific items of work to be performed by the DBEs and all related conditions of the work. The CMA shall make the Directory available to the bidders not less than 15 days prior to the date the Bids are opened.

4. Following up the written initial solicitations of interest by contacting the owner or other manager of the DBEs to determine with certainty whether the enterprises were interested in performing specific items of the project.

5. Making the project plans, specifications, and requirements for the selected subcontracting or material supply work available for review by interested DBEs.

6. Where needed, advising and making efforts to assist interested DBEs in obtaining lines of credit, or required insurance.

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7. Negotiating in good faith with DBEs and, as determined by the CMA, not unjustifiably rejecting as unsatisfactory bids prepared by any DBE.

8. Contacting the CMA, identifying the DBEs contacted and explaining any problems securing DBE bidders at least five (5) working days before Bid opening.

9. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. A potential Subcontractor's standing within its industry, membership in specific groups, organizations or associations, and political or social affiliations (for example, union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the Prime Contractor's efforts to meet the Contract Goal.

10. Advertising, not less than ten (10) calendar days before the date the Bids are opened, in one or more daily or weekly newspapers, trade association publications, minority or trade oriented publications, trade journals, or other media, that may be specified by the CMA to solicit DBEs that are interested in participating in the project. This paragraph applies only if the CMA provides public notice of the project not less than 15 calendar days prior to the date the Bids are opened.

11. Requesting assistance from minority and women's community organizations, contractors' groups, local, state, or federal minority and women business assistance offices, or other organizations that provide assistance in the recruitment and placement of DBEs, if any are available.

12. Making any other efforts to obtain DBE Participation that the CMA could reasonably expect would produce a level of participation sufficient to meet the CMA's Goal and requirements.

    Prime Contractors who have not met the DBE Goal for participation will demonstrate in their Bid documents that they have used Good Faith Efforts to utilize DBE Subcontractors, suppliers, manufacturers, brokers, truckers or owner/operators of equipment. Before noon of the first working day following the date the Bid was submitted, contractors who have not met the Goal will submit a Good Faith Effort Report. The Prime Contractor will list on the report the names of all DBEs contacted by the Prime Contractor to solicit their Bids; the name and title of the person contacted; the date contact was made; and the dates of all follow-up contacts. The Prime Contractors will also identify specifically the selected items of work that Bids from DBEs were requested for; the dates plans and specifications were made available to the DBEs; what technical assistance was offered the DBEs; and the reason that the bid was rejected. Prime Contractors will attach all letters and other documents relating to their efforts to comply with the Good Faith Effort requirements to solicit DBE Participation.

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In determining whether a Prime Contractor has made good faith efforts, the CMA may take into account the performance of other bidders in meeting the DBE Goal of the Contract. For example, when the apparent successful Prime Contractor fails to meet the contract Goal, but others meet it, the CMA may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful Prime Contractor could have met the Goal. If the apparent successful Prime Contractor fails to meet the Goal, but meets or exceeds the average DBE participation obtained by other bidders, the CMA may view this, in conjunction with other factors, as evidence of the apparent successful Prime Contractor having made good faith efforts.

The CMA recognizes that a bidder using good business judgment would consider a number of factors in negotiating with Subcontractors, including DBEs, and would take a firm's price and capabilities as well as the contract Goal into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the Contract DBE Goal, as long as such costs are reasonable. Also, the ability or desire of a Prime Contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make Good Faith Efforts. Prime Contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

Good Faith Effort Review. If a Prime Contractor has not met the applicable DBE Goal, the CMA shall investigate whether the Prime Contractor made a Good Faith Effort to meet the DBE Goal and shall recommend to the CMA's Board whether the Bid should be accepted or rejected.

In its investigation, the CMA may contact the DBEs listed on the Good Faith Effort Report to verify the information provided by the Prime Contractor. The Prime Contractor will also provide further documentation regarding its efforts to attain DBE Participation as requested by the CMA. Whenever the CMA recommends rejection of a Bid that has not met the DBE Goal, the Prime Contractor may appeal the rejection of its Bid to a Good Faith Effort Review Committee ("Committee") assembled for this purpose by the CMA. The Committee will review the CMA's decision to award a contract based on Good Faith Effort when the DBE Goal is not met. The Committee shall consist of three (3) members appointed by the Chair of the CMA Board and shall include at least one CMA staff member, and at least one CMA Board representative.

The Committee shall hold a hearing in Alameda County. All Subcontractors listed on the Good Faith Report will be given notice of the hearing at least ten (10) days before it takes place. The Committee will review evidence at the hearing to determine whether the Prime Contractor made a Good Faith Effort to meet the DBE Goal. The Committee shall review and keep confidential any information revealing a Prime Contractor's proprietary interests and shall exclude the public from the hearing for that limited purpose. The Committee shall give the bidders and Subcontractors participating in bids on the project an opportunity to present evidence relating to the Prime Contractor's Good Faith Effort to meet the DBE Goal.

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The Committee's decision on the Prime Contractor's Good Faith Effort shall be final and binding on the CMA. The Prime Contractor will receive a written decision on reconsideration, explaining the basis for finding that the Prime Contractor did or did not meet the Goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to DOT.

END OF ADDENDUM NO. 1

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