

Moynihan Station Development Corporation

FOR CONSIDERATION

January 18, 2013

TO: The Directors

FROM: Tim Gilchrist

SUBJECT: New York City (New York County) – Moynihan Station Civic and Land Use Improvement Project

REQUEST FOR: Authorization of a Change Order for the Construction Contract with Skanska USA Civil Northeast, Inc. (“Skanska Civil”)

CONTRACT NEEDS AND JUSTIFICATION

I. Contract Summary

Contractor:	Skanska USA Civil Northeast, Inc.
Scope of Services:	Construction Phase 1 Moynihan Station, West End Concourse & Related Trainshed work
Contract Term:	June 1, 2012 to December 31, 2016
Contract Amount:	Not to exceed \$ 147,750,000 +\$14,775,000 contingency
[Proposed Change Order Amount]:	Not to exceed \$22,261,000 + \$2,226,100 contingency
New Proposed Total Contact Amount:	\$170,011,000 + 17,001,100 contingency

Funding Source(s):

Original contract funded by a combination of FRA, MTA and PA funds.

Change Order – \$15,000,000 new FRA High Speed Rail funds through grant from NYSDOT. \$7,261,100 and contingency from FRA Appropriation funds. Both funding sources are reimbursed at 100%.

Authorization is sought to enter into a change order with Skanska USA Civil Northeast, Inc. for its performance of trainshed structural work associated with the Project’s Platform Ventilation System.

The Moynihan Station Project will build a new intercity train hall for Amtrak within the Farley Post Office Building.

Phase 1 consists of three sub-projects:

- West End Concourse (“WEC”) Expansion and related Railroad work, including an alternate for creating a new waiting area;
- Platform Ventilation System;
- Connecting Corridor and related Subway work.

Phase 1 is a pre-requisite to Phase 2, which is the construction of a new Amtrak Station within the James A. Farley Post Office Building.

The contract for the first sub-project, the expansion of the West End Concourse, was approved by the MSDC Board on May 9, 2012, with the contract awarded to Skanska USA Civil Northeast, Inc. at a cost of \$147,500,000.

MSDC, in September 2012, was awarded by FRA, through NYSDOT, FRA High Speed Rail funds in the amount of \$30 million for additional Phase 1 work. This additional work includes the completion of the Connecting Corridor sub-project concurrently with the WEC sub-project (scheduled completion September 2016) which will minimize the construction impact on Penn Station customers. The funding will also allow MSDC to advance the Platform Ventilation System sub-project in several stages.

The first stage will consist of the work in the Penn Station trainshed C Yard, which involves the structural work to build the rooms that would hold the fans and the substation that would provide power to the fans. To the extent funds are available in the grant and existing grants, the rooms in E Yard will be constructed. (Prior to the original bid, it was agreed with Amtrak and LIRR that this work, on the north side of the trainshed in C Yard and the south side in E Yard, could be carried out in two 70 day periods with 24/7 construction rather than on weekends to minimize the impact on train operations and the need for Amtrak Electrical staff to lower and raise the catenary (power lines) in the Yards after each weekend outage.). The next stage of the Platform Ventilation System sub-project would consist of furnishing and installing the ventilation fans and performing the related electrical and mechanical work.

This staged implementation approach has the concurrence of USDOT, FRA, Amtrak, MTA, LIRR, NJ Transit and the New York City Fire Department.

The project team (MSDC staff, PA staff, Construction Manager STA JV and Holland & Knight) have reviewed the contracting options for constructing the Connecting Corridor sub-project and the trainshed structural work for the Platform Ventilation System sub-project using the current funding and the additional \$30 million in funding from FRA.

Due to its nature, the Connecting Corridor sub-project can be independently bid to a broader group of contractors than the seven that were prequalified for the WEC and Platform Ventilation System sub-projects. The current WEC contract includes all trainshed foundation work for the Connecting Corridor. The only coordination between the Connecting Corridor contractor and the WEC contractor, Skanska, will be minor changes to the Skanska 33rd Street Plaza work to include the new A/C/E Subway entrance and at the border of the Subway mezzanine and the WEC entrance. Unlike the WEC sub-project work, the Connecting Corridor sub-project work will only require minor outages from Amtrak.

The Platform Ventilation System sub-project work is more complicated. Having a second contractor perform the Platform Ventilation System structural work in the trainshed would severely impact the WEC sub-project work:

- The Platform Ventilation System and WEC sub-projects are very close in proximity in the trainshed (as close as 8 feet) and in certain areas the access would need to be provided by a common work train. The additional cost, delays, and operational variables of the coordination of such proximate work and limited work train access would negatively affect the currently contracted WEC sub-project work and the work to be contracted for the Platform Ventilation System sub-project.
- The WEC sub-project construction contract guarantees the contractor 32 weekend outages per year, the maximum that are available, and no additional outages are available due to the moratorium (mid November to mid January) and holiday restrictions. Taking outages from the WEC contractor for another contractor's performance of Platform Ventilation System work would lead to contractor claims against MSDC and failure to meet the deadline for the completion of the WEC sub-project.
- Amtrak agreed to weekend track outages for the WEC sub-project. The Platform Ventilation System sub-project work in C and E Yards can be carried out only if the work outages are coordinated and designed to minimize the need for additional Amtrak electrical and protection staff. Voluntary coordination would be practically impossible with multiple contractors. Using multiple contractors would require MSDC to manage each contractor's work schedule and means and methods, and this would expose MSDC to potentially substantial contractor claims for delay and extra work.
- The WEC sub-project contractor already has control of the laydown/staging areas on the Empire Line and no additional areas are available. A separate contractor for the Platform Ventilation System sub-project work would not have access to a laydown/staging area, which is required to perform the work. Amtrak requires that

all steel be onsite prior to the start of the extended outage, and a separate Platform Ventilation System sub-project contractor could not comply with this requirement given the unavailability of an additional laydown/staging area.

- Even if alternative laydown/staging areas were available, the movement of work trains to the trainshed would require precise coordination between separate contractors, and inevitable conflicts between the two and would lead to claims by both contractors against MSDC; and multiple contractors also would require additional Amtrak protective staff beyond the staff that included in the current Force Account Agreement between MSDC and Amtrak. Amtrak is already stretched in providing sufficient staff to support the project and cannot be expected to provide additional support to accommodate a second contractor working in the trainshed.
- Per Amtrak, independent of this staff constraint, the movement of multiple independent work trains could reduce productivity by up to 1 hour per event for either or both contractors.
- Any mitigations undertaken to accommodate a separate contractor would come at the expense of Skanska, either in terms of laydown/staging area space, Amtrak work force availability, or scheduled track outages, all of which can be expected to automatically result in expensive delay/damage claims from Skanska against MSDC.

In summary, the introduction of a second contractor to carry out the Platform Ventilation System sub-project work in the trainshed: (i) would result in claims against MSDC for delay and interference from the WEC sub-project contractor; (ii) possibly delay the WEC and the Platform Ventilation System sub-projects beyond the timeframe for which project funding is available; and (iii) require practically impossible coordination of laydown/storage areas, work train access to the trainshed, and performance of the work. It is therefore recommended to negotiate with Skanska USA Civil Northeast, Inc. in order to obtain a competitive price to carry out the trainshed structural work associated with the Platform Ventilation System.

The Connecting Corridor sub-project work contract will be released for bid shortly with an anticipated contract award in February 2013.

The project team has negotiated with Skanska USA Civil Northeast, Inc. for the C Yard work. The negotiation resulted in Skanska agreeing to perform the C Yard work for a total of \$22,261,000 compared to the Engineer's Estimate, prepared by STA JV, the Construction Manager, of \$21,052,000. The project team considers this price to be a good value to MSDC and recommends that the Board approve a change in the existing Skanska contract to include this change order.

Once prices are received for the Connecting Corridor project it will be determined if it is feasible to proceed with the work for the Platform Ventilation rooms in E Yard.

As this is not a competitive bid contract the justification for this award will be posted on the MSDC web site as required in the FRA Grant.

II. Contractor Selection Process

- Request for Qualifications for prequalifying contractors was advertised in NYS Contract Reporter May 20, 2011. Contractors were qualified based upon Experience of Firm, Qualifications of Project Manager, Specific Work Experience critical to the Project, Bonding and Financial Capacity and Safety Record.
- Twelve firms responded and the MSDC Board prequalified seven contractors on August 11, 2011.
- After prequalification selection criteria was low bid.
- Original bid packages made available to prequalified contractors on September 30, 2011. Seven bids received on January 12, 2012. All bids rejected on February 3, 2012. Revised package released March 1, 2012. Bids opened April 26, 2012. Three bids received and Skanska USA Civil Northeast, Inc. was low bidder, and MSDC Board approved award on May 9, 2012.
- Skanska USA Civil Northeast, Inc. was reviewed and found responsible in both the MSDC Board action of August 11, 2011 and May 9, 2012. This included a review by PANYNJ staff in addition to consulting the list of non-responsible bidders and debarred offenders maintained by the NYS Office of General Services.

Pursuant to State Finance Law Section 139-j and 139-k and the Corporation's policy related thereto, staff has; a) considered proposed contractor's ability to perform the services provided for in the proposed contract; and b) consulted the list of offerers determined to be non-responsible bidders and debarred offerers maintained by the New York State Office of General Services. Based on the foregoing, staff considers the proposed contractor to be responsible.

III. Scope of Work

Platform Ventilation System C Yard Sub-Project construction includes three new fan rooms and a sub-station room structures in the train shed for the Platform Ventilation System. The trainshed structures include all of the fan rooms and support structures necessary to hold the ventilation fans, conduit and other mechanical equipment that constitute the completed Platform Ventilation System. Construction includes the electrical sub-station structure. Structures consist of three new Fan Rooms, located to the north of the Amtrak controlled trainshed. The completed electrical sub-station room will accommodate the main termination/switching for the new power feeds to service

the fan rooms. Work also includes all necessary steel erection and concrete and masonry work.

IV. Contract Term, Price and Funding

This change order does not impact the original contract schedule; the change order will be paid upon completion.

Funding for this construction contract will be from the FRA High Speed Rail grant and the Appropriations grant administered by FRA. Both grants reimburse 100% of project costs so no match is required.

V. Non-Discrimination and Contractor & Supplier Diversity

MSDC's DBE/MBE/WBE Program Plan will apply to this contract. Skanska USA Civil Northeast Inc. will be required to use its best efforts to achieve a Minority/Women's Business Enterprise participation goal of 20% of the total dollar value of work performed pursuant to contracts or purchase orders entered into in connection with the construction work related to the Project. This is a comprehensive goal for all areas of the project (i.e., professional, construction and purchasing of supplies), and therefore the overall goal for the project is 20%. MSDC will also encourage DBE participation, but there is no numerical goal for DBEs.

For the base project Skanska USA Civil Northeast Inc. has submitted a plan to achieve up to 21% participation.

VI. Environmental Review

ESD staff, on behalf of MSDC, has determined that the requested authorization to amend a construction contract constitutes a Type II action as defined by the New York State Environmental Quality Review Act and the implementing regulations for the New York State Department of Environmental Conservation. No further environmental review is required in connection with this request.

VII. Requested Actions

The Directors are requested to authorize the Corporation to authorize a change order for the construction contract with Skanska USA Civil Northeast, Inc. in the amount of \$22,261,000 to a total of \$170,011,000 with a 10% contingency of \$17,001,100 for a total amount of \$187,012,100, as set forth in these materials.

VIII. Recommendation

Based on the foregoing, MSDC staff recommends approval of the requested actions. Pursuant to the Board-approved consulting services agreement between MSDC and PANYNJ and the grant conditions set forth by USDOT/FRA, the Port Authority has submitted to MSDC the Port Authority's Letter of Recommendation to Award.

IX. Attachments

Letter of Recommendation to Award – Port Authority of New York and New Jersey
Resolution

January 18, 2013

NEW YORK CITY (New York COUNTY) – Moynihan Station Civic and Land Use Improvement Project – Authorization of a Change Order for the Construction Contract with Skanska USA Civil Northeast and Authorization to Take Related Actions

BE IT RESOLVED, that based on the materials presented at this meeting (the “Materials”), a copy of which is hereby ordered filed with the records of the Corporation, the Corporation hereby finds Skanska USA Civil Northeast Inc. to be responsible; and be it further

RESOLVED, that in accordance with the Materials, a Change Order for the contract with Skanska USA Civil Northeast Inc. for an additional amount not to exceed \$22,261,000 plus a 10% contingency (totaling \$2,226,100) new contract amount for a total not to exceed one hundred eighty seven million twelve thousand and one hundred dollars (\$187,012,100) for the purposes and services, and substantially on the terms and conditions, as set forth in the Materials; and be it further

RESOLVED, that the President, or other Officer of the Corporation, or his or her designee(s) be, and each of them hereby is, authorized to take such action and execute such documents as may be necessary or appropriate to carry out the foregoing Resolutions.

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