

THIS PRINT COVERS CALENDAR ITEM NO. : 10.5

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Capital Programs and Construction

BRIEF DESCRIPTION:

Authorizing the Director of Transportation to execute Contract Modification No. 2 to SFMTA Contract No. 1281, Muni Metro Subway Escalator Rehabilitation Phase II, with Schindler Elevator Corporation (Schindler), to add L&W Construction and Cal West Inc., which were not listed on the subcontractors' list at the time of bid, as subcontractors; to make findings of public necessity required under Public Contract Code Section 4109; and to impose a penalty on Schindler of \$25,500, as authorized under Section 4110, reducing the total contract amount from \$19,582,833 to \$19,557,333.



SUMMARY:

- On January 20, 2015, the SFMTA Board of Directors authorized the execution of Contract No. 1281, Muni Metro Subway Escalator Rehabilitation Phase II, at a cost not to exceed \$19,582,833, and for a term of 1335 calendar days.
- The scope of work under this project is the rehabilitation of 17 escalators.
- Schindler failed to list two subcontractors with work over half of one percent in its bid: L&W Construction for \$153,000, and Cal-West Inc., for \$102,000, totaling \$255,000.
- Public Contract Code Section 4109 authorizes an owner to permit unlisted subcontractors to perform work only "in cases of public emergency or necessity," and Public Contract Code Section 4110 authorizes imposition of a penalty of up to ten percent of the amount of the work in question.
- The SFMTA believes that retaining the two subcontractors to assist in performing the escalators work to be a "public necessity" because of the critical nature of this escalator work.
- Schindler has agreed to a ten percent penalty of \$25,500.

ENCLOSURES:

1. SFMTAB Resolution
2. Project Budget and Financial Plan
3. Contract Modification No. 2

APPROVALS:

	DATE
DIRECTOR 	5/29/2018
SECRETARY 	5/29/2018

ASSIGNED SFMTAB CALENDAR DATE: June 5, 2018

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PURPOSE

The purpose of this calendar item is to authorize the Director of Transportation to execute Contract Modification No. 2 to the SFMTA Contract No. 1281, Muni Metro Subway Escalator Rehabilitation Phase II, with Schindler Elevator Corporation (Schindler), to add L&W Construction and Cal West Inc., which were not listed on the subcontractors' list at the time of bid, as subcontractors; to make findings of public necessity required under Public Contract Code Section 4109; and to impose a penalty on Schindler of \$25,500, as authorized under Section 4110, reducing the total contract amount from \$19,582,833 to \$19,557,333.

STRATEGIC PLAN GOALS AND TRANSIT FIRST POLICY PRINCIPLES

Contract No. 1281 will assist in the implementation of the following goals, objectives and initiatives in the SFMTA Strategic Plan:

Goal 1: Create a safer transportation experience for everyone.

- Objective 1.1 Improve security for transportation system users.
- Objective 1.3 Improve the safety of the transportation system.

Goal 3: Improve the environment and quality of life in San Francisco

- Objective 3.2 Increase the transportation system's positive impact to the economy
- Objective 3.2 Deliver services efficiently

Transit First Policy Principles:

1. To ensure quality of life and economic health in San Francisco, the primary objective of the transportation system must be the safe and efficient movement of people and goods.
2. Public transit, including taxis and vanpools, is an economically and environmentally sound alternative to transportation by individual automobiles. Within San Francisco, travel by public transit, by bicycle and on foot must be an attractive alternative to travel by private automobile.

DESCRIPTION

Background

The escalators at the Muni Metro Stations were constructed as part of the BART/Muni Metro project completed in 1972. The SFMTA is responsible for the maintenance of 28 escalators.

The modernization/replacement of the escalators started in February 2011. Due to budget limitations, this work was programmed to be performed in several phases. The first phase of the project, which was completed in May 2013, concentrated on five high priority outdoor escalators: one at Church Station, two at Hallidie Plaza, and two at Van Ness Station.

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The SFMTA originally intended to upgrade the remaining 23 escalators under Phase II. However, the scope was reduced from 23 to 17 escalators due to budget constraints. The remaining six escalators (four at Embarcadero and two at West Portal) will be addressed in the next phase when funding becomes available.

On January 20, 2015, the SFMTA Board adopted Resolution No. 15-014 awarding Contract No. 1281 to Schindler in the amount of \$19,582,833 and for a term of 1,335 days to upgrade the 17 escalators. On June 24, 2016, the Director of Transportation authorized Contract Modification No. 1 extending the term of the contract by 72 days at no additional cost to the SFMTA to change the escalator drives and make additional repairs due to unforeseen damages.

Reason for Contract Modification

On April 4, 2016, when Schindler submitted Progress Payment No. 1 for payment, staff discovered that Schindler sought payment for the work of two subcontractors, L& W Construction and Cal-West Inc., who were not identified on Schindler's Subcontractors' List attached to its bid. Staff notified Schindler of this discrepancy, and on April 17, 2016, the SFMTA received two letters from the Contractor requesting permission to add the two subcontractors.

On May, 17, 2016, the SFMTA wrote to Schindler explaining that failure to list a subcontractor that will perform work in excess of ½ of 1 percent of the total bid amount at the time the bidder submits its proposal to the awarding agency was a violation of California's Subletting and Subcontracting Fair Practices Act (Public Contract Code Sections 4100 et seq.). A contractor who fails to list such a subcontractor is presumed to be qualified to perform the work itself and must perform the work itself. If the contractor hires an unlisted subcontractor, the contractor would be subject to disciplinary action. Pub. Cont. Code § 4106.

An exception to the rule is in Public Contract Code Section 4109, which authorizes an owner to permit an unlisted subcontractor to perform work only "in cases of public emergency or necessity, and then only after a finding reduced to writing as a public record of the awarding authority setting forth the facts constituting the emergency or necessity."

Justification of Public Necessity

After receiving Schindler's letters requesting to add L&W Construction and Cal-West Inc., the Resident Engineer and the Project Manager met with Schindler to discuss the reasons for adding the two unlisted subcontractors. Schindler claimed that at the time of the bid, it intended that its personnel installing the new escalators would clean the existing truss and concrete coring to install the stainless steel gates. However, while working on the escalators at Hallidie Plaza and Harvey Milk Plaza during the first stage of the Contract, Schindler saw that the trusses, as well as the metal pans and pits of the escalators, were extremely layered with grease and oil, and contained hypodermic needles and human biohazards. Schindler stated that it did not have the personnel qualified to clean these conditions and had to hire a specially qualified and certified company, L&W Construction, to remove these hazards and other materials and certify that the existing trusses are safe from all

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hazards. The SFMTA and Schindler anticipate the same degree of grease buildup, biohazards and concrete coring depths throughout work on the remaining escalators.

Also, the new electrical feeders required core drilling of three-inch holes in the existing concrete wall at a depth of 12 inches plus or minus. Schindler states that it did not anticipate having to perform core drilling at the time of bid because the drawings showed a different route for electrical conduit routing than the one that was eventually chosen that required the core drilling, and did not have qualified personnel to do this work. Cal-West Inc. has the personnel capable of x-raying the concrete walls to avoid damage to structural rebar and electrical conduits from the core drilling.

Even if the contractor could have reasonably anticipated the deteriorated condition of the escalators and the necessity to perform core drilling, staff highly recommends adding L&W Construction and Cal-West Inc. to Contractor's list of subcontractors for their expertise in attending to these conditions. Staff believes that adding the two subcontractors is justified on the ground of public necessity.

Penalty

For the violations described above, Public Contract Code Section 4110 subjects the prime contractor to termination of its contract or a penalty of up to 10% of the amount of the subcontract(s) involved. The SFMTA has reviewed the subcontracts with both Cal-West, in the amount of \$102,000, and L & W Construction, for \$153,000 (totaling \$255,000). Because of the critical nature of this escalator work, staff believes that terminating the contract would not be warranted. Instead, staff recommends, and Schindler has agreed to, a 10 percent penalty of \$25,500. This money will be credited to the SFMTA under Contract Modification No. 2.

STAKEHOLDER ENGAGEMENT

The SFMTA's Outreach team has developed signs and implement other means to inform the public concerning the temporary impacts of the work across the different Muni stations. The Outreach team will continue outreach efforts to communicate these impacts and appropriate mitigation measures two weeks before construction starts at the specific station. Construction equipment will be staged safely at the platform and away from public areas. Impacts will be minimal at the platform level, and revenue service will not be impacted.

ALTERNATIVES CONSIDERED

The Project team held discussions with Maintenance staff concerning whether the work should be done by in-house staff. The required work is specialized and the SFMTA does not have in-house staff with the required skill set. Staff determined that using L&W Construction and Cal-West Inc., was the practical alternative.

FUNDING IMPACT

The total cost of this Project is \$26,233,105. This contract is funded by Federal and Local funds. All

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funding for this project has been secured.

The budget and financial plan for this Project is presented in Enclosure 2.

ENVIRONMENTAL REVIEW

On January 26, 2018, the SFMTA, under authority delegated by the Planning Department, determined that the proposed Contract Modification No. 2 to SFMTA Contract No. 1281 is not defined as a “project” under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b).

A copy of the CEQA determination is on file with the Secretary to the SFMTA Board of Directors and is incorporated herein by reference.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

The City Attorney Office has reviewed this calendar item.

RECOMMENDATION

Staff recommends authorizing the Director of Transportation to execute Contract Modification No. 2 to the SFMTA Contract No. 1281, Muni Metro Subway Escalator Rehabilitation Phase II, with Schindler Elevator Corporation (Schindler), to add L&W Construction and Cal West Inc., which were not listed on the subcontractors’ list at the time of bid, as subcontractors; to make findings of public necessity required under Public Contract Code Section 4109; and to impose a penalty on Schindler of \$25,500, as authorized under Section 4110, reducing the total contract amount from \$19,582,833 to \$19,557,333.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, the San Francisco Municipal Transportation Agency (SFMTA) Contract No. 1281, Muni Metro Subway Escalator Rehabilitation Phase II, will rehabilitate 17 escalators in the Muni Metro Subway stations; and,

WHEREAS, On January 20, 2015, the SFMTA Board of Directors adopted Resolution No. 15-014, authorizing the Director of Transportation to execute Contract No. 1281, Muni Metro Subway Escalator Rehabilitation Phase II, with Schindler Elevator Corporation (Schindler) at a cost not to exceed \$19,582,833, and for a term of 1335 calendar days; and,

WHEREAS, While the Contract work was underway, the SFMTA discovered that at the time it submitted its bid, Schindler failed to list two subcontractors that were scheduled to perform work in excess of half of one percent of the bid amount: L&W Construction for \$153,000; and Cal-West Inc., in the amount of \$102,000, in violation of California's Subletting and Subcontracting Fair Practices Act (Public Contract Code Sections 4100 et seq.); and,

WHEREAS, Public Contract Code Section 4109 authorizes an owner to permit an unlisted subcontractor to perform work only "in cases of public emergency or necessity, and then only after a finding reduced to writing as a public record of the awarding authority setting forth the facts constituting the emergency or necessity; and,

WHEREAS; During the first stage of the Contract, Schindler saw that the trusses, as well as the metal pans and pits of the escalators at Hallidie Plaza and Harvey Milk Plaza were extremely layered with grease and oil, and contained hypodermic needles and human biohazards; and

WHEREAS, Schindler determined that it had to hire a specially qualified and certified company, L&W Construction, to remove these hazards and other materials and certify that the existing trusses are safe from all hazards; and,

WHEREAS, The SFMTA and Schindler anticipate the same degree of grease buildup, biohazards and concrete coring depths throughout work on the remaining escalators that will be rehabilitated under the Contract; and,

WHEREAS, Schindler also determined that the new electrical feeders required core drilling of 3" holes in the existing concrete wall at a depth of 12" plus or minus; Schindler claimed that it did not anticipate having to perform core drilling and did not have qualified personnel to do this work; Schindler therefore hired Cal-West Inc., which has the personnel capable of x-raying the concrete walls to avoid damage to structural rebar and electrical conduits during the core drilling; and,

WHEREAS, Based on the above facts and circumstances, the SFMTA Board finds that the work being done by L&W Construction and Cal West Inc. is critical and necessary to protect the public health and safety; and,

WHEREAS, The SFMTA Board agrees that terminating the contract under these circumstances is not warranted; and,

WHEREAS, Schindler has agreed to the imposition of a ten percent penalty of \$25,500 under Public Contract Code Section 4110; and,

WHEREAS, On January 26, 2018, the SFMTA, under authority delegated by the Planning Department, determined that the proposed Contract Modification No. 2 to SFMTA Contract No. 1281 is not defined as a "project" under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b); and,

WHEREAS, A copy of the CEQA determination is on file with the Secretary to the SFMTA Board of Directors and is incorporated herein by reference; now, therefore, be it

RESOLVED, That based on the above findings, the SFMTA Board determines that Schindler's addition of L&W Construction and Cal West Inc. to assist in performing the escalator work is a "public necessity" under Public Contract Code Section 4109; and be it further

RESOLVED, That the SFMTA Board of Directors imposes a penalty on Schindler of \$25,500, as authorized under Public Contract Code Section 4110, to reduce the contract amount from \$19,582,833 to \$19,557,333; and be it further

RESOLVED, That the SFMTA Board of Directors authorizes the Director of Transportation to execute Contract Modification No. 2 to the SFMTA Contract No. 1281, Muni Metro Subway Escalator Rehabilitation Phase II, with Schindler Elevator Corporation, to add L&W Construction and Cal West Inc., which were not listed on the subcontractors' list at the time of bid, as subcontractors.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of June 5, 2018.

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

ENCLOSURE 2
MUNI METRO SUBWAY ESCALATOR REHABILITATION PHASE II

San Francisco Municipal Railway Contract No. 1281

Project Budget and Financial Plan

Cost	Amount
Conceptual Engineering Phase Staff Support (SFMTA, SFPW and Other Dept. Services)	\$63,862
Detail Design Phase Staff Support (SFMTA, SFPW and Other Dept. Services)	\$1,531,907
Construction Phase Construction Contract, Contingency, and Staff Support	\$24,637,336
Total Cost	\$26,233,105

Funding	Amount
Federal Grant	\$20,986,484
Local Grants	\$5,246,621
Total Funding	\$26,233,105

CONTRACT MODIFICATION NO. 2

**San Francisco Municipal Transportation
Agency
Contract No. 1281**

Contractor: Schindler Elevator Corporation
(SEC) 555 McCormick Street
San Leandro, CA 94577-1107

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The Contract is modified as follows:

1. Perform and execute the following:

CM-2.	Add the following two subcontractors to SEC's Subcontractors List: <ul style="list-style-type: none">• L&W Construction• Cal-West Inc.
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2. Add the following new Item to the Schedule of Prices:

CM-2	Penalty for Adding Two Unlisted Subcontractors	Lump Sum	-\$25,500
Total Amount of this Contract Modification:		Decrease	-\$25,500
Previous Total of Contract:			\$19,582,833
New Revised Total of Contract:			\$19,557,333

Total Contract Time added by this Contract Modification:	0 Days
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Previous Contract Substantial Completion Date:	02/04/19
Current Contract Substantial Completion Date:	02/04/19

3. This Modification is made in accordance with Article 6 and 7 of the Contract General Provisions.

