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OCTOBER 26, 2012

TO: BOARD OF DIRECTORS

THROUGH: ARTHUR T. LEAHY *ATL*
CHIEF EXECUTIVE OFFICER

FROM: KRISHNIAH N. MURTHY *KMS*
EXECUTIVE DIRECTOR, TRANSIT PROJECT DELIVERY

SUBJECT: NOTICE OF TERMINATION – GONZALES CONSTRUCTION
CONTRACT C0902

ISSUE

To inform the LACMTA Board of a Termination for Default issued to Gonzales Construction for lack of performance under Contract No. C0902 Division 20 Carwash and Car Cleaning Platform.

BACKGROUND

LACMTA issued a Notice to Proceed for Design/Build Contract No. C0902 to Gonzales Construction on October 7th, 2009. This Contract was for the construction of a new Car Cleaning Platform and a new train Car Wash within the Division 20 maintenance yard.

Based on the Contractor's Performance on October 4th, 2012, LACMTA issued a Cure Notice to Gonzales Construction. This Cure Notice was issued for the following reasons:

1. Since September 24th, 2012, Gonzales Construction has failed to pursue substantial work on the project. This is in non-conformance with the Contract under General Condition 41.1.4.
2. Since August 14th, 2012, Gonzales Construction has failed to respond to an LACMTA issued Quality Audit Report. Failure to provide a response is in non-conformance with the Contract under General Condition 41.1.2.

3. Gonzales Construction has failed to compensate persons performing work on the project. This is in non-conformance with the Contract under General Condition 41.1.7.
4. Gonzales Construction has failed to provide LACMTA with Conditional and Unconditional releases as required by CP-2 Progress Payments, Section D.3. This is in non-conformance with the Contract under CP-2 and General Condition 41.1.2.
5. Gonzales Construction has failed to provide acceptable Project Management oversight. Contract requires a Project Manager onsite at all times that Work is being performed. Gonzales failed to comply with this. This failure is in non-conformance with the Contract under General Condition 5.2.2.
6. Gonzales Construction has failed to comply with Technical Specification 01300 – Submittals, including failure to provide submittals at least 30 calendar days prior to the commencement of work, failure to provide the required information in the body of the submittal, and failure to identify deviations or substitutions to Contract requirements. This is in non-conformance with the Contract under General Condition 41.1.2.

On October 9th, 2012, Gonzales Construction responded to LACMTA's Cure Notice. This response was reviewed by Construction Management, Procurement and County Counsel. These parties jointly agreed that the Contractor's response to LACMTA's Cure Notice was inadequate. As a result, a Termination for Default was issued to the Contractor and the Contractor's surety on October 25th, 2012, in accordance with General Condition 41 of the Contract.

NEXT STEPS

In accordance with the Contract, LACMTA terminated Gonzales Construction's right of entry to the project site as of close of business Thursday, October 25th, 2012 and Construction Management began an inventory of all materials on-site. The project is currently shut down for all construction activity and access.

LACMTA has been notified that the Surety wishes to meet with all parties on November 9th, 2012 to discuss next steps. There are three possible scenarios:

1. The Contractor's Surety will send in its own management to direct Contractor's forces to complete the project.
2. The Contractor's Surety will replace the General Contractor with its own Contractor, which would need to be approved by LACMTA, to complete the work.
3. The Contractor's Surety will contest the termination and Procurement will take steps to prepare new IFB documents for the remaining work.

In any of these scenarios there will be a lapse in construction activity on the site for a period of time. The length of such a lapse depends on the amount of work remaining and how long it may take for the Surety to identify a qualified replacement Contractor.

For example, recently Metrolink was forced into a situation where the Contractor's Surety took over the Union Station Platform 7 project. There was a period of approximately 3 months in which no work took place while the Surety replaced the defaulted Contractor with an approved Contractor.