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JULY 23, 2014

TO: BOARD OF DIRECTORS

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

FROM: STEPHANIE WIGGINS *SW*
**EXECUTIVE DIRECTOR, VENDOR/CONTRACT
MANAGEMENT**

**SUBJECT: WESTSIDE PURPLE LINE EXTENSION, SECTION 1
PROCUREMENT PROCESS**

ISSUE

At its regularly scheduled meeting of the Construction Committee July 17, 2014, the Metro Board of Directors directed staff to file a written report addressing staff's application of its procurement policies and procedures in determining the award recommendation for the Westside Purple Line Extension Section 1 project.

DISCUSSION

The question concerning the application of Metro's procurement policies and procedures was raised in the context of a letter from Dragados USA on behalf of joint venture DAS regarding the award recommendation for the Westside Subway Extension RFP, C1045 (Attachment A). The following are responses to the issues in the correspondence that relate to the procurement process.

Dragados asserts that DAS project management and leadership team was consistently proposed throughout the entire solicitation.

Although DAS was pre-qualified as a joint venture firm, they did make changes to key personnel, including the proposed project manager. Metro's Proposal Evaluation Team appropriately assessed these changes in DAS's Best and Final Offer.

DAS raises questions concerning Metro's evaluation of the proposed DAS project management.

Staff has confirmed that the DAS proposed project manager does not meet the minimum qualifications defined in the RFP.

Dragados alleges that meeting minutes were not taken for all Westside, Section 1 meetings, in violation of the Metro procurement policy.

Metro's procurement policy does not require meeting minutes to be taken.

Dragados asserts that Metro's evaluation of all of the RFP factors were not properly explained, including the price factor.

The basis for evaluation scoring was provided in the RFP. The price factor includes 35 points for total project price, four points for delay compensation and one point for life cycle cost. Staff has confirmed that the evaluation scoring was performed in compliance with Metro's procurement policies, procedures and the method defined in the RFP, including the determination of the price scores for all proposers.

NEXT STEPS

Vendor/Contract Management has requested support from the Inspector General to provide investigative assistance for specific allegations made by Dragados concerning Metro's project manager. That review is in progress by the Inspector General staff.

However, yesterday afternoon, Metro received protests from the two joint ventures that are not recommended for award, DAS and Westside Transit Partners. Per Metro's Procurement Policy, the Contracting Officer will issue a written decision on each substantive issue raised in all timely filed Protests prior to the execution of the contract award, and not later than 45 days from the receipt of the Protest.

As a normal practice, the award recommendation for STS may be approved by the Board at the July 2014 meeting, subject to the resolution of all protests. The procurement process includes the right of the protestors to appeal any administrative decision to Metro's Chief Executive Officer. If any of the protests raise issues that merit a reversal of staff's award recommendation, or require that proposals be re-evaluated to determine a new recommended awardee, staff is obligated to return to the Board with a complete description of the issues raised, determinations and findings made, as well as any actions taken to address those issues so as to make a proper award recommendation.

ATTACHMENT

A. Dragados USA letter, dated July 10, 2014

DRAGADOS USA

July 10, 2014

Honorable Don Knabe
Chair, Construction Committee
Metro Board of Directors
One Gateway Plaza
Los Angeles, CA 90012

Subject: Westside Purple Line Extension Project, Section 1 Contract Award (C1045) Recommendation

Dear Chair Knabe:

I am writing to express our strongest concerns and reservations by the Dragados Astaldi Southland joint venture (DAS) that submitted a highly competitive proposal for Westside Purple Line Extension Project, Section 1. As detailed below, DAS is technically and managerially qualified to build this important project and submitted a best and final offer (BAFO) price \$192 million less than the proposer recommended by Metro staff in their report that we received on July 7, 2014 (Item 56 scheduled for consideration by your Construction Committee on July 17, 2014). We urge you and the Construction Committee to reject the Metro staff recommendation and recommend to the Metro Board of Directors award of the contract to DAS as the responsive and responsible proposer offering the Best Value. We further urge you to investigate the issues we raise below.

Qualifications

DAS is perplexed by and takes the strongest objection to the low scores given and negative characterizations made by Metro staff in the aforementioned report. We believe that the scoring received by DAS indicates either a lack of due diligence by Metro staff to confirm DAS's extensive experience or intentional action meant to steer the contract award to the team pre-determined and favored by Metro staff.

DAS is a highly experienced and qualified tunnel builder

Dragados, the lead partner in DAS, is the global leader in tunnel construction in all geological conditions. Dragados has successfully completed 857 miles of tunnel infrastructure to date, including 150 miles of subway transit and stations in locations such as New York City (Caverns and Queens extension), Ottawa (Confederation Line), Toronto (Eglinton Tunnels), London (Crossrail), Buenos Aires (Buenos Aires Subway),

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Lima (Nuevo Metro de Lima), Sydney (North West Rail Link), Barcelona (Barcelona Subway) and Madrid (Madrid Subway), projects which are currently being built. Astaldi, another partner on the DAS team, also has extensive tunneling experience. Together, DAS has successfully delivered subway projects in the most challenging conditions in cities like Madrid, Barcelona, London, Rome, and Warsaw. This makes us uniquely qualified for the Westside Purple Line Extension Project. We believe extensive global experience in tunneling is by far the most relevant qualification for this project.

Metro staff recognizes that DAS is qualified to complete the project

DAS was pre-qualified by Metro staff, indicating that Metro staff believes that our team is fully capable and able to deliver the project. To be clear, our pre-qualification included the same management and leadership in our proposal, including our BAFO. Metro staff generically acknowledges this point: "All four SOQs received from respondents met the minimum prequalification requirements and were invited to submit proposals." (p.6) Metro staff further says about us: "DAS and key personnel demonstrate general combined experience on a variety of similar major capital projects." (p.10)

However, Metro staff later critiques the DAS without merit as part of a rationale for not recommending DAS for the contract: "DAS Project Manager does not have rail transit experience and limited project management experience." (p.10) and "DAS Deputy Project Manager has recent project management experience on a multi-lane motorway highway tunnel project and no major experience on rail transit or other relevant major construction projects." (p.10). This experience is clearly outlined in DAS's proposal in the resume section. Again, if Metro staff had any concerns about the capability of DAS and, more specifically, its personnel, to build the project then DAS would not have been pre-qualified. As you know, pre-qualification is a requirement for this type of procurement under California law.

The Metro staff report also erroneously and falsely characterizes a supposed lack of relevant experience in the DAS team's project manager and deputy project manager as referenced above. Specifically, the DAS project manager has rail experience on Madrid-Valladolid high-speed rail line (which included extensive tunneling) and, more importantly, other tunneling experience on multiple major roadway projects. Likewise, the DAS deputy project manager has relevant experience managing construction on both the Los Teques (Venezuela) Metro subway system and the Copenhagen (Denmark) Metro system. As Metro staff is aware, the DAS team's senior managers have the requisite rail, tunneling, and major civil engineering experience to successfully deliver the project. The whole DAS team has the requisite mix of skills and experience to build this project at the highest level of quality. Complete resumes detailing DAS team member experience were submitted to Metro as part of our pre-qualification and formal proposal.

Procurement Process Irregularities

DAS urges the Construction Committee and Metro Board to fully and thoroughly investigate the issues below. An independent investigation by the Inspector General would be appropriate.

Lack of Transparency – Regional Connector Award

Dragados et al did not receive the Regional Connector staff recommendation and ultimately Metro Board contract award, despite providing the lowest price, by over \$80 million (not \$39 million as erroneously stated by Metro staff). To understand why, we requested a debriefing and various documents associated with procurement. Metro staff provided a verbal debrief and some requested information, but to date has not fully complied with our request for information. Whether an intentional withholding of information or something else, this lack of transparency negatively impacted DAS ability to provide Metro with the most responsive proposal possible for subsequent projects. In contrast, when Dragados et al bid the Crenshaw-LAX project and ranked second, Metro staff promptly and fully complied with requests for information.

Inappropriate Metro Staff Interference & False Statement in Staff Report

DAS took the design-build solicitation as a serious effort by Metro to secure design innovations that would result in more efficient, less expensive construction. Our original proposal included innovative approaches to achieve these important goals, including a re-sequencing of tunnel boring to reduce schedule risk and alternative architectural design to reduce the amount of soil removal necessary for underground auxiliary rooms. However, during the BAFO interview, Executive Officer Dennis Mori specifically and forcefully told DAS to exclude any innovative approaches. As a result of this verbal direction from Mr. Mori, DAS prepared an entire new proposal and changed its BAFO and priced the Metro design. In essence, the so-called design-build procurement became a traditional design-bid-build procurement as DAS was instructed to provide BAFO pricing for the RFP drawings prepared by PB without deviation. In this case, the lowest price responsible bidder should be awarded the contract. For this project, that bidder is DAS, \$192 million less than the recommended team and \$127 million less than the team scored second by Metro staff. The aforementioned \$192 million difference it is calculated taking into account Schedules A and B of the proposals and therefore the gap it is likely to widen through the amounts of Schedule C.

Consequently, the following statement in the Metro staff report is false and fails to acknowledge DAS proposed innovations or the direction from Mr. Mori: "Although the solicitation process allowed Proposers to submit alternate proposals, none were

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submitted." (p.7) DAS is not aware whether Mr. Mori and/or other Metro staff provided the same direction to all bidders, or whether only DAS was given such direction. DAS will be shortly requesting disclosure from Metro of any relevant records.

DAS Sought Clarification on BAFO Instructions

Executive Officer Dennis Mori's aggressive behavior during the BAFO interview was irregular and inconsistent with past Metro practice. Moreover, we understood that if we followed Mr. Mori's aggressive verbal instructions from our BAFO interview - accept the Metro design as provided - the DAS team could be placed at a significant disadvantage during the official Metro procurement team deliberations. Consequently, we submitted a letter to the Metro Team seeking clarity (attached).

Further Metro Staff Interference & Another False Statement in Staff Report

Another alleged weakness about the DAS proposal identified by Metro staff is: "All "Added Value" personnel who were in the original proposal were removed after the BAFO." First, the significance of this point is limited as it only represents three individuals out of 50 in the DAS organization chart. Second, and more importantly, DAS removed the "Added Value" personnel at the verbal direction of Executive Officer Dennis Mori at the aforementioned meeting of May 1, 2014. It is blatantly unfair for Mr. Mori to strongly criticize the inclusion of these personnel, which he did, and direct their removal, then co-sign a Metro staff report criticizing DAS for removing said personnel from our proposal. At the same time, the Metro staff report lists "Added Value" personnel as strength for the recommended team. This creates the strong impression that Mr. Mori was trying to weaken the DAS proposal knowing that he had pre-determined his recommended team.

Inaccurate & Damaging Mischaracterizations About DAS Proposal

The Metro report erroneously characterizes DAS twice: "DAS' description of their Construction Approach was not supported by a thorough detailed schedule." and "Construction Approach as presented in their Detailed Schedule exposes Metro to a high probability of cost and schedule risk." (p.11) DAS strongly objects to and disagrees with these negative characterizations about our professional approach to the project. In fact, DAS provided a detailed schedule and proposed schedule innovations (mentioned above) that would have reduced risk. Executive Officer Dennis Mori was not interested in listening to a comprehensive explanation by the DAS team and actually truncated DAS response during the interview process. While the belligerence and aggressiveness displayed by Mr. Mori was unprofessional, it is exacerbated by the false characterizations about DAS in the Metro report. DAS team members have extensive experience developing construction schedules that can and are successfully delivered

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to the expectations of owners. DAS does not understand why the Metro report and underlying scoring do not reflect this fact.

The Metro staff report further states about DAS: "Proposal illustrates a weak understanding of the overall Project as demonstrated by the organizational discontinuity between the Project Manager, Design Manager and key personnel, who were not familiar with the details of the contents of their Request for Proposal (RFP)." Again, this is simply not true. The DAS team is fully committed to the project, work well together, and understand the project as well as our proposed approach. Our team has worked together on other major projects across the globe, as described in detail in our proposal. More importantly, the DAS team members bring extensive international experience in subway construction that is always available to further strengthen the DAS team at any time. This is unparalleled experience that none of the other proposing teams can offer. Metro staff chose not to share the full breadth of our qualifications and experience for no legitimate reason.

Negative Tone & Lack of Documentation Undermines Future Bidding Participation

In various settings, Metro officials have expressed interest in expanding bidding competition. DAS supports this goal. Unfortunately, at different times during the procurement process Metro staff, specifically Executive Officer Dennis Mori, was openly hostile, aggressive, and even verbally abusive to DAS. In addition, in contradiction to the last two Metro procurements Dragados et al participated in, meeting minutes were not taken for all Westside Purple Line Extension Project, Section 1 meetings. We believe this to be a violation of Metro procurement policy, but it also creates inconsistency in the procurement process and fails to document irregularities DAS experienced during the current procurement. At a minimum, this sort of behavior creates the appearance of unequal treatment toward DAS. This sort of procurement practice undermines Metro's reputation and will limit competition in the future if it continues.

Uneven or Unfair Description of Qualifications Misleading

While we respect both the other teams who submitted proposals for this project, DAS objects to Metro staff's inflation of the recommended team's experience and lack of acknowledgement of DAS global leadership position in tunnel construction to justify the staff recommendation. The Metro staff report erroneously criticizes the DAS management team's alleged lack of relevant experience, but gives undue credit to the recommended team for local work. To be clear, the lead partner on the recommended team has yet to complete a Metro rail transit project and yet this would be the third major Metro project awarded to the team. The recommended team's highlighted experience includes work on (p.9): the Metro Gold Line Eastside Extension Light Rail

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Transit (project only included 1 mile of tunneling); City of LA North East Interceptor Sewer tunnel (was not a rail transit project); Exposition LRT —Phase 2 (project not completed yet and no tunneling included); and Foothill Extension LRT (again, no tunneling included). In contrast and as indicated above, DAS is the global leader in infrastructure tunneling and that fact should be properly and fairly acknowledged in both the Metro staff report text and underlying scores.

No Rationale for Scoring Decisions, Especially Price

The Metro staff report summarizes the scores for each proposer, but fails to adequately explain why each proposer received each respective score. As described above, if the negative comments about DAS in the Metro staff report were the basis for DAS receiving lower scores, then these scores are wrongly too low as the negative comments are either false, inaccurate, or misleading. The most egregious example of this failing is in the area of price. As the proposer with the lowest price, DAS was surprised to see Metro not rank DAS with maximum points, or at least the highest score. Instead, Metro staff scored price as follows: other proposer (\$1,571,775,900), 35.97 points; DAS (\$1,443,878,064), 35.01; recommended proposer (\$1,636,418,585), 30.98 points. Metro staff comments about DAS qualifications also resulted in scores that are too low.

Policy Issues

Finally, this procurement raises two important policy questions for the Metro Board of Directors.

Risk Management

While most credible builders can have multiple projects simultaneously under construction in different parts of the world, the Metro Board should be concerned that a single contractor would be responsible for delivering three major projects in the same city at the same time if the Metro staff recommendation is approved. Metro would be better served by having different teams dedicated to each project. This provides the further benefit of Metro being able to observe the actual performance of different teams and team members, which will provide better information in future procurements. Also, by spreading the work around to qualified and competitively priced teams, Metro creates the perception and the reality that any qualified team can compete for and win a construction contract. Conversely, "putting all your eggs in one basket" does exactly the opposite.

To the extent that the teams preferred by Metro staff for both the Regional Connector and Westside Purple Line Extension Project, Section 1 were recommended due to

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perceived strengths in the project manager, Metro will not realize these benefits since the same project manager is identified for both projects. The Metro staff report glosses over this significant and glaring issue: "Proposed Project Manager also selected for the Regional Connector as the Project Manager" (p.9). It is impossible for even the best project manager to dedicate 100% of his or her focus on a project when his or her time is split between multiple projects of this magnitude.

Fiscal Responsibility

Notwithstanding a fatal flaw in any proposal, Metro is well served by spending the tax dollars entrusted to you wisely and efficiently. We understand that there are many competing needs for financial resources. The \$192 million cost savings associated with the DAS proposal, if not captured, represents plenty of lost opportunities, e.g. continuation of the Foothill Extension beyond Azuza, continuation of the Westside Purple Line Extension west of the Veterans Affairs campus, Eastside Extension Phase 2, Planning for Sepulveda Pass, PE for East San Fernando Valley Project, BRT Studies, Burbank to Pasadena, additional funding for grade separations on the Crenshaw-LAX project, or funding for the Green Line-Crenshaw-LAX station and/or automated people mover, to name a few. The Metro Board also recently approved a difficult fare increase. Building promised transit projects in the most cost effective manner should be a cornerstone of Metro Board policy.

Conclusion

DAS stands ready and able to successfully build the Westside Purple Line Extension Project, Section 1 for a price of \$1,443,878,064, or \$192,540,521 at least less than the recommended team and \$127,897,836 less than the other team. In addition, DAS is confident that working with your engineering team we can further reduce this cost based on the design and sequencing approaches we originally proposed to Metro staff. The best outcome for Metro and taxpayers is to award the contract to the lowest price, qualified and responsible team, which is DAS.

DAS appreciates the Construction Committee's serious consideration of the issues we identify in this letter. Through this letter we hope that the Metro Board of Directors will take appropriate action to remedy the deficiencies in the Metro staff report and recommendation. Thank you in advance for your consideration.

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Sincerely,



Alejandro Canga Botteghelz
President of North America West
Dragados USA

cc: Honorable Mark Ridley-Thomas, Vice Chair, Construction Committee
Honorable Jacquelyn Dupont-Walker, Construction Committee
Honorable Gloria Molina, Construction Committee
Honorable Pam O'Connor, Construction Committee
Honorable Eric Garcetti, Chair, Metro Board of Directors
Arthur Leahy, Chief Executive Officer
Karen Gorman, Inspector General



May 22, 2014

To: Los Angeles County Metropolitan Transportation Authority
One Gateway Plaza
Los Angeles, CA 90012
(delivered via e-mail)

Attention: Eva Rodriguez
Contract Administrator
RFP No. C1045

Dear Ms. Rodriguez:

Re: Request for Proposal - Contract No. RFP No. C1045
Westside Subway Extension Project

We are seeking written clarification regarding verbal direction we were given by LACMTA staff at our recent meeting on Thursday, May 1, 2014. In advance of our upcoming best and final offer (BAFO) submittal by May 30, 2014, please confirm in writing as soon as possible that LACMTA is directing all proposers to submit a proposal and a BAFO price for the base project design contained in the original request for proposals/invitation for bids. If this is not the direction, please clarify in writing the direction to the proposers regarding design and price. Thank you in advance for your prompt response.

Yours truly,

For Dragados / Southland / Astaldi, a Joint Venture

Alejandro Canga Botteghelz