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NOVEMBER 27, 1996

TO: BOARD OF DIRECTORS

FROM: JOSEPH E. DREW  
CHIEF EXECUTIVE OFFICER

SUBJECT: METRO EASTSIDE CONSTRUCTION MANAGEMENT  
CONTRACT

This letter is to inform you that I am withdrawing my recommendation to select Metro East Consultants (MEC) as the construction manager for the Metro rail project into East Los Angeles.

As you are aware, on the morning of the Board meeting of October 23, 1996, the Office of the County Counsel informed me of an apparent irregularity in a bid submittal certification document of the Metro East Consultant team for the Metro Red Line Eastside Extension construction management contract. Following the discovery of this irregularity, County Counsel staff and our Director of Management Audit Services have reviewed MEC's bid submittal to determine the potential effect of this irregularity and the reason it was not identified earlier in our process.

The MTA Internal Auditor reported to me Monday that two of the major partners in the MEC team - DeLeuw Cather & Co. and TELACU - failed to provide essential information to the MTA in a questionnaire filed with their bid documents. In the auditor's opinion, both found to be non-responsive and have "material defects," in the applications. This conclusion is supported by legal counsel.

The certification document within which DeLeuw Cather made the material false statement clearly states: "A false statement or material omission made in connection with this Pre-Award Survey is sufficient cause for denial of a contract with the Los Angeles County Metropolitan Transportation Authority thereby precluding the proposer or any member of its team from participation in the contract."

The false statement by DeLeuw Cather, a twenty-percent partner of the MEC joint venture, that it had not been sued for fraud when in fact a lawsuit against it alleging fraud was pending in court renders the bid submitted by the MEC joint venture non-responsive, and in my judgement, disqualifies MEC from further participation in this procurement process. By letter, the CEO of Parsons Dillingham acknowledges the inaccuracy of the DeLeuw Cather response.

Separately, the auditor confirmed that TELACU failed to report a \$1,000 donation to an MTA Board member. This is also considered to be non-responsive.

All three proposers were initially deemed fully qualified for this project. The MTA's Construction Committee has recommended Jacobs Management Associates (JMA) to the full Board. If the full Board concurs with the committee recommendation, I am recommending to the Board that three considerations be negotiated into the final contract: first, that the firm's Chief Executive Officer submit a progress and status report to our Board on a monthly basis; second, that the team be required to prepare a transition plan to identify what key personnel will be made available for both projects at all times; and, third, that the awardee be required to prepare an emergency plan which will indicate a notification and implementation process for dealing with emergencies which may occur. I believe these considerations will provide an added measure of oversight and assurance to Board Members on this construction effort.

CONFIDENTIAL

**INTEROFFICE  
MEMORANDUM**

**Date:** November 26, 1996

**To:** Joe Drew, CEO 

**From:** Tony Padilla, Director, Management Audit Services Department

**Subject:** Assessment of Certification Defects - Metro East Side Procurement

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The inaccurate certifications made by DeLeuw, Cather, Inc. and TELACU Industries on the subject procurement raise two key questions:

- 1) adequacy of MTA's system to detect inaccuracies in disclosures made by contractors; and,
- 2) what affect an inaccurate disclosure should have on an entity's proposal, and how to evaluate materiality

These questions must be addressed more explicitly going forward.

Applying the Federal standard of false certification, a contractor would be prohibited from bidding on the contract in question. It would also trigger an investigation to determine suspension or debarment applicability (and possible violation of criminal statutes). In California, the standards appear less precise, and the question of how to interpret the inaccurate certifications is raised.

Based on my evaluation of the documents, the certifications, on their face, are false and knowingly or unknowingly, both firms filed false certifications. It is impossible to evaluate intent, so the documents must speak.

In my opinion, the documents stand alone regardless of interpretation, and both firms should be deemed non-responsive and not be allowed to participate. This then affects MEC's ability to meet the solicitation requirements, and without substitution, would likely cause the entire JV to be deemed non-responsive.