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MEMO TO: MTA Board Members & Alternates

FROM: John Fasana, MTA Board Member

SUBJECT: Eastside Construction Management Consultant Selection Process

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Over the holidays, I took the opportunity to review the 12 hours of oral interview videotapes, evaluation panel roundtable discussion transcript, Construction Committee transcript, and other relevant documents. My review confirmed the concerns expressed by the CEO that were communicated in his briefing to me as well as his October 7, 1996 recommendation. First, I believe it is useful to establish the appropriate context for my observations. The following examples may seem relatively small to some, but I believe there is no doubt that the incidents affected the selection process in that all three proposals were virtually in a 3 way tie with various features to distinguish each proposal. It is not unreasonable that the CEO would apply his weight to these evaluation criteria. The tapes show the Director of Contracts was not even handed to all three proposers. Not only were some of his questions improper (as noted below), but his actions placed the integrity of the oral interview and subsequent 'roundtable discussion' in question. I have summarized my pertinent observations that may be of interest to you.

Mr. Graw's responsibility as Director of Contracts was to facilitate a procurement evaluation process during the evaluation of the three proposers. In the first phase (written evaluation), the independent panel reviewed and scored the written proposals based upon previously stated evaluation criteria; including: experience, qualifications and management proposal. After the Phase I evaluation and scoring, MEC was ranked first, with JMA second and Bechtel third.

Phase II of the evaluation was the oral presentations and interviews. Before the interviews, the MTA was required in the procurement guidelines to notify the proposers in advance of the interviews of 'any major deficiencies' in order that they be prepared for the interviews. This requirement apparently was not followed when one reviews the oral interview tapes. Examples of Mr. Graw's uneven treatment in questioning the MEC Team are summarized below:

- Mr. Graw requires MEC to prepare their responses to questions in writing and FAX them to MTA that afternoon;
- Mr. Graw refers to a MEC joint venture member with the use of stigmatic construction slang 'body shop';

- Mr. Graw states that “our information differs with yours” inferring that MEC is incorrect in its response but does not explain the difference to panel members. (Think for a moment how this must have appeared to the panel members as MEC is in the position of being unable to respond due to a lack of critical information.)

Mr. Graw described his conduct during this oral interview Phase II at the October 17 Construction Committee meeting when he said, “. . . I was harder... one might perceive that I was harder on MEC because they had more problems with their subs than the other two firms.” Mr. Graw facilitated and led the oral interviews. The tapes indicate to me that he imposed his bias on the panel. It appears to me that his conduct affected the opinion of the independent evaluation panel when it came to scoring. This appearance is given greater weight the next day during the ‘roundtable discussion’ where he stated that “The hardest sell would have been MEC because we couldn’t sell it the first time.”

Phase III was the roundtable discussion. In my opinion, this meeting is the most controversial element of this procurement. For the CEO to be chastised publicly by some Board members for ignoring this stage of the procurement is the most disturbing of ironies because a careful review of this meeting can only leave the conclusion that it would be unprofessional to rely on the outcome of the roundtable discussion. Examples of some of the roundtable discussion are summarized below:

- The Procurement guidelines require the proposers to be ranked after scoring; however, there was no scoring at the roundtable.
- The Evaluation panel did not have their score sheets with them at the roundtable. Common sense suggests that a proper final evaluation would require reliance on the results so far.
- The ranking that resulted during the roundtable was actually suggested at the beginning by Mr. Graw, prior to any voting taking place, “. . . what is your argument in favor of JMA, in lieu of Bechtel.”
- Directly after the ranking, there is reference to “creative accounting”.
- Certain documents are alluded to in the discussion as being shredded, thus preventing close scrutiny of the integrity of the final scoring process.
- In the transcript, Mr. Graw never attempted to remedy the improprieties, instead, he appears to facilitate them.
- The determination of the independent panel that all three proposers were capable of doing the job and that the scoring was extremely close by the panel was omitted from the panel report as prepared by Mr. Graw.

Conclusion

The CEO has been criticized publicly and chastised by the press and certain MTA Board Members. I have considered all relevant facts concerning the evaluation including the CEO's briefing to me, my review of documents and tapes as noted above, and the CEO finding in his recommendation which stated:

"Following this [roundtable] session, the panel inexplicably altered the rankings of preferred firms such that Bechtel became ranked higher than MEC. There exists however, no scoring summary or justification for this change in the ordering. In the absence of such quantifiable evidence, staff cannot rely upon this roundtable discussion."

The CEO properly used his authority and judgment to ignore this part of the evaluation process which included bias and improper evaluation criteria not included in the procurement guidelines. The CEO's professionalism in the face of unsubstantiated allegations while attempting to best serve the MTA interests is clear when one reviews these tapes and manuscripts.