

We urge you to:

- 1) Defer the approval of a contract for Construction Package #1 and refine any delegation of authority for execution and management of the contract.
- 2) Request your staff to prepare a report documenting the circumstances of the change to the bidding process.
- 3) Request more detailed information from your staff on the differences in technical scores. Public statements by CEO Jeff Morales and the board member who was not involved with the RFP approval have suggested that all scores were excellent are not supported by the actual differences in scores or by anything in the documentation. If there is additional information on which Mr. Morales and Mr. Richards are making these statements, it should be provided to the Board and the public.
- 4) Request more information about the determination that there was not a material change to Tutor Perini's financial capabilities.
- 5) Request that Mr. Morales send a letter to the Legislature correcting previous statements. Mr. Morales sent a letter on Authority stationery to the Legislature stating that notifications had been made (<http://www.documentcloud.org/documents/692817-april-22-2013-morales-letter-to-ca-legislative.html>) on April 22, 2013. The Letter said "In addition, as part of the Authority's mission to increase transparency, notification was sent to Legislative staff and members of the media informing them when change (addendum) to the RFP was approved, included ... Addendum 4..." This is inaccurate and not true, in the "Absence of Malice" type of truth. Notification was not sent. Even if someone was to be hitting "refresh" on the Authority's website daily, the Change Logs that Mr. Morales referred to are very, very away from being in plain English. To make matters worse, no red-line version of documents like the Instructions to Bidders was provided.
- 6) Ask staff to provide you a full project budget update, that includes the work excluded from the D-B contract and project management costs so this can be compared to original budget.

**There still has been no transparency around the change in bidding process.** Every single one of our Public Records Act requests to understand why this change was made, what analysis supported it and who was involved in it have been deferred since mid April.

**The CEO's actions and lack of understanding of the Legislatively defined limits on his ability to act autonomously are very concerning.** Even today's resolution reflects a lack of understanding that Mr. Morales is not the Authority, the Board is. The statement:

“Whereas, the Authority has prepared a recommendation of the apparent best value and requests the approval of the Board to enter into a contract for Design/Build services for Construction Package 1” is inaccurate. The correct statement would be, “Whereas, the Authority staff has prepared....requests the approval of the Authority...”

We have included with this letter an article we wrote that describes the rationale for the significant limitations on Mr. Morales to act independently of the Board.

**Contrary to his statements, there is no general delegation of authority to Mr. Morales and his staff regarding the management of RFPs for construction. According to the Board Policies and Procedures, all such delegations must be made through a Board Resolution.**

There is a delegation of Authority for smaller value contracts and a delegation regarding A&E contracts, but no such delegation exists for contracts like the one you will consider today with good reason. While the Authority has existed since 1996, it has only recently grown into a project organization and it is very young institutionally for that purpose. The decision to change the process in a way that may result in much, much higher life-cycle costs for the people of California should not have been in the hands of one individual.

This is particularly true given the circumstances of this procurement process where the relative technical strengths would have been apparent by the ATC submission deadline in July. Authority staff and consultants met twice in June 2012 with the bidders to review these. While the precise order of technical ability might not have been known, it is inconceivable that the staff would not have known which bidding teams fell into a higher or lower cluster of scores. Even the fact that there were three at the bottom might have impacted the decision to change the process. We would suggest that this would have actually been even more reason to stay with the original process as bidders would have been incented to raise quality scores to stay in the running.

The City of Fresno will be highly impacted by this project. It is unprecedented because of the noise and vibration impacts to travel at 220 mph through a town, adjacent to its zoo and through a downtown area. We have previously criticized and questioned this decision. Once this decision has been, however, the Authority has a responsibility to provide a high quality project to the residents of the city.

Particularly as we believe that this is Mr. Rossi’s first experience with a public construction contract it would have been important to have the full board, with their decades of experience in public works, weigh in on the implications of the decision. The Board had a meeting on August 2, 2012 where it considered other changes to the contract. There is no reason it could not have considered the change then. Even if the decision had been made to change the process, the Board could later take accountability for the outcome of that decision, good or bad.

**Approval of the CEQA action to supplement the previously approved EIR was not properly noticed and would be a violation of the Bagley-Keene Act.**

The agenda item to approve the contract did not mention a CEQA item. Previous case law is very clear; such actions cannot be taken without proper notification. In this case, it seems appropriate to ensure that the residences and businesses that would be impacted by the decision be properly notified and have an opportunity to speak on this. Such a hearing or meeting should take place in Fresno, as the impacted area is one considered to be socio-economically disadvantaged.

**Tutor Perini no longer has the Financial Capacity to undertake this project, according to the criteria laid out in the Instructions to Bidders.** It was downgraded to junk bond status in September 2012 by Moody's because of decreased liquidity and increased indebtedness. Tutor's financial issues have become more serious since then, with only \$35 million of cash available for general corporate purposes remaining as of March 31, 2013. Our own analysis shows this is not a one-time issue. Tutor acquired a large number of companies in 2010 and 2011 using cash and debt. The write-off last year of 25% of its shareholder equity reflected the fact these companies failed to produce the revenue or earning that were anticipated and are required to replenish the cash coffers and pay off the acquisition debt. In addition, it has a large number of claims related to building projects in Las Vegas. The most significant of these, the Harmon Hotel project, accounts for \$200 million of working capital (mostly in receivables). The case will go to jury trial in 2014. Tutor does not have the financial capacity to absorb an adverse judgment and its insurance company has disclaimed responsibility. Just this week, the Nevada Supreme Court heard arguments about whether the entire building needs to be demolished prior to the trial.

Inexplicably, the staff memo states that none of the bidding teams was found to have a Material Change. The Board should require more information from staff on this finding, given Tutor's situation.

**Staff members participating in the bidding review were required to disclose any financial interest in the award of the contracts.** Mr. Morales, because his bonus was expressly based on a low bid, would have had an interest in awarding it to a bidding team that won on the basis of a strong price score rather than a strong technical score. The Board should request assurances that either Mr. Morales did not participate on the reviews or that he disclosed such a conflict.

**Authority board members and staff members have stated that the Tutor Perini bid of \$985 million was below the stated budget for the project. This is inaccurate.** While the budget for the project was \$1,544,341,000, as provided under state law to the Public Works Board in March 2012, the design-build contract is only one of many items in that budget.

\$1,544,341,000 build budget was comprised of:

\$1,257,943,000 design-build contract

\$65,781,000 contingency

\$208,776,000 program management

\$11,841,000 other project costs

According to our calculations (which are admittedly very rough because of a lack of transparency), the project is actually over budget at this point. A number of items originally in the project scope were taken out of the design-build contract but are still part of the project. One of these was brought to the board (the \$226 million Caltrans contract) but others were part of Addendum 7, in December 2012.

Category	Amount	Notes
<b>Design-build contract</b>	\$985,000,000	
<b>Provisional sums (utility, building hazardous, slush fund)</b>	\$53,000,000	
<b>Caltrans move 99</b>	\$180,000,000	Part of Caltrans contract is ROW acquisition
<b>City of Fresno excluded work</b>	\$60,000,000	Addendum 9 Special Provisions (Veterans Blvd Overpass excluded) Cost of project including road extension \$111041000 <a href="http://www.dot.ca.gov/dist6/environmental/envdocs/d6/veterans_blvd_080812.pdf">http://www.dot.ca.gov/dist6/environmental/envdocs/d6/veterans_blvd_080812.pdf</a>
<b>City of Fresno excluded work</b>	\$15,000,000	roadway improvements on Golden State Boulevard
<b>PG &amp; E</b>	\$50,000,000	
<b>AT &amp; T</b>	\$12,497,000	Task orders 1 & 2
<b>UP costs</b>	\$15,000,000	
<b>BNSF costs</b>	\$15,000,000	
<b>Program management</b>	\$208,776,000	Includes Construction Management Contract
<b>Environmental mitigation/Fresno biz relo etc</b>	\$12,000,000	
<b>Total Build Cost</b>	\$1,606,273,000	
<b>Original Build Budget</b>	\$1,544,341,000	Includes contingency
<b>Current contingency</b>	(\$61,932,000)	
<b>Original contingency for CP1</b>	\$65,781,000	

Thank you for your consideration.