



HONOLULU AUTHORITY for RAPID TRANSPORTATION

MINUTES

**Board of Directors Meeting
October 13, 2011, 8:30 A.M.
Mission Memorial Annex Conference Room
550 South King Street
Honolulu, Hawaii**

PRESENT:

Carrie Okinaga	Keslie Hui
Ivan Lui-Kwan	Wayne Yoshioka
William "Buzz" Hong	Robert Bunda
David Tanoue	Don Horner
Damien Kim	Glenn Okimoto

ALSO IN ATTENDANCE:

Toru Hamayasu	Councilmember Breene Harimoto
Gary Takeuchi	Councilmember Tom Berg
Joyce Oliveira	Brandon Elefante
Simon Zweighaft	Philmund Lee
Wes Mott	William Spiegelberg
Shannon Wood	Michael Levine
Barbara Tanabe	Wally Zimmerman
Brian Gibson	Maurice Morita
David Pettinger	Al Lardizabal
Russell Honma	

I. Call to Order by Committee Chair

At 8:32 A.M., the meeting of the Board of Directors was called to order by Board Chair Carrie Okinaga.

II. Public Testimony

Ms. Okinaga called for public testimony. Russell Honma offered testimony on the Core Systems contract, and stated that railcar vehicles ought to be built in Hawaii using trained, local workers.

Philmund Lee of Councilmember Berg's office submitted testimony in the form of a letter, dated October 12, 2011, from Sumitomo Corporation of America to HART Interim Executive Director Toru Hamayasu.

Councilmember Tom Berg offered testimony on the procurement for the Core Systems contract, stating that he believed Bombardier would have provided better value. Councilmember Berg also described Maglev technology as a better alternative, and stated that his office would hold a public meeting on rail on December 6, 2011.

Board Member Don Horner asked Councilmember Berg whether he agreed with the court process, and whether or not Bombardier “played by the rules.” Councilmember Berg replied that he believed that “the rules of DCCA were played out” and that Bombardier “played by the taxpayers’ rules.” Board Member Robert “Bobby” Bunda asked Councilmember Berg if he had personally analyzed the financial standing of Ansaldo Honolulu JV. Councilmember Berg replied that he had reviewed data from Moody’s on Finmeccanica, and further expressed concerns about the financial capability of subcontractors.

III. Approval of Minutes of October 6, 2011 Board Meeting

Ms. Okinaga called for the approval of the minutes of the October 6, 2011 Board meeting. There being no objections, the minutes were unanimously approved.

IV. Discussion on Core Systems Contract

Mr. Hamayasu announced that HART has completed its due diligence on Ansaldo Honolulu JV, the company awarded the Core Systems contract. He indicated that HART conducted extensive discussions with Ansaldo Honolulu JV and its parent company, Finmeccanica; that HART has received commitments from Ansaldo Honolulu JV, Finmeccanica, and Chartis, the company providing Ansaldo Honolulu’s surety bonds; and that the Chief Procurement Officers of HART and the City and County of Honolulu have both determined Ansaldo Honolulu JV to be a Responsible Offeror for the contract, pending the receipt of bonds and other final documents. Mr. Hamayasu reported that, as a result of the above, HART will soon present the Core Systems contract to Ansaldo Honolulu JV for execution.

Board Member Damien Kim requested a list of subcontractors that Ansaldo Honolulu JV plans to utilize, and requested information on whether the subcontractors were local or not and whether the subcontractors are properly licensed. Mr. Hamayasu stated he will attempt to get the requested information, and noted again that while HART might want to utilize local resources, HART cannot require this.

Board Member David Tanoue asked whether HART would have proceeded with the Core Systems contract if it had not received a letter from Finmeccanica ensuring compliance by Ansaldo Honolulu JV of its contractual obligations under the Core Systems contract, regardless of any change in ownership or financial capacity of the partners of the joint venture. Mr. Hamayasu replied that he would have waited to receive a statement to the same effect before proceeding, and that the letter represents a moral obligation on the part of Finmeccanica and Ansaldo Honolulu JV to carry out the Core Systems contract.

Board Member Keslie Hui asked for more information regarding Moody's downgrade of Finmeccanica, and whether the downgrade affects the requirements of the RFP. Mr. Hamayasu replied that HART has reason to believe that Finmeccanica remains financially responsible, given that Finmeccanica's standing is generally very good and that Finmeccanica is backed by the Italian government. Mr. Hamayasu further stated that the rating requirement in the RFP applied to the surety company.

Board Member Ivan Lui-Kwan asked about the status of Ansaldo Honolulu JV's contractor's license issue. Deputy Corporation Counsel Gary Takeuchi replied that this was the contractor's responsibility to resolve, and it was working with the State Department of Commerce and Consumer Affairs to resolve the issue.

Mr. Tanoue asked if there might be a point where further due diligence or investigation might make the playing field not level. Mr. Takeuchi replied that HART asked to be provided with additional assurances based on issues raised in the Offeror's own statements, and noted that the additional information sought went above and beyond the requirements of the solicitation.

Mr. Lui-Kwan noted that the procurement process took two years to get to this point, and asked what the ramifications would be for a re-bid. Mr. Takeuchi stated that precise answers should come from the agency, but added that while it might be possible to conduct a shorter procurement, protests would be likely to occur even if the contract were re-bid.

Mr. Kim reiterated his concern that there be opportunities for local workers in the rail project to the maximum extent possible under applicable requirements.

Board Member William "Buzz" Hong asked if the Ansaldo Honolulu JV system is compatible with the cars of other vendors. Project Manager Simon Zweighaft replied that the system is designed to be open for future cars and extensions. Mr. Horner asked Mr. Zweighaft how long he's been in the transit business and whether he is comfortable with the Core Systems contract. Mr. Zweighaft replied that he has been in the business for 43 years and is indeed comfortable with the contract.

Mr. Tanoue asked for more information on Maglev, and asked whether Maglev would be open technology. Mr. Zweighaft stated that he only knows of one Maglev system in a similar urban environment, and observed that the technology is therefore proprietary by definition.

Mr. Lui-Kwan asked about the news stories reporting that AnsaldoBreda might be spun off, and inquired about how such a spin-off might occur. Mr. Hamayasu replied that it would be difficult to speculate about such scenarios. Mr. Horner observed that the firm representing 80% of the contract, Ansaldo STS, is already independent of Finmeccanica to some extent, given that it is a publicly-traded firm started by Westinghouse more than 100 years ago, and that it is 60% owned by parties other than Finmeccanica.

Mr. Zweighaft noted that if AnsaldoBreda were sold, it would likely be to another major vehicle manufacturer, and that such a sale would have to take into account its existing contractual liabilities. Mr. Zweighaft further noted that it is standard procedure for contracts to contain provisions for assignment in the case of sale. Procurement and Contracts Officer Wes Mott stated that even if AnsaldoBreda were sold, HART would still have a contract with Ansaldo Honolulu JV, of which AnsaldoBreda is a partner.

Mr. Hui noted that a letter was received from the CEO of Finmeccanica “confirm[ing] that Ansaldo Honolulu JV has the financial and technical capacity to carry out the...project,” and asked how legally enforceable such a letter might be. Mr. Hamayasu noted that the significance of this letter lies in the fact that Finmeccanica CEO Giuseppe Orsi, the originator of the letter, was the same person who stated that Finmeccanica might sell AnsaldoBreda, and is now providing assurances that Ansaldo Honolulu JV will meet its contractual obligations.

Mr. Hong reiterated that he would like to see a third-party review of the bond language. Ms. Okinaga stated that, per the City Charter, HART’s attorneys are Corporation Counsel, but did note that the Board did ask Corporation Counsel to look at this request. Mr. Horner agreed that there should be an independent review of the bond language. Board Member Wayne Yoshioka affirmed that a third-party review would be a good idea.

Mr. Horner stated that the HART Board’s fiduciary responsibility is to ensure that the Chief Procurement Officer has adhered to the process. Mr. Horner observed that the process was challenged, and subsequently reviewed by the City, the State, and by the courts, and in all instances, it was found that the process was done correctly. Mr. Horner further observed that a resolution on the procurement was reviewed and deferred by the City Council and that the procurement was conducted with assistance from Corporation Counsel. Mr. Yoshioka added that the contract had also been reviewed by HART’s financial team and project team, which has many years of combined experience on various projects across the country. Mr. Horner stated that he feels the process was done correctly, and added that he was impressed by those doing the procurement. Mr. Lui-Kwan joined Mr. Horner in expressing confidence in the individuals conducting the procurement.

Mr. Hui agreed that the procurement process was conducted correctly, but noted that the HART Board has a responsibility to ensure the project is delivered on-time and on-budget. Mr. Hui acknowledged that the Board has heard on multiple occasions that the partners are jointly and severally liable, that Ansaldo STS, which represents 80% of the contract, has a great track record, and that Finmeccanica has ensured compliance. Based on these facts, Mr. Hui expressed confidence that the joint venture has enough money behind it to fulfill the contract, but affirmed that it must also demonstrate adequate bonding by a surety company.

Mr. Hui requested verification that the partners are indeed jointly and severally liable, more information on the guarantees the parent company has offered, and the consents or

approvals required for transfer of ownership. Mr. Horner also requested information on the joint and several liability of the partners. Mr. Hamayasu reminded Board members that the contract package must be sent to the Offeror in order for the Offeror to be required to return the bonds. Mr. Hamayasu assured the Board that HART will have thirty days after receiving the returned contract package to review the information before executing the contract. Mr. Mott noted that HART does have unofficial drafts of the bonds, which will only become official once Ansaldo Honolulu JV sends them back with the signed contracting package.

Mr. Hong said he did not question the integrity of the process, but given the importance of the contract, it was important to have assurance through a third party review of the bonds.

Mr. Yoshioka stated that the Board agrees the procurement has been handled appropriately, that given concerns expressed about the contractor extraordinary measures have been taken to obtain confirmation that they have the necessary financial capacity, that there has been review by a project team which has years of experience, and that while a desire for certainty that everything will work as intended is understandable, the Board should be comforted by all the efforts, as well as the knowledge that there will be an additional third party review of the bonds, so it was time to move forward with the contract.

Ms. Okinaga said it was instructive to see the expertise of the project team members as they interacted with their industry peers at the APTA conference, and that she had confidence in the efforts that had been made to protect the interests of HART in the procurement. In reference to Mr. Tanoue's earlier comment about a level playing field, she noted that Ansaldo Honolulu JV had been held to a higher standard than the other offerors in the procurement, as the financial capacities of the others had not been scrutinized to the same degree as Ansaldo Honolulu JV.

Mr. Bunda asked whether there are processes through which HART could engage in discussions with the surety company. Mr. Takeuchi replied that HART would not ordinarily engage in separate discussions with the surety company. Mr. Mott stated that HART does have information on the surety company in terms of its rating by A.M. Best Company, as required in the solicitation.

Mr. Hui clarified his earlier request regarding the guarantees of the parent company, noting that the Board already had in front of it the oral testimony provided at the September 8 meeting, minutes of the Finmeccanica corporate board meeting, and the letter from Finmeccanica's CEO. Mr. Mott confirmed that the City's contract requires joint and several liability between the partners to the joint venture, and noted that Finmeccanica provided a guarantee of \$50M for AnsaldoBreda in RFP Part I, which HART has on file. Mr. Zweighaft noted that there is a reference to cross-indemnification in the Finmeccanica Board of Director's resolution. Mr. Horner observed that the slides provided at the September 8, 2011 videoconference also contain references to the backing and full commitment of Finmeccanica to the joint venture..

Mr. Horner stated that it should be clear that HART will be moving forward, and once the contract is presented to and returned from Ansaldo Honolulu JV, the only remaining item is the bonding. Mr. Horner stated that after the bonds are found acceptable, there is no recourse, and the City and County then becomes obligated to proceed to execute the contract. Mr. Hui reiterated that the joint and several liability was his major concern, and he appreciated getting confirmation that the contract provides for that. He noted that once Ansaldo Honolulu JV comes back with a signed contract, then the bonds become the critical "safety valve." Mr. Hui stated that if a third-party review finds that the bonds are adequate, then he is comfortable with HART moving forward. Mr. Bunda indicated his concurrence with Mr. Horner and Mr. Hui.

Mr. Takeuchi reported to the Board that a third-party review of the bond language can be done under an existing Corporation Counsel contract. Mr. Hong thanked Mr. Takeuchi for finding out that information. Mr. Hong also stated that he does not understand the urgency in immediately executing the contract, observing that the cars will not be required for a few years.

V. Adjournment

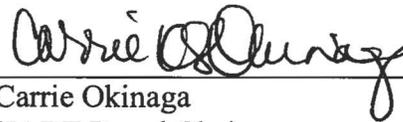
Having no other pending business, Ms. Okinaga called for the meeting to be adjourned. There being no objections, the meeting was adjourned at 10:03AM.

Respectfully Submitted,



Tyler Dos Santos-Tam
Board Administrator

Approved:



Carrie Okinaga
HART Board Chair

OCT 27 2011

Date