



HONOLULU AUTHORITY FOR RAPID TRANSPORTATION

Daniel A. Grabauskas
EXECUTIVE DIRECTOR AND CEO

April 24, 2012

The Honorable Tulsı Gabbard
Honolulu City Council
530 South King Street, Room 202
Honolulu, Hawaii 96813

Dear Councilmember Gabbard:

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This letter is in response to your question regarding the Honolulu Authority for Rapid Transportation's (HART) plan in the event the Core Systems Design-Build-Operate-Maintain Contractor, Ansaldo Honolulu Joint Venture, is adversely affected by the current debt crisis in certain European countries.

In responding to your question, some background information about Ansaldo and the Core Systems Contract is pertinent. The Core Systems Contract was awarded to the Ansaldo Honolulu Joint Venture. The Ansaldo Honolulu Joint Venture has two partners: Ansaldo STS S.P.A. and AnsaldoBreda S.P.A. Approximately 85 percent of the contract performance rests with Ansaldo STS, the provider of the train signaling and control center and the operations and maintenance of the rail system. AnsaldoBreda will design and manufacture the train cars and is responsible for the remaining 15 percent of the contract. In this general partnership, each partner is jointly and severally liable. Each is contractually responsible for the other partner's obligations to fulfill the contract, so there is an incentive for each partner to ensure the other's success.

As a condition in the solicitation, Finmeccanica, the parent company of AnsaldoBreda, provided a financial guarantee in the amount of \$50,000,000 on behalf of AnsaldoBreda. Finmeccanica also provided a written commitment to ensure the compliance of the Ansaldo Honolulu Joint Venture regardless of any change in ownership or financial capacity of the individual partners.

Pursuant to the contract, performance and payment bonds were purchased by Ansaldo Honolulu Joint Venture from the surety National Union Fire Insurance Company of Pittsburgh, Pennsylvania. The bond amounts are \$360,941,082 and cover the design-build phase of the contract. The bonds were delivered to HART at execution of the contract. In the event of a Default by the Principal (Ansaldo Honolulu Joint Venture), of the obligations under the Contract, then after written Notice of Default from the Obligee (HART) to the Surety (National Union Fire Insurance Company of Pittsburgh, Pennsylvania) and the Principal and subject to the limitation of the penal sum of the bond, the Surety shall remedy the Default, or take over the work to be performed under the Contract and complete such work, or pay moneys to the Obligee in satisfaction of the surety's performance obligation of this bond.

In accordance with the terms of the contract, we expect adverse performance issues by either of the joint venture partners to be rectified by the firm with assistance from the other partner and from Finmeccanica, if necessary. This expectation is based on the contract terms and on the commitments made. However, should Finmeccanica, Ansaldo STS, and AnsaldoBreda all be unable to live up to the guarantees and commitments made, there will likely be advance warning signals evidenced by their inability to meet schedules, deliver equipment, services and so forth, in which case HART would issue

The Honorable Tulsi Gabbard
Page 2
April 24, 2012

a cure notice in accordance with the terms of the contract and provide them a reasonable time to fix the problem. If they are unable to do so they would be declared in default of the contract.

PLAN

Should Ansaldo Honolulu Joint Venture fail to perform and complete the work in the contract HART would implement the processes regarding Termination for Default for Nonperformance or Delay contained in the contract Special Provisions (SP) and General Conditions of Design-Build Contracts (GCDB). The specific clauses that would apply are found in SP 7-2 and GCDB 7-2.

In accordance with the contract, HART would issue a default notice in writing advising Ansaldo of the performance or payment problem(s).

a. If the problem(s) is/are not corrected within fifteen (15) days HART would issue written notice to the Surety of the Performance Bond (National Union Fire Insurance Company of Pittsburgh, Pennsylvania) demanding satisfactory compliance with the Contract. Upon receipt of the notice the Surety shall within fifteen (15) days elect to either;

- (1) Have Ansaldo Honolulu Joint Venture, with consent of HART, complete the work; or
- (2) Undertake to complete the work itself; or
- (3) Issue a new solicitation from qualified contractors acceptable to HART; or
- (4) Determine the amount to complete the work for which it was liable to HART and tender payment to HART for that amount

In the event the Surety chose alternative (4), above, HART would complete the work. If the cost to complete the work was greater than the proceeds received from the Surety, HART would take action to collect the difference from the Surety, from Ansaldo Honolulu Joint Venture, from Ansaldo STS, from AnsaldoBreda and from Finmeccanica.

Please do not hesitate to contact me should you have any further questions.

Sincerely,



Daniel A. Grabauskas
Executive Director and CEO

cc: All Councilmembers
HART Board of Directors