

November 3, 2017

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Juan Matias Archilla Pintidura
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RE: *Revised* Decision on Protest

Dear Mr. Archilla Pintidura,

The California High-Speed Rail Authority (Authority) has conducted a thorough and diligent review of RENFE's "Early Train Operator (RFP 16-13) Protest concerning Notice of Proposed Award." The following will summarize the basis of RENFE's protest and background, the applicable authority, discussion and decision:

BACKGROUND

On December 16, 2016, the Authority issued a Request for Qualifications (RFQ) for Early Train Operator (ETO) services. Five teams submitted Statements of Qualifications (SOQs) in response to the RFQ. All five teams met the minimum qualifications and were determined to be qualified to participate in the Request for Proposals (RFP) stage. The ETO RFP was issued on July 16, 2017 to the five qualified teams and on September 6, 2017, the Authority received four Proposals. The Proposal evaluation criteria (including the minimum qualifications checklist) was set forth in Attachments A-D of the RFP.

After receipt of the four Proposals, the Authority began the evaluation process. As part of the evaluation, the Authority conducted Discussions with each of the Proposers. The Proposers were each notified of the time, date and location of the Discussion portion of the evaluation and were provided an agenda and six initial questions for which to prepare. The Discussions took place on October 3, 2017 and October 4, 2017.

On October 6, 2017, the Authority issued the Notice of Proposed Award for ETO RFP 16-13 (NOPA). The NOPA explained that each team was scored on its Proposal and Discussion using the criteria in the RFP and ranked the four Proposers (also referred to as Teams) as follows: (1) DB Engineering & Consulting USA, (2) RENFE, (3) FS First Rail Group, (4) China HSR ETO Consortium.

Ten days after issuance of the NOPA (October 16, 2017), the Authority received an Early Train Operator (RFP 16-13) Protest concerning Notice of Proposed Award (Protest) from RENFE. The Protest alleges "improprieties in the procurement or the procurement process which can only be apparent after submission of Proposals or the Authority's contract award recommendation" pursuant to section 7.1(C) of the RFP. Specifically, as set forth in the Protest document, the

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Protest “addresses the scores assigned by the Authority for the Discussion category of the four presentations, particularly the Discussion score assigned by the Authority to RENFE, which bears little relationship to the scores awarded for the Technical and Cost presentations made by each of the proposers.” This appears to be the primary basis upon which the Protest supports its allegations of “improprieties.” RENFE also sent copies of the Protest to each of the other Proposers.

On October 20, 2017, the Authority received one statement in response to the Protest from DB Engineering & Consulting USA. The Authority promptly sent a copy of this statement to RENFE. On October 30, 2017, the Protest Official received a letter from RENFE in response to DB Engineering & Consulting USA’s statement.

APPLICABLE AUTHORITY

Section 7.0 of the RFP sets forth the exclusive protest remedies available with respect to the RFP and prescribes the exclusive procedures for a protest. Section 7.1 outlines the grounds for protest, which includes allegations of “improprieties in the procurement or the procurement process which can only be apparent after submission of Proposals or the Authority’s contract award recommendation.”

Section 7.3 of the RFP sets forth the deadline by which a proposer must file a protest. In the case of the ETO RFP, protests filed pursuant to Section 7.1(C) were due no later than five (5) Working Days after the public announcement of the notice of intent to award the ETO contract. As Monday, October 9, 2017 was a holiday, any protest was due on Monday, October 16, 2017.

Section 7.4 of the RFP describes the required content of a protest. Pursuant to this section, a protest shall:

- State the grounds for protest
- State its legal authority
- State its factual basis
- Include all factual and legal documentation in sufficient detail to establish the merits of the protest
- Be sworn and submitted under penalty of perjury
- Contain the name, address, email, and telephone numbers for the protestor
- Contain the RFP number
- Contain a request for a ruling by the Authority
- Contain all information establishing that the protestor is an interested party for the purposes of filing a protest
- Contain all information establishing the timeliness of the protest

Section 7.6 allows the other proposers to file statements in support of or in opposition to the protest within seven days of the filing of a protest. Any factual determinations contained in the statements must be sworn and submitted under penalty of perjury and the Authority, per this section, is required to promptly forward copies of all such statements to the protesting Team.

The Protest Official is required to decide a protest on the basis of the written submissions, with the burden of proof on the protesting Team. With regard to RENFE’s Protest, the Authority’s Protest Official must determine whether the Authority followed its policies and procedures with regard to the scoring of the Discussion portion of the evaluation. Specifically, the Authority’s Protest Official must decide whether the Authority’s Evaluation Selection Committee scored each Proposer’s Discussion portion of the evaluation based upon the criteria set forth in RFP – Attachment C: Criteria for Awarding Points for the Discussion and Total Score Worksheet.

DISCUSSION

As set forth above, RENFE submitted its Protest on Monday, October 16, 2017. RENFE’s submission was timely pursuant to Section 7.3 of the RFP. Further, in reviewing RENFE’s Protest, the Authority’s Protest Official confirmed that RENFE’s Protest stated applicable grounds for a protest pursuant to Section 7.1 and contained all required elements pursuant to Section 7.4, but notes that RENFE’s Protest did not set forth any specific legal authority. The Protest Official also timely received DB Engineering & Consulting USA’s statement in response to RENFE’s Protest on October 20, 2017. However, the response, as pointed out in RENFE’s October 30, 2017 letter, did not include any factual information relevant to the Protest Official’s decision.

The Protest Official reviewed all information submitted with RENFE’s Protest and all written documentation setting forth the Authority’s scoring of the Discussion portion of the evaluation. This review included, but was not limited to, the RFP, including Attachment C: Criteria for Awarding Points for the Discussion and Total Score Worksheet, the NOPA, the Request for Proposals Evaluation Manual for Early Train Operator and the Evaluation Selection Committee Report for Early Train Operator, HSR16-13 Request for Proposals. In reviewing the Protest in combination with these documents, the Authority’s Protest Official noted that all evidence contained in the documents listed above support the Authority complying with its policies and procedures in scoring the Discussion portion of the evaluation. The Authority’s Protest Official discovered no evidence that the Authority did not score each Proposer’s Discussion element solely on the criteria set forth in Attachment C: Criteria for Awarding Points for the Discussion and Total Score Worksheet as required in the RFP, and discovered no evidence of any improprieties of any kind.

DECISION ON PROTEST

Based on the above, and in accordance with the RFP criteria and Protest Procedures, the Protest Official has determined that there is no evidence that the Authority did not follow the RFP criteria in its ETO evaluation. Specifically, as relevant to RENFE’s Protest, the Protest Official has determined that there is no evidence that the Authority did not evaluate all Discussions according to the criteria set forth in the RFP nor is there any evidence that any other criteria was used, therefore supporting the conclusion that there were no improprieties in the procurement or the procurement process.

Accordingly, the Protest Official hereby determines that RENFE did not meet its burden of proof with regard to the Protest and therefore the Protest is denied.



Mark A. McLoughlin
Protest Official
California High-Speed Rail Authority