



Mark McLoughlin  
Early Train Operator Protest Official  
California High-Speed Rail Authority  
770 L Street, Suite 620, MS 2  
Sacramento, CA 95814

October 16, 2017

**Re: Early Train Operator (RFP 16-13) Protest concerning Notice of Proposed Award.**

Dear Mr. McLoughlin,

Pursuant to sections 7.1 C. and 7.3 of RFP 16-13, RENFE submits this sworn statement as its protest of the Early Train Operator (RFP 16-13) Notice of Proposed Award (the "Award") dated October 6, 2017, which ranked RENFE second among the four entities responding to the RFP, even though the California High-Speed Rail Authority (the "Authority") ranked RENFE first in the Technical Proposal category and highly rated RENFE's Cost Proposal. This protest is being submitted within five (5) days after the Authority issued the Award.

As further detailed below, this Protest specifically 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.

In the balance of this statement, we will explain the bases for RENFE's protest.

**1.- Grounds for Protest and Factual Basis**

1.1.- The Authority rated RENFE's Technical Proposal as the best among the four proposals, with an aggregated total score of 478.75 points out of a possible total of 550 (a score representing 87.04% of the possible total). Furthermore, the Authority rated RENFE highly for its Cost Proposal, which was far superior to the proposal submitted by DB E&C USA ("DB"), whom the Authority ultimately ranked first overall. The Authority awarded 82.06 points (out of a possible 100) to RENFE for its Cost Proposal, while awarding DB only 59.52 points. RENFE's combined score in the Technical Proposal and Cost categories was higher by a wide margin than the combined scores for those same categories of any other proposer, including DB.



These scores clearly confirm that RENFE's Technical and Cost Proposals more than satisfy the demanding requirements of the RFP and establish its proposal as the most realistic, reasonable and complete for the Project.

1.2. The Authority assigned only 215 points (out of a maximum of 350 points) to RENFE for the Discussion portion of its presentation. Assigning RENFE only 61.42% of the maximum points is impossible to reconcile with the high scores awarded to RENFE in the two other categories (Technical and Cost).

The Discussion score should bear a close relationship to the Technical and Cost Proposal scores because the Discussion part is intended to provide an oral explanation of the proposal and to answer any questions the Authority might have.

1.3. Questions and Answers criteria for awarding points only have one vague descriptor prescribing evaluation of "clear and responsive answers to questions." This has been a surprise for us, as in the proposal score document, the Q & A section balances 50% of the total Discussion, when according to Attachment C of the RFP it only represents 1 bullet out of 9 listed. The weighting itself notwithstanding, the lack of advanced notice of the weighting created a situation that is disproportionately and structurally unfair to evaluation and weighting of the Technical Proposal as well as the preparation of the Presentation and Comments on Procurement Term Sheets. This structural impropriety in the procurement and the procurement process was only apparent after the Authority's contract award recommendation when weighting and scoring was finally made available to the proposing teams. So, all this should have been anticipated to the proposers to avoid unfair competition.

Concerning criteria and scoring weights of the Discussion, Renfe has some questions for the Authority:

- Were the communication skills of the Team part of the valuation scheme? If yes, which percentage was allocated to it? Which were the scores of Renfe and the other proposers?
- Which percentage of the 175 points allocated to Q&A section is assigned to the personal knowledge and experience of the Team Members? How were Renfe and the other proposers scored for this?
- In which part of the Discussion (Presentation, Procurement Term Sheets or Questions and/or Answers) is the understanding of the requirements scored? What is the weight assigned to it? How were Renfe and the other proposers scored for this?
- Which percentage of the points allocated to the Discussion is assigned to the experience of the Team Members working together? How were Renfe and the other proposers scored for this?

In summary, we would like to better understand the specific criteria used for the evaluation and ranking of the Discussion assessment (Presentation, Term Sheets and Q&A) as we are certain that the Authority would base these on non-discretionary criteria.

1.4. RENFE maintains that the remarkable difference between the scores awarded for its Technical and Cost portions and the score assigned for the Discussion portion can be explained by the following:



- **Regarding the Presentation:** During RENFE's oral presentation, the Authority asked only a limited number of questions and did not request any clarification, even though one stated purpose of the Discussion portion of the RFP was to allow "the Authority to fully understand the Proposer's ability to meet the scope of work." The Authority's relative silence suggests that the RENFE team thoroughly addressed its commitment and capabilities to deliver the requested scope of work in its Technical and Cost presentations, and thus met the criteria for being awarded the most points. In the absence of questions or comments from the Authority, RENFE did not further discuss its written Technical proposal but instead focused its time during the presentation on the value-added topics that the RENFE team brings to the Authority as a public partner with private equity support. In particular:
  - RENFE explained its understanding of the requirements to deliver the services. We did not describe the project over and over again as it was intimately known to the panel, so we preferred to focus our time during the presentation on the new, not known and value-added topics our team brings forth to the Authority as a public partner with private equity support.
  - RENFE discussed the challenges inherent in the project, focusing on its experience in meeting challenges in similar projects and its deep knowledge and understanding of the California project and the transferability of our experience to this High Speed Line. In particular, Amtrak explained his experience in California and how both capabilities combined will guarantee the best transferability to the project, with the support of the Small Business.
  - RENFE described its proposed path to reaching the second phase, and
  - All RENFE team took part in the presentation and delivered the material in a comprehensive and timely manner. In particular, according to the script prepared and the rehearsals carried out, the time for each team member was as follows:
    - Project Director: 10 min, 30 sec
    - Lead Project Manager: 4 min, 30 sec
    - Lead Procurement Advisor: 3 min, 45 sec
    - Rolling Stock Procurement Manager: 2 min, 00 sec
    - Lead Operations Manager: 4 min, 30 sec
    - Lead Commercial Advisor: 3 min, 30 sec
    - Lead Stations Advisor: 3 min, 00 sec
    - AMTRAK representative: 3 min, 00 sec
    - Lead SB Advisor: 1 min, 00 sec

The very limited Discussion points assigned by the Authority are not consistent with the development of the presentation performed by the RENFE team, which addressed all the criteria for awarding most of the available points. The award of points in the Discussion category generally should be re-evaluated.

- **Regarding the Procurement Term Sheets:** RENFE summarized the procurement Term Sheets and the 2016 Business Plan. The Discussion scoring is, once more, not



at all consistent with, and does not reflect, the marks obtained in the Technical proposal, where RENFE received very high marks on the very same topics.

In particular, the RENFE team included in the presentation 20 proposals for improvement for the Track and Systems Term Sheet, 9 proposals for the Trainsets Term Sheet, and 18 additional insights on the 2016 Business Plan. All of that information was based on RENFE's previous experience and has allowed RENFE to offer one of the lowest costs per mile and trainset in the world.

For the Procurement Term Sheets portion of the Discussion category, the Authority awarded RENFE only 55 of 75 available points. This award is inexplicably at odds with RENFE's 47 additional proposals and the award of 86.27% of the available points for its Technical Proposal. The award of only 55 points should be re-evaluated.

**Regarding the Questions and Answers:** The RFP states that the criterion for awarding points in this section is: "Does the Proposer team provide clear and responsive answers to questions presented?" We understand that this is the only criterion to evaluate this section.

Given the technical superiority and cost advantage of RENFE's proposal, for the winning bidder to "come from behind" and overtake RENFE based solely on the oral presentation is troubling, as it is difficult to believe that the difference between RENFE's responses and those of the winning bidder were as substantial as the scoring suggests.

RENFE, of course, was not present during the winning bidder's oral presentation and so is not able to comment on it directly. However, the process itself was sufficiently limited in scope that it is hard to believe such a great disparity could manifest itself during such a short and limited meeting.

RENFE was asked 14 questions; six of those were technical questions that had been provided in advance and for which RENFE submitted written answers. The answers to those were presumably fully satisfactory, as the Authority asked no follow-up questions.

As for the remaining eight questions, RENFE believes it answered them thoughtfully, fully, and correctly. Those questions, and RENFE's answers, are summarized as follows:

1. Anticipating procurement of rolling stock, RENFE answered these conceptual ideas:
  - a. Resources and project planning and priorities
  - b. Use standards with adaptations versus complete personalization
  - c. Interfaces with other procurements, for example signaling system



2. Addressing the higher CAPEX in California, RENFE responded that
  - a. It is widely known and understood from public information that land acquisition is an issue in California;
  - b. By contrast, Spain has one of the lowest CAPEX costs in the world;
  - c. That said, this issue is not insurmountable and RENFE will be able to provide more specific insights once it has access to currently confidential information.<sup>1</sup>
3. Asked about performance versus specification-based procurement methods, RENFE explained his vision and expressed that it has experience with both methods of procuring track, systems, and rolling stock. On the other hand, Amtrak explained his vision about the performance based procurement method.
4. Regarding methods for obtaining ancillary revenues from stations, RENFE discussed additional concrete examples of doing so (as this area was also addressed in responses to one of the questions the Authority provided in advance).
5. As for integrated ticketing, RENFE explained his vision about integrated ticketing systems and clarified that:
  - a. Its partner, Amtrak, has this type of experience in California;
  - b. RENFE has similar and extensive experience in Spain; and
  - c. RENFE supports this goal and will work to create a user-friendly ticketing experience.
6. Asked about a recommended Signaling System,
  - a. RENFE explained his vision on Signaling Systems and stated that he knows the Signaling Systems used in Europe and that his partner Amtrak knows the USA Signaling Systems. RENFE Consortium and the Authority could work together and select the best system for the California High Speed Rail Project.

Regarding the last two logistical questions, integration of the team and public company in California, we understand that there is not a correct or wrong answer, as it simply relates to our experience, capabilities and commitment to partner with the Authority, something which was well demonstrated in our technical proposal. RENFE reaffirmed its experience and capability to work in California as other European public companies do and made a firm commitment to fully integrate its key team members with the Authority's team. RENFE also emphasized that its team members have considerable experience working together, having successfully done so on projects in Spain and Saudi Arabia.

As the Authority can see in the resumes of the staff and as we clearly stated during the Discussion, all our team members have been working together in the past. In

---

<sup>1</sup> It is difficult to believe that any other bidder would have had a materially different response to this question. High CAPEX costs in California are a given; any winning bidder will have to address them.



particular: between 1991 and 1994 Mr. Barrón and Mr. Lastra have worked together in the first HS line in Spain; Mr. Barrón and Mr. Martín worked together between 1994 and 1997 and have cooperated in several working groups of UIC and CER; Mr. Lastra and Mr. Romo have worked together in the construction phase of the Madrid-Sevilla HS line between 1990 and 1992; Mr. Barrón and Mr. Romo have worked together in some UIC projects; Mr. Martín and Mr. Lastra worked together in working groups about ERTMS in UIC; Mr. Martín and Mr. Ruiz-Roso, cooperate regularly in their current positions; Mr. Lastra and Mr. Preus have worked in Mecca-Medina High Speed project between 2011 and 2014; Mr. Lastra and Mr. Borregón worked together in the construction phase of the HS lines Madrid-Lérida, Madrid-Valladolid and Olmedo-Medina; Mr. Lastra and Mr. Soria have worked together in the construction phase of the HS line between Madrid - Valencia/Albacete between 2007 and 2011; Mr. Martín and Mr. Soria have worked together between 1998 and 2004; Mr. Preus and Mr. Soria have worked together in stations projects between 2008 and 2011; Mrs. Nieto and Mr. Soria have worked together in the launching of services in the Mediterranean corridor; Mrs Nieto and Mr. Martín have worked together in the homologation process of the HS train series 100-F in France; Mr. Borregón and Mr. Preus have worked together between 2007 and 2010 in the coordination of the Contract-Program between the Spanish Government and Adif for the construction of the HS Line Orense-Santiago.

Besides, all the Key Personnel have worked for at least one of the Consortium members, not having to call on other external companies to complete the Team.

Finally, RENFE would note that the Authority only used 55 minutes for the Discussion (presentation and Q&A) session of the total 75 minutes available. If the Authority had any doubts about RENFE's capabilities, expertise, or commitment to deliver a quality project, it certainly could have used those additional 20 minutes to address those doubts.

On top of that, without those 20 minutes above mentioned, our candidates had potentially less opportunities than other teams for showing their strength and cohesion, in addition to going clearly against provisions in the RFP.

In sum, it is difficult to understand how RENFE's answers to eight questions could have been so materially below those of the winning bidder that it would push RENFE into second position given, again, the superiority of RENFE's technical proposal and cost structure.

## **2.- Support Documentation for the Protest.**

We enclose the following documents, both of which were previously given to the Authority at the meeting:

Attachment 1. - RENFE DISCUSSIONS PRESENTATION

Attachment 2. - RENFE Q&A



### **3.-Other Factors the Authority Should Consider**

RENFE respectfully submits that the Authority's decision to score the oral presentation in such a manner as to push RENFE into second place ignores the following strengths of RENFE's proposal:

- RENFE is the only consortium that includes an investor rooted in the United States and willing to invest in this project: Globalvia.
- RENFE is the only high speed operator that has run a high speed train completely outside its home country at a speed of 200 mph (Saudi Arabia). In Saudi Arabia, RENFE is about to begin operation of a high speed railway that has successfully overcome numerous technical and logistical challenges.
- RENFE is the only operator with experience operating trains from all the major high speed rail manufacturers. This is also true for track and systems. This experience puts RENFE in the best position to advise the Authority as to the best available procurement options, as RENFE has established its qualifications as a fair, neutral, and independent operator. Furthermore, the Key Personnel proposed by RENFE have never worked for any of the Rolling Stock or Track and Systems suppliers, guaranteeing their neutrality and independence not only at a Company level, but also at a personal level.
- RENFE is the only consortium that includes the high speed railway operator of the United States: Amtrak, which should give confidence to the Authority about complying with US regulations and enhancing transferability.

### **4.- Request for a Ruling by the Authority:**

We respectfully request the Authority to reconsider the scoring of the oral presentation to reach a fair and cost-effective decision that provides the best value to all stakeholders, including the citizens of California, namely, a decision to award the contract to RENFE.

### **5.- Contact details of the Protestor:**

**Name:** Juan Matías Archilla Pintidura on behalf of RENFE Consortium

**Address:** Avenida Pío XII, 110, 28036 Madrid, Spain

**e-mail:** jmarchilla@renfe.es

**Telephone number:** +34 91 300 7472

I swear **under penalty of perjury** that the foregoing is true and correct.

A handwritten signature in black ink, appearing to read "J. Archilla", written over a horizontal line.

