



California High-Speed Rail Authority **BRIEFING: December 6, 2023, Board Meeting** **Agenda Item #2**

TO: Board Chair Richards and Board Members

FROM: Catrina Blair, MBA, Chief, Process and Program Development Branch
Tawnya Southern, Attorney IV, Authority Legal Office

DATE: December 6, 2023

RE: Program Delivery Support Services Agreement Annual Update regarding Small Business and Conflict-of-Interest Compliance

Summary

This is an informational item to update the California High-Speed Rail Authority's (Authority) Board of Directors (Board) on small business and conflict-of-interest compliance for the Program Delivery Support (PDS) contract.

Background

The Board's October 20, 2022, Resolution #HSRA 22-23 approved the contract award of the PDS services to AECOM-Fluor Joint Venture (AECOM-Fluor) and directed the Authority to "report on conflict-of-interest compliance and small business compliance to the full Board on an annual basis."

Prior Board Action

On October 20, 2022, the Board previously approved the award of the PDS services contract to AECOM-Fluor through Resolution #HSRA 22-23 and directed Authority staff to "report on conflict-of-interest compliance and small business compliance to the full Board on an annual basis."

Discussion

The PDS services Agreement No. HSR21-17 (Agreement) between the Authority and AECOM-Fluor was fully executed on November 8, 2022. Exhibit A, Section 3.7 of the Agreement requires the consultant to prepare "a Conflict Mitigation Plan identifying mitigation measures it will put in place to avoid actual or potential organizational conflicts of interest for the Consultant and staff throughout the duration of the Agreement."

Exhibit D, Section 22 of the Agreement requires compliance with Small Business (SB), Disabled Veteran Business Enterprise (DVBE) and Disadvantaged Business Enterprise (DBE) participation goals in compliance with State and federal law. The Agreement is subject to the Authority's prior Revised Small and Disadvantaged Business Enterprise Program (August 2012, updated 2022), which

established a 30 percent SB utilization goal, that is inclusive of a 10 percent DBE goal 3 percent DVBE participation goal.

This informational item will provide the annual report to the Board regarding the PDS services consultant's compliance with the conflict-of-interest and small business Agreement requirements.

Small Business Compliance

The Authority's Small Business Team ensures Small Businesses (SB), including Micro Business (MB), and Small Business Public Works (SB-PW), Disabled Veteran Business Enterprises (DVBEs), and Disadvantaged Business Enterprises (DBEs), are afforded every practicable opportunity to participate on the High-Speed Rail Project.

Monitoring compliance is the method by which the SB Team tracks the efforts of Prime contractors/consultants on the project. The PDS must comply with Authority's prior Revised Small and Disadvantaged Business Enterprise Program (August 2012, updated 2022), which established a 30 percent SB utilization goal, that is inclusive of a 10 percent DBE goal 3 percent DVBE participation goal and is not subject to the new SB/DVBE/DBE goal structure approved by the Board on November 2, 2023. Compliance measures are detailed as follows:

1. Payment

Compliance Management System- In September, the Authority implemented a Compliance Management System. This system tracks prime payments and notifies subcontractors/subconsultants, giving them the opportunity to validate the payments they received from the prime. The system is designed to alert the Authority if a payment has not been validated and immediate action is taken. The SB Team contacts the small business directly to confirm payment and reaches out to prime directly to resolve.

Monthly Compliance Form Submittal-Authority Primes must submit monthly compliance forms that detail payments made to SB, DVBE and DBE firms.

2. Utilization

Bi-weekly meeting with SB Officer-The PDS Small Business officer (SBO) has a standing meeting with the Authority's SB Advocate and Program Chief to discuss compliance and efforts PDS is making to achieve SB/DVBE/DBE Goals.

Monthly Narrative-The PDS provides a monthly narrative that details outreach efforts, and strategies to increase participation, which include training meetings held with SB/DBE/DVBE firms on the PDS contract. This narrative is shared with the Authority's Business Advisory Council (BAC).

In addition to the above measures, the PDS SBO participates in partnering workshops with the Authority and attends BAC meetings held six times per year. The PDS SBO regularly reports their utilization, payment, and outreach efforts in BAC meetings.

As of the September 2023 reporting period, the PDS is on target based on their total expended values. The SB Team is working closely with the PDS SBO to assist with increasing the DVBE numbers.

Overall SB Goal Attainment (30%)

PDS SB Goal Progress	Actual Value to Date	Status SB Goal Progress
All SB Total Expended (SB/DBE/DVBE)	\$10,972,790.57	30.1%

DBE Goal 10%

PDS DBE Goal Progress	Actual Value to Date	Status DBE Goal Progress
DBE Total Expended	\$6,695,714.97	18.3%

DVBE Goal 3%

PDS DVBE Goal Progress	Actual Value to Date	Status DVBE Goal Progress
DVBE Total Expended	\$186,989.32	.50%

Conflict-of-Interest Compliance

The Authority and AECOM-Fluor, including their attorneys, have worked collaboratively to implement mitigation measures that will sufficiently address potential and/or actual conflict-of-interest issues. In accordance with the Agreement provisions, a Conflict Mitigation Plan (Plan) was developed by AECOM-Fluor, negotiated, and approved by the Authority. The Plan requires the following:

1. Identification of the consultant's key personnel and additional expertise resources, their respective companies, and their proposed locations for the duration of the Agreement to ensure required physical separation, if necessary, as a mitigation measure.

The Plan identified the requisite key personnel and additional expertise resources and where necessary mitigation measures have been implemented. AECOM-Fluor continues to update this information and track personnel changes.

2. A description of the reporting relationships of each of the consultant staff.

The Plan designates the consultant's Principal in Charge and the Deputy Principal in Charge have all key personnel and additional expertise personnel reporting to them and have first line project responsibility regarding conflicts.

3. A description of methods to prevent, restrict and disassociate consultant staff from other projects outside of the Authority's program that may create a potential or actual organizational conflict of interest.

Prior to an employee becoming part of the PDS staff, the Plan requires that AECOM-Fluor conduct an internal due diligence review to determine other project involvement. If the due diligence reveals a potential or actual conflict of interest, mitigation measures are employed such

as an ethical wall and separation are put in place. To date, three supplemental reports to the Plan were prepared by the consultant, which identified three employees working on other projects. An analysis of the potential conflict was performed by the Authority's Legal Office and mitigation measures have been implemented, to the extent required, including disassociation from the other project.

Two supplemental reports to the Plan were provided by the consultant that identified two projects, the San Joaquin Regional Joint Powers Authority's Merced Integrated Track Connector (MITC) project and the Madera station, which may create a potential conflict of interest. The potential conflicts were analyzed by the Authority's Legal Office and mitigation measures were put in place, which include utilization of separate AECOM teams for the PDS Agreement work and the MITC and Madera station contract work. AECOM has also established ethical walls between the AECOM employees who work on the contracts to ensure that no "inside" information is shared.

4. A Description of how the consultant will control the information relative to the Authority's operations and strategy in accordance with the terms of the Agreement.

AECOM-Fluor has implemented security controls and a tracking system to identify user access regarding PDS information, and has been utilizing project-specific servers and separate cloud environments.

5. The Consultant's process to promote awareness and to instruct Consultant staff in the importance of impartiality and its role in preventing bias, fraud, waste and abuse, including ethics training.

AECOM-Fluor has taken steps to ensure that all staff have a copy of the Plan and are aware of their obligations and responsibilities under the Plan. Consultant has implemented a live web-based conflict-of-interest training program.

6. The Consultant's process to assess the effectiveness of the Conflict Mitigation Plan and address issues.

The consultant has appointed attorneys for AECOM Technical Services, Inc. and Fluor Enterprises, Inc. as their Plan officers with direct responsibility for implementation of the Plan. The Plan officers are responsible for monitoring overall compliance with the various Plan measures and for identifying and responding to any actual or potential conflicts. The Plan officers undertake quarterly reviews of Plan compliance and prepare supplemental reports and quarterly reports provided to the Authority.

To date, the Authority and AECOM-Fluor have agreed to mitigation measures for certain key personnel and additional expertise resources on the project and have not conflicted out any individual from working on the project.

Legal Approval

The Legal Office has reviewed this informational item, and has found it complies with Authority policy.

Budget and Fiscal Impact

This is an informational item, and by itself, does not have a budget or fiscal impact.

REVIEWER INFORMATION	SIGNATURE
Reviewer Name and Title: Brian Annis Chief Financial Officer	Signature verifying budget analysis: Signed 11/28/2023
Reviewer Name and Title: Alicia Fowler Chief Counsel	Signature verifying legal analysis: Signed 11/28/23

Recommendations

Not applicable, as this is an informational item only.

Attachments

Authority Board's October 20, 2022 Resolution #HSRA 22-23.