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Memorandum

TO: BATA Oversight Committee

DATE: March 3, 2010

FR: Commissioner Bill Dodd
Commissioner Steve Kinsey
Commissioner Adrienne Tissier

W. I. 1251

RE: Appeal of Executive Director's Decision on Protest of San Francisco-Oakland Bay Bridge ("SFOBB") Toll Operations Building Contract Award

On January 13, 2010, the BATA Oversight Committee approved award of the contract for the construction of the SFOBB Toll Operations Building to Roebbelen Contracting, Inc. ("Roebbelen"). A protest by the second low bidder, Alten Construction, Inc. ("Alten") was filed and the award was deemed conditional subject to the resolution of the protest.

Alten's protest was reviewed by a staff review officer. Upon acceptance of the staff review officer's report, the Executive Director denied the protest. Alten appealed the Executive Director's decision. An ad hoc review panel consisting of the above-named Commissioners was asked to review the appeal of the Executive Director's decision.

Staff provided each Committee member with a copy of the administrative record. The Committee met on February 24, 2010 to review the appeal and to afford BATA staff and the companies involved an opportunity to offer supplemental comments. Representatives and counsel for Alten and Roebbelen appeared before the review panel and offered comments.

The Committee, after having an opportunity to fully review the record, and taking into consideration comments made by Alten, Roebbelen, and staff, unanimously recommends that all bids be rejected and the project rebid.

We find that the bid submitted by Roebbelen was not compliant with the specifications, which called for the building to be supported by precast pre-stressed concrete piles that are driven into the ground. After bid opening, it was discovered that the subcontractor to Roebbelen that would perform the piling work would use a torque down pile system, a method in which steel forms are screwed into the ground and filled with reinforced concrete. This alternative method was less expensive than providing driven piles and had not been approved for use by BATA.

The bid documents included language that would have allowed Roebbelen to propose alternative items 14 days prior to bid opening. At that time, if BATA accepted the substitution, all bidders would be so notified by addendum so that they could bid on the substituted item. Other methods of requesting substitution included requesting a substitution after bid opening but before award or proposing a value engineering proposal after award. We find that Roebbelen did not follow the instructions in the bid documents.

BATA has the authority to waive a minor irregularity in bid where that irregularity does not create an unfair competitive advantage for the bidder. Roebbelen has argued that its failure to follow instructions did not give it an unfair competitive advantage; Roebbelen has stated that it is unconditionally required to comply with the specifications and that it can perform the pile work through its listed subcontractor at the price bid. Further, Roebbelen has argued that had it sought BATA approval and all bidders could bid the less expensive torque down piling method, the difference in price between the piling systems, \$148,000, would not have been enough to displace Roebbelen as the low bidder. These arguments have merit.

On the other hand, we also find merit in Alten's arguments, in particular, that any impact on price creates an unfair competitive bid advantage; Roebbelen was allowed to submit a lower bid than if it had followed the instructions set forth in the IFB. BATA asked for a bid for a building supported by precast driven piles, but received a bid from Roebbelen for a building supported by torque down piles. We believe that bidders must bid to the specifications and follow the instructions contained in the IFB.

Alten also submitted other arguments regarding Roebbelen's failure to list a waterproofing subcontractor. However, the review panel concurs in the Executive Director's decision in this area and finds no irregularity.

As we find merit to both Roebbelen and Alten's conflicting arguments, we are directing staff to reject all bids, cancel the procurement, and rebid the requirement for the SFOBB Toll Operations building. Prior to rebidding, staff should review BATA's solicitation and clarify any issues with the specification.

The review panel seeks the BATA Oversight Committee's concurrence with its recommendation.

A handwritten signature in black ink that reads "Bill Dodd". The signature is written in a cursive, flowing style.

Bill Dodd