



**BRIEFING: JANUARY 13, 2015, BOARD MEETING AGENDA ITEM # 4**

**TO:** Chairman Richard and Board Members

**FROM:** Scott Jarvis, Deputy Chief Program Manager

**DATE:** January 13, 2015

**RE:** Consider Awarding the Design-Build Services Contract for Construction Package 2-3 to the Apparent Best Value Winner and Delegating Authority to the CEO to Negotiate the Final Terms and Execute the Contract

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**Background**

The First Construction Segment (FCS) of the California High-Speed Rail System Program identified in the 2012 and 2014 Business Plans runs through the Central Valley and includes the counties of Madera, Fresno, Tulare, Kings and Kern. The FCS consists of Construction Packages 1-5, which will ultimately serve as the backbone of the statewide system.

Construction Package 2-3 (CP 2-3) follows Construction Package 1, continuing construction to the south. CP 2-3 extends approximately 65 miles from the terminus of Construction Package 1 at East American Avenue in Fresno to one mile north of the Kern-Tulare County line. CP 2-3 includes approximately 36 grade separations in the counties of Fresno, Tulare and Kings, including viaducts, underpasses and overpasses.

Pursuant to Board Resolution HSRA #14-05, approved on March 11, 2014, the California High-Speed Rail Authority (Authority) issued a Request for Proposals (RFP) for the Construction Package 2-3 Design-Build Contract in accordance with the Board's policy on issuance of RFPs. Resolution #HSRA 14-15, approved on June 3, 2014, allowed the Authority to amend the scope of work outlined in the RFP to delete Independent Checking Engineer (ICE) and Independent Site Engineer (ISE) services and to add ICE/ISE work to the PCM contract.

As detailed below, the CP 2-3 procurement process is now complete and staff is prepared to award the contract, pending Board approval. Staff recommends that the Board confirm the finding of the Evaluation Selection Committee and the recommendation of the Chief Executive Officer (CEO) that Dragados/Flatiron/Shimmick is the Apparent Best Value Proposer for the CP 2-3 design-build contract. The Board is further requested to authorize the CEO to take all steps necessary to negotiate and enter into a design-build contract with Dragados/Flatiron/Shimmick, including the execution thereof on behalf of the Authority.

## **Discussion**

The Authority was granted in statute the power to enter into contracts, and California Public Utilities Code, section 185036(a) specifically authorizes the Authority to use the design-build delivery method.

Design-build procurements seek to obtain the best overall value for the project owner and for CP 2-3, and as such both price and technical merit were considered. The approach for selecting and awarding the CP 2-3 design-build contract is similar to that used for CP 1, specifically, a two-phase process designed to obtain the best value for the Authority.

In the first phase of the CP 2-3 selection process, the RFQ was issued and each of the submitting teams were evaluated for their qualifications to perform the work. In the second phase, the RFP was issued to each qualified design-build team with proposals due on October 30, 2014.

### *Initiation of the RFP Process*

The RFP was issued on April 2, 2014, and was managed directly by Authority staff consistent with the RFP procurement process and in accordance with the Authority's administrative regulations, policies, and procedures. Three Proposers submitted Proposals on October 30, 2014 as follows: (1) Dragados/Flatiron/ Shimmick; (2) Golden State Rail Partnership; and (3) Tutor Perini/Zachry/ Parsons, a Joint Venture.

### *Evaluation Process*

The Proposals were analyzed and evaluated by a team of public employees, including Authority staff and a representative of the City of Hanford, supported by the Authority's legal, financial, and program management consultants. This review was conducted in accordance with the terms of the RFP and applicable criteria with the goal of awarding the contract to the responsive Proposer that complied with all of the requirements of the RFP, has demonstrated that they are technically qualified, and has the Apparent Best Value Proposal.

Review of the Proposals occurred in three stages as follows:

- Pass/Fail and Responsiveness Evaluation to ensure that all administrative requirements for the Proposals were met and to ensure that there had been no material changes in the financial position of the teams since they submitted their Statements of Qualifications which would negatively affect their ability to deliver CP 2-3;
- Technical Proposal Evaluation by the Technical Advisory Committee for analysis of the technical responses according to the stated evaluation criteria; and
- Final evaluation of the Technical Proposal by the Evaluation Selection Committee, which had ultimate responsibility for all aspects of the evaluation process.

The Pass/Fail review for responsiveness, administrative compliance, and financial capability was conducted by two committees, each chaired by a senior member of the Authority's staff supported by consultants. The Pass/Fail committee reviewing the three proposals found that each

was responsive and met all of the administrative requirements in the Instructions to Proposers, Forms and Certifications (ITP). The Pass/Fail committee reviewing the financial capabilities of the five proposers found that none had material changes in their financial status which would affect their financial capability to design and construct CP 2-3.

### *Technical Proposal Evaluation*

As noted above, the Technical Advisory Committee was chaired by a senior member of the Authority staff. Using the criteria given to the Proposers in the ITP, the Technical Advisory Committee reviewed the Technical Proposals provided by each of the three teams in detail. Each Technical Proposal was analyzed against the pre-established, pre-announced criteria. The evaluation of the Technical Advisory Committee and its chair was then transmitted to the chair of the Evaluation Selection Committee (ESC). This analysis was provided in a supporting capacity only to the ESC.

The ESC consisted of five members, all public employees, chaired by a senior member of Authority staff. The other members were senior Authority staff and senior staff at other public agencies with relevant expertise. Pursuant to the established procedures, the ESC received and considered the evaluation of the Technical Advisory Committee and its chair. As the entity with ultimate responsibility to evaluate and score the Technical Proposals, the ESC also conducted its own independent review of the Proposals and scored them.

Technical Proposals of the teams were evaluated against the technical criteria and sub-criteria described in RFP Section 9.5 to develop the Technical Proposal Score, which comprises 30 percent of the Total Proposal Score. After extensive review of the Proposals, the Evaluation Selection Committee scored the three Proposals pursuant to the criteria from the RFP:

<u>Technical Proposal Evaluation Criteria</u>	<u>Maximum Point Value</u>
Project Management	25 points
Design and Design Oversight	30 points
Construction and Construction Oversight	30 points
Small Business Participation	15 points
Raw Score for Technical Proposal	100 points possible

Based upon these criteria, the raw score for the Technical Proposal with 100 points allocated was used to calculate the Technical Proposal Score as described in Section 9.7 of the RFP. The Technical Proposal Score, with 30 maximum points available, was calculated using the following formula: Raw Score for Technical Proposal x 30%. The resulting calculations were as follows: (1) Dragados/Flatiron/ Shimmick – 26.67; (2) Tutor Perini/Zachry/ Parsons, a Joint Venture – 26.61; and (3) Golden State Rail Partnership – 25.47.

### *Price Proposal Opening*

Upon the conclusion of the technical review, evaluation on the price component of the Proposals took place. On December 11, 2014 the chairman of the ESC and Authority staff, supported by legal counsel and a Department of Finance representative, retrieved the sealed Price Proposal envelopes from their locked location. The envelopes were opened, the contents reviewed and the

results were documented. Related documents containing pricing information, such as the Proposer’s Proposal Bond, were also reviewed at this time.

Each Proposer’s Price Proposal Score is based upon the Total Proposal Price it submitted. The Total Proposal Price consists of both a Fixed Bid Price and a Variable Bid Price. The Fixed Bid Price will be included in the Contract Price as a lump sum payment for the design and construction work. The Variable Bid Price will be used to establish unit pricing for any hazardous waste remediation activities that are added by change order during the term of the Contract.

*Apparent Best Value Proposer*

Pursuant to the established procedures, each Proposal was given a numeric Price Proposal Score with the lowest bidder assigned the full 70 points commensurate with the 70% weight given the price element in the evaluation process. Each other Proposer received a proportionately lower score for the price component.

Once the Price Proposals were opened, the determination of apparent best value based on a 70-30 point scale, was calculated. The Total Proposal Score can be a maximum of 100 points using the formula provided in the RFP Section 9.7. The results were as follows:

<i>Proposer</i>	<i>Technical Proposal Score (maximum 30 points)</i>	<i>Total Proposal Price</i>	<i>Price Proposal Score (maximum 70 points)</i>	<i>Total Proposal Score</i>	<i>Rank</i>
Dragados/ Flatiron/ Shimmick	26.67	1,234,567,890	70	96.67	1
Tutor Perini/ Zachry/ Parsons, a Joint Venture	26.61	1,739,700,000	49.68	76.29	2
Golden State Rail Partnership	25.47	2,065,644,000	41.84	67.31	3

### *Contract Negotiation Process and the Team*

After confirmation by the Board and Federal Railroad Administration, limited negotiations will commence with the Apparent Best Value Proposer, Dragados/Flatiron/ Shimmick (DFS). Authority staff is pleased to note that the highly qualified team of DFS had the highest Technical Proposal Score and the lowest Total Proposal Price. The bid was below the engineer's estimate of \$1.5 – \$2.0 billion for CP 2-3, and utilizes significant savings through Alternative Technical Concepts. Accordingly, this contract is consistent with the cost projections contained in the 2012 and 2014 Business Plan.

The DFS Joint Venture team, comprised of Dragados USA, Inc., Flatiron West, Inc., and Shimmick Construction Company, Inc., combines significant resources and expertise in high-speed rail. The projects built by Dragados are recognized by their sheer size, technical intricacy, use of the latest technologies, and innovation to resolve technical challenges. The firm has more than 72 years of international experience in the construction, rehabilitation, and maintenance of high-speed rail, roads, bridges, tunnels and highways around the world.

Flatiron provides extensive California civil construction experience and local personnel, equipment, and material resources to execute the work. Flatiron, who is consistently ranked as one of California's top construction contractors, has successfully completed 22 design-build contracts and delivered over \$3.7 billion of transportation projects over the past 10 years.

Shimmick also has extensive California construction experience and resources and is recognized throughout the state for delivering some of the most challenging construction projects while maintaining an excellent safety record. Shimmick has experience on over \$3 billion in rail and other transportation projects in California, including commuter and heavy rail, bus rapid transit, bridges, grade separations, grade crossings, transit stations, rail maintenance facilities, and highway work.

The selection procedures stated in the ITP allow the Authority to review the Proposal of the Apparent Best Value Proposer and to conduct limited negotiations with them. During these limited negotiations, elements of the Proposal can be clarified and minor elements of work can be added or deleted from the contract. A copy of the updated Term Sheet with key contract elements is attached for review.

### *Calculation of CP 2-3 Contract Value*

The total Contract Price calculated below constitutes full compensation for the work. The Contract Price, Provisional Sums, and hazardous materials unit prices are all included in the design-build contract. The Contract Price is subject to equitable adjustment as set forth in the Contract Documents, such as limited circumstances where the contractor may be entitled to a change order for a cost adjustment as specifically set forth in the contract.

An Updated Term Sheet detailing the key contract provisions is attached to this memo. The contract issued for design-build services for CP 2-3 will also include the 30 percent Small and Disadvantaged Business (SBE) participation goal adopted by the Authority Board of Directors. Specifically, it is the goal of DFS to provide immediate and long-term opportunities for Small Businesses, Disabled Veteran Business Enterprises, Disadvantaged Business Enterprises and

Microbusinesses (collectively “SB”) in the Central Valley and California. DFS’s proposal reaffirms that the team is, “committed to meeting the goal of 30% SB participation and will implement a thorough and ongoing SB outreach and performance plan.” DFS has pledged to support, mentor and train SBs, and also identified a preliminary list of SBs with contractual commitments already in place.

The total contract allotment of the CP 2-3 design-build contract will be comprised of various components. Specifically, the total contract value includes:

- Proposer’s Fixed Bid Price;
- Provisional Sums;
- Hazardous materials unit prices; and
- Contingency.

Each of these components of the total contract allotment are described in detail below, including a comparison of the Total Proposal Price, which includes a Variable Bid Price item not included in the contract value. The key components to the bid and contract are as follows:

Fixed Bid Price Amount: The lump sum contract Fixed Bid Price of the Apparent Best Value Proposer DFS was \$1,205,335,890.00.

Variable Bid Price for Hazardous Waste: The Variable Bid Price will be used to establish unit pricing for any hazardous waste remediation activities that are added by change order during the term of the Contract. DFS bid \$73.00 price per ton for Class I Hazardous Waste and \$65.00 price per ton for Class II Hazardous Waste. The Total Variable Bid Price of DFS was \$29,232,000.00.00. This is usually an item of contingency and not included in the Contract Price at this time.

Total Proposal Price: Each Proposer’s Price Proposal score was evaluated based on its Total Proposal Price. The Total Proposal Price is the sum of the Proposer’s Fixed Bid Price and Total Variable Bid Price. The Fixed Bid Price noted above is the lump sum price for the Design-Build Contract and will be included in the Contract Price. The Total Variable Bid Price is used solely to evaluate the Proposers’ unit prices for any required hazardous waste remediation. The Total Variable Bid Price is determined by multiplying the Proposer’s Hazardous Waste unit prices by the Authority’s assumed quantities.

For CP 2-3, the Fixed Bid Price, Variable Bid Price for hazardous waste and the Total Proposal Price for DFS was as follows:

<b>Fixed Bid Price:</b>	<b>\$1,205,335,890.00</b>
Class I Hazardous Waste:	\$10,512,000.00 (144,000 tons x \$73.00/ton)
Class II Hazardous Waste:	<u>\$18,720,000.00</u> (288,000 tons x \$65.00/ton)
<b>Total Variable Bid Price:</b>	<b>\$29,232,000.00.00</b>
Fixed Bid Price:	\$1,205,335,890.00

Total Variable Bid Price: \$29,232,000.00  
**Total Proposal Price: \$1,234,567,890.00**

PG&E Provisional Sum: Provisional sums are frequently included in major infrastructure projects to provide an allocation for items of work that must be performed but cannot be quantified in advance.

In the case of CP 2-3, the RFP provides a provisional sum in the amount of \$160,000,000.00 for the cost of the design, construction, labor and materials portion of third party facility work self-performed by PG&E. The provisional sum was estimated by Authority consultants to pay for utility relocations, and protection of existing utilities, for overhead and underground lines including gas transmission lines, gas distribution lines, electric transmission lines and distribution lines.

During the procurement all of the Proposer teams noted that there was insufficient information from PG&E to accurately price this work. To avoid having the Proposers include significant contingencies in their bids, the Authority elected to pay for PG&E utility relocation/protection work using a provisional sum.

Given that the Authority will be responsible for the actual cost, payment may be higher or lower than the \$160,000,000 PG&E Provisional Sum. By retaining this work in the Design-Build Contract and not separately contracting with PG&E, the Design-Build Contractor remains responsible for management and coordination. To be eligible for payment from the PG&E Provisional Sum, each item of the PG&E Facility Work must first be approved by the Authority in a Provisional Sum task order stating the scope, costs, and schedule for the work to be performed.

Contingency: Contingencies are typically included in large contracts of this nature but are not included in the Contract Price. A contingency analysis for risks related to this contract will be presented to the Board at a subsequent meeting.

To summarize the items above for contract purposes, the total Contract Price includes the Fixed Bid Price and the PG&E Provisional sum. The Total Variable Bid Price and Contingency is not included in the contract. Thus, the CP 2-3 design-build total Contract Price is \$1,365,335,890.00 as follows:

Fixed Bid Price:	\$1,205,335,890.00
<u>PG&amp;E Provisional Sum:</u>	<u>\$160,000,000.00</u>
<b>Contract Price</b>	<b>\$1,365,335,890.00</b>

Pursuant to the provisions of the RFP, on December 15, 2014, Authority staff gave its Notice of Intent to Award (Notice) to the three design-build teams and posted this Notice on its public website. Issuance of this Notice commenced a five-day period in which unsuccessful design-build teams could protest the Apparent Best Value award to DFS. More than five days have

elapsed since issuance of the Notice and no protest from an unsuccessful design-build team has been received by the Authority.

Authority staff now seeks the Board's approval to award the design-build services contract for CP 2-3 to DFS. Once approved by the Board, and the Federal Railroad Administration, the CEO or his authorized designee, on behalf of the Authority, would then enter into negotiations with DFS to finalize a contract.

Pursuant to the terms of the RFP, if for any reason the Authority is unable to negotiate a contract with the Apparent Best Value Proposer, DFS, the Authority will terminate those negotiations in writing. The Authority may then enter into limited negotiations with the Proposer that received the next highest Total Proposal Score, until a contract is awarded or all of the Proposals are rejected. In this event, staff would return to the Board at their next meeting to update them on the process and solicit approval to move forward.

### **Recommendation**

It is the recommendation of Authority staff that the Board confirm the finding of the Evaluation Selection Committee and the recommendation of the CEO that Dragados/Flatiron/Shimmick is the Apparent Best Value Proposer for the CP 2-3 design-build contract. The Board is further requested to authorize the CEO to take all steps necessary to negotiate and enter into a design-build contract with Dragados/Flatiron/Shimmick, including the execution thereof on behalf of the Authority in the total contract price in the amount of \$1,365,335,890.00 for a term of approximately four years, or until project completion.

If negotiations are not successful with Dragados/Flatiron/Shimmick as the Apparent Best Value Proposer for the CP 2-3 design-build contract, Authority staff will terminate discussions. The Authority will then come back to the Board as to the next actions required and provided by the RFP provisions.

### **Attachments**

- Draft Resolution #HSRA 15-01
- Updated Term Sheet