

MIAMI-DADE EXPRESSWAY AUTHORITY (MDX)

BOARD MEETING
TUESDAY, FEBRUARY 24, 2015
4:00 PM

WILLIAM M. LEHMAN MDX BUILDING
3790 NW 21ST STREET
MIAMI, FLORIDA 33142

SUMMARY MINUTES

Members Present:

Maritza Gutierrez, Chair
Maurice A. Ferré, Vice Chair
Carlos R. Fernandez-Guzman, Treasurer
Gus Pego, P. E., District VI Secretary
Alfredo L. Gonzalez, Esq.
Louis V. Martinez, Esq.
Rick Rodriguez Piña
Shelly Smith Fano
Javier L. Vázquez, Esq.
Luz Weinberg

Members Absent:

Robert W. Holland, Esq.

Staff:

Javier Rodriguez, Executive Director
Carlos Zaldivar, General Counsel
Marie Schafer, Chief Financial Officer
Steve Andriuk, Director of toll Operations
Juan Toledo, P.E., Director of Engineering
Helen Cordero, Manager of Procurement and Contracts Administration
Ivan Del Campo, Chief Information Officer/Manager of ITS
Mario Diaz, Public Information Manager
Francine Steelman, Associate General Counsel
Carol Lang, Human Resources Manager
Maria Luisa Navia Lobo, Board Secretary

Consultants:

Finance: Randy Topel, First Southwest Co.

Transportation: Albert Sosa, HNTB (GEC-A)
Rick Crooks, EAC Consultants (GEC-B)
Tere Garcia, Bermello Ajamil (GEC-A)

CALL TO ORDER & ROLL CALL

Chair Gutierrez called the meeting to order. Ms. Navia Lobo called the roll and announced a quorum of the MDX Board was present.

PLEDGE OF ALLEGIANCE

Chair Gutierrez asked Executive Director Rodriguez to lead in the Pledge of Allegiance.

APPROVAL OF AGENDA

Chair Gutierrez requested a motion to approve the agenda. Mr. Ferré moved to accept the agenda as presented and Mr. Martinez seconded the motion. The agenda was unanimously approved.

DECLARATIONS OF VOTING CONFLICTS

Mr. Zaldivar informed Members that approximately an hour ago MDX was served with a lawsuit filed by MCM for declaratory judgment and injunctive relief. Ms. Gutierrez informed Members that at the last Operations Committee that she, an abundance of caution to avoid a conflict issue, stepped out of the meeting and did not participate in the discussion and voting on Item IX. B.

Mr. Zaldivar informed Members that Ms. Gutierrez asked for a legal opinion regarding the possible conflict. He further informed Members that he contacted the Florida Commission on Ethics and Ms. Gutierrez does not have a conflict on Item IX.B. Mr. Zaldivar asked Members if there were any voting conflicts regarding the items on the Board Agenda. No conflicts were declared.

CITIZEN COMMENT

The following individuals addressed the Board regarding agenda item IX. B MDX Procurement/Contract Number RFP-14-03; MDX Work Program No. 83628.030; Design-Build Services for SR 836 Operational, Capacity and Interchange Improvements:

- Erik Fresen – Representing MCM – 1500 S.W. 45th Avenue, Miami, FL
- Jeffrey Bass, Esq. – Representing MCM – 46 SW 1st Street, Miami, FL
- Pedro Munilla, Representing MCM - 7277 Sunset Drive, Miami, FL
- Juan Munilla, Representing MCM – 6030 SW 114 Street, Miami, FL
- Daniel Munilla - Representing MCM - 5400 SW 82nd Avenue, Miami, FL
- Mauricio Gonzalez – Representing Odebrecht – 201 Alhambra Circle, Coral Gables
- James Moye, Esq. – Representing Odebrecht - firm of Moye, O'Brien
- Gilberto Nieves – Representing Odebrecht – 8488 SW 94 Street

APPROVAL OF SUMMARY MINUTES

- Board Meeting of January 27, 2015

Mr. Martinez moved to approve the Summary Minutes for the December 9, 2014 meeting. Mr. Pego seconded the motion. The motion was unanimously approved.

EXECUTIVE DIRECTOR'S REPORT

Mr. Rodriguez reported on the following items of interest since the last Board Meeting:

- February 6 – Meeting with State Representative Jeanette Nunez, giving her an update on activities at the Authority and Advantage program. Updates on the status of the Miami Intermodal Center (MIC) and various MDX projects
- March 2 – Follow up meeting with Mayor Gimenez and Miami-Dade Aviation Department regarding the MIC. Secretary Pego will be attending.
- January 28 – Attended Florida Chamber of Commerce, Tallahassee Florida
- February 10, Francine Steelman, Associate General Counsel, participated in the IBTTA

Leadership Academy

- MDX Budget, Committees will be discussing the proposed FY 2016 budgets and a Budget Workshop will be scheduled in April 2015
- Transit Solutions – Since its inception MDX has been a partner with transportation agencies when there is a priority project moving forward. As far as transit, the policy of the Board is that MDX participates in capital improvements but do not participate in operations and maintenance.

GENERAL COUNSEL’S REPORT

Mr. Zaldivar announced that an Attorney/Client Privileged meeting (Shade Meeting) regarding the ETCC litigation will be held at the next MDX Board of Directors meeting scheduled for March 24, 2015.

MPO REPRESENTATIVE REPORT

Mr. Ferré reported on the Transportation Summit. He further highlighted issues discussed at the MPO Board meeting.

TREASURER’S REPORT

Ms. Schafer reported for the January 31, 2015 Fiscal Year 2015 overall revenue posted \$87.6 million compared to the forecast of \$93.7 million, which reflects a negative variance of \$6 million. In December 2014, an allowance for doubtful accounts was taken of \$4 million that was reported in December’s 2014 financials. There is also a lag on toll by plate customers, on recognition revenue. as well as the fact that programed in the forecast were the ramps up and running in January 2015 which did not occur, there is a delay on the collection of revenue on the construction side. Expenses overall are 4% below the forecast. Interest Expense is reflecting a savings of \$2.3 million. A potential refunding will take place in March, 2015. Overall net revenue is approximately \$31.2 million. Mr. Fernandez-Guzman asked Ms. Shafer what the savings have been for the restructuring in the past two years. Overall saving of \$47 million present value savings between all the refunding and have lowered the debt service overall approximately \$74 million.

Mr. Fernandez-Guzman stated the saving generated with the refunding have gone to either shore up the financing and debt service capacity, increasing the project capacity of MDX. The dollars are being well spent.

COMMITTEE REPORTS

- Operations Committee, 2/17/15

The Committee reports were waived.

Mr. Zaldivar asked Members who joined the meeting after the declaration of Conflicts, if they had any declarations. Mr. Gonzalez declared a conflict with agenda item *IX. B “MDX Procurement/Contract Number RFP-14-03; MDX Work Program No. 83628.030; Design-Build Services for SR 836 Operational, Capacity and Interchange Improvements.*

[a copy of Mr. Gonzalez’s declaration of Conflicts report is attached to these minutes]

CONSENT AGENDA

A) Travel Approval:

- March 29-31, 2015, Trip to Washington, DC. by Executive Director Rodriguez to attend the IBTTA Washington Briefing

- April 23-28, 2015, Trip to Portland, OR, by Executive Director Rodriguez to attend IBTTA Special Board & Committee Meeting (April 23-25) and Transportation Finance & Road Usage Charging Conference (April 26-28)

Mr. Ferré moved to approve the Consent agenda. Mr. Fernandez Guzman seconded the motion. The motion was unanimously approved.

REGULAR AGENDA

A) MDX Procurement/Contract Number RFQ-10-05; MDX Work Program No. 11211.050; Construction Engineering and Inspection (CE&I) Services for Central Boulevard Reconstruction (\$250,914.55) (Endorsed by the Operations Committee on 2/17/15)

- Approval of Amendment No. 4

Mr. Zaldivar read the agenda item for the record. Mr. Toledo introduced the item and explained Parsons Brinkerhoff, Inc. is the Construction, Engineering, and Inspection (CE&I) consultant for Central Boulevard Project Reconstruction project at the Miami International Airport.

He further explained the purpose of the fourth amendment was to extend the contract time and to increase the CE&I's Contract limiting amount by an additional \$250,914.55 so that the CE&I can close out the project. The Design Build Firm has been behind schedule on this Project, with DBF contract time extensions running to March 15, 2014. The Design Build Firm is being assessed liquidated damages for all work extending beyond March 15, 2014. Substantial completion was accomplished on January 31, 2015. As a result, the DBF will be assessed 322 calendar days @ \$14,471.83/calendar day, which amounts to \$ 4,659,934.26 to the January 31, 2015 date.

Mr. Martinez moved to approve Amendment No. 4. Mr. Vazquez seconded the motion. The motion was unanimously approved.

B) MDX Procurement/Contract Number RFP-14-03; MDX Work Program No. 83628.030; Design-Build Services for SR 836 Operational, Capacity and Interchange Improvements (Engineer's Estimate \$158,426,151.00) (Endorsed by the Operations Committee on 2/17/15)

- Approval of Technical Evaluation Committee's recommendation to select the number one ranked Proposer, Odebrecht Construction, Inc., to enter into a Contract for a not-to-exceed amount of \$149,575,971.00

Ms. Cordero read the action item into the record. She informed Members three (3) Proposers were shortlisted to move forward in the RFP process to submit a technical and price proposal.

- Condotte/de Moya Joint Venture
- Munilla Construction Management, LLC d/b/a MCM
- Odebrecht Construction, Inc.

Ms. Cordero informed Members that due to the size of the size and the importance of the project several elements were included in the RFP process which although common to the industry and

proven, not regularly used by MDX, Ms. Cordero explained the process in depth to give the board their perspective of this project.

- 1) **Stipend:** MDX agreed to pay the non-selected and Responsive Proposers a stipend of \$150,000 to offset the cost of preparing their proposal and allows MDX to use the ideas/concepts on the Proposals without limitation – this is a common practice in projects of this magnitude.
- 2) **Alternative Technical Concept (ATC):** Prior to submittal of the Technical Proposals, the Proposers were allowed to propose different concepts from the one provided in the RFP in which to deliver the project. The ATC's are subject to MDX review and approval. A combined total of 54 ATC's were submitted from all Proposers. Various ATC's were approved by MDX.
All Proposers included approved ATC's in their Proposal, therefore Technical Proposals, schedules, and Price Proposals are not apples-to-apples.
- 3) **ROW Acquisition:** There are several parcels located within the project limits that have not been acquired by MDX. MDX estimated 690 calendar days after the Notice to proceed is issued to the Successful Proposer to complete the acquisition of those parcels. The RFP prohibited construction activities on the parcels that have not been acquired by MDX and advised Proposers to take that time into consideration in preparing the Technical and Price Proposals.
- 4) **Time Value Cost:** MDX assigned a Time Value Cost (TVC) of \$50,000 to each calendar day of the project duration– this amount was determined using several factors:
 - The year 2020 projected traffic volumes on SR 836 between NW 57th Ave and Le Jeune Road, this data was prepared by the Traffic & Revenue Consultants and endorsed by the GEC;
 - The decreased traffic volume during construction
 - The Board approved toll rates for ORT
 - The FDOT criteria to determine TVC, which accounts for various factors impacted by the project construction, including, but not limited to: travel time, accident costs, costs of maintenance activities, impacts to other facilities.
 - MDX also considered the TVC used for the SR 826/SR 836 Interchange reconstruction project, which is currently under construction, was procured in the same manner as this project, and also used a \$50,000 TVC.
- 5) **Minimum Technical Score:** The RFP required that Proposers receive a minimum Technical Score of 700 points out of 1000 in order for the Price Proposal to be opened.
- 6) **Adjusted Score:** an Adjusted Score was used to determine the ranking of the Proposers based on an overall best value approach using 3 components:
 - Technical Scores (TS) – the scores received by each Proposer from the Technical Evaluation Committee (TEC) as a result of their evaluation of the Technical Proposals
 - Proposed Contract Time (PCT) – this is the number of calendar days in which proposers commit to complete the project

- Price Proposals (PP) - this the dollar amount for which the proposers commit to deliver the project.

This combination of these factors to determine the overall best value to the agency is a common and proven practice used in the industry for major construction projects procured using the design/build delivery method.

- 7) **Final Selection Formula:** The formula used to combine the 3 components to determine the Adjusted Score was:
Adjusted Score = $PP + (PCT * TVC) / TS$

First Step: Assign a dollar value to the proposed contract time. This was done by multiplying the proposed contract time by the time value cost (“TVC”), which was \$50,000/Calendar Days.

Second Step: the dollar value assigned to the proposed contract time was added to the price proposal

Third Step: the total dollar amount was divided by the technical score to arrive at the Adjusted Score.

The Proposer with the lowest Adjusted Score would be ranked #1.

All of the selection information and processes were detailed in the RFP from its original distribution to the shortlisted firms on June 5, 2014 and no changes to these were made throughout the process.

Evaluation of Proposals:

- Customary Compliance/Responsiveness Review was performed on all Technical Proposals before distribution to the TEC.
- The TEC meeting was held on January 28. At that meeting, the TEC scored the Technical Proposals, and the Price Proposals were opened and the ranking was determined. Based on the formula previously described, the ranking was:
 - #1 OCI
 - #2 MCM
 - #3 CDM JV
- **Compliance/Responsiveness Review:** Staff conducted compliance and responsiveness review of the two (2) highest ranked Proposers and found the Price Proposals to be in compliance and responsive. In addition, a Price Proposal and Proposed Contract Time analysis were performed by the General Engineering Consultant (GEC).
- The GEC analysis concluded that Odebrecht’s Price Proposal is reasonable and competitive based on their proposed design as submitted in the Technical Proposal; and the Proposed Contract Time is achievable based on their proposed approach to the project and was consistent with the requirements and allowances in the RFP.
- **Contract Terms:**
- This Contract includes a fifteen percent (15%) Small Business Participation Requirement and a fifteen percent (15%) Local Business Participation Requirement.
- The Project has a Contract Time of One Thousand Fifty-Five (1055) Calendar Days.

Disclosures Related to the Protests Submitted by MCM

➤ **Prior to the Operations Committee:**

- MCM submits a premature Notice of Intent to Protest (Notice).
- In the Notice MCM's alleges that OCI's Proposal is not responsive.
- MDX returned the Notice & Bond to MCM.
- MDX reviewed all allegations made by MCM in its Notice and found no merit to the claims; and presented the TEC recommendation to award to the Operations Committee.

➤ **At the Operations Committee:**

- As part of the Public Comment segment, MCM presented the same points addressed in the Notice.
- OCI disputed MCM's points.
- Staff answered questions from the Members and reassured the Committee that the points raised by MCM are not valid based on the staff and the GEC's review of OCI's proposal.
- Committee moved to endorse to the Board that the OCI contract be approved.

➤ **After Operations Committee:**

- MCM re-submits the Notice of Intent of Protest with the same allegations (Notice #2).
- Notice #2 requests that MDX defers the contract award until after the conclusion of the mediation step of the MDX protest procedure.

Before Board Meeting:

- MDX met with MCM on February 23rd, to determine if there were any new points to be considered by MDX. MCM presented the same points.
- MCM submitted two addenda to its protest, elaborating on the same reasons why they believe the Proposal from OCI is non-responsive.
- MDX was served with an "Emergency Complaint for Declaratory and Injunctive Relief" electronically filed by MCM on 2/23/15.

Recommendation:

- Staff's recommendation to award the contract to Odebrecht Construction, Inc. as the Responsive and Responsible and number one ranked Proposer does not change.

Ms. Gutierrez asked Ms. Cordero to expand on the Cone of Silence. Ms. Cordero explained that communications, in any form, between any Proposer or its employees, agents, lobbyist or representatives and any MDX Board Member, employee, agent, counsel or representative, including MDX contractors/ consultants, and Technical Evaluation Committee Members, are strictly prohibited from the date of the advertisement of the solicitation documents through the date of execution of the contract.

Any violation of the requirements set forth in this subsection shall constitute:

- Grounds for immediate and permanent disqualification from participating in this procurement; and

- May also result in the proposer's temporary debarment from participating in any other MDX procurement.

Mr. Rodriguez informed Members that if the item is deferred it will set precedence and violate MDX procedures and policies.

Members thoroughly discussed the item.

Mr. Martinez moved to approve the Technical Evaluation Committee's recommendation to select the number one ranked proposer, Odebrecht Construction, Inc. and to enter into a contract for a not-to-exceed amount of \$149,575,971.00. Mr. Ferré seconded the motion. Ms. Gutierrez was not present for the vote. The motion was unanimously approved.

INFORMATIONAL ITEMS

A) Procurement Report

B) Communications Report

CHAIR'S COMMENTS

ANNOUNCEMENTS:

Mr. Rodriguez encouraged Members to attend the Procurement Policy Review Workshop scheduled for Wednesday, February 25, 2015.

Mr. Rodriguez informed Members that House Bill 989 was filed by Representative Nunez calling for reducing the size of the MDX Board to a total of nine Members. Four appointed by the State, four by the County and one (1) District Secretary. Restricting lobbyist in any form from participating and being appointed to MDX, as well as limiting the number of years doing work with municipalities or the State. There is a companion Senate Bill.

ADJOURNMENT

Chair Gutierrez adjourned the Meeting.

Summary Minutes prepared by Maria Luisa Navia Lobo, Board Secretary