



RESOLUTION

REQUESTING THE HONOLULU AUTHORITY FOR RAPID TRANSPORTATION TO REVIEW THE TERMS OF EXISTING CONTRACTS FOR THE HONOLULU HIGH-CAPACITY TRANSIT CORRIDOR PROJECT IN ORDER TO LIMIT COSTLY CHANGE ORDERS AND COST OVERRUNS ON FUTURE CONTRACTS.

WHEREAS, pursuant to the authority provided by the State Legislature in Act 247, Session Laws of Hawaii 2005, the Council established by enactment of Ordinance 05-27 a general excise and use tax ("GET") surcharge of one-half of one percent for the purposes of funding the operating and capital cost of a locally preferred alternative ("LPA") for a mass transit project within the City and County of Honolulu; and

WHEREAS, by enactment of Ordinance 07-01, the Council approved an LPA to address transportation issues for Honolulu's Primary Transportation Corridor; and

WHEREAS, the selected LPA is a fixed guideway alternative connecting West Kapolei to the University of Hawaii at Manoa (the "Project"); and

WHEREAS, because the revenues to be derived from the GET surcharge will not be sufficient to construct the LPA, the City will require federal funds to complete the Project; and

WHEREAS, the mechanism by which the federal government commits funds for new fixed guideway transit projects is known as a "Full Funding Grant Agreement"; and

WHEREAS, such agreements provide the following benefits to the City:

1. They define the scope of the project;
2. They establish a firm date for project completion;
3. They provide a mechanism for designating federal funds for the project in future years;
4. They lead to the development of accurate cost estimates; and
5. They permit the use of local funding for project activities without jeopardizing the receipt of future federal funding for the project;

and



RESOLUTION

WHEREAS, when the City expended its own funds on the Bus Rapid Transit ("BRT") Project in the early 2000s prior to securing a Full Funding Grant Agreement for BRT from the federal government, the expenditures ultimately disqualified the City from receiving federal funds for BRT; and

WHEREAS, with the approval of Resolution 09-252, CD1, by the voters at the 2010 general election, the City's functions relating to the construction and operation of the Project were transferred from the City's Department of Transportation Services ("DTS") to the Honolulu Authority for Rapid Transportation ("HART"); and

WHEREAS, according to Departmental Communication D-70 from HART dated February 7, 2012, notwithstanding the lack of a Full Funding Grant Agreement for the Project, HART has conducted procurement for, and entered into (or taken over from DTS) and issued Notices to Proceed ("NTP") on a number of contracts for the design and construction of the fixed guideway (West Oahu to Farrington Highway), design and construction of station groups (Farrington Highway Station Group), and design and construction of the Maintenance and Storage Facility; and

WHEREAS, unlike the procurement for the rail transit project proposed by the Fasi Administration in the early 1990s, neither the current City Administration nor HART has provided the Council with copies of the procurement documents for the various contracts for the current Project prior to the deadlines for receipt of proposals or bids; and

WHEREAS, the *Honolulu Star-Advertiser* reported on January 27, 2012 that the City would be required to pay an additional \$15 million to contractor Kiewit Infrastructure West Co. ("KIWC") under a change order required when the City requested KIWC to mobilize its personnel and equipment to begin work on design and construction of the West Oahu/Farrington Highway guideway segment, but then required KIWC to suspend that work because the Final Environmental Impact Statement ("FEIS") for the Project had not received final federal approval; and

WHEREAS, it appears that the change order could have been avoided if the City had waited to issue its NTPs until the Full Funding Grant Agreement had been executed; and

WHEREAS, it is also possible that the KIWC change order may have been avoidable had the Council been provided copies of the procurement documents for the West Oahu/Farrington Highway guideway contract and given a meaningful opportunity to comment on the proposed contract terms prior to the deadline for receipt of proposals or bids; and



RESOLUTION

WHEREAS, frequent large change orders increase the possibility of cost overruns, which diminish the Project's contingency reserve and jeopardize the completion of the project on time and within budget; and

WHEREAS, members of the public have become frustrated with and lost confidence in the integrity of the Project due to a lack of transparency by the City administration regarding the Project and the fact that there are already change orders despite the fact that Project construction has barely begun; and

WHEREAS, in order to protect the taxpayers of the City and County of Honolulu, the Council wishes to be afforded a meaningful opportunity to review and comment on the Requests for Proposals ("RFPs") and other procurement terms in an effort to avoid additional change orders or potential disqualification from federal funding for the Project altogether that might result from a lack of caution in the terms of the City's Project contracts or in their implementation; now, therefore,

BE IT RESOLVED by the Council of the City and County of Honolulu that the Honolulu Authority for Rapid Transportation is hereby requested to review the standard terms of its design and construction contracts to determine whether they should be modified to better protect the City from future change orders of the nature necessitated for the Kiewit Infrastructure West Co. contract; and

BE IT FURTHER RESOLVED that HART is urged to follow the practice of the Fasi Administration to provide, for procurements estimated to exceed \$1,000,000, a copy of the RFP and other relevant procurement documents to the Council at the time the procurement is formally commenced, which copies may be in paper or electronic form, and to consider fairly the Council's comments thereon, if any; and

BE IT FURTHER RESOLVED that HART is urged to defer execution of additional construction contracts or issuance of additional Notices to Proceed for the Project's fixed guideway or stations until a Full Funding Grant Agreement has been executed between the City and Federal Transit Administration; and



RESOLUTION

BE IT FINALLY RESOLVED that copies of this Resolution be transmitted to the Chairperson of the Board of Directors and the Executive Director of the Honolulu Authority for Rapid Transportation.

INTRODUCED BY:

Romy M. Carhola

DATE OF INTRODUCTION:

JUN 20 2012
Honolulu, Hawaii

Councilmembers