



**RESOLUTION**

URGING THE MAYOR, THE CITY’S CHIEF PROCUREMENT OFFICER, AND THE HONOLULU AUTHORITY FOR RAPID TRANSPORTATION TO REVERSE THE AWARD TO ANSALDO HONOLULU OF THE “CORE SYSTEMS” CONTRACT FOR THE CITY’S RAIL PROJECT BY UPHOLDING THE PROTESTS OF THE OTHER OFFERORS OR BY CALLING FOR NEW BIDS FROM ALL THREE OFFERORS.

WHEREAS, the City has awarded a contract to Ansaldo Honolulu (“Ansaldo”) to design, build, operate and maintain the City rail project’s “core systems,” which include 80 train cars and a system control center; and

WHEREAS, Ansaldo, a joint venture between AnsaldoBreda and Ansaldo STS, was awarded the contract over the submission of two other competitive proposals, one by Sumitomo Corporation of America (“Sumitomo”), and the other by Bombardier Transportation (“Bombardier”), of which the latter will potentially save the City hundreds of millions of dollars as reflected in the following table:

<b>Project Phases</b>	<b>Ansaldo</b>	<b>Bombardier</b>	<b>Sumitomo</b>
Design-Build Cost	\$573,782,793	\$697,263,592	\$688,825,949
Intermediate Operations and Maintenance	\$166,974,503	\$86,550,393	\$273,491,568
Full Operations and Maintenance	\$339,056,303	\$176,167,567	\$240,438,085
Optional Operations and Maintenance	\$317,573,494	\$203,375,014	\$250,694,496
<b>Total</b>	<b>\$1,397,387,093</b>	<b>\$1,163,356,566</b>	<b>\$1,453,450,098</b>

and

WHEREAS, the evaluation of the proposals submitted by the three proposers was based on a variety of factors, including price, past experience, performance, and the proposers’ management team; and

WHEREAS, Bombardier has more than 100,000 train vehicles in operation in 25 countries; and

WHEREAS, it has been reported that in other places AnsaldoBreda has had problems delivering train vehicles it had contracted to deliver in a timely manner and according to specifications, including the following examples:



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- (1) In 2003, AnsaldoBreda won a contract from the Los Angeles County Metropolitan Transportation Authority to deliver 50 light-rail vehicles by June of 2007 but delivered only 19 vehicles by January 2009, and even those vehicles were 5,000 to 6,000 pounds overweight; and
- (2) Danish train company DSB has said that AnsaldoBreda was behind schedule in delivering 14 trains by 2009, delivering only eight trains, only three of which were operational and even those had problems;

and

WHEREAS, Bombardier's proposal also includes plans to: (1) assemble 65 train cars on Oahu, creating an estimated 150 full-time local jobs, most of which will become permanent local jobs maintaining the train cars; and (2) create training programs at the University of Hawaii and Leeward Community College to train residents for jobs with the train system; and

WHEREAS, Ansaldo will assemble all of its train cars on the mainland and will not provide local jobs or training programs similar to those that Bombardier proposes to provide; and

WHEREAS, the Council has raised a number of questions and concerns regarding the award of the core systems contract to Ansaldo including the following: (1) Ansaldo has had a spotty performance record with respect to the trains it has contracted to deliver to other train authorities; (2) the design and build portion of the contract was weighted as being seven times more important than the operations and maintenance portion which gave an advantage to Ansaldo, even though its operations and maintenance costs for the interim period and the optional extension far exceeded the same costs for Bombardier and was significantly higher than those costs for Sumitomo; (3) Ansaldo's design and build price dropped from \$679.8 million in June 2010 to \$574 million in February 2011, while its operations and maintenance price went up by about \$100 million; (4) Bombardier's second best and final offer ("BAFO") was rejected because it allegedly included an inappropriate condition regarding a change in the indemnification clause, even though, according to Bombardier, it was not a condition but merely a request for clarification and despite the fact that the alleged condition was included in Bombardier's first BAFO without causing Bombardier's proposal to be rejected; and



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WHEREAS, these problems and concerns with the procurement of the core systems and the award of the contract to Ansaldo have resulted in the following actions:

- Bombardier has filed legal action in Circuit Court seeking to invalidate a State agency's summary judgment throwing out Bombardier's appeal that it was unfairly and improperly disqualified. Bombardier has also requested the Federal Transit Administration to review whether the City has violated both State and Federal procurement laws by failing to conduct meaningful discussions with Bombardier about specific language in its proposal;
- A well-known group of rail opponents have filed suit in U.S. District Court seeking to invalidate the project's environmental impact statement ("EIS") and federal government approval. The plaintiffs accuse the City of violating federal environmental, historic preservation and transportation laws in preparing the EIS, claiming that City officials defined the requirements of the project so narrowly as to exclude all reasonable alternatives, including monorail, light rail and other technologies. An injunction is being sought that would require the City to prepare a new or supplemental EIS; and
- Two firms, both potential subcontractors for the project, have filed complaints with the State Contractors Licensing Board alleging that Ansaldo was not licensed as a contractor in Hawaii when it bid on the contract to design, build, operate and maintain the City's rail system—an apparent violation of state law;

and

WHEREAS, at the very least, these legal actions create serious doubts about the validity of the Ansaldo award, and in fact, may result in halting the project and requiring the City to prepare a new EIS that leads to a new request for proposals on the core systems contract; now, therefore,

BE IT RESOLVED by the Council of the City and County of Honolulu that it urges the Mayor, the City's Chief Procurement Officer, and the Honolulu Authority for Rapid Transportation to reverse the award to Ansaldo Honolulu of the "core systems" contract for the city's rail project by upholding the protests of the other offerors or by calling for new bids from all three offerors; and

BE IT FURTHER RESOLVED that the procurement process for this contract pick up where it left off, resuming the evaluation of all three offerors on a fair and equitable



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basis; or barring that course of action, beginning at square one and calling for new bids based on criteria that best serve the interests of Honolulu residents and taxpayers, giving appropriate weighting to cost considerations in all phases of the contract, including design, building, operations and maintenance—and thereby yielding the creation of the greatest number of guaranteed jobs for the residents of Hawaii at the lowest cost; and

BE IT FURTHER RESOLVED that should the lawsuit in U.S. District Court result in an injunction and the requirement of the preparation of a new EIS that appropriately considers and evaluates all viable technologies and alternatives, including but not limited to magnetic levitation, monorail, rubber tire on concrete, managed lanes and bus rapid transit, the City is urged to issue a new Request for Proposals for the core systems contract based on factors including but not limited to: 1) Due diligence and investigation of past performance in other jurisdictions, 2) Criteria that appropriately considers low cost, jobs creation, and financial standing, and 3) Appropriate communications with all offerors in order to prevent and cure misunderstandings as they arise; and

BE IT FINALLY RESOLVED that copies of this Resolution be transmitted to the Mayor, the Director of Budget and Fiscal Services, and the Chair of the Honolulu Authority for Rapid Transportation Board of Directors.

INTRODUCED BY:

Tom BERG

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DATE OF INTRODUCTION:

SEP 08 2011

Honolulu, Hawaii

Councilmembers