

April 16, 2013

FOR YOUR INFORMATION

TO: Mayor and Members of City Council

FROM: Milton Dohoney, Jr., City Manager *MD*

SUBJECT: Streetcar Project Status

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There have been many media inquiries regarding the status of the streetcar project and the role that the Executive Project Director will play moving forward. The Administration has been evaluating the project's budget and scope since the bid responses came in for the construction manager contract in February, and so, has not been in a position to respond until now. The following questions from the media and their respective answers are being provided to you for your information.

**1. What's going on with the bid process and the examination of the bids the city received earlier this year? Who was involved in that process?**

As noted in my memorandum of February 14, 2013, the City opened bids for the civil construction contract for the Cincinnati Streetcar on February 8. Those bids came in significantly higher than anticipated, resulting in a project budget gap exceeding \$20 million. The City and SORTA immediately began investigating the causes of the overage, reviewing the overall project budget, and determining necessary next steps to continue the project.

This investigation included a thorough review of the project involving City and SORTA project staff, the design contractor (Parsons Brinckerhoff), the City's independent third party estimator (ME Companies), local experts, including John Deatrick, Project Executive for The Banks, and an outside team of third party experts from the American Public Transportation Association (APTA). In addition, the FTA and its Project Management Oversight Consultant (PMOC) conducted their own independent review of the project and bids.

All three reviews concluded the same thing: The construction estimates did not adequately capture the true costs of construction including 1) costs attributable to rail project administration, 2) Federal Prevailing Wage requirements, 3) working conditions in Downtown, and 4) lack of the economies of scale assumed for a construction project that covers nearly four miles.

The bid prices provided appear to include premium costs associated with performing a wide range of construction tasks in the downtown environment. Multiple mobilizations, work conditions necessary to maintain pedestrian and traffic flow in the CBD, concerns about disruptions to businesses, as well as higher than estimated prices for items all appear to have played a role in the overage.

The low bidder has indicated that it would likely not re-bid the project if the City chose not to award the current contract. As the low bid was also significantly lower than the other two bids,

re-bidding the project would likely result in higher bid prices, increasing the cost of the project. All reviewers agree that the lowest bid, while higher than anticipated, is highly competitive.

### **Internal Analysis of Bids**

The differences of \$17.5 million between the lowest and highest of the three bids submitted indicate that the firms did not employ a common approach to pricing the work – and that bidders do not agree on a "typical" or standard approach to estimating the costs of this first-of-its-kind project in Cincinnati.

As many of the items included in the construction scope are items which the City has bid several times before (e.g., water mains, paving, curbs), the third party estimate was based in part on historical bid pricing for such items. In addition, the estimate reviewed recent line item bid pricing received by the Tucson streetcar project. Unit based pricing for items normally bid in the City using historical bid data and past experience in the City did not adequately estimate the project cost. Further, review of individual lines suggests that contractors did not see economy of scale for the project and are not anticipating that the work will be very efficient.

### **Scope Reductions**

As part of the analysis, the City asked the design contractor, PB to identify potential scope reductions to close the budget gap. That review garnered \$2.8 million in achievable savings without violating federal grants or compromising the safety or level of service for the streetcar system.

### **APTA Peer Review**

To provide an objective third party perspective on the project, the City and SORTA invited a team of professionals from APTA to conduct a Peer Review of the project in Cincinnati from March 25-27, 2013. A four member panel comprised of rail transit construction and operation experts from across the country was provided complete access to all project documentation to review, in addition to access to City of Cincinnati, SORTA and consultant staffs. John Deatrick, Project Executive for The Banks, also participated in the review.

Among the key findings of the APTA group were:

- The Cincinnati streetcar is a strong streetcar project that includes several innovative features such as the first application of a 100% low-floor vehicle in the United States.
- The history of the project and the fact that this was the third attempt to procure the construction contract (DBOM, then CM/GC, and now IFB with 100% design) set the context for some of the issues.
- Administrative costs typical for rail construction project, prevailing wage rates, and use of highway rather than rail transit estimating methodologies, contributed to the estimate's failure to capture correct costs.
- The low bid reflects the new actual cost for the project. While a rerun of the estimate should be undertaken, the low-bid price appears competitive and reflects the market.
- Re-bidding will likely increase costs substantially.
- While some savings through scope reductions allowed under IFB process are achievable, the budget shortfall cannot be closed entirely from scope reduction; this will compromise the project.

In addition to the list of PB scope reductions, the APTA group identified an additional \$2.5 million in feasible cuts to bring the total amount of scope reductions to \$5.3 million. The group

also recommended additional areas for further investigation by the City as potential value engineering opportunities as well as construction management strategies. These items must be evaluated following execution of a construction contract with the vendor.

**2. What impact, if any, does the April 8<sup>th</sup> passing without work beginning have on the project?**

The April 8<sup>th</sup> date was provided in the bid document as the Notice to Proceed date for the contractor. Since that date has passed and the City is not able to issue the contract because of a continued funding gap, it cannot be guaranteed that the lowest bidder, or any of the bidders, will wait indefinitely nor be able to honor their bid submission. Therefore, the longer the City waits to issue the construction contract the less able the contractor will be to guarantee the prices contained in their bid response, and the longer it will be until the streetcar is ready for passenger service. Time is money.

Additionally, the City's grant agreements with the Federal Transportation Administration (FTA) include certain contractual schedule milestones that the City must meet. The longer the City waits to issue a construction contract, the higher the risk that the City will miss these milestones and find itself in violation of the grant agreements. Such a scenario would give the FTA reason to pull federal funds committed to the project. The FTA has repeatedly expressed that it wants the project to succeed.

**3. If the work doesn't begin soon, will the project be delayed because it will miss the "window of opportunity" for this construction season and have to be put off until next year. Is this accurate?**

The longer the City cannot issue a construction contract, the more of delay in the schedule there will be. Construction contractors are busy this season and rely on signed contracts to assemble and keep their subcontractors committed to a project. Otherwise, the contractors and their subs move on to other projects where contracts are secured.

**4. Can you provide an example of what a delay in the project could mean if you have to re-bid?**

Re-bidding the project would require several months, at a minimum, just to re-conduct the procurement process. During that time, the City would have to wait to order certain critical materials in the project, such as special trackwork, that come with already long lead times. These materials are in high demand due to the high number of rail projects seeking them nationwide and the very low number of suppliers able to meet federal Buy-America grant requirements. In some cases, only a single provider is available, resulting in high competition among numerous rail projects to be first in the production line. These include other streetcar projects across the country as well as projects for Amtrak, light rail and even commercial rail projects. Therefore, there is a limited capacity to fulfill orders in the timeframe the Cincinnati streetcar project would need the longer we wait. The longer the streetcar project waits to put an order in for this "in demand" commodity, the higher the price and the longer the wait, which impacts our schedule locally.

**5. Can the City move forward with the current bids while simultaneously decreasing the cost of the project's budget? Must the project be re-bid?**

As stated in the answer to question #1 above, the City has conducted a thorough and intensive review of the project, its scope and costs. The reviews conducted by the project team, contractors and John Deatrick, and the APTA peer review, as well as the FTA and PMOC, all agreed that the resulting budget gap cannot be closed using cuts to the project alone. The

project team, peer review group, and FTA/PMOC have identified a maximum of approximately \$5.3 million in savings due to scope cuts, but these represent the limit of what is possible. Further scope reductions would compromise the quality and functionality of the streetcar system to an extent that would jeopardize federal grant dollars.

Additionally, the professionals involved in the review process agree that re-bidding will delay the project's timetable and ultimately, will add costs. The project has actually gone through 3 different procurement processes for construction since its inception in 2007: the first was through the Design-Build-Operate-Maintain (DBOM) model as envisioned when the project was announced. When the City was awarded federal funds for the project, this process was nullified. The second was the Construction Manager/General Contractor process in 2011 in which the City was ready to issue a contract when the scope of the project changed after the State of Ohio pulled \$52 million in funding. The bids received in February were the third bid process. In talking with the construction contract bidders, there is also some question as to whether they would rebid at all, given the number of construction contractor for the project. Re-bidding options are limited since an Invitation for Bid (IFB) low-bid procurement was used. This substantially limits the ability of the City to negotiate price.

Even if we re-bid, we will revise the Engineer's estimate upward to reflect current increased costs.

**6. Although the city estimated this work to cost \$44.6 million, the lowest bidder was Messer at \$70.9 million. Has there been any additional money identified or appropriated for this cost?**

The City's estimate was not \$44.6 million, but as the contract has not been awarded, the Administration cannot say what the actual engineer's estimate was at this time. The total budget gap for the project currently stands at \$22.7 million.

The project team, along with the designer (PB) and third party estimator (ME Companies) reviewed the bids to determine why they exceeded estimates to such a high degree. The differences of \$17.5 million between the lowest and highest of the three bids submitted indicate that the firms did not employ a common approach to pricing the work – and that bidders do not agree on a "typical" or standard approach to estimating the costs of this first-of-its-kind project in Cincinnati.

The re-engineering process that has been undertaken has yielded a maximum savings in the project budget of \$5.3 million. Further, the Administration has looked at the options for the project budget with our federal partners in the FTA administration and at the policymaker level for guidance and financial resources.

**7. Will the project move forward?**

After the re-engineering of the scope and budget saving \$5.3 million, it is clear the project will need more funding. We continue to work with our federal partners to identify options. However, it is equally clear that the longer we wait to get the construction under contract, the more it will cost. This has been seen in the delays from the two referenda, the utility cost issues, and the funding changes and subsequent route changes that have occurred with this project.

**8. Is this work being delayed until John Deatrick begins his job?**

No.

**9. Does the City plan to fill the newly created executive project manager position?**

It is the intention of the City Manager to fill this position, as it is feasible within the project budget. This position would be paid out of the streetcar budget, not the General Fund, which pays police officers and firefighters.

**10. Why is John Deatrick being hired?**

As the Streetcar project moves into the construction phase, it is clear that that the many moving parts require more staffing. John Deatrick has more than 35 years in public service and construction management and is a licensed professional engineer in Ohio and the District of Columbia; a chartered engineer in the United Kingdom; and a certified planner by the American Institute of Certified Planners.

As The Banks project executive since June 2008, Deatrick has successfully provide oversight and direction to the Carter/Dawson team, which is serving as the master development team and for The Banks Project as well as the City and County's Development Manager for the public infrastructure development. Such public infrastructure includes the design and construction of the garage facilities, street grid and utilities in the central riverfront.

He served as project manager for the Fort Washington Way Realignment and Reconstruction project, an award-winning, \$330 million transportation cornerstone of the Cincinnati central riverfront. The project reconnected the central business district with the central riverfront, completely replacing the expressway system linking I-71, I-75, I- 471, and US 50 and opening up 18 acres of riverfront land to now facilitate the Banks project and the Central Riverfront Park.

Deatrick served as the chief engineer/deputy director of the District Department of Transportation for the District of Columbia. While in D.C., he established and managed the team working with developers and local and federal agencies on the Anacostia Waterfront Initiative. This multi-agency effort is rebuilding the southeast and southwest areas of the city to accommodate a new home for the Washington Nationals, and the redevelopment of vacant industrial land and abandoned public housing into a mixed-use, mixed-income neighborhood.

Deatrick will join Chris Eilerman, streetcar project manager, on the project as soon as it is financially and logistically feasible to bring him on board. The streetcar project is too large to expect any one person to do it all themselves.

**11. Is Chris Eilerman still involved in the project?**

Chris Eilerman has been with the City for more than 13 years and brings considerable city and project experience. He will continue to interface with the FTA and other project partners as well as will continue to provide project management on the streetcar project.