

California Legislature



ASSEMBLY REPUBLICAN CAUCUS

February 13, 2013

The Honorable Adam Gray
Chair, Joint Legislative Audit Committee
1020 N Street, Room 107
Sacramento, CA 95814

Dear Chairman Gray:

My colleagues and I are writing to request an audit of the California High-Speed Rail Authority's oversight and management of private contractors for the initial 29-mile segment between Madera and Fresno, known as Construction Package 1 (CP 1). On January 18, 2013, five teams of design-build contractors submitted their bids for design and construction of CP 1. The Authority expects to begin construction in July, 2013 and finish in December, 2017. At a projected cost of \$1.2-\$1.8 billion, it will be necessary to spend up to \$1.1 million every day to meet this ambitious pace.

The Authority plans to employ four layers of private contractors for construction, oversight and management of CP 1 (see Figure 1, attached). The Design-Build (DB) contractor will be overseen by a Project and Construction Management (PCM) contractor (coalition of two firms, Harris/Wong), who will be overseen by the Program Management Team (PMT) contractor (Parsons Brinckerhoff), who is overseen concurrently by the Authority and a Program Management Oversight (PMO) contractor (T.Y. Lin). In addition, the Authority and its primary contractors are associated with at least 59 affiliates and subcontractors (see Figure 2, attached).

In previous reports (2011-504 and 2009-106), the State Auditor raised troubling concerns regarding the Authority's weak management infrastructure, inadequate oversight capabilities, poor contract management, and overreliance on private contractors. Since the release of these reports, the Legislature appropriated \$8.02 billion for initial construction, and the Authority has hired a PCM contractor, issued bid specifications for the DB contractor, and defined roles and duties for all four layers of contractors in preparation for the beginning of construction. Ensuring that the Authority has proper policies, protocols, and resources in place to manage its contractors prior to breaking ground is critical for protecting passenger safety and controlling costs. Missteps during this early planning period could imperil the project for decades with defective construction, expensive litigation, massive cost overruns and lengthy project delays. An active and prominent role for the State Auditor during these crucial months could ultimately save lives and billions of taxpayer dollars.

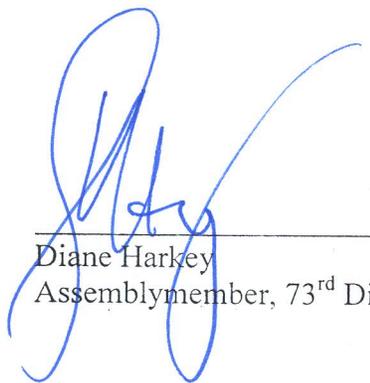
To the extent possible, I request that the State Auditor review and evaluate the following for all contractors, subcontractors, and affiliated contractors involved in CP 1:

1. Do the Authority's policies and protocols create clearly defined, non-redundant roles for all layers of contractors? Are all layers performing an essential role? Is there a clear reporting structure in place? Does the Authority ultimately review the work of all contractors? Does the Authority's employee-to-contractor ratio allow for sufficient oversight? Do internal accountability measures comply with best practices for comparable projects?
2. Who is responsible for inspecting the work of the DB contractor? What role does the PCM contractor play in evaluating quality of work? Does the Authority employ independent engineers to detect defective materials and/or construction? Who has the authority to reject unsafe or defective design, materials, or construction? Who assumes the costs of mitigating defective construction? Does the Authority have adequate policies and protocols in place to evaluate the contractor's quality of work *before* and *during* the time when concrete is poured? Are policies in place to ensure that independent site inspectors are truly independent? Are all inspection protocols and procedures consistent with standard practices for similar projects?
3. On January 14, 2013, the California State Public Works Board authorized the Authority to initiate acquisition of 356 parcels in Madera and Fresno Counties. Who will be responsible for managing right-of-way property acquisitions? Has the Authority hired a separate eminent domain contractor? Which entities exercise management and oversight over the eminent domain contractor? Who is responsible for performing appraisals? Does the Authority have adequate policies and procedures in place to ensure that appraisals are independent? Does the Authority's land acquisition plan comply with existing laws and best practices?
4. Does the Authority's procedure for selecting the DB contractor abide by applicable laws and best practices? What role do the PCM, PMT, and PMO contractors play in the decision-making process? What role do the subcontractors and affiliated contractors in Figure 2 play in the decision-making process? Do any members of the High-Speed Rail Peer Review Group play a role in selection of the DB contractor? Are all roles appropriate, and do they serve the state's best interest?
5. Has the Authority adequately identified project risks, and taken appropriate and reasonable steps to transfer risks to the DB contractors? Under what circumstances will the Authority be responsible for additional costs as they arise? Based on the parameters of the contract and submitted bids, do the Authority's budget and timeline projections for CP 1 remain realistic?
6. For all subcontractors and affiliated contractors, including those listed in Figure 2, does the Authority have adequate policies and protocols in place to exercise appropriate oversight? Do all entities perform a clearly defined, non-redundant role? Are all contracts and contract amendments for these entities reviewed and/or approved by the Authority? Are adequate policies in place to identify potential conflicts of interest for these entities, specifically:
 - a. Does the PMT (Parsons Brinckerhoff) have an illegal conflict of interest, in violation of the Political Reform Act, in contracting with Balfour Beatty Construction Services, when both entities are divisions of the same company?
 - i. [NOTE: See Government Code Sec. 82048, 82034, 87100, and 87103, California Code of Regulations Sec. 18701(a)(2), Department of Justice Conflict Memo 1 (2001): http://ag.ca.gov/conflict_interest/doj_conflict_memo_1.pdf]

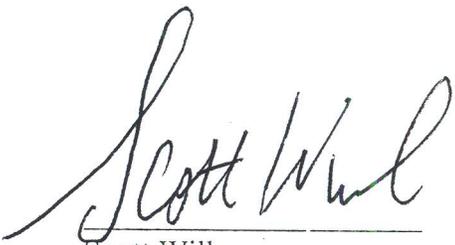
- b. Does the above contract violate the prohibition against “self-dealing” in public contracting [Government Code Sec. 1090-1099]?
 - i. [NOTE: see *Hub City Solid Waste Services, Inc. v. City of Compton* (2010) 186 Cal.App.4th 1114, 1124-1125; *California Housing Financing Agency v. Hanover* (2007) 148 Cal.App.4th 682; *Campagna v. City of Sanger* (1996) 42 Cal.App.4th 533; *People v. Gnass* (2002) 101 Cal.App.4th 1271; *Schaefer v. Berinstein* (1956) 140 Cal.App.2d 278, 291; *Terry v. Bender* (1956) 143 Cal.App.2d 198, 206-207; 70 Ops.Cal.Atty.Gen. 271 (1987), 46 Ops.Cal.Atty.Gen 74 (1965)]
 - c. Does the above contract violate the prohibition against “follow-on contracts” [Public Contract Code Sec. 10365.5]?
 - d. What are the remedies and consequences for potential violation of any of the above provisions?
7. On September 11, 2012, the Authority’s Board approved Resolution #HSR12-24, authorizing the Chief Executive Officer to prepare and execute contracts up to \$5 million, and to execute contract amendments and time extensions on all contracts up to specified limits, without prior Board approval. Authority staff is required to “periodically” provide the Board with a list of all new or amended contracts greater than \$10,000. The Resolution also specifically excludes contracts with the CEO’s previous employer (the PMT contractor, Parsons Brinckerhoff).
- a. Since the approval of this Resolution, how many new contracts or contract amendments have been executed under the CEO’s delegated authority? Do all contract and contract amendment amounts abide by applicable limits?
 - b. Have summaries of all new contracts and contract amendments greater than \$10,000 been provided to the Board “periodically,” as required by the Resolution? How do internal policies define “periodically?”
 - c. How many new contracts or contract amendments less than \$10,000 have been executed under the CEO’s delegated authority?
 - d. Have all procurements under this policy been conducted in accordance with all applicable federal and state laws, regulations, and policies, and in compliance with all applicable grant agreement requirements?
 - e. If the CEO’s delegated authority excludes contracts with his former employer, who reviews and approves PMT contracts and contract amendments? Does this adequately mitigate the conflict of interest identified by the Board?
 - f. Does the Authority have adequate oversight and management policies and protocols in place to ensure sufficient review of contracts and contract amendments?
8. Does the Authority have adequate systems and controls in place for reviewing and verifying invoices from each layer of private contractors? Does the Authority have adequate systems in place for tracking expenditures?
9. Does the Authority adequately address and mitigate potential conflicts of interest for staff and contractors?
10. Pursuant to SB 1029 (Budget), approved by the Legislature on July, 6, 2012:
- a. Has the Authority developed an accountability plan, consistent with Executive Order S-02-07? Does this plan establish adequate criteria governing the expenditure of funds, and include detailed project descriptions and associated costs?
 - b. Has the Authority contracted with the Office of State Audits and Evaluations for ongoing monitoring of expenditures?

Thank you for your consideration of this request. Should you have any questions or would like additional information, please do not hesitate to contact me at (916) 319-2073 or Daniel Ballon in the Assembly Republican Caucus Office of Policy at (916) 319-3900.

Sincerely,



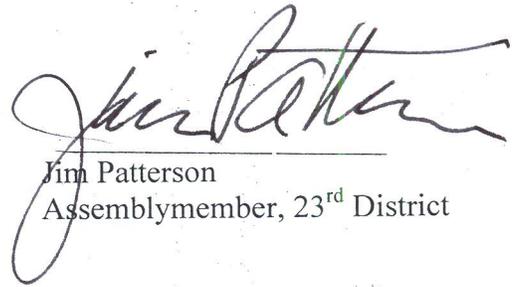
Diane Harkey
Assemblymember, 73rd District



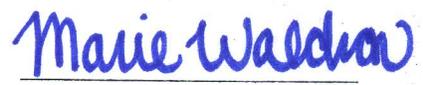
Scott Wilk
Assemblymember, 38th District



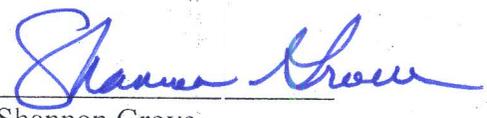
Allan Mansoor
Assemblymember, 74th District



Jim Patterson
Assemblymember, 23rd District



Marie Waldron
Assemblymember, 75th District



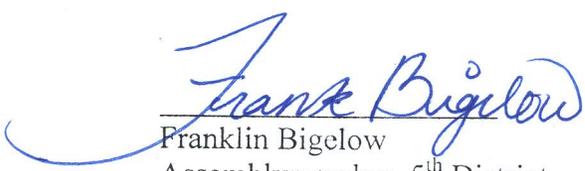
Shannon Grove
Assemblymember, 34th District



Brian Maienschien
Assemblymember, 77th District



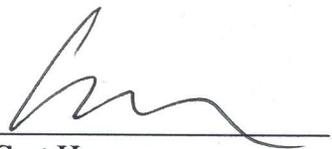
Mike Morrell
Assemblymember, 40th District



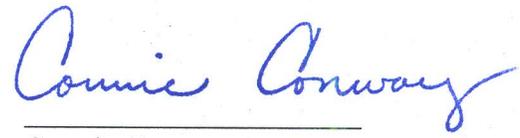
Franklin Bigelow
Assemblymember, 5th District



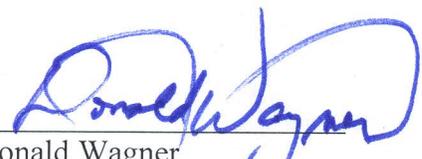
Travis Allen
Assemblymember, 72nd District



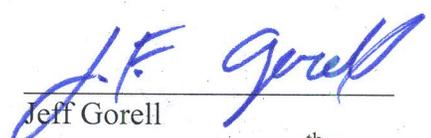
Curt Hagman
Assemblymember, 55th District



Connie Conway
Assemblymember, 26th District



Donald Wagner
Assemblymember, 68th district



Jeff Gorell
Assemblymember, 44th District



Beth Gaines
Assemblymember, 6th District



Brian Nestande
Assemblymember, 42nd District



Melissa Melendez
Assemblymember, 67th District

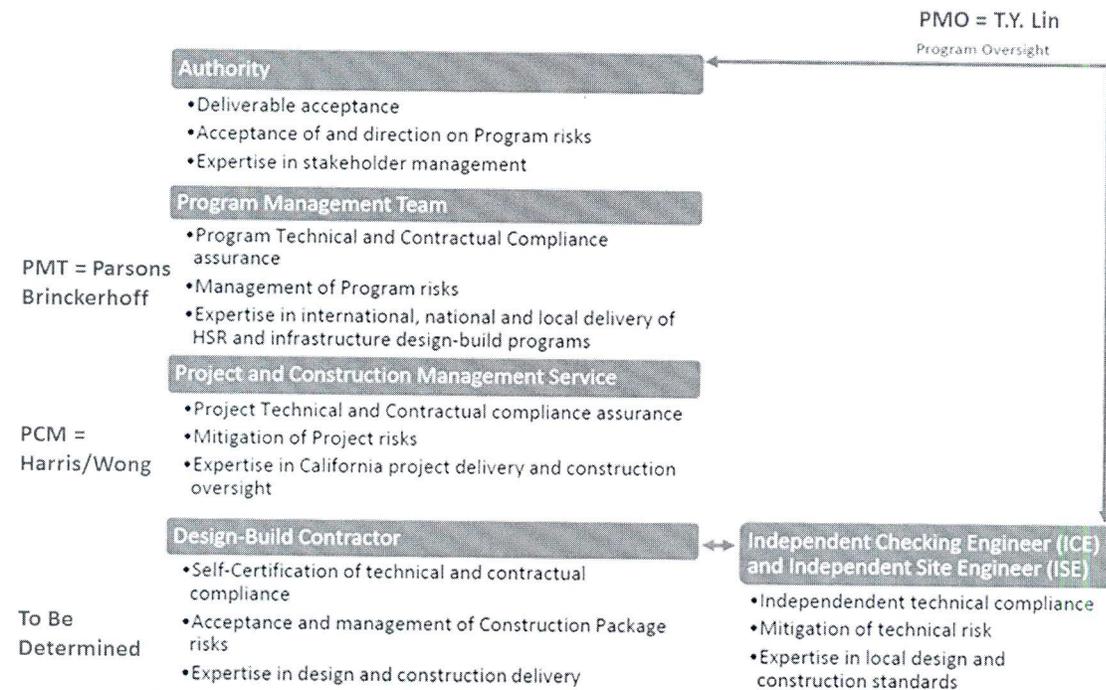


Eric Linder
Assemblymember, 60th District



Katcho Achadjian
Assemblymember, 35th District

Figure 1. High-Speed Rail Authority and Contractor Responsibilities



Source: CEO Jeff Morales, Memorandum to HSRA Board, September 11, 2012.

Figure 2. Subcontractors and Affiliated Contractors

Firms on PMT	Firms on Fresno to Bakersfield RC
Parsons Brinckerhoff	URS
The Solis Group	Hatch Mott MacDonald
Pat Padilla and Associates	Arup
Cordoba Corporation	Anchor Engineering
SC Solutions, Inc.	Applied Earthworks
Turner Engineering Corporation	ATS Consulting
Cambridge Systematics	Bender Rosenthal Inc.
All Transit Consultants LLC	CSU, Stanislaus (Brian Cypher, PhD)
Simpson Gumpertz & Heger	Gene Tackett Consulting
Paragon Partners	J.R. Conkey & Associates
Balfour Beatty	JRP Historical Consulting
Technical Advisory	Mara Feeney & Associates
Spectrum Consult Leslie Rifkin	Minner, Stinnett, Koo & Agbayani
The Next Generation	Paleo Resource Consultants
Julia Sankey	Sierra Testing Labs
Gil Mallery	Signet Testing Labs
David Dubbink	The Forhan Company
John Diener	VBN Architects
Firms on Merced to Fresno RC	Firms on PMOC
AECOM	TY Lin
Bender Rosenthal Inc.	Auriga Corporation
CH2MHill	Other Authority Consultants
CirclePoint	KPMG
Critigen	Nossaman LLP
INOCSA	Ogilvy
EDAW	Valerie Martinez and Associates (VMA)
HMMH	Key Stakeholder Firms
Parus	Zimmer Gunsul Frasca (ZGF)
Parikh	
Lynch	
Psomas	
O'Dell Engineering	
Cross Spectrum Acoustics	

Source: RFP #HSR 11-16, Table 3.