



**October 25, 2021**

**To:** Members of the Board of Directors

**From:** Darrell E. Johnson, Chief Executive Officer

**Subject:** Appeal to the Board of Directors to Protest Proposed Award of Contract: Request for Proposals 0-2690 Contractor Selection for the Back-Office System and Customer Service Center Operations for the 405 Express Lanes in Orange County

### **Overview**

The Orange County Transportation Authority has established a protest process as part of the Board of Directors-adopted Procurement Policy, which allows a proposer to appeal a contract award decision. A protest of the award of the contract for Request for Proposals 0-2690 Contractor Selection for the Back-Office System and Customer Service Center Operations for the 405 Express Lanes in Orange County has been escalated pursuant to the Procurement Policy to the Board of Directors for its consideration and decision.

### **Recommendation**

Rule on the protest from WSP USA Services, Inc., and provide whatever remedies that are deemed appropriate in its sole and absolute discretion.

### **Discussion**

The Orange County Transportation Authority (OCTA) released Request for Proposals (RFP) 0-2690 on December 10, 2020. Three proposals were received on March 22, 2021. As a result of the evaluation of proposals submitted in response to RFP 0-2690, two firms were short-listed and interviewed: WSP USA Services, Inc. (WSP), and Cofiroute USA, LLC (Cofiroute).

At the Finance and Administration (F&A) Committee meeting held on July 28, 2021, the F&A Committee members deliberated and voted, 6 to 0 to approve the staff recommendation to award the contract for the subject services to WSP. At the August 9, 2021 Board of Directors (Board) meeting following additional deliberations, the Board voted, 10 to 6 to award the above referenced RFP to Cofiroute. This award was counter to the recommendation of the

**Appeal to the Board of Directors to Protest Proposed Award of Contract: Request for Proposals 0-2690 Contractor Selection for the Back-Office System and Customer Service Center Operations for the 405 Express Lanes in Orange County**

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**Page 2**

evaluation committee and the F&A Committee, which both recommended award to WSP.

Following the Board action, WSP submitted a post-award protest on August 16, 2021, to OCTA Director of Contracts Administration and Materials Management (CAMM) in accordance with the Board-adopted Procurement Policy (Policy). The Director of CAMM denied WSP's protest on August 23, 2021. WSP then timely escalated its protest to OCTA Chief Executive Officer (CEO) on August 25, 2021, also in accordance with the Policy. The CEO denied the protest on August 30, 2021. Following the denial of the protest, WSP submitted a timely protest to the Board on September 3, 2021.

At the September 27, 2021 meeting of the Board, pursuant to the Policy, WSP made a presentation to the Board detailing their reasons for their protest. At that meeting, due to WSP asserting litigation should the Board not uphold their protest, the Board chose to take the protest under advisement in order to further consult with General Counsel in closed session at the October 11, 2021, meeting of the Board.

At the October 11, 2021 meeting, the Board was unable to reach a decision on the protest and the Board decided to continue the item to the October 25, 2021 meeting of the Board.

At the October 25, 2021 meeting, the Board will once again consider the protest from WSP and rule on the protest. Even though the Board is once again considering the protest, the Policy does not afford WSP another opportunity to make a presentation as that was made at the September 27, 2021 meeting.

Any ruling on the protest is the final administrative step provided in the Policy and the decision of the Board is final.

***Summary***

Staff recommends the Board of Directors consider the protest submitted by WSP USA Services, Inc., and provide a ruling on the protest and provide whatever remedies the Board of Directors deems appropriate in its sole and absolute discretion.

**Appeal to the Board of Directors to Protest Proposed Award of Contract: Request for Proposals 0-2690 Contractor Selection for the Back-Office System and Customer Service Center Operations for the 405 Express Lanes in Orange County**

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**Page 3**

***Attachments***

- A. Appeal to the Board of Directors to Protest Proposed Award of Contract: Request for Proposals 0-2690 Contractor Selection for the Back-Office System and Customer Service Center Operations for the 405 Express Lanes in Orange County
- B. Letter from Michael Rizzo and Aaron S. Ralph, Counsel for WSC USA Services, Inc., to Darrell E. Johnson, Chief Executive Officer, and Bob Webb, Contracts Administration and Materials Management, Orange County Transportation Authority, re: Escalation of Protest of WSP USA Services, Inc. to Award of RFP 0-2690 Back Office System and Customer Service Operations Services (BOS/CSC) for the 405 Express Lanes in Orange County, dated August 25, 2021
- C. Committee Transmittal dated August 9, 2021, and Staff Report dated July 28, 2021: Contractor Selection for the Back-Office System and Customer Service Center Operations for the 405 Express Lanes in Orange County

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