

To: Les, Wielinga, Chief Executive
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Pages: 2 **Ref:**
Subject: M5 East



ISSUE

Approval to enter into direct negotiations with Baulderstone Hornibrook Bilfinger Berger Joint Venture (BHBB) for the supply and installation of the filtration plant in the M5 East Tunnel.

BACKGROUND

On June 16 2006, the Minister for Roads announced an Air Quality Improvement Plan for the M5 East Tunnel that included the installation of a filtration plant in the westbound tunnel near Bexley Road.

Under the M5 East Project Deed, BHBB are responsible for the operation and maintenance of the motorway (including the existing tunnel) until 2011, which includes warranties on the structural integrity of the tunnel and its control mechanisms.

DISCUSSION

The filtration plant is to be housed in a bypass tunnel system, or equivalent, to extract, filter and return treated air to the the M5 East tunnel. The construction of the proposed system will need to interface with the existing tunnel. The mechanical/electrical systems for the filtration plant will also require integration with the existing tunnel operating systems to ensure that operation of the filtration plant does not compromise the tunnel operations or compliance by BHBB with the planning conditions of approval relating to air quality. The proposed works may require a modification to planning approval, which cannot be sought until an appropriate design is available.

Considering the level of integration between the existing operation and the proposed works it will be important to ensure that the construction of the bypass tunnel system, or equivalent, and installation of the filtration plant is appropriately managed such that it does not impact upon the risk allocation under the M5 East Project Deed.

Having regard to the desire to have the filtration trial commence as soon as possible and the challenges outlined above, a procurement strategy that appropriately minimises lead time required for design/delivery, satisfactorily manages the complex integration of the proposed works with the existing operations and ensures continued compliance with planning approval is required.

BHBB were responsible for the design of the existing tunnel. BHBB management of the delivery of the work is likely to result in efficiency gains (with respect to time, cost and quality) due to BHBB's level of knowledge of the complex tunnel operating systems and the geotechnical and other site conditions that impact on the proposed works.

Procurement options were considered by RTA, technical experts, commercial advisers (Evans and Peck), legal advisers (Clayton Utz) and probity auditor (Deloitte). Given the project risks and opportunity to secure best value for money, direct negotiations with BHBB are considered to provide the best procurement solution.

The RTA could have directed BHBB to undertake the work by issuing a change order to BHBB under the existing DCM project deed. However, it is considered that better value for money will be achieved through

negotiation. Value for money will be an essential component of the contract negotiated with BHBB. To demonstrate value for money RTA will seek independent confirmation of the reasonableness of cost estimates provided by BHBB and where practicable BHBB will be required to seek competitive bids for subcontracted works. This will include competitive bids for the significant filtration equipment which is expected to continue from the RTA's earlier ROI/RPP process. The RTA will seek advice from the probity auditor as to arrangements that should be put in place to ensure probity.

Probity

In negotiating with BHBB, RTA will have proper regard to ICAC's, *Direct negotiation – guidelines for managing risks in direct negotiations*, 2006.

To ensure the probity of the processes undertaken by the RTA and BHBB a probity plan will be developed for approval by the RTA's probity auditor. The probity plan will address probity fundamentals such as conflict of interest, confidentiality, accountability, transparency and value for money and other issues identified by the probity auditor. BHBB will also be required to engage its own probity auditor to provide advice and assurance to RTA that appropriate probity procedures are established by BHBB and followed. BHBB will be required to comply with the *NSW Government Procurement Policy*.

Publication

In accordance with ICAC's, *Direct negotiation – guidelines for managing risks in direct negotiations*, 2006, this recommendation will be published on the RTA's website if approved.

RECOMMENDATION

It is recommended that approval be given to:

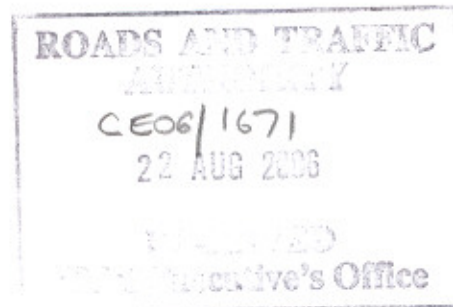
- 1. direct negotiation with BHBB to develop a suitable contract for the delivery and installation of the filtration plant proposed for M5 East.

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Approved/~~Not approved~~

Les Wielinga

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Chief Executive

03.09.06