

FABYANSKE, WESTRA, HART & THOMSON

A PROFESSIONAL ASSOCIATION

M.T. FABYANSKE
MARK W. WESTRA
JEREMIAH J. KEARNEY
SCOTT LLOYD ANDERSON
PAUL L. RATELLE
GREGORY T. SPALJ
DEAN B. THOMSON
GARY C. EIDSON
KYLE E. HART
JUDITH E. KROW
STEPHEN A. MELCHER
RICHARD G. JENSEN
THOMAS J. TUCCI
CHARLES G. CARPENTER, III
STEVEN C. COX
JULIE A. DOHERTY
KATHLEEN S. MARA
AARON A. DEAN
DYANNA L. STREET
THOMAS A. FORKER

SUITE 1900
800 LASALLE AVENUE
MINNEAPOLIS, MINNESOTA 55402
TELEPHONE 612-359-7600
FAX 612-359-7602
WWW.FWHTLAW.COM

PATRICK J. LEE-O'HALLORAN
FREDERICK H. LADNER
NATHAN E. RAY
MARK R. BECKER
THEODORE V. ROBERTS
MATTHEW T. COLLINS
JEFFREY W. JONES
RORY O. DUGGAN
DAVID M. CULLEN
KRISTINE KROENKE
HANNAH R. STEIN
KRISTIN M. FIUMEFREDDO
JOHN C. REDPATH

OF COUNSEL:
GORDON P. HEINSON

RETIRED:
B.C. HART

September 20, 2007

dthomson@fwhtlaw.com
DIRECT 612.359.7624

VIA MESSENGER

Betsy Hayes
Department of Administration
112 Administration Building
50 Sherburne Avenue
St. Paul, MN 55155

**Re: St. Anthony Falls (35W) Bridge Design-Build Project Protest
S.P. 2783-120; E.R. MN 07 (300)**

Dear Ms. Hayes:

I write on behalf of C.S. McCrossan Construction, Inc. ("C.S. McCrossan") and Ames/Lunda, a Joint Venture ("Ames/Lunda"), who are two of the pre-qualified proposers on the St. Anthony Falls (35W) Bridge Design-Build Project ("Project"). Both C.S. McCrossan and Ames/Lunda protest MnDOT's announced intent to award the Project to the Joint Venture of Flatiron Construction, Manson Construction and Johnson Bros. Construction ("Flatiron").

C.S. McCrossan and Ames/Lunda are two of the region's largest contractors. They and the members of their proposal teams have built the vast majority of the region's bridges. Both teams retained nationally recognized bridge designers, both teams have exemplary qualifications, and both teams have excellent technical capabilities. Given the outstanding technical capabilities of these two teams, the relatively low technical capability scores that MnDOT gave to each was arbitrary and capricious and not supported by any credible or substantial evidence.

C.S. McCrossan and Ames/Lunda were misdirected by MnDOT regarding the type of proposal desired by the state, which now results in a great harm to the public. MnDOT consistently emphasized to both teams MnDOT's desire for a bridge design and approach that would minimize the cost and time of construction. An emphasis on cost and time leads to a certain type of design and construction. MnDOT's statements and emphasis in meetings with both teams led them each to propose a design and type of construction that was the most economic and quickest to build. MnDOT's selection of Flatiron's proposal that is \$57 million higher than the lowest proposal and takes at least 70 days longer than the lowest proposal indicates that MnDOT based its award on desires and an emphasis different than communicated to C.S. McCrossan and Ames/Lunda.

The public interest suffers as a result of MnDOT's misdirection to C.S. McCrossan and Ames/Lunda. Had either team known that MnDOT was interested only in a specific type and kind of bridge or that a design which reduced cost and time was not as important as consistently emphasized, then both teams would have submitted materially different proposals.

Both teams are confident they would have been able to present designs and approaches similar to Flatiron's but at a cost of tens of millions of dollars less and with a shorter period for construction. MnDOT's misdirection resulted in a loss of competition for Flatiron's proposal to the detriment of the public.

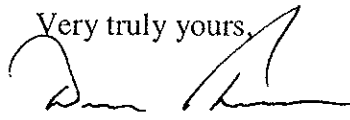
C.S. McCrossan and Ames/Lunda also protest MnDOT's restrictive protest procedures which attempt to insulate MnDOT's procedures and award from effective inquiry, review, or oversight. It is against public policy and law for MnDOT to declare that its award is subject to challenge only if it is "wholly arbitrary." Surely, MnDOT does not believe that the public should be satisfied if any part of the award is arbitrary or capricious. MnDOT cannot change the judicial standard of review, restrict judicial review, or impose penalties on protesters attempting to protect the public as a private attorney general.

C.S. McCrossan and Ames/Lunda would provide a more detailed protest, but in an attempt to further restrict meaningful review of its actions, MnDOT has restricted the time for protests. Both teams reserve the right to supplement their protest as time and additional discovery of facts warrant.

C.S. McCrossan hereby demands that MnDOT immediately release to C.S. McCrossan all of MnDOT's scoring, comments and notes regarding C.S. McCrossan's technical capabilities.

Ames/Lunda hereby demands that MnDOT immediately release to Ames/Lunda all of MnDOT's scoring, comments and notes regarding Ames/Lunda's technical capabilities.

Each are entitled to this information and both protest any refusal by MnDOT to supply it until after award. If MnDOT keeps secret the basis for its scoring of technical proposals until after award, then MnDOT will have effectively precluded any public review or oversight of its procedures or awards.

Very truly yours,

Dean B. Thomson

DBT/hrh/37986.000

Betsy Hayes
September 20, 2007
Page 3

cc: Jon Chiglo, P.E. (via messenger)
Walsh/American Bridge, c/o Dale Swanberg (via fax & UPS overnight)
Ames/Lunda, A Joint Venture, c/o Richard Fahland (via fax & UPS overnight)
CS McCrossan, Inc., Thomas McCrossan (via fax & UPS overnight)
Flatiron/Manson & Johnson Bros., c/o Tom Rademacher (via fax & UPS overnight)