



COUNTY OF LOS ANGELES
DEPARTMENT OF PUBLIC WORKS

"To Enrich Lives Through Effective and Caring Service"

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GAIL FARBER, Director

November 01, 2011

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Dear Supervisors:

**FIND CONTRACTOR IN DEFAULT
BRIDGE SEISMIC RETROFIT
9TH STREET ON-RAMP OVER
HARBOR SCENIC DRIVE AND PICO AVENUE
CITY OF LONG BEACH
(SUPERVISORIAL DISTRICT 4)
(3 VOTES)**

SUBJECT

This action is to find the contractor, Dalaj International Corp., in default of the contract and authorize the Director of Public Works or her designee to terminate Dalaj International Corp.'s right to perform under the contract, serve written notice on the project surety, Suretec Insurance Company, to complete the work of the contract, and to enter into an agreement with Suretec Insurance Company for the completion of the work of this contract.

IT IS RECOMMENDED THAT YOUR BOARD:

Find the contractor, Dalaj International Corp., in default of the contract and authorize the Director of Public Works or her designee to terminate Dalaj International Corp.'s right to perform under the contract, serve written notice on the project surety, Suretec Insurance Company, to complete the work of the contract, and to enter into an agreement with Suretec Insurance Company for the completion of the work of this contract.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

On November 12, 2008, your Board awarded a contract to Dalaj International Corp. (Dalaj) for the seismic strengthening of the 9th Street On-Ramp over Harbor Scenic Drive and Pico Avenue. The

term of the contract was 140 working days. Suretec Insurance Company (Suretec) furnished the contractually required payment and performance bonds for 100 percent of the contract amount.

On March 25, 2009, Dalaj started the construction work and to date has completed approximately 60 percent of the work. The contractor has not performed any work at the project site since January 5, 2011. On June 9, 2011, Suretec, as the surety and attorney-in-fact for Dalaj sent a letter to the Department of Public Works (Public Works) notifying us that Dalaj voluntarily abandoned and terminated the contract. Dalaj disputed Suretec's authority to default on its behalf and requested to present its objections to Public Works' planned recommendation to terminate Dalaj's right to perform. On August 8, and 18, 2011, Public Works convened a hearing, and both Dalaj and Public Works provided documentation and testimony to a Hearing Officer. On October 3, 2011, the Hearing Officer issued his report and concluded that there are sufficient grounds for the County of Los Angeles (County) to exercise its contractual right to terminate the contract for default.

Public Works recommends that your Board find Dalaj in default of the contract and authorize the Director of Public Works (Director) to terminate Dalaj's right to perform under the contract. Public Works will then serve written notice on Suretec and enter into an agreement with Suretec for the completion of the work of this contract.

Implementation of Strategic Plan Goals

The Countywide Strategic Plan directs the provision of Operational Effectiveness (Goal 1). The recommended action will provide for completion of the work at no additional cost to Public Works except for minimal administrative expenses.

FISCAL IMPACT/FINANCING

There will be no impact to the County General Fund.

There will be minimal fiscal impact as the surety will assume responsibility for completing the work of the contract for the original contract price.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The contract provides for termination of Dalaj's right to perform if the contractor fails to prosecute the work; to provide workers, materials, or equipment to complete the work; or fails to promptly pay its subcontractors, employees, and material suppliers.

Daily work records show that Dalaj ceased working at the project site as of January 5, 2011. On June 9, 2011, Suretec notified Public Works that Dalaj voluntarily abandoned and terminated the contract and Suretec would take over the completion of the contract. One of the reasons Suretec took over the project from Dalaj was Suretec's judgment that "Dalaj is financially unable to complete performance of the project work, or otherwise comply with its contractual obligations." In a subsequent letter, Dalaj disputed Suretec's assertions and contended Public Works had provided Dalaj with plans that were not constructible.

A hearing was held on August 8 and 18, 2011, in which Dalaj was allowed to present the factual basis for its objections to Public Works' recommendation to terminate Dalaj for default. Dalaj provided no facts to contradict Suretec's statement that Dalaj is financially unable to complete performance of the work but did present facts Dalaj believes support its objection that the plans were not constructible. The hearing officer did not agree with Dalaj's assertions that the plans were

unconstructible. The hearing officer concluded that there were sufficient grounds for Public Works' recommendation to terminate Dalaj's right to perform under the contract (report enclosed).

ENVIRONMENTAL DOCUMENTATION

On April 17, 2007, Agenda Item 43, your Board found this project statutorily exempt from the provisions of the California Environmental Quality Act.

CONTRACTING PROCESS

In accordance with the project's performance bond requirements, the surety is obligated to step in and complete the work.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

It is not anticipated the recommended action will have a significant impact on residents or motorists. When the project is completed, it will have a positive impact by providing more reliable bridge infrastructure for the traveling public during and immediately following seismic events.

CONCLUSION

Please return one adopted copy of this letter to the Department of Public Works, Construction Division.

Respectfully submitted,



GAIL FARBER

Director

GF:JTS:lg

Enclosures

c: Chief Executive Office (Rita Robinson)
County Counsel
Executive Office
Internal Services Department

**LOS ANGELES COUNTY DEPARTMENT OF PUBLIC WORKS
PROJECT ID. NO. RDC0011166
BRIDGE SEISMIC RETROFIT
9TH STREET ON-RAMP OVER HARBOR SCENIC DRIVE AND PICO AVENUE**

**ADMINISTRATIVE HEARING
DALAJ INTERNATIONAL CORPORATION**

REPORT OF HEARING OFFICER

Hearing Dates: August 8 and August 18, 2011

Hearing Officer:

**John Kelly
Assistant Director
Department of Public Works**

Introduction

The Department of Public Works (Public Works) convened a hearing to review Public Works' recommendation to terminate Dalaj International Corporation (Dalaj), right to perform under PROJECT ID. NO. RDC0011166, BRIDGE SEISMIC RETROFIT, 9TH STREET ON-RAMP OVER HARBOR SCENIC DRIVE AND PICO AVENUE (Project) with the County of Los Angeles (County) for cause. This hearing took place on August 8 and August 18, 2011, at Public Works Headquarters in Alhambra, California.

The Hearing Officer was Mr. John Kelly, Assistant Director, Department of Public Works. Dalaj was primarily represented by Mr. Shahin Araghi, President; Mr. Sam Araghi, Superintendent; and Mr. Armenak Kavcioglu, Counsel for Dalaj. Public Works was primarily represented by Mr. Laren Bunker, Ms. Jolene Guerrero, Mr. Ross Ghavimi, and Ms. Rosa Linda Cruz from County Counsel. In addition, representatives of Dalaj's surety company, Suretec, were present, as were representatives of Bragg Crane and Rigging and Stinger Welding, two subcontractors to Dalaj, and a court reporter.

An audio recording was taken in addition to a transcript prepared by the court reporter. Therefore, this report will not attempt to summarize the approximate eight hours of presentations made during the two hearing dates, nor the extensive amount of documentation submitted to the hearing officer. The report will however, identify certain documents and testimony as needed to assist in the discussion of the issues raised.

Purpose of the Hearing

The purpose of the hearing was to consider the following two issues:

1. Dalaj's objections to Suretec's assertion that Dalaj is financially unable to complete the Project, or otherwise comply with its contractual obligations, and
2. To determine if the County provided plans and specifications for the Project that were not constructible.

Background

The County's contract for the Project was awarded to Dalaj on November 12, 2008, for \$1,811,519. Under the terms of the contract, Dalaj was required, in part, to construct reinforced concrete shear keys, seat extenders, end diaphragms, steel braces, bottom flanges, column casings, and to perform other appurtenant work on the 9th Street On-Ramp over Harbor Scenic Drive and Pico Avenue, in the City of Long Beach. The contract also required Dalaj to obtain a performance bond through a surety company and that the work be completed in 140 working days. Dalaj commenced work on March 25, 2009, which would have resulted in a required contract completion date of October 12, 2009.

The contract also provides, in part, that the County has the right to terminate the contractor's right to proceed with the work (or a separable part of the work), if the contractor refuses or fails:

- to prosecute the work or any separable part with the diligence that will ensure completion within the time specified in the contract, including any authorized extension;
- to provide sufficient and properly skilled workers or proper materials or equipment to complete the work in an acceptable manner and without delay; or
- to properly pay its subcontractors, employees, and material suppliers.

In addition, in part, the contract provides that the contractor's right to proceed will not be terminated because of delays, nor will the contractor be charged with damages, if the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the contractor.

As of the date of the Hearing, the contract work was approximately 60 percent complete. Public Works reported that Dalaj was paid \$950,505.22 for the work performed as of the date of Public Works' written notice to Dalaj recommending termination for default (June 23, 2011).

Under their contract with Public Works, Dalaj accumulated 612 days of liquidated damages. There have been many points in time that work on the job has ceased, however; there is no dispute that Dalaj has performed no contract work on the Project since January 5, 2011.

On June 9, 2011, Suretec sent a letter to Public Works advising that Dalaj, "...is in default under the terms of its Contract..." with Public Works for the Project, "...and is financially unable to complete performance of the Project work, or otherwise comply

with its contractual obligations". Suretec further noted in its letter that in reference to their Bond No. 4370978 for the Project, Dalaj executed a General Agreement of Indemnity (GAI) for the benefit of Suretec in which Dalaj granted Suretec power as attorney-in-fact.

As attorney-in-fact, Suretec notified Public Works that Dalaj, by and through Suretec, was irrevocably and voluntarily abandoning and terminating their contract with Public Works effective June 9, 2011. On June 22, 2011, Suretec informed Dalaj by e-mail that Suretec was assuming control of the Project, and that Dalaj should remove its personal items from the jobsite.

Subsequently, on June 23, 2011, Public Works sent a letter to Mr. Shahin Araghi informing him that based on the determination by Suretec that Dalaj was in default of their contract, Public Works intended to recommend to the Los Angeles County Board of Supervisors that Dalaj's right to perform the contract be terminated for default and that the contract surety, Suretec, assume responsibility for completing the Project.

On July 1, 2011, the Office of the County Counsel received a letter from Raisin & Kavcioglu, Attorneys At Law representing Dalaj, objecting to any determination that Dalaj's contract be terminated for default. This letter further asserts that, "The County is in breach of the construction contract and the law because the County did not provide plans and specifications that were full, complete, accurate, and suitable for construction." The letter also included a demand for notice and an opportunity for a hearing.

On July 12, 2011, the Office of the County Counsel replied in writing to Mr. Armenak Kavcioglu of Raisin & Kavcioglu. Included in its response, County Counsel summarized Dalaj's stated objections to Public Works' intent to recommend termination for default and informed Mr. Kavcioglu that as a result of Suretec's action, Dalaj was no longer covered by the bond it obtained from Suretec and thus could not work on the Project. Further, County Counsel informed Mr. Kavcioglu of the opportunity for Dalaj to be heard by a Public Works hearing officer.

As discussed in further detail below, during the hearing, both Dalaj and Public Works submitted documentary evidence and testimony as to the two issues identified above. In addition to the other evidence produced by the parties, the Hearing Officer also considered the plans and specifications and contract related to the Project. No other documents were considered by the Hearing Officer.

Issues

1. Dalaj's objections to Suretec's assertion that Dalaj is financially unable to complete the Project, or otherwise comply with its contractual obligations.

Included in the documents submitted by Dalaj and Public Works to be considered by the Hearing Officer were two letters and one e-mail from Suretec to Dalaj.

In their May 20, 2011, letter, Suretec gave notice to Dalaj that Suretec had incurred a loss in excess of \$400,000 under the payment bond for the Project and that there had been virtually no progress on completion of the remaining work. Suretec's letter goes on to say that they had seen nothing to date that would indicate any sort of significant change order money which could help defray Suretec's loss. Suretec concludes their letter with a demand for immediate payment of \$444,088.30, or collateral in the amount of \$750,000 equal to its anticipated loss and expense, to be paid by May 31, 2011, or Dalaj would face the risk of takeover of the Project by Suretec.

In Suretec's subsequent letter dated June 9, 2011, Suretec gave notice to Dalaj that Suretec was exercising its power of attorney to take over the Project from Dalaj since no payment had been made. Suretec further stated, "Dalaj is financially unable to complete performance of the Project work, or otherwise comply with its contractual obligations." There was no other information submitted from Suretec offering additional details as to the basis of their decision that Dalaj was financially, or otherwise unable to comply with its contractual obligations under the Project contract.

Dalaj submitted two "Project Issues" to the Hearing Officer directly related to their ability to finance Project costs (Dalaj Issue #05 – Assessment of Liquidated Damages and, #09 – Involvement of Contractor's Surety Company). In their written summary for each of these two issues, Dalaj alleges that Public Works' collection of liquidated damages for the period October 2009 through March 2010, "...essentially suffocated the contractor's cash flow and by mid-March had significantly limited the contractor's ability to continue with progress on the job." Dalaj added that had Public Works obtained the contractually required access permit from Caltrans and had there not been significant structural steel design deficiencies still pending, both being owner caused delays in Dalaj's opinion, then Dalaj could have met its contractual completion date and avoided the assessed liquidated damages.

In Public Works' written response for the Hearing, they stated, in reference to the encroachment permit from Caltrans, that the permit was obtained by Public Works in March 2010 and that Dalaj was not prepared to begin work in that area of the Project until August 2010 at the earliest, thus rendering the issue moot.

In reference to the other delays alleged by Dalaj, Public Works submitted documents and testified during the hearing that liquidated damages were assessed against Dalaj by Public Works beginning in November 2009 and continued through February 2010, at which time the collection of liquidated damages was suspended. Public Works added that in July 2010, they returned the amounts withheld to Dalaj in a good faith effort to restore cash flow the contractor claimed were necessary to complete the Project. Public Works further stated that the return of the money withheld was predicated on an assurance from Dalaj's surety that a consultant would be hired to take a more active role in the Project in an effort to bring an end to any further delays. Public Works concluded by stating that a year had passed since the return of the withheld liquidated damages to Dalaj; however, the project was still not completed. Therefore, the withheld money was clearly not the cause of Dalaj's financial difficulties in the opinion of Public Works.

2. To determine if the County provided plans and specifications for the Project that were not constructible.

The 9th Street Bridge over Harbor Scenic Drive and Pico Avenue was originally designed by Moffat & Nichol Engineers in 1956. The design plans for the seismic retrofit project were prepared for Public Works in 2002, also by Moffat & Nichol Engineers. The plans were subsequently revised and updated and were approved by Public Works in February 2007. The Project was awarded to Dalaj International Corporation by the Los Angeles County Board of Supervisors on November 12, 2008. Dalaj began construction on March 25, 2009, with a required completion date of October 12, 2009.

Most of the testimony at the hearing, and a majority of the documents submitted for the hearing, relate to the issue of the design completeness and the constructability of the plans. There are 32 sheets in the design plans approved for the Project, with an additional eight sheets of traffic control plans. Each sheet of the plans are stamped and signed by a State of California registered civil or geotechnical engineer, as appropriate and required by law. The applicable law from the California Business and Professions Code, commonly known as the "Professional Engineer's Act", reads as follows:

6735. Preparation, signing, and sealing of civil engineering documents

(a) All civil (including structural and geotechnical) engineering plans, calculations, specifications, and reports (hereinafter referred to as "documents") shall be prepared by, or under the responsible charge of, a licensed civil engineer and shall include his or her name and license number. Interim documents shall include a notation as to the intended purpose of the document, such as "preliminary," "not for construction," "for plan check only," or "for review only." All civil engineering plans and specifications that are permitted or that are to be released for construction shall bear

the signature and seal or stamp of the licensee and the date of signing and sealing or stamping. All final civil engineering calculations and reports shall bear the signature and seal or stamp of the licensee, and the date of signing and sealing or stamping. If civil engineering plans are required to be signed and sealed or stamped and have multiple sheets, the signature, seal or stamp, and date of signing and sealing or stamping, shall appear on each sheet of the plans.

Under this statute, the approved plans for the Project would be considered final and would be authorized for construction.

As a generally accepted industry standard, design plans and specifications (also known as construction documents when complete and ready for bidding) must be complete, clear, and accurate such that essential information such as project location, scope of work, existing topography and improvements, controlling dimensions, and specifications for materials is included. Such plans should depict the work to be performed in plan view, elevation and through details in order that the scope of work is clearly understood. Construction documents do not show the precise dimensions of each individual structural and non-structural element required to be formed, fabricated, or otherwise made to fit. The process of measuring and verifying actual field dimensions, and properly forming, fabricating, or otherwise fitting building elements is performed by the contractor and/or subcontractors during the construction of a project. Based on the evidence submitted in this matter, this Project is no different and the expectation for field measurements by the contractor prior to fabrication of bridge elements was contractually known and required to be performed under State law by the general contractor or a properly licensed subcontractor.

The existing bridge and support piers for the 9th Street Bridge project are not uniform in dimension, configuration, or alignment. The roadway along the 9th Street Bridge is on a curve, and the concrete support structures for the bridge are skewed in relation to the steel structure that supports the bridge deck. In addition, the bridge deck is superelevated or "banked" to counter the centrifugal force experienced by vehicles as they traverse the curve, much like the turns on an oval racetrack.

There is a note on each page of the Project plans stating, "The contractor shall verify all controlling field dimensions before preparing shop drawings and ordering or fabricating any material". Although a note such as this is common to most construction documents when the scope of work includes the remodeling, refurbishing, and/or retrofitting of existing structures, it bears more significance when the existing structure being modified is not dimensionally uniform and symmetrical.

For non-uniform structures, such as the 9th Street Bridge and its supports, the contractor responsible for the fabrication and erection of new support members cannot assume that these new structural elements will be uniform and repetitive throughout the length, width, and depth of the existing bridge. Instead, the contractor is responsible for carefully field measuring the existing structure to determine the precise dimensions of each element that must be detailed and fabricated prior to delivery to the jobsite.

The process of precise measurement of the existing 9th Street Bridge and its supports in the field was a critical step in order to produce accurate and complete "shop drawings" by the contractor's structural steel fabricator and was contractually required to be submitted to Public Works for review and approval prior to the actual fabrication of any material (See Section 1 of Project Agreement and as noted on each sheet of approved Project Plans). Equally important is that these shop drawings be prepared by an experienced and properly qualified structural steel fabricator.

In this case, Public Works ultimately determined that the subcontractor chosen by Dalaj at the start of the Project (Quality Steel Fabricators) was neither experienced nor properly qualified to perform structural steel fabrication, which directly resulted in significant project delays. More specifically, Quality Steel Fabricators held an Ornamental Steel contractor's license (C-23) rather than a Structural Steel contractor's license (C-51).

As a result, the initial delays in structural steel fabrication appear to have been caused by the inability of Quality Steel Fabricators to perform proper and complete field measurements of the existing steel bridge structure and their inability to produce full and complete structural steel shop drawings for Public Works' review. Although Public Works could have exercised its right to terminate the separable part of the work being performed by Quality Steel Fabricators sooner in order that a properly qualified structural steel fabricator be brought on board, by September 2009, Public Works did demand that Dalaj replace Quality Steel Fabricators with a properly qualified subcontractor(s). It was not until February 2010 that Dalaj retained the services of two new subcontractors, Stinger Welding and Bragg Crane and Rigging, who were determined to be properly qualified by Public Works, to perform the required field measurements, shop drawings, and erection of the structural steel. This was four months past the contractually required project completion date.

During the hearing, the representative from Stinger Welding testified that the amount of field measurements required for the Project were clear, and he considered them to be baseline field measurements for a project of this scope and something Stinger Welding would normally do for a project such as the 9th Street Bridge seismic retrofit.

As is commonly understood throughout the construction industry, either before or after a contractor has begun actual construction work, ideas for different methods or materials of construction are proposed. Sometimes these proposed changes result in increased work and cost in order to mitigate unforeseen conditions, and other times the changes can result in easier and possibly lower cost options for the contractor and owner through value engineering, for example. In either case, any proposed change from the bid documents require that the owner and contractor communicate, fairly consider, and ideally, agree on the scope and cost before implementing the change. When communication, fair consideration, or agreement is not achieved, disputes arise and accumulate, inevitably resulting in project delay and unresolved cost impacts.

From the documents submitted for the hearing, as well as from testimony at the hearing, it is clear that change orders submitted and resubmitted by Dalaj were being rejected by Public Works on the basis that the requests for additional compensation by Dalaj was inappropriate. Public Works' position, in general, was that Dalaj was seeking to be additionally compensated for work that should have been clearly expected and included in their bid. More specifically according to Public Works, since Quality Steel Fabricators, Dalaj's subcontractor, was not able to perform their required work, resulting in significant project delay, it would be inappropriate for Public Works to pay for their additional time and/or inaccurate representations of increased project costs.

The ongoing and protracted dispute over the technical aspects of structural steel connection design, which Dalaj claims is due to incomplete and unconstructable design plans and specifications, instead appears to be the direct result of the attempted use of an unqualified and inexperienced structural steel subcontractor. It is clear from many of the documents submitted for the hearing, and from the testimony of both parties, that Dalaj's insistence on the continued use of this subcontractor, and Public Works' unsuccessful attempts to get them to perform, resulted in a highly problematic and confrontational relationship at the jobsite. Dalaj chose to deal with their side of the problem by submitting what appeared to be an endless string of requests for information and change orders to the extent that the total cost of Dalaj's requests for change amounted to more than \$2 million. This amount is more than the entire value of the original contract. To this date, the primary scope of work under the contract, structural steel fabrication and erection, has yet to begin.

From Dalaj's point of view, design discrepancies and conflicts in the plans relative to the actual field conditions permeated the project and affected the vast majority of their work. However, from testimony and documents submitted for the hearing by Public Works, it is clear that areas of conflict in the structural steel plans and details amounted to no more than ten percent of the connections required to be made on the steel bridge structure. Dalaj disputed this figure but did not produce a detailed analysis to counter it during their testimony.

In any event, the resulting arguments and protracted disputes appear to be manifestations of a contractor trying to recover from significant errors in their estimation of the type and scope of work required to complete the Project, and an increasingly frustrated and defensive Public Works team determined to protect the County's financial interests and requirements for high quality results on an important public highway. Neither Dalaj nor Public Works made any concerted effort to create an atmosphere of constructive problem solving, particularly at the jobsite, to resolve disputes and efficiently seek to identify workable solutions to technical constructability conflicts. The relationship between the two parties became so dysfunctional that all work on the Project stopped in January 2011 and no work has been performed since that date.

It is important to note that Dalaj's surety, Suretec, came on the job and observed and participated in the everyday jobsite performance of Dalaj beginning in April 2010 through June 2011. It was Suretec's independent conclusion following this jobsite observation and participation that Dalaj was unable to complete the project work, despite the introduction of properly qualified structural steel subcontractors. Additionally, from a financial perspective, and despite the return of liquidated damages by Public Works to Dalaj to mitigate their cash flow problems, Suretec incurred over \$400,000 in project expenses on behalf of Dalaj until the project work ceased in January 2011.

Conclusions

Regarding Issue 1:

Dalaj's objections to Suretec's assertion that Dalaj is financially unable to complete the Project, or otherwise comply with its contractual obligations.

The Hearing Officer finds that:

Dalaj did not offer specific financial information to counter Suretec's assertion that Dalaj is financially unable to complete the Project.

Dalaj did submit voluminous information in an attempt to justify their various claims for compensation associated with owner caused delay and as a result of changes due to an incomplete design and/or unconstructable plans. It is important to note that Public Works has paid Dalaj approximately \$950,000 of a \$1.8 million contract that is 60 percent complete. In other words, Public Works has paid out 53 percent of the value of the contract to date, leaving only seven percent of the work performed outstanding in terms of payment (60% complete less 53% paid). Therefore, the amount of work completed but not yet paid for by Public Works does not appear to be a significant financial issue that would prevent Dalaj from performing, as they have claimed.

Resolving the vast number of specific disputes relative to Dalaj's requests for change and compensation is beyond the scope of the administrative hearing; however, the Hearing Officer has given strong consideration to the assessment of liquidated damages against Dalaj by Public Works which, according to Dalaj, was another primary cause of Dalaj's financial inability to perform.

Despite the fact that the assessed liquidated damages were returned by Public Works to Dalaj in July 2010, Dalaj never offered or submitted an explanation of why the return of the withheld liquidated damages did not assist them with cash flow and improve their ability to perform work under the contract between July 2010 and their cessation of work in January 2011.

More importantly and certainly more pertinent to the question of whether Dalaj should be terminated for default is the fact that Dalaj is no longer properly bonded for the Project as a result of Suretec's irrevocable and voluntary abandonment and termination of the contract on behalf of Dalaj. This fact alone provides sufficient grounds for the County to exercise its contractual right to terminate the contract for default.

Regarding Issue 2:

To determine if the County provided plans and specifications for the Project that were not constructible.

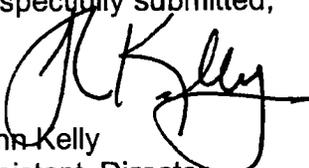
The Hearing Officer finds that:

The plans and specifications for the Project were full, final, professionally engineered drawings that were within industry standards for completeness, accuracy, and constructability. As made clear in the Notice Inviting Bids, the contract, if awarded, would be awarded to the lowest responsive and responsible bidder. Further, a responsible bidder must demonstrate quality, fitness, capacity, and experience to satisfactorily perform the contract. In order for a contractor to properly and responsibly bid on the contract, the contractor must fully understand and properly cost estimate the work as depicted in the contract documents, including the Project plans and specifications.

Therefore, it appears that the primary cause of non-performance of the structural steel work on the Project was Dalaj's lack of properly qualified personnel and subcontractors for the type and scope of work depicted in the contract documents, plans, and specifications. As a result, Dalaj was also unable to perform the contract work within the time allowed under their contractually required schedule. Furthermore, Dalaj was initially unable, and later possibly unwilling according to Public Works' written submittal and testimony, to adequately identify, obtain County approval, and properly execute modifications and value engineered improvements for the Project through the request for change process. This contributed to Suretec's decision to take over the project under the terms of their contract with Dalaj.

Although the confrontational and problematic relationship between Public Works and Dalaj was a shared responsibility, it is not a valid reason for Dalaj to refuse to perform under their contract or to insist to be paid for rejected requests for change and compensation as a condition of continuing their work.

Respectfully submitted,


John Kelly
Assistant Director
Department of Public Works

Date: 10/3/11