

## MEMORANDUM

**TO:** Board of Directors, Peninsula Corridor Joint Powers Board

**FROM:** James C. Harrison and Anna Myles-Primakoff

**DATE:** November 28, 2022

**RE:** Proposer Protest of Intent to Award Contract for Broadband Communication Services (RFP No. 21-J-T-057)

---

## BACKGROUND

On October 8, 2021, the Peninsula Corridor Joint Powers Board (JPB) issued a Request for Proposals (RFP) for broadband communications services, RFP No. 21-J-T-057 (the Project). The JPB received four proposals and selected Nomad Digital (Nomad) as the highest ranked proposer who presented the best value to the JPB following a rigorous evaluation process, including a system demonstration. The Selection Committee was composed of qualified Agency staff from the Rail Division, including the Capital Program Delivery and Rail Development Systems Engineering departments, supported by technical advisors and subject matter experts. Selection Committee members reviewed and scored the proposals in accordance with the weighted criteria in the RFP. The JPB issued a Notice of Intent to Award the contract to Nomad on November 9, 2022, which was received by all the proposers who had submitted proposals to the RFP.

### **I. Protest Procedures**

RFP No. 21-J-T-057 outlines the Protest Procedures in Section P. Protests based upon restrictive specifications or alleged improprieties in the proposal procedure which are apparent or reasonably should have been discovered prior to receipt of proposals must be filed in writing with the Procurement Administrator at least five calendar days prior to the proposal due date. Protests based upon alleged improprieties that are not apparent or which could not reasonably have been discovered prior to submission date of the proposals, such as disputes over the staff recommendation for contract award, must be submitted in writing to the Procurement Administrator within five calendar days from receipt of the Notice of Intent to Award. The protest must specify in writing the grounds for the protest and the evidence on which the protest is based. The Director, Contracts and Procurement, is required to respond to the protest in writing at least three calendar days prior to the meeting at which staff's recommendation to the Finance Committee will be considered. Should the Proposer decide to appeal the response of the Director, Contracts and Procurement, and pursue its protest at the Finance Committee meeting, the Proposer must notify the Director, Contracts and Procurement, of its intention at least two calendar days prior to the scheduled meeting.

## **II. Icomera Protest of Notice of Intent to Award**

Icomera US Inc. (Icomera), the second-highest ranked proposer, submitted a timely letter of protest to the JPB on November 14, 2022. The letter offered six separate grounds for the protest. In his response on November 18, 2022, Kevin Yin, Director of Contracts and Procurement, rejected Icomera's protest. Icomera's protest and Mr. Yin's response are summarized below:

- Icomera stated that there was an absence of transparency throughout the full Selection Process and requested the full names of the members of the Selection Committee and their affiliations, as well as detailed scoring of proposals and evaluations of the demonstration.
  - Mr. Yin responded that the Selection Committee was composed of qualified Agency staff from the Rail Division, including the Capital Program Delivery and Rail Development Systems Engineering departments, supported by technical advisors and subject matter experts, and that the Committee had reviewed and scored the proposals in accordance with the weighted criteria in the RFP.
  - Mr. Yin also referred Icomera to the RFP, Section L (Evaluation of Proposals and Selection Process), Subsection 1 (Selection Committee), which states "The Committee's composite scores for all steps of the evaluation process will comprise the official record for the proposal evaluation process; individual evaluation records will not be available for public inspection at any point during or after the evaluation process. By submitting a proposal, Proposers agree to be bound by these terms and will not later challenge said terms." Mr. Yin disclosed the composite scores from the Selection Committee and the members' affiliations and positions.
- Icomera suggested that the JPB had departed from the agreed intent of the System Demonstration, which was to validate the Proposed Solution's ability to meet the minimum requirements as set forth in the RFP, and argued that the technical evaluation was based on criteria other than those set forth in the RFP. In response, Mr. Yin referred Icomera to Section L, Subsection 1 of the RFP, which provides that the Committee's composite score would constitute the official record. Mr. Yin also stated that the System Demonstration had been used to validate the information provided by the Proposers, consistent with the RFP.
- Icomera complained of a perceived bias and/or potential conflict of interest on the part of staff assumed to be part of the Broadband Communications Services

Selection Committee. Mr. Yin rejected this claim, stating that Icomera had presented no evidence in support of its claim.

- Icomera stated its perception that the Selection Committee favored a specific technology and did not adhere to the requirements of the RFP. Mr. Yin rejected this claim, stating Icomera had presented no evidence of bias.
- Icomera alleged a perception of bias and/or conflict of interest from consultants believed to be involved in the direct procurement of Broadband Communications Services and/or known to have written reports that influenced RFP 21-J-T-057, Broadband Communications Services. Mr. Yin rejected this claim, stating Icomera had presented no evidence to support its allegation.
- In response to Icomera's query regarding the JPB's decision to request a Best and Final Offer (BAFO) from Nomad, rather than all proposers invited to participate in the System Demonstration, Mr. Yin reminded Icomera of the reservation of rights described in Section N of RFP, which included the right to seek a BAFO from one or more proposers, including on a serial basis.

To address Icomera's concerns, JPB staff offered to meet with Icomera representatives. This meeting occurred on November 18, 2022.

Following this meeting, Icomera submitted a second letter on Saturday, November 19th, more than five days after the issuance of the Notice of Intent to Award, and offered additional "evidence" in support of its protest. Mr. Yin responded on Monday, November 21st, before the Finance Committee meeting. Mr. Yin explained that Icomera's submission of additional information was not timely, but nonetheless responded to each of Icomera's points on the merits. Icomera's additional "evidence" and Mr. Yin's response included the following:

- Icomera argued that the evaluation criteria did not account for the revision of scores after the system demonstration. Mr. Yin responded that the JPB complied with the terms of the RFP, as the Selection Committee had the opportunity under the RFP to re-score the applications following the system demonstration but chose not to do so. Mr. Yin pointed out that had the system demonstration preceded differently, the outcome could have been different; instead, the demonstration confirmed the Selection Committee's views
- Icomera suggested that the JPB did not adhere to the required minimum system performance of 100 Mbps as specified in the RFP. Mr. Yin responded that the fact that Icomera demonstrated that it could meet the minimum requirement did not entitle Icomera to a contract award; it simply meant that Icomera's bid was responsive.

- Icomera complained that Caltrain representatives had voiced doubts to Icomera regarding the viability of Wi-Fi Technology to serve as the backbone of the Broadband Communications Solution and had expressed a preference towards mmWave-based technologies operating in the 57-71 Ghz spectrum. Mr. Yin responded that Selection Committee members are permitted to ask questions and to form judgments as part of their review, and that this does not demonstrate bias.
- Icomera argued that the JPB had deviated from the RFP by evaluating the proposers against one another rather than based on their individual merit. Mr. Yin replied that the Selection Committee had evaluated each proposal based on its individual merit, but that an RFP process necessarily entails a determination based on scores that one proposal exceeded the others.

Mr. Yin advised Icomera that it had the right to appeal his determination to the Finance Committee, which met on November 21, 2022.

### **III. Consideration of Protest at Finance Committee Meeting**

Icomera chose to appeal the response and to pursue its protest at the JPB Finance Committee meeting on Monday, November 21, 2022. Chair Monique Zmuda, Director Glenn Hendricks, and Director Jeff Gee were all present at the Committee meeting. After Rob Barnard presented the staff recommendation to award contracts for broadband service to Nomad, Mr. Yin carefully walked the Committee through each point raised by Icomera and the JPB's response. Mr. Yin then requested that Chair Zmuda offer Icomera the opportunity to address the Committee. Chair Zmuda invited Gabriel Lopez-Bernal, President of Icomera US, to speak on behalf of Icomera. Mr. Lopez-Bernal repeated the grounds for Icomera's protest, as described in Icomera's letters dated November 14 and 19, 2022. Mr. Lopez-Bernal addressed the Committee for five minutes, which was followed by public comment and Committee member discussion. The Committee members asked further questions of both Mr. Yin and Mr. Lopez Bernal.

Based on these presentations and the facts provided to the Committee, the Committee determined that there was no evidence supporting the protest. Director Hendricks summarized the findings of the Committee, stating that the JPB had followed the procurement process it had outlined in the RFP and that its decisions to provide the Selection Committee members' positions and affiliations, rather than their names, and to request a BAFO only from one proposer was consistent with that process. Additionally, he stated that he found no evidence of bias, conflict of interest, or lack of transparency on the part of the JPB. Director Gee stated that he agreed with Director Hendricks' comments. Chair Zmuda concurred, stating that there was insufficient evidence that the JPB had violated any of its procurement rules and that the JPB's selection was consistent with the RFP and JPB's standard practices. Based on the

Peninsula Corridor Joint Powers Board

November 28, 2022

Page 5

Committee's findings, the Committee unanimously recommended that the Board reject the proposal and award contracts for broadband services to Nomad.

The Committee's recommendations to reject Icomera's protest and award contracts for broadband service to Nomad will be presented to the Board at its December 1, 2022, meeting.

AMP:NL

Attachments

(00477965-3)

**PROTEST LETTER FROM ICOMERA (11/14/22)**



Sent via email:  
[choa@samtrans.com](mailto:choa@samtrans.com)

Alice Cho  
Procurement Manager  
Contracts and Procurement  
Peninsula Corridor Joint Powers Board  
1250 San Carlos Ave. – P.O. Box 3006  
San Carlos, CA  
94070-1306

November 14, 2022

**Re: CONFIDENTIAL - RFP 21-J-T-057, Broadband Communications Services**

Dear Alice,

*Please note that the entirety of the information provided by Icomera herein is information supplied in Confidence.*

In response to the letter received from the Peninsula Corridor Joint Powers Board (JPB) on November 9, 2022, titled “*Notice of Intent to Award – RFP 21-J-T-057, Broadband Communications Services*” which advised Proposers that JPB staff would recommend the JPB Board of Directors authorize award contracts to the highest-ranked firm – and Pursuant to Section P. Protest Procedures of RFP 21-J-T-057, Broadband Communications Services – Icomera US Inc. hereby Protests the Decision.

As previously transmitted by Icomera to the JPB in our communication dated June 8, 2022, this protest is based upon alleged improprieties that were not apparent or which could not reasonably have been discovered prior to the submission date of the proposals and includes a dispute over the staff recommendation for contract award.

We offer the following grounds and evidence on which the Protest is based:

1. Absence of transparency throughout the full Selection Process, including but not limited to:
  - a. Selection Committee members and their affiliation;
  - b. Detailed Scoring of Proposals (i.e., by evaluation member), and
  - c. Detailed Scoring / Evaluation of Proponents invited to participate in a System Demonstration.
2. A perceived departure from the agreed intent of the System Demonstration, which was to validate the Proposed Solution’s ability to meet the minimum requirements as set forth in the RFP.

*Note: The RFP required a minimum system performance of 100 Mbps. Icomera demonstrated that it can meet or exceed the required performance. It is Icomera’s perception that the technical evaluation was benchmarked on a set of requirements other than those set forth in*



*the RFP. Icomera requests full transparency of the evaluation including the release of the evaluation breakdown for each bidder by criteria evaluated per section L.2 "Proposal Evaluation Process" of RFP and by scorer.*

3. A perceived bias and/or potential conflict of interest from staff assumed to be part of the Broadband Communications Services Selection Committee.
4. A perception that the Selection Committee's decision was made based on specific technology preferences and not adherence to the requirements of the RFP.
5. A perceived bias and/or conflict of interest from consultants believed to be involved in the direct procurement of Broadband Communications Services and/or known to have written reports that influenced RFP 21-J-T-057, Broadband Communications Services.
6. An understanding of how it would not be in the best interest of the agency to request Best and Final Offers (BAFOs) from, at a minimum, the Proponents invited to participate in a System Demonstration.

This is a preliminary list of grounds based on our observations of the process and people involved. Icomera reserves the right to amend and expand upon this list should additional grounds and evidence materialize.

Sincerely,

*Gabriel J. Lopez-Bernal*

**Gabriel Lopez-Bernal**

President

Icomera US Inc.

6550 Rock Spring Drive, Suite 500

Bethesda, MD 20817

305-494-1094

[gabriel.lopez-bernal@icomera.com](mailto:gabriel.lopez-bernal@icomera.com)

CC:

Kevin Yin, Director, Peninsula Corridor Joint Powers Board

Magnus Friberg, CEO, Icomera

Richard Berg, Legal Counsel, Icomera



**PROTEST RESPONSE ICOMERA (11/18/22)**



BOARD OF DIRECTORS 2022  
STEVE HEMINGER, CHAIR  
CHARLES STONE, VICE  
CHAIR  
DEVORA "DEV" DAVIS  
CINDY CHAVEZ  
JEFF GEE  
GLENN HENDRICKS  
DAVE PINE  
SHAMANN WALTON  
MONIQUE ZMUDA  
  
MICHELLE BOUCHARD  
EXECUTIVE DIRECTOR

via electronic mail at  
[gabriel.lopez-bernal@icomera.com](mailto:gabriel.lopez-bernal@icomera.com)

November 18, 2022  
Gabriel Lopez-Bernal, President  
Icomera US Inc.  
6550 Rock Spring Drive, Suite 500  
Bethesda, MD 20817

**Re: Request for Proposals (RFP) 21-J-T-057, Broadband Communications Services**

Dear Mr. Lopez-Bernal:

The Peninsula Corridor Joint Powers Board (Agency) confirms receipt of Icomera's protest letter dated and received on November 14, 2022.

I have reviewed your letter and have advised you via email, dated November 17, 2022, that your letter and the response are subject to disclosure per the California Public Records Act. In addition, I have advised you that per the Agency's procedures in response to a protest, the Agency will respond to your protest letter and advise all Proposers for the subject solicitation of both the protest letter and the Agency's response.

In your protest letter, you stated, "We offer the following grounds and evidence on which the Protest is based:"

1.

1. Absence of transparency throughout the full Selection Process, including but not limited to:
  - a. Selection Committee members and their affiliation;
  - b. Detailed Scoring of Proposals (i.e., by evaluation member), and
  - c. Detailed Scoring / Evaluation of Proponents invited to participate in a System Demonstration.

1.a. The information requested here is similar to an email request dated November 11, 2022, which we responded on November 14, 2022 as follows:

**PENINSULA CORRIDOR JOINT POWERS BOARD**  
1250 San Carlos Ave – P.O. Box 3006  
San Carlos, CA 94070-1306 (650) 508-6200

The Selection Committee was comprised of qualified Agency staff from the Rail Division including the Capital Program Delivery and Rail Development Systems Engineering departments, supported by technical advisors and subject matter experts, that reviewed and scored the proposals in accordance with the weighted criteria in the RFP. They also re-reviewed and re-scored for the interviews and demonstrations based on the weighted scores received from the written submittal. Pursuant to the Agency standard practice, we are unable to disclose the Selection Committee member's names. However, we confirm that all participants in the evaluation of proposals and selection process signed a conflict of interest and confidentiality agreement before they participated in the RFP process. The Selection Committee included the following members:

#### Scoring Members

1. Member #1 – Agency employee in Rail Development department
2. Member #2 – Agency employee in Rail Operations and Maintenance department
3. Member #3 – Agency employee in Rail Development department
4. Member #4 – Agency consultant in Rail Systems Engineering department, PMG, LLC
5. Member #5 – Agency consultant, Technical expert, Civic Foundry

The following advisors provided input to the Selection Committee:

#### Advisors

1. Member #1 – Agency employee in Rail Systems Engineering department
2. Member #2 – Agency employee in Rail Development department
3. Member #3 – Agency consultant in Capital Program Delivery department, Jacobs Project Management Company
4. Member #4 – Agency employee in Customer Service department
5. Member #5 – Agency employee in Contracts and Procurement department

Based on the information provided, I am rejecting your claim that there is an absence of transparency.

1.b. and 1.c. The information requested here is similar to an email request dated November 11, 2022, which we responded on November 14, 2022 as follows:

Per the referenced RFP, under Section L (Evaluation of Proposals and Selection Process), Subsection 1 (Selection Committee), "The Committee's composite scores for all steps of the evaluation process will comprise the official record for the proposal evaluation process; individual evaluation records will not be available for public inspection at any point during or after the evaluation process. By submitting a proposal, Proposers agree to be bound by these terms and will not later challenge said terms." As such, I've attached the Committee's composite scores.

The RFP provides rules with which everyone must adhere. Icomera submitted a proposal, and thereby is bound by these terms and agreed not to challenge said terms. Based on

the information provided, I am rejecting your claim that there is an absence of transparency.

2.

2. A perceived departure from the agreed intent of the System Demonstration, which was to validate the Proposed Solution's ability to meet the minimum requirements as set forth in the RFP.

*Note: The RFP required a minimum system performance of 100 Mbps. Icomera demonstrated that it can meet or exceed the required performance. It is Icomera's perception that the technical evaluation was benchmarked on a set of requirements other than those set forth in*

*the RFP. Icomera requests full transparency of the evaluation including the release of the evaluation breakdown for each bidder by criteria evaluated per section L.2 "Proposal Evaluation Process" of RFP and by scorer.*

Per the referenced RFP, under Section L (Evaluation of Proposals and Selection Process), Subsection 1 (Selection Committee), "The Committee's composite scores for all steps of the evaluation process will comprise the official record for the proposal evaluation process; individual evaluation records will not be available for public inspection at any point during or after the evaluation process. By submitting a proposal, Proposers agree to be bound by these terms and will not later challenge said terms." Icomera had the opportunity to protest these terms prior to the proposal due date and time but did not do so.

The RFP provides rules with which everyone must adhere. Icomera submitted a proposal, and thereby is bound by these terms and its agreement not to challenge said terms. Based on the information provided and consistent with the terms of Section L, Subsection 1 of the referenced RFP, I am rejecting your request for "...evaluation breakdown for each bidder by criteria evaluated..."

Please note the system demonstration was evaluated as stated, which is to validate the information provided by Proposers.

3.

3. A perceived bias and/or potential conflict of interest from staff assumed to be part of the Broadband Communications Services Selection Committee.

I see no evidence presented on which this protest is based. As such, I am rejecting this claim.

4.

4. A perception that the Selection Committee's decision was made based on specific technology preferences and not adherence to the requirements of the RFP.

I see no evidence presented on which this protest is based. As such, I am rejecting this claim.

5.

5. A perceived bias and/or conflict of interest from consultants believed to be involved in the direct procurement of Broadband Communications Services and/or known to have written reports that influenced RFP 21-J-T-057, Broadband Communications Services.

I see no evidence presented on which this protest is based. As such, I am rejecting this claim.

6.

6. An understanding of how it would not be in the best interest of the agency to request Best and Final Offers (BAFOs) from, at a minimum, the Proponents invited to participate in a System Demonstration.

Per the referenced RFP, Section N (Revised Proposals and Negotiations), "The Agency reserves the right to negotiate with any individual(s) or qualified firm(s), to request revised proposals, to visit the Proposer(s)' site(s), and/or to request best and final offers (BAFOs) if it is in the best interest of the Agency to do so." At its sole discretion, the Agency decided to ask for the BAFO from only the highest-ranked Proposer.

7.

This is a preliminary list of grounds based on our observations of the process and people involved. Icomera reserves the right to amend and expand upon this list should additional grounds and evidence materialize.

Per the referenced RFP, under Section P (Protest Procedures), "Protests based upon alleged improprieties that are not apparent or which could not reasonably have been discovered prior to submission date of the proposals, such as disputes over the staff recommendation for contract award, must be submitted in writing to the Acting Procurement Manager, within five (5) calendar days from receipt of the notice from the Agency, such as advising of staff's recommendation for award of contract. The protest must clearly specify in writing the grounds and evidence on which the protest is based."

Although your protest letter was timely submitted, the protest letter does not contain evidence on which the protest is based. As such, and for the reasons stated above, I am rejecting your protest of the award decision.

You may appeal my response and pursue your protest at the Agency Finance Committee meeting, which is scheduled at 2:30 PM (Pacific Time) on Monday, November 21, 2022. If you decide to pursue this, you must notify me, the Director of Contracts and Procurement, via email at [yink@samtrans.com](mailto:yink@samtrans.com) of your intention at least two (2) calendar days prior to the scheduled meeting, which is Saturday, November 19, 2022. The meeting will be held via Zoom at <https://zoom.us/j/93388927360?pwd=SFJranR4KzVURGIZVW5VUXJMZGlxQT09> or by entering Webinar ID: # **933 8892 7360**, Passcode: **790810**, in the Zoom app for audio/visual capability or by calling 1-669-900-6833 (enter webinar ID and press # when prompted for participant ID) for audio only.

Thank you for your participation in this solicitation process. I welcome and encourage Icomera's participation in future solicitations.

Sincerely,

Kevin Yin  
Director, Contracts & Procurement

cc: Michelle Bouchard  
Grace Martinez  
Julie Sherman  
James Harrison  
Robert Tam  
Andy Robbins  
Vijay Sammeta  
Alice Cho  
File

Attachment: Broadband Composite Scores

# 21-J-T-057 - BROADBAND COMMUNICATIONS SERVICES

## Scoring Summary

### Active Submissions

	Total
Supplier	/ 105 pts
Nomad Digital	85.4
Icomera US Inc.	66.8
RL Controls	57.6
Nokia	55.2

**RESPONSE TO CALTRAIN – RFP 21-J-T-057**





Sent via email:  
[choa@samtrans.com](mailto:choa@samtrans.com)

Alice Cho  
Procurement Manager  
Contracts and Procurement  
Peninsula Corridor Joint Powers Board  
1250 San Carlos Ave. – P.O. Box 3006  
San Carlos, CA  
94070-1306

November 19, 2022

**Re: CONFIDENTIAL - RFP 21-J-T-057, Broadband Communications Services**

Dear Alice,

*Please note that the entirety of the information provided by Icomera herein is information supplied in Confidence.*

***This is an update to the letter submitted by Icomera on November 14<sup>th</sup> with additional evidence uncovered during the “Broadband Debrief with Icomera” held on November 18, 2022.***

In response to the letter received from the Peninsula Corridor Joint Powers Board (JPB) on November 9, 2022, titled “*Notice of Intent to Award – RFP 21-J-T-057, Broadband Communications Services*” which advised Proposers that JPB staff would recommend the JPB Board of Directors authorize award contracts to the highest-ranked firm – and Pursuant to Section P. Protest Procedures of RFP 21-J-T-057, Broadband Communications Services – Icomera US Inc. hereby Protests the Decision.

As previously transmitted by Icomera to the JPB in our communication dated June 8, 2022, this protest is based upon alleged improprieties that were not apparent or which could not reasonably have been discovered prior to the submission date of the proposals and includes a dispute over the staff recommendation for contract award.

We offer the following grounds and evidence on which the Protest is based:

1. Absence of transparency throughout the full Selection Process, including but not limited to:
  - a. Selection Committee members and their affiliation;
  - b. Detailed Scoring of Proposals (i.e., by evaluation member), and
  - c. Detailed Scoring / Evaluation of Proponents invited to participate in a System Demonstration.
    - i. Evidence: During the “Broadband Debrief with Icomera” held on November 18, 2022, the JPB stated that Icomera was invited to participate in the interview and System Demonstration because its proposal was deemed to be within a “competitive range”. The JPB furthered that no score changed following the



system demonstrations. The Evaluation Criteria Provided in the Broadband Communications Services does not account for this revision of scores or the weighing of the System Demonstration.

1. Can the JPB explain how it intended to depart from the RFP to “revise” vendor scores as communicated during the “Broadband Debrief with Icomera” held on November 18, 2022? A copy of the RFP’s stated evaluation criteria is pasted below.
2. Can the JPB explain why it invited two vendors to participate in the System Demonstration when the initial scoring disparity between the two proponents was apparently insurmountable?

<b>Evaluation Criteria</b>	<b>Max. Points</b>
Project Approach, Technical Proposal & Rider Experience	<b>35</b>
Company Qualifications, Experience, References	<b>15</b>
Qualifications and Experience of Key Personnel	<b>15</b>
Financial Viability	<b>15</b>
Cost Proposal	<b>20</b>
Small Business Enterprise (SBE) Preference	<b>5</b>
<b>Total</b>	<b>105</b>

2. A perceived departure from the agreed intent of the System Demonstration, which was to validate the Proposed Solution’s ability to meet the minimum requirements as set forth in the RFP.
  - a. Evidence: The RFP required a minimum system performance of 100 Mbps. Icomera demonstrated that it can meet or exceed the required performance. It is Icomera’s perception that the technical evaluation was benchmarked on a set of requirements other than those set forth in the RFP. Icomera requests full transparency of the evaluation including the release of the evaluation breakdown for each bidder by criteria evaluated per section L.2 “Proposal Evaluation Process” of RFP and by scorer.
3. A perceived bias and/or potential conflict of interest from staff assumed to be part of the Broadband Communications Services Selection Committee.
  - a. Evidence: Throughout the full evaluation process, including during Icomera’s Interview, held via video conference on February 2, 2022, and the Icomera System Demonstration site visit, held on March 8 and 9, 2022, Caltrain representatives voiced repeated doubts to Icomera regarding the viability of Wi-Fi Technology to serve as the backbone of the Broadband Communications Solution.
    - i. Note: Caltrain imposed a restriction that prohibited Icomera from recording the Interview session. This action supports the claim of a process which lacked transparency.

- b. Evidence: During the Icomera System Demonstration site visit held on March 8 and 9, 2022, Caltrain representatives demonstrated a misunderstanding of the Icomera solution proposal and technology, evidenced by questioning fundamental aspects of how the Icomera TraXside Solution functions in a) high-speed rail operating conditions; b) at distances exceeding one (1) mile; and c) concurrent with cellular technologies.
4. A perception that the Selection Committee's decision was made based on specific technology preferences and not adherence to the requirements of the RFP.
  - a. Evidence: During Icomera's System Demonstration Site Visit held on March 8 and 9, 2022, Caltrain representatives actively voiced preference towards mmWave-based technologies operating in the 57-71 Ghz spectrum.
5. A perceived bias and/or conflict of interest from consultants believed to be involved in the direct procurement of Broadband Communications Services and/or known to have written reports that influenced RFP 21-J-T-057, Broadband Communications Services.
  - a. Evidence: During the "Broadband Debrief with Icomera" held on November 18, 2022, the JPB stated that all proposers were evaluated against the requirement of the RFP and not against each other. The report titled "Caltrain Broadband Demo Findings" suggests otherwise:
    - i. See p. 8, Conclusions from Demonstration: "Nomad Digital produced greater average and peak throughput than Icomera"
    - ii. See p. 8, Conclusions from Demonstration: "Many of the item identified by Icomera and Nomad Digital (length of train, initialization time by moving the train from unconnected to connected states, etc.) would benefit both vendors."
    - iii. See p. 8, Conclusions from Demonstration: "...was added to the average and peak throughput of the Icomera tests, it would still be less than what was demonstrated by Nomad Digital."
6. An understanding of how it would not be in the best interest of the agency to request Best and Final Offers (BAFOs) from, at a minimum, the Proponents invited to participate in a System Demonstration.



This is a preliminary list of grounds based on our observations of the process and people involved. Icomera reserves the right to amend and expand upon this list should additional grounds and evidence materialize.

Sincerely,

*Gabriel J. Lopez-Bernal*

**Gabriel Lopez-Bernal**

President

Icomera US Inc.

6550 Rock Spring Drive, Suite 500

Bethesda, MD 20817

305-494-1094

[gabriel.lopez-bernal@icomera.com](mailto:gabriel.lopez-bernal@icomera.com)

CC:

Kevin Yin, Director, Peninsula Corridor Joint Powers Board

Magnus Friberg, CEO, Icomera

Richard Berg, Legal Counsel, Icomera

**PROTEST RESPONSE ICOMERA SECOND LETTER (11/21/22)**



BOARD OF DIRECTORS 2022  
STEVE HEMINGER, CHAIR  
CHARLES STONE, VICE  
CHAIR  
DEVORA "DEV" DAVIS  
CINDY CHAVEZ  
JEFF GEE  
GLENN HENDRICKS  
DAVE PINE  
SHAMANN WALTON  
MONIQUE ZMUDA  
  
MICHELLE BOUCHARD  
EXECUTIVE DIRECTOR

via electronic mail at  
[gabriel.lopez-bernal@icomera.com](mailto:gabriel.lopez-bernal@icomera.com)

November 21, 2022  
Gabriel Lopez-Bernal, President  
Icomera US Inc.  
6550 Rock Spring Drive, Suite 500  
Bethesda, MD 20817

**Re: Request for Proposals (RFP) 21-J-T-057, Broadband Communications Services**

Dear Mr. Lopez-Bernal:

The Peninsula Corridor Joint Powers Board (Agency) confirms receipt of Icomera's additional protest letter dated and received on November 19, 2022.

I had responded to your timely protest letter on November 18, 2022, which was submitted on November 14, 2022.

This additional protest letter received on November 19, 2022, was not timely submitted, as the protest, and the grounds and evidence on which the protest is based must be received by the Agency by November 14, 2022 (five days from the issuance of the Notice of Intent to Award letter). Please note the Agency is not required to consider the letter submitted on November 19, 2022, but I will nonetheless respond.

1.c.i.1.

i. Evidence: During the "Broadband Debrief with Icomera" held on November 18, 2022, the JPB stated that Icomera was invited to participate in the interview and System Demonstration because its proposal was deemed to be within a "competitive range". The JPB furthered that no score changed following the

system demonstrations. The Evaluation Criteria Provided in the Broadband Communications Services does not account for this revision of scores or the weighing of the System Demonstration.

**PENINSULA CORRIDOR JOINT POWERS BOARD**  
1250 San Carlos Ave – P.O. Box 3006  
San Carlos, CA 94070-1306 (650) 508-6200

1. Can the JPB explain how it intended to depart from the RFP to “revise” vendor scores as communicated during the “Broadband Debrief with Icomera” held on November 18, 2022? A copy of the RFP’s stated evaluation criteria is pasted below.

There was no departure from the ground rules of RFP, as the Selection Committee had the opportunity under the RFP to re-score the criteria listed. The Selection Committee chose not to change the scores, as Icomera confirmed in its November 19 letter. Had the Demonstration preceded differently, the outcome could have been different. Instead, the Demonstration confirmed the Selection Committee’s views.

1.c.i.2.

2. Can the JPB explain why it invited two vendors to participate in the System Demonstration when the initial scoring disparity between the two proponents was apparently insurmountable?

As we mentioned during the debriefing provided to Icomera on November 18, 2022, Icomera was invited to the Oral and Demonstration phases of the evaluation process because Icomera scored in the competitive range. This means that Icomera had a reasonable chance of being selected for award, including following the Demonstration phase. However, Icomera’s scores did not change as a result of the Demonstration (i.e., it was not the highest ranked firm).

Per the referenced RFP, under Section I (Stipend) Understanding that there were costs associated with the system demonstration, the Agency offered “...a stipend of \$15,000 to those Proposers who are invited to perform a system demonstration within the Caltrain corridor and ultimately are not selected as the successful Proposer. This stipend is to reimburse reasonable travel and labor expenses associated with setup, demonstration and removal of the Proposer’s solution within the Caltrain right-of-way.”

2.

2. A perceived departure from the agreed intent of the System Demonstration, which was to validate the Proposed Solution’s ability to meet the minimum requirements as set forth in the RFP.
  - a. Evidence: The RFP required a minimum system performance of 100 Mbps. Icomera demonstrated that it can meet or exceed the required performance. It is Icomera’s perception that the technical evaluation was benchmarked on a set of requirements other than those set forth in the RFP. Icomera requests full transparency of the evaluation including the release of the evaluation breakdown for each bidder by criteria evaluated per section L.2 “Proposal Evaluation Process” of RFP and by scorer.

The fact that Icomera demonstrated that it could meet the minimum requirement does not entitle Icomera (or any firm) to a contract award; it simply means that Icomera's proposal was responsive. Under the terms of the RFP, which Icomera agreed to by submitting a proposal, Icomera is not entitled to the additional data it seeks

3.

3. A perceived bias and/or potential conflict of interest from staff assumed to be part of the Broadband Communications Services Selection Committee.

a. Evidence: Throughout the full evaluation process, including during Icomera's Interview, held via video conference on February 2, 2022, and the Icomera System Demonstration site visit, held on March 8 and 9, 2022, Caltrain representatives voiced repeated doubts to Icomera regarding the viability of Wi-Fi Technology to serve as the backbone of the Broadband Communications Solution.

i. Note: Caltrain imposed a restriction that prohibited Icomera from recording the Interview session. This action supports the claim of a process which lacked transparency.

b. Evidence: During the Icomera System Demonstration site visit held on March 8 and 9, 2022, Caltrain representatives demonstrated a misunderstanding of the Icomera solution proposal and technology, evidenced by questioning fundamental aspects of how the Icomera TraXside Solution functions in a) high-speed rail operating conditions; b) at distances exceeding one (1) mile; and c) concurrent with cellular technologies.

The Selection Committee members are permitted to ask questions and to form judgments as part of their review and scoring. This does not demonstrate bias.

Concerning the request to record the Oral/Interview session, the Agency did not allow such action as the session was not a public process.

4.

4. A perception that the Selection Committee's decision was made based on specific technology preferences and not adherence to the requirements of the RFP.

a. Evidence: During Icomera's System Demonstration Site Visit held on March 8 and 9, 2022, Caltrain representatives actively voiced preference towards mmWave-based technologies operating in the 57-71 Ghz spectrum.

The Selection Committee members are permitted to ask questions and to form judgments as part of their review and scoring. This does not demonstrate bias.



5.

5. A perceived bias and/or conflict of interest from consultants believed to be involved in the direct procurement of Broadband Communications Services and/or known to have written reports that influenced RFP 21-J-T-057, Broadband Communications Services.
- a. Evidence: During the “Broadband Debrief with Icomera” held on November 18, 2022, the JPB stated that all proposers were evaluated against the requirement of the RFP and not against each other. The report titled “Caltrain Broadband Demo Findings” suggests otherwise:
    - i. See p. 8, Conclusions from Demonstration: “Nomad Digital produced greater average and peak throughput than Icomera”
    - ii. See p. 8, Conclusions from Demonstration: “Many of the item identified by Icomera and Nomad Digital (length of train, initialization time by moving the train from unconnected to connected states, etc.) would benefit both vendors.”
    - iii. See p. 8, Conclusions from Demonstration: “...was added to the average and peak throughput of the Icomera tests, it would still be less than what was demonstrated by Nomad Digital.”

As we have mentioned during the debriefing, each proposal was evaluated based on its individual merit. However, an RFP process necessarily entails a determination based on scores that one proposal exceeded the others.

Therefore, I am rejecting this late submittal of your additional protest letter, which was dated and received on November 19, 2022, as Icomera again failed to show bias or any other violations of the JPB’s rules as outlined in the referenced RFP.

Sincerely,

Kevin Yin  
Director, Contracts & Procurement

cc: Michelle Bouchard  
Julie Sherman  
James Harrison  
Robert Tam  
Andy Robbins  
Vijay Sammeta  
Alice Cho  
File