

REGIONAL TRANSIT ISSUE PAPER

Agenda Item No.	Board Meeting Date	Open/Closed Session	Information/Action Item	Issue Date
10	01/25/10	Open	Action	12/29/09

Subject: Conditionally Approving Liquidated Damages Settlement Agreement with Orion Bus Industries

ISSUE

Whether or not to approve the proposed Settlement Agreement with Orion Bus Industries for Liquidated Damages in the form of a \$350,000 spare parts credit.

RECOMMENDED ACTION

Adopt Resolution No. 10-01-_____, Conditionally Approving A Liquidated Damages Settlement Agreement with Orion Bus Industries.

FISCAL IMPACT

The agreement will result in a spare parts credit with Orion Bus Industries in the amount of \$350,000.

DISCUSSION

Sacramento Regional Transit District (RT) entered into a contract with Orion Bus Industries on September 8, 2006 to procure 91 forty foot Low Floor Compressed Natural Gas Powered Buses. RT secured options to procure the buses by exercising an unused option from a contract awarded to Orion Bus Industries by Washington Metropolitan Area Transit Authority (WMATA) on April 16, 2004.

As stipulated in the original WMATA contract, RT would receive liquidated damages in the amount of \$150 per bus for each day the original delivery schedule was not met. During the production process Orion requested and was granted excusable delays for minor changes initiated by RT staff, an unavoidable work stoppage at the Orion production facility and for an engine manufacturer production delay. In addition, RT staff agreed to push out the delivery schedule due to a lack of available inspection staff during the production process. The revised delivery schedule called for 57 buses to be delivered by April 25, 2008, 9 buses to be delivered by May 9, 2008 and the remaining 25 buses by June 9, 2008.

On June 16, 2008, Orion had only delivered 44 buses to RT. At that time, Orion requested that RT accept \$79,950 for liquidated damages for the entire production order. RT staff rejected Orion's offer. The final bus was delivered to RT on September 10, 2008.

Had the contract language been strictly upheld, RT maintains that Orion would have incurred liquidated damages in excess of \$400,000. Orion claims that the unavoidable delays and the RT mandated changes should reduce the liquidated damages claim significantly. While the parties could expend substantial amounts of time and effort to reconcile these differences, we have agreed to stipulate (subject to FTA concurrence) that liquidated damages are equal to \$350,000. In our agreement with Orion, RT would waive all liquidated damages on the contract in trade for a \$350,000 credit to be used for project related spare parts. RT would have until December 31, 2010 to apply the spare parts credit to the procurement of spare parts from Orion. Upon

Approved:

General Manager/CEO



Presented:

for Director, Procurement Services



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concluding discussions with Orion, RT's General Manager/CEO submitted a letter to the FTA requesting FTA approval of the settlement terms.

RT staff recommends that the Board approve the Settlement Agreement between RT and Orion in which the parties agree that the total amount of Liquidated Damages owed to RT is \$350,000 and Orion agrees to repay those damages in the form of a \$350,000 in spare parts credit conditioned upon securing FTA concurrence. Staff further recommends that the Board delegate authority to the General Manager/CEO to execute the settlement agreement with Orion upon receipt of FTA concurrence of the settlement.

RESOLUTION NO. 10-01-_____

Adopted by the Board of Directors of the Sacramento Regional Transit District on this date:

January 25, 2010

**CONDITIONALLY APPROVING A LIQUIDATED DAMAGES SETTLEMENT
AGREEMENT WITH ORION BUS INDUSTRIES**

BE IT HEREBY RESOLVED BY THE BOARD OF DIRECTORS OF THE
SACRAMENTO REGIONAL TRANSIT DISTRICT AS FOLLOWS:

THAT, the Settlement Agreement between Sacramento Regional Transit District and Orion Bus Industries whereby RT is granted Liquidated Damages in the form of a \$350,000 spare parts credit, is hereby approved on the condition that the FTA approves the settlement terms.

THAT, upon receipt of FTA approval of the Settlement Agreement, the General Manager/CEO or his designee is hereby directed to execute the Settlement Agreement.

STEVE MILLER, Chair

A T T E S T:

MICHAEL R. WILEY, Secretary

By: _____
Cindy Brooks, Assistant Secretary