

**NOTICE OF SPECIAL SCHEDULED EXECUTIVE COMMITTEE MEETING
OF THE BOARD OF DIRECTORS
OF THE
SACRAMENTO REGIONAL TRANSIT DISTRICT**

NOTICE IS HEREBY GIVEN that the Board of Directors of the Sacramento Regional Transit District will meet in a **Special Scheduled Executive Committee Meeting on Wednesday, August 29th to commence at 11:00 a.m.** in the Regional Transit Auditorium, 1400 29th Street, 1st Floor, Sacramento, CA 95814.

The purpose of this Special Scheduled Board Meeting is to discuss matters as shown on the attached agenda.



BONNIE PANNELL, Chair



Sacramento Regional Transit District Agenda

Revised 8/28/12
Addition of Item #2

SPECIAL SCHEDULED EXECUTIVE COMMITTEE MEETING

11:00 A.M., WEDNESDAY, AUGUST 29, 2012

REGIONAL TRANSIT AUDITORIUM

1400 29TH STREET, SACRAMENTO, CALIFORNIA

Website Address: www.sacrt.com

(29th St. Light Rail Station/Bus 38, 67, 68)

ROLL CALL — Directors Budge, Cohn, Fong, Hume, MacGlashan, Miller, Morin, Nottoli, Serna, Schenirer, and Chair Pannell

Alternates: Directors Detrick, Sander and Slowey

NEW BUSINESS

1. Information: Procurement Process Review: Solicitation, Award, and Bid Protest Procedures (Behrens)
2. Resolution: Delegating Authority to the General Manager/CEO to Enter into the First Amendment to Agreement Between the Sacramento Municipal Utility District and Sacramento Regional Transit District to Relocate 230 KV and 69 KV Facilities for RT's South Sacramento Corridor Phase 2 Project (Abansado)

PUBLIC ADDRESSES BOARD ON MATTERS NOT ON THE AGENDA*

ADJOURN

*NOTICE TO THE PUBLIC

It is the policy of the Board of Directors of the Sacramento Regional Transit District to encourage participation in the meetings of the Board of Directors. At each open meeting, members of the public shall be provided with an opportunity to directly address the Board on items of interest to the public that are within the subject matter jurisdiction of the Board of Directors. Please fill out a speaker card and give it to the Board Clerk if you wish to address the Board. Speaker cards are provided on the table at the back of the auditorium.

Public testimony may be given on any agenda item as it is called and will be limited by the Chair to five minutes or less per speaker. When it appears there are several members of the public wishing to address the Board on a specific item, at the outset of the item the Chair of the Board will announce the maximum amount of time that will be allowed for presentation of testimony.

Matters under the jurisdiction of the Board and not on the posted agenda may be addressed by the public following the item entitled "New Business." Up to 20 minutes will be allotted for this purpose. The Board limits testimony on matters not on the agenda to three minutes per person and not more than fifteen minutes for a particular subject.

This agenda may be amended up to 24 hours prior to the meeting being held. An agenda, in final form, is located by the front door of Regional Transit's building at 1400 – 29th Street and is posted on Regional Transit's website.

Any person(s) requiring accessible formats of the agenda or assisted listening devices/sign language interpreters should contact the Clerk of the Board at 916/556-0456 or TDD 916/483-4327 at least 72 business hours in advance of the Board Meeting.

Copies of staff reports or other written documentation relating to each item of business referred to on the agenda are on file with the Clerk to the Board of Directors of the Sacramento Regional Transit District and are available for public inspection at 1400 29th Street, Sacramento, CA. Any person who has questions concerning any agenda item may call the Clerk to the Board of Sacramento Regional Transit District to make inquiry.

Agenda Item No.	Executive Board Committee Meeting Date	Open	Information	Issue Date
1	08/29/12	Open	Information	08/22/12

Subject: Procurement Process Review: Solicitation, Award, and Bid Protest Procedures

ISSUE

Review of Regional Transit’s Procurement Process: Solicitation, Award, and Bid Protest Procedures.

RECOMMENDED ACTION

Information: Review of the Procurement Process: Solicitation, Award, and Bid Protest Procedures.

FISCAL IMPACT

None as a result of this report.

DISCUSSION

At its June 6, 2012 meeting, the Board requested clarification of the District’s contract award process, especially in the context of bid protests and the award of “Best-Value” contracts, both of which are not matters frequently before the Board.

Bid Protests

Since 2006, approximately 700 formal procurements have been completed by the District, as well as many more procurements using informal competitive procedures. Of that number, 12 have been the subject of bid protests, only one of which proceeded beyond the administrative resolution process to the Board. The last protest which required Board review occurred in 2003.

The procedural requirements for bid protests are set out in state and federal law, and are incorporated into the District’s Procurement Ordinance and included in each contract document. In the event a protest proceeds to the Board level, its decision making process is required to be reasonable and follow all procedural requirements.

Best Value/Competitive Negotiation

Contracts involving competitive negotiation, which may use a “best-value” selection process, are also somewhat uncommon. Traditional public agency contracting largely relied upon lowest price, sealed bids as the means to ensure competition, except for several areas where the need for technical expertise was recognized as justifying a qualification-based selection process, such as architectural/engineering services (A&E). However, beginning with the federal government, and increasingly at the state and local level, various forms of procurement have been authorized

Approved:

Presented:

Final 8/22/12

General Manager/CEO

Chief Counsel

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Agenda Item No.	Board Meeting Date	Open/Closed Session	Information/Action Item	Issue Date
1	08/29/12	Open	Information	08/22/12

Subject: Procurement Process Review: Solicitation, Award, and Bid Protest Procedures

which allow the agency to use a competitive, negotiated process which allow the agency to select the most advantageous offer by evaluating and comparing factors in addition to cost or price. This allows the agency to acquire technical superiority even where it must pay a higher price.

Because it is largely a creature of federal procurement, an elaborate set of rules and procedures governing best value contracting have been developed by federal agencies, including, among others, the Federal Transit Administration (FTA). These procedures identify a number of methods to be used in evaluating and selecting a best value proposal. As a result, the federal courts have developed an extensive body of case-law on the use of best value contracting, which governs not only federal agency procurements, but procurements which use federal funds.

State law authorization for best value contracting has been somewhat slower, initially coming to California in the context of Design-Build contracting for certain public works, and more recently for the procurement of certain supplies, equipment, and materials. In fact, the District was an early recipient of such authority, receiving legislative approval for a form of Design-Build on the Folsom Corridor Project in 1998 and approval in 1992 for best-value procurement of certain electronic and specialized rail transit equipment which are undergoing rapid technological change. If signed, legislation currently on the Governor's desk (Senate Bill 1068) will provide the District with additional best-value authority for the purchase of certain supplies, equipment, and materials; this discretionary authority is now held by nearly all of California's major transit agencies.

In anticipation of wider possible use of the Best-Value contracting, staff will attempt to clarify the processes that govern its use (as well as other methods) and identify possible opportunities for policy change and process modifications. The application of bid protest procedures in this context will also be reviewed.

Accordingly, RT Legal and Procurement staff will provide an overview of the District's existing procurement, contract award, and bid protest procedures with an emphasis of the following elements of the procurement process:

- A. Governing Authorities (Statutes, regulations, ordinances, and policies)
- B. Current RT Procurement Experience and Responsibilities
- C. Types of Procurements
- D. General Rule: Full and Open Competition – Methods of Competition
- E. Procurement Process Step-by-Step
- F. Protests
- G. Board Discretion

These topics are further detailed in the attached outline, Attachment 1.

Based on any questions and discussion surrounding these elements, the Board may wish to direct staff to explore possible changes to policy and/or procedures for future consideration.

RT PROCUREMENT PROCESS OVERVIEW: SOLICITATION, AWARD AND BID PROTEST PROCEDURES (Key areas of Board discretion highlighted in red)

A. Governing Authority

1. Federal Authority
 - a. Statutes
 - b. Regulations
 - c. FTA Circulars and Guidance
 - d. Federal Acquisition Rules (FARs)
2. State Authority
 - a. RT Enabling Act
 - b. Public Utilities Code
 - c. Public Contract Code
 - i. Key Purposes
3. District Authority
 - a. **Procurement Ordinance [RT Administrative Code, Article II]**
 - b. Procurement Policy Manual
4. Legal Standard of Review

B. Current RT Procurement Experience and Responsibilities

1. Recent RT Procurement Experience
2. Roles
 - a. **Board Responsibilities and Authority**
 - b. Staff Responsibilities and Authority
 - i. "Customer" department
 - ii. Procurement Department
 - iii. Finance Department
 - iv. Legal Department
 - v. GM/CEO

C. Types of Procurement – What Does the District Need to Accomplish its Mission?

1. Public Works
 - a. Design-Bid-Build
 - b. Design-Build
 - c. Other Approaches
2. Services
 - a. Professional Services
 - i. Architectural & Engineering (A&E) Services
 - ii. Specialty Services
 - iii. Other Consultants
 - b. Non-Professional Services

3. Equipment/Materials/Supplies
4. Rolling Stock

D. General Rule: Full and Open Competition – Methods of Competition

1. Competitive Bid (Sealed Low-Bid)
 - a. Public Works: Lowest Responsible (and Responsive) Bid
 - b. Design-Build: Prequalify/Low Bid or Best Value
 - c. Equipment/Materials/Supplies: Low Bid
2. Competitive Negotiation
 - a. Best-Value Method
 - i. Trade-Off Method
 - ii. Lowest Price, Technically Acceptable Source
 - iii. Other methods
3. A&E (Qualification-based, reasonable price)
4. Services: Professional (Most Advantageous), Non-Professional (Low Bid)
5. Equipment/Materials/Supplies (Low Price or Best Value - SB 1068)
6. Products or Materials Undergoing Rapid Technological Changes/New Technologies (Best Value)
7. Exceptions (Sole Source, Emergency, Best Interest)

E. Procurement Process – Step-by-Step

1. Selection of Method to Be Used
 - a. Role of “Customer” Department (Requirements)
 - b. Role of Procurement Staff
 - c. Role of Legal Staff
 - d. GM Contract
 - e. Board Contract
 - f. Request to Release ITP/RFP Issue Paper
2. Development of RFP Documents, Solicitation, and Award
 - a. Development of Standards
 - b. Development of Evaluation Criteria
 - i. Method of Competition
 - ii. Evaluation Process - Scoring and Scoring Methods
 - iii. Method of Award
 - c. Approval for Release of ITB/RFP (Board or GM)
 - d. Receipt of Bids/Proposals
 - e. Selection of Successful Proposal/Bid
 - f. Notice of Intent to Award
 - g. Opportunity for Protest
 - i. Challenge to Bid Term/Conditions
 - ii. Challenge to Award
 - h. Disposition of Protest
 - i. GM/CEO

- ii. Board
- i. Award/Reject All Bids and Re-Procure

F. Protests

1. Standards Set out in Procurement Ordinance
2. Statutory Requirements
3. Federal Requirements
4. Standards Included in Bid Documents/Contract
5. Role of Brown Act
6. Other Jurisdictions' Experience

G. Board Discretion

1. Policy-setting (Procurement Ordinance)
2. Initial authorization to release RFP/ITB (Issue Paper)
3. Prior to Award
 - a. Change Requirements/Re-advertise (if Material Change)
 - b. Cancel Procurement
 - c. Reject All Bids
 - d. Re-solicit
4. At award
 - a. Without Protest
 - b. With Protest (depends on basis of protest)
 - i. If granted
 - ii. If rejected

POSSIBLE CHANGES TO PROCUREMENT PROCESS AND POLICY

1. Require additional clarification in Issue Papers authorizing release of ITB/RFPs regarding method and weighting.
2. Consider use of Best Value - Trade Off Method with "approximately equal" weight for price and technical factors.
3. Consider use of Best Value - Lowest Price, Technically Acceptable Source Method
4. Modifications to Procurement Ordinance
5. Seek Legislation
6. Other

RT PROCUREMENT PROCESS REVIEW

Agenda Item 1



RT is a Special District

- The District's authority is limited to that expressly conferred by the Legislature or reasonably implied by necessity from express authority
- Authority must be provided by State Law; cannot be conferred by Federal Law
- Method of Contracting
 - Contracting authority is limited to method and mode conferred by statute



GOVERNING AUTHORITY

■ Federal

- Statutes (Title 49 and Title 15 U.S.C.)
- Regulations
- FTA Circulars and Guidance
- Federal Acquisition Rules (FARs)
- FTA-RT Master Agreement

■ State

- RT Enabling Act
- Public Utilities Code
- Public Contract Code

■ District/Local

- RT Procurement Ordinance
- RT Procurement SOPs & Procurement Policy Manual



IMPACT OF FEDERAL RULES ON RT CONTRACTING

- Federal Law
- FTA-RT Master Agreement
- FTA Circular 4220.1F
- FTA Best Practices Procurement Manual
- Federal Acquisition Regulations (FARs)
- Public Contract Code 53702
- RT Procurement Ordinance, Section 1.108
- Inclusion in Contract Documents
- Federal Decisional Law



RT PROCUREMENT EXPERIENCE

- Recent Procurement History
 - Awards
 - Protests
- Triennial Review
- Independent, Specialized Procurement Staff
- Procurement Department
- Training of “Customer”
- Legal
- Finance
- GM/CEO or Board



TYPES OF PROCUREMENTS

■ Public Works

- Design-Bid-Build
- Design-Build
- Other Approaches

■ Services

- Professional Services
 - Architectural & Engineering (A&E) Services
 - Specialty Services
 - Other Consultants
- Non-Professional Services

■ Equipment/Materials/Supplies

■ Rolling Stock



METHODS OF COMPETITION

Full and Open Competition

- **Competitive Bid - Sealed Low Bid**
 - Public Works - Lowest Responsible and Responsive Bid
 - Design-Build - Prequalify/Low Bid or Best-Value
 - Equipment/Materials/Supplies - Sealed Low Bid

- **Informal Bids below Specified Dollar Thresholds**

- **Competitive Negotiation**
 - **Best-Value Method**
 - Statutory formulas
 - Trade-Off Method
 - Technically Acceptable, Lowest Price
 - Other Methods



FULL AND OPEN COMPETITION METHODS

Type	Method	Threshold (\$)
Public Works Design-Bid-Build Design-Build	Sealed Bid Best Value	Over \$5,000 Over \$25M
Services Professional A&E Non-Professional	Most Advantageous Qualification Based Low Bid	- - Over \$50,000
Equipment, Materials, and Supplies SB 1068 (Pending)	Low Bid Best Value or Low Bid	Over \$40,000 Over \$100,000
Products or Materials Undergoing Rapid Technological Changes	Best Value	-

PROCUREMENT STEPS

COMPETITIVE NEGOTIATION

APPROVAL OF SOLICITATION BY BOARD OR GM/CEO

SOURCE SELECTION PLAN

- Identification of RT Requirements
- Development of Procurement Method
- Development of Type and Form of Contract
- Selection Procedures
 - Statement of Evaluation Factors/Weights/Importance
 - Development of Selection Evaluation Criteria and Process
 - Solicitation/Competitive Range
 - Discussions/Negotiations/Best and Final Offers
 - Selection Committee
 - Proposal Evaluation
 - Recommendation
- Determination and Award by Board or GM/CEO



STANDARD OF REVIEW

■ Award

- **Federal:** Is Agency action arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law? Is the Agency's action supported by substantial evidence?

Under this standard, a procurement decision may be set aside if it lacks a rational basis, or if the decision involved a clear and prejudicial violation of statute, regulation or procedure.

- **State:** Whether the agency's actions were arbitrary, capricious, entirely lacking in evidentiary support, or inconsistent with proper procedure? Contrary to established public policy or procedurally unfair?

In determining these issues, the court defers to the agency's factual findings if supported by substantial evidence.

■ Evidence

- Material in administrative record to support decision.
- Need for contemporaneous documentation.
- Must consider staff recommendations
- Need factual analysis, not conclusions



APPLICATION TO COMPETITIVE NEGOTIATION/BEST VALUE AWARDS

■ Common Areas of Challenge:

- Flawed Competitive Range Determinations
- Evaluation Inconsistent with Evaluation Criteria Specified in RFP
- Disparate Treatment of Offerors
- Improper Best-Value Determination
- Failure to Adequately Document or Support the Evaluation and Award
- Failure to Inform All Potential Bidders of Any Change in Solicitation Requirements



BEST-VALUE

■ What is Best-Value?

“Best value: A selection process in which proposals contain both price and qualitative components, and award is based upon a combination of price and qualitative considerations. Qualitative considerations may consider technical design, technical approach, quality of proposed personnel, and/or management plan. The award selection is based upon consideration of a combination of technical and price factors to determine (or derive) the offer deemed most advantageous and of the greatest value to the procuring agency.”

FTA Circular 4220.1F(2009)

■ Various Formulations

■ Determination by Awarding Body

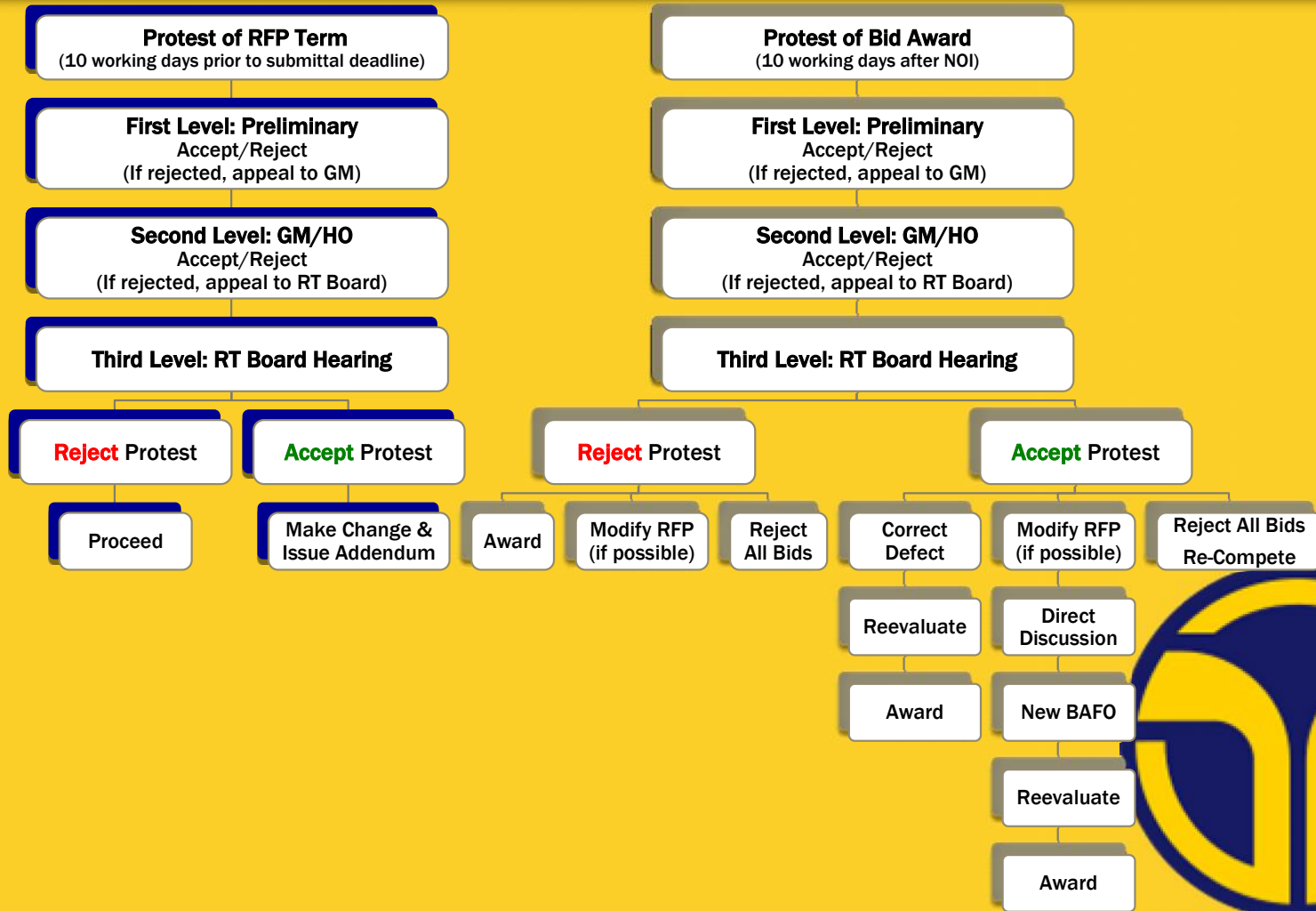
■ How is it Determined in Competitive Negotiation?

- Trade-Off Method
- Technically Acceptable, Lowest Price
- Documentation of Determination



PROTEST PROCESS

BOARD CONTRACTS



KEY AREAS OF BOARD DISCRETION

- **Policy Adoption**
 - Resolutions
 - Delegation of Authority to GM
 - Procurement Ordinance
- **Authorization to Release RFP/ITB**
 - Method of Competition
 - Factors and Weighting
- **Changes Prior to Award**
- **Cancel Procurement/Reject All Bids**
- **Protest Review**
- **Award**



POSSIBLE CHANGES TO POLICY AND PROCESS

- **Modify/Update Procurement Ordinance**
 - Add clarification in Issue Papers authorizing release of ITB/RFPs regarding procurement method, selection criteria, and weighting
 - Refine Scoring/Rating Process
 - Consider use of Best Value – Trade-Off Method with “approximately equal” weight for price and technical factors
 - Consider use of Best Value – Technically Acceptable, Lowest Price Method
 - Clarify Best Value – Trade-Off Analysis Documentation
 - Add Process for SB 1068 Best Value
- **Seek Legislation**
- **Other**



REGIONAL TRANSIT ISSUE PAPER

Agenda Item No.	Board Meeting Date	Open/Closed Session	Information/Action Item	Issue Date
2	08/29/12	Open	Action	08/28/12

Subject: Delegating Authority to the GM/CEO to Enter into the First Amendment to Agreement Between the Sacramento Municipal Utility District and Regional Transit to Relocate 230 KV and 69 DV Facilities for RT's South Sacramento Corridor Phase 2

ISSUE

Whether or not to Delegate Authority to the General Manager/CEO to Enter into the First Amendment to Agreement Between the Sacramento Municipal Utility District (SMUD) and Sacramento Regional Transit District to Relocate 230 KV and 69 KV Facilities for RT's South Sacramento Corridor Phase 2 Project.

RECOMMENDED ACTION

Adopt Resolution No. 12-08-_____, Delegating Authority to the General Manager/CEO to Enter into the First Amendment to Agreement Between the Sacramento Municipal Utility District and Sacramento Regional Transit District to Relocate 230 KV and 69 KV Facilities for RT's South Sacramento Corridor Phase 2 Project.

FISCAL IMPACT

Budgeted:	Yes	This FY:	\$	350,000
Budget Source:	Capital	Next FY:	\$	1,550,000
Funding Source:	New Starts/MSA/STA/Prop1B	Annualized:	\$	
Cost Cntr/GL Acct(s) or Capital Project #:	410.06.04.02.02	Total Amount:	\$	1,900,000
Total Budget:	\$ 1,900,000			

DISCUSSION

The South Sacramento Corridor Phase 2 project (Project) will extend Sacramento Regional Transit District's (RT's) light rail service from its existing terminus at Meadowview Road south and east 4.3 miles to Cosumnes River College (CRC).

As part of the original Project, a SMUD 230 KV transmission line was required to be relocated due to the Light Rail Alignment and the restraints of the existing Right of Way. The Union Pacific Railroad (UPRR) has now required that the clearance between the centerline of the UPRR track and the Light Rail Track be a minimum of 50'. This requirement shifts the SMUD conflict from the 230 KV pole line to the 69KV pole line along the entire UPRR corridor. The number of 69 KV poles required to be relocated is 31.

The estimated cost for SMUD's relocation of its 69KV pole line for the Project is for a "not to exceed" reimbursable amount of \$1,550,000. Under the Agreement, SMUD would be required to

Approved:

Presented:

Final 8/28/12

General Manager/CEO

Director, Civil and Track Design

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2	08/29/12	Open	Action	08/28/12

Subject: Delegating Authority to the GM/CEO to Enter into the First Amendment to Agreement Between the Sacramento Municipal Utility District and Regional Transit to Relocate 230 KV and 69 DV Facilities for RT's South Sacramento Corridor Phase 2

provide notice to RT if it expects to exceed that amount and the parties would negotiate an amendment to the Agreement, if appropriate.

The Agreement would obligate RT to pay 100% of SMUD's submitted costs for the 69KV pole line relocation under a limited reservation of rights to audit such costs.

The Federal Transit Administration has communicated that the execution of 3rd-party agreements, specifically including the SMUD Agreement, are necessary to advance the Project through to the Full Funding Grant Agreement (FFGA). RT must be able to demonstrate execution of 3rd-party agreements no later than September 6, 2012 in order to meet the December 2012 FFGA execution date. Although the final terms of the Agreement are not complete as of this date, staff will complete negotiations in advance of September 6th.

Staff recommends delegating authority to the General Manager/CEO to execute the Amendment to the Agreement between SMUD and Sacramento Regional Transit District to relocate the gas line for the South Sacramento Corridor Phase 2 Project.

RESOLUTION NO. 12-08-_____

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

August 29, 2012

DELEGATING AUTHORITY TO THE GENERAL MANAGER/CEO TO ENTER INTO THE FIRST AMENDMENT TO AGREEMENT BETWEEN SACRAMENTO MUNICIPAL UTILITY DISTRICT AND SACRAMENTO REGIONAL TRANSIT TO RELOCATE 230 KV AND 69 KV FACILITIES FOR THE SOUTH SACRAMENTO CORRIDOR PHASE 2 PROJECT

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

THAT, the General Manager/CEO is hereby authorized to amend the agreement between the Sacramento Regional Transit District, therein referred to as "RT," and the Sacramento Municipal Utility District, therein referred to as "SMUD," whereby SMUD agrees to complete the construction work to relocate its 69 KV pole line to accommodate the South Sacramento Corridor Phase 2 Project under the conditions set forth therein, upon completion of contract negotiations, and after review and approval by the Chief Counsel.

THAT, the General Manager/CEO is hereby authorized to execute said Agreement upon satisfaction of the foregoing contingency.

BONNIE PANNELL, Chair

A T T E S T:

MICHAEL R. WILEY, Secretary

By: _____
Cindy Brooks, Assistant Secretary