

**SACRAMENTO REGIONAL TRANSIT DISTRICT  
EXECUTIVE COMMITTEE OF THE  
BOARD OF DIRECTORS  
August 29, 2012**

**ROLL CALL:** Roll Call was taken at 11:06 a.m. PRESENT: Directors Budge, Cohn, Fong, Hume, Nottoli, Serna, and Chair Pannell. Absent: Directors MacGlashan, Miller, Morin and Schenirer. Directors Fong and Cohn arrived at 11:13 and 11:14, respectively.

Director Budge moved; Director Hume seconded a motion to move Item 2 to the first order of business. Motion was carried by voice vote. Absent: Directors Cohn, Fong, MacGlashan, Miller, Morin and Schenirer.

**NEW BUSINESS**

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)

***ACTION: APPROVED - Director Budge moved; Director Hume seconded approval of the item as written. Motion was carried by voice vote. Absent: Directors Cohn, Fong, MacGlashan, Miller, Morin and Schenirer.***

1. Information: Procurement Process Review: Solicitation, Award, and Bid Protest Procedures (Behrens)

Bruce Behrens reminded the Board members why they were here at this special meeting and started reviewing RT's contracting authority, the legal framework that operates it, and the legal standards of review that governs RT's procurement decisions.

Mike Mattos introduced the Procurement staff in attendance - Randall Miller, Fernando Barcena, Irene Bell, Colleen Elder, and not present: Eric Houston and Bill Gilliam.

Mr. Behrens introduced the members of his legal staff who were present: Olga Sanchez-Ochoa and Melissa Noble.

Mr. Behrens noted that RT has several types of Procurements. Public works obligations, where typically RT uses design-bid-build, procurement of services such as professional and non-professional services, equipment, materials and supplies, and rolling stock are other procurements. The methods of competition vary based on the type of procurement such as competitive bid (sealed low bid), informal bids below specific dollar thresholds, and competitive negotiation. Mr. Behrens indicated that the

best value process was developed by the federal government and is a combination of price and qualitative considerations.

Procurement steps begin at the Board level with the approval of a solicitation. The source selection plan is created by identifying all of RT requirements, developing the procurement method, developing the type and form of the contract, selecting the type of procedure and then the determination and award by the Board.

Fernando Barcena noted that RT is required to follow certain laws of procurement to ascertain different types of products and services. In terms of making the determination of whether to select a trade off or to conduct a technically acceptable low bid is in terms of the work itself that is being bid. For a trade off, where you are making a decision to potentially award to other than the lowest bid, and that you are willing to pay a higher price for a technically superior proposal, the requirements to consider that the work and requirements are less definitive, there is more development work required, greater performance risk, and that there is more technical past performance considerations in selecting the successful consultant. If price is more important, than the considerations for technically acceptable low price procurement competitive negotiation as set out in the regulations is that cost is important and that the acquisition requirements are clearly definable under risk of unsuccessful contract performance is minimum.

Director Nottoli indicated that the Board was not provided an opportunity to consider something other than what staff was proposing at the June 11<sup>th</sup> Board meeting. Mr. Behrens noted that at the June 11<sup>th</sup> meeting, Alstom protested that they were technically competitive, technically acceptable and that they were low bid, and that they should have been awarded the contract. Mr. Behrens recommended that evening that the Board had the ability to go back and reevaluate based on any defects to see how the scoring would come out, but the answer would not be know until you did the evaluation.

The authority given an agency to award a contract is demonstrated a legislative function by the State courts, and because of that there is considerable discretion given to the agency in that decision making. Both Federal and State standard of review for a decision by an agency in its contracting activities is whether the action is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance of the law. The important parts are the procedures and standards set out in the RFP.

Common area of challenges are: flawed competitive range determinations, inconsistent evaluation with the criteria specified in the RFP, disparate treatment of offerors, improper best-value determination, failure to adequately document or support the evaluation and award, and failure to inform all potential bidders of any change in solicitation requirements. Mr. Behrens then reviewed the protest process for Board awarded contracts.

Director Hume noted that the Board at the June 11<sup>th</sup> meeting was only offered to reject all bids. One of the technical deficiencies was that the protestor was not thorough

enough in their response. Director Hume wanted to know why the Board did not have the opportunity to tell staff to go back and have the protestor explain their answers, and then re-evaluate. Bruce Behrens indicated that had price and non-price values were approximately equal in weight, and then staff could have asked the vendor to go back and explain their answers. Early on in the best value, trade off procurement method, a respective value is assigned that becomes part of your criteria.

Bruce Behrens suggested that in the future when staff brings back a best value proposal to the Board, one of the things that staff will provide is greater detail as to the type of procurement, why it was chosen that way, and recommend factors to weigh the procurement. Once the Board commits to the details they become part of the process. The Alstom bid came in 4 million dollars under the engineering's estimate, and the Siemens bid came in near the engineer's estimate. The percentage difference is not disqualifying, That may have not been clear to the Board at that time.

Director Cohn indicated that if the Board disagreed with the evaluation and felt the weighting should have been different, the Board should have rejected the bids, and the entire project would have been put at risk.

Director Budge indicated that informing the Board of the kind of contract and its process, and what authorities the Board has relative to the process, is a very good idea. Director Budge, in a previous job, submitted proposals and understands that sometimes a business constrains their staff from the language that is placed in the bid document and in other cases, not.

Fernando Barcena noted that the rules that govern competitive negotiation require RT to negotiate with everyone that is in the competitive range. The exception to that rule, by statute, is for Architectural and Engineering consultant services which allow RT to sequentially negotiate. Everything else is to be negotiated with everyone in the competitive range. The reason for this is because negotiations involve changing the proposal and we do not want to create advantages and disadvantages in the procurement process in the competition. Allowing a competitor to change their proposal gives an advantage to them. In order to be able to do that legally, we have to allow all the proposers that remain in the competitive range to negotiate and improve their proposals. RT is restricted from "bid shopping".

Director Hume indicated that he could not see how Alstom's answers were inferior to Siemen's.

Bruce Behrens suggested that the Board look at RT's Procurement Ordinance, in particular, the authorization to release the RFP as well as the new legislation (SB 1068) - Best Value. Changes prior to the award may cause a change in scope and the RFP might have to be re-bid. The Board has the option to reject all bids and revamp an RFP, as the Board plays a critical part in the award.

Staff has identified some areas of change to the policy and process by clarifying the

alternatives in the issue papers going to the Board for the release of an ITB/RFP, and consideration of the best value method.

Director Nottoli suggested that an explanation be provided in the issue paper of the values, and allow the Board to make a determination in the release of an RFP, as well as Director Budge's suggestion that the information be included in the award issue paper.

***ACTION: NONE***

**PUBLIC ADDRESSES THE BOARD ON MATTERS NOT ON THE AGENDA**

**ADJOURN**

As there was no further business to be conducted, the meeting was adjourned at 12:33 p.m.

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BONNIE PANNELL, Chair

A T T E S T:

MICHAEL R. WILEY, Secretary

By: \_\_\_\_\_  
Cindy Brooks, Assistant Secretary