

# REGIONAL TRANSIT ISSUE PAPER

Agenda Item No.	Board Meeting Date	Open/Closed Session	Information/Action Item	Issue Date
9	01/28/13	Open	Action	01/22/13

Subject: Reject All Bids for the Purchase of UTDC Light Rail Vehicle Journal Bearings

## ISSUE

Whether to reject all bids for Purchase of UTDC Light Rail Vehicle Journal Bearings.

## RECOMMENDED ACTION

Adopt Resolution No. 13-01-\_\_\_\_, Rejecting All Bids for Purchase of UTDC Light Rail Vehicle Journal Bearings.

## FISCAL IMPACT

This action does not involve the expenditure of funds.

## DISCUSSION

Under Resolution Number 12-07-0110, dated July 23, 2012, the RT Board authorized the solicitation of bids for the purchase of UTDC light rail vehicle journal bearings. The purchase of journal bearings is part of the refurbishment of the 21 UTDC light rail vehicles.

The Invitation to Bid (ITB) Technical Specifications specified that the minimum standards of the original manufacturer of the journal bearings must be met and no alternatives could be used for this safety-related component. The original parts have been designed to work with the UTDC vehicles and the safety of the parts has been verified through a rigorous program of qualification testing to the limits of the design margins. Seeking an alternative source for these components would involve extensive reverse engineering and re-qualification procedure; therefore, no alternatives to the original manufactured product were allowed.

The ITB document was released on September 19, 2012, sent to 6 qualified sources, advertised in publications of general circulation (as per RT SOP GM-SOP-97-009), and posted on RT's website under Contracting Opportunities. On October 24, 2012, RT received 4 bids from: Hi-Tec Enterprises (Hi-Tec), Kaman Industrial Technologies (Kaman), Motion Industries, and Siemens Industry, Inc. (Siemens).

## BID IRREGULARITY

After a thorough review of the bids, staff determined that the bid from Hi-Tec contained a material irregularity that cannot be waived. Hi-Tec submitted an exception to its bid on Section 5.1, Delivery Schedule. Per ITB No. 2012107, Section 1.5, Conditional/Alternate Bids, "A bid that includes unauthorized conditions, limitations or provisions attached to a Bid may render it nonresponsive." Hi-Tec stated the "First delivery will be made in approximately 11-12 months from contract release." RT does not accept this condition, as the delivery schedule for journal bearings

Approved:

Presented:

Final 1/23/13

General Manager/CEO

Maintenance Superintendent - Light Rail

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is critical to the overall UTDC light rail vehicle refurbishment schedule; therefore, Hi-Tec's bid was deemed non-responsive.

## BID PRICES

<u>Bidder:</u>	<u>Total Bid Price</u>
Motion Industries	\$160,524.00
Kaman	\$162,544.20
Siemens	\$164,114.00

All bid prices are within the Engineer's estimate of \$148,000 to \$170,000.

## BUY AMERICA REQUIREMENTS

The Buy America statute and its implementing regulations impose certain requirements on the procurement of rolling stock and manufactured products using federal funds. The journal bearings are being purchased to support the overhaul (a form of preventative maintenance) of the UTDC light rail vehicles to enable the vehicles to perform to the end of their useful life. The overhaul is partially funded with American Reinvestment and Recovery Act (ARRA) funding. Due to the nature of the funding and the purpose of the parts, all Bidders were required to submit a certification of compliance with the Buy America Manufactured Products rule. The apparent low Bidder, Motion Industries, filled out Bid Form 7.7, FTA Buy America Certificate, Alternative B, Certificate of Non-Compliance with Section 165(a). Execution of the Alternative "B" Certificate constitutes an application by the bidder for a waiver from the Buy America requirement. The low bidder must provide all documentation to RT necessary to support the application for a waiver within ten days from the date of bid opening. RT must submit the waiver request and supporting documentation provided by the bidder to the FTA. If a bidder signs the Alternative "B" Certificate and a waiver is not granted by FTA, the bidder's bid will be deemed to be nonresponsive. Under Alternative B, a Bidder certifies that it cannot comply with the Buy America requirements, but it may qualify for an exception. Neither the Buy America statute nor the Buy America regulations impose a deadline on the FTA to render a decision for a waiver request. RT's last request for a waiver, for inverters, took 16 months to resolve and FTA ultimately denied the request for a waiver, resulting in RT procuring the parts with local funds. Furthermore, FTA issued a Dear Colleague letter dated November 17, 2011 that it will not approve Buy America public interest waivers on ARRA-funded projects. The Dear Colleague also set forth that FTA will continue to carefully scrutinize requests for waivers based on non-availability to determine whether suitable American-made alternatives exist and, if none do, whether the funds can be used in an alternative manner that fulfills the goals of the Recovery Act. Similarly, FTA will examine requests for cost-differential waivers to determine whether the cost savings justifies the loss of American jobs, especially in critical manufacturing sectors. By necessity, FTA will extend existing, standing waivers—for products exempted by the Federal Acquisition Regulation (microprocessors and microcomputers, and small purchases)—to Recovery Act-funded procurements

RT cannot make a determination that Motion Industries is non-responsive until FTA rules on a Buy America waiver request. RT is not able to set aside Motion's bid and go to the next lowest bidder,

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Kaman, for the following reasons: 1) RT competitively solicits contracts and awards to the lowest responsive and responsible bidder where required by California law, including Public Contract Code Section 20321 and Public Utilities Code Section 102222; and, 2) per ITB Section 1.15 Determination of Low Bid, “unless all Bids are rejected, the Contract will be awarded to the responsible Bidder submitting the lowest responsive Bid.”

RT cannot meet the refurbishment project schedule if RT pursues a Buy America waiver request. To meet the schedule for the Siemens main overhaul contract, the journal bearings must be delivered to RT by May 15, 2013. There is a 6-month lead time for production of the journal bearings. The journal bearings are identified as owner-furnished equipment in the Siemens contract. If RT is unable to provide the bearings by the date required to avoid a delay in the work being performed by Siemens, Siemens could request an extension of time and additional compensation for the delay.

If the Board rejects all bids, the General Manager/CEO would issue a Contract Change Order (CCO) to the Siemens contract to eliminate the requirement that RT supply the journal bearings as owner-furnished equipment, with the consequence that Siemens would be required to obtain the journal bearings to complete the overhaul work. The CCO would incorporate the increased cost to Siemens to purchase and provide the bearings and Siemens would assume all liability for timely providing the journal bearings as necessary to complete its work.

In accordance with RT’s Standard Operating Procedure GM-SOP-97-009, Section XI, Rejection of Bids, and RT’s Procurement Ordinance Section 1.509, Rejection of Bids/Proposals, staff recommends that the RT Board of Directors reject all bids.

RESOLUTION NO. 13-01-\_\_\_\_\_

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

January 28, 2013

**REJECTING ALL BIDS FOR PURCHASE OF UTDC LIGHT RAIL VEHICLE  
JOURNAL BEARINGS**

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

THAT, pursuant to the RT Procurement Ordinance Section 1.508, this Board hereby  
rejects the bids received for the Purchase of UTDC Light Rail Vehicle Journal Bearings.

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PATRICK HUME, Chair

A T T E S T:

MICHAEL R. WILEY, Secretary

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