

REGIONAL TRANSIT ISSUE PAPER

Agenda Item No.	Board Meeting Date	Open/Closed Session	Information/Action Item	Issue Date
12	10/27/14	Open	Action	10/22/14

Subject: Repealing Resolution No. 14-08-0084, Approving a Noncompetitive and Sole Source Procurement, Awarding a Contract to Genfare for the Purchase of Fast Fare Fareboxes and Delegating Authority to the General Manager/CEO to Execute Amendments to the Contract

ISSUE

Whether or not to repeal Resolution No. 14-08-0084, approve a noncompetitive and sole source procurement, award a contract to Genfare for the purchase of Fast Fare fareboxes and delegate authority to the General Manager/CEO to execute amendments to the contract.

RECOMMENDED ACTION

Adopt Resolution No. 14-10-___, Repealing Resolution No. 14-08-0084, Approving a Noncompetitive and Sole Source Procurement, Awarding a Contract to Genfare for the Purchase of Fast Fare Fareboxes and Delegating Authority to the General Manager/CEO to Execute Amendments to the Contract.

FISCAL IMPACT

Budgeted: Yes This FY: \$534,640.00*
Budget Source: Local
Funding Source: Revenue Bond Proceeds
Cost Cntr/GL B143.07.01
Acct(s) or B143.07.02
Capital Project #:
Total Budget: \$ 534,640.00*
* plus applicable state and local taxes

DISCUSSION

On August 11, 2014, the Board approved a noncompetitive and sole source procurement awarding a contract to Genfare for the purchase of Fast Fare fareboxes and delegated authority to the General Manager/CEO to execute any future amendments to the Contract. After the contract documents were sent to Genfare for execution, two issues came to light: (1) Genfare was not prepared to deliver the fareboxes with the Connect Card printing functionality that RT expected and (2) Genfare proposed additional contract terms and conditions, primarily aimed at limiting the firm's liability.

On September 25, 2014, Staff met with Genfare to discuss the technical complexities of the interface between the Fastfare farebox and the Connect Card system and other remaining outstanding issues. Genfare has committed to working with Init Inc. (the provider of RT's Connect

Approved:

Presented:

Final 10/22/14

General Manager/CEO

Director, Bus Maintenance

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Card system), to ensure that any future limited use smart card dispensed from Genfare’s trim unit is recognized by the Init Connect Card reader as valid fare media. As mentioned above, since Genfare was not able to immediately provide fare boxes with the limited use smart card technology dispensing unit, RT has opted for an interim solution.

Rather than delaying the delivery of the Fast Fare fareboxes with the limited use smart card dispensing unit, Staff has decided to purchase the first 30 Fast Fare fareboxes with a magnetic-strip trim unit, which will dispense encoded paper daily passes. These magnetic daily passes will be compatible with the fareboxes on RT’s existing fleet, and will also be usable for other regional transit systems with Odyssey fareboxes, such as e-tran and Yolo bus; this could allow for improved reporting for the existing transfer agreements. These fareboxes will be delivered to Gillig for installation into the first order of 30 new buses. Farebox pricing has been revised to reflect the \$2,395 per unit cost of the magnetic-strip trim unit. Genfare has agreed to allow RT to return the magnetic-strip trim units and credit RT with \$1,300 per unit when the Limited Use Smart Card (LUSC) trim units are made available. In addition, Genfare has agreed to lock in the per unit price for the LUSC trim units at \$3,400 through December 31, 2015, with a 3% increase per year thereafter. Total consideration for 1 LUSC trim unit, 30 Genfare Fastfare fareboxes and infrastructure upgrades, is \$534,640.00 plus applicable state and local taxes.

With respect to the Contract terms and conditions, Staff and Genfare have reached agreement on the following material changes to the terms and conditions:

- Warranty: RT’s warranty provision usually provides that if the same component fails in 10% or more of the purchased products, a “Failure Trend” or “Fleet Defect” is established and the vendor must identify the root cause of the failure and develop an acceptable solution, which may involve replacement of the component in all of the purchased products, including products that are no longer under warranty and where the component has not failed. Genfare requested, and Staff has agreed, that the threshold for a “Failure Trend”/“Fleet Defect” be raised to 20% and agreed that it will not cover products that are no longer under warranty. Genfare has also agreed to pay liquidated damages of \$250 per bus per day if there is a Failure Trend and the failed component prevents RT from operating a bus in revenue service.
- Limitation on liability: RT’s standard form of contract permits RT to pursue all forms of damages against a defaulting contractor, with no cap or upper limit on the potential damages. Genfare proposed limiting its liability to RT for any claim, other than third party lawsuits and intellectual property claims, to the Contract price. RT and Genfare agreed that Genfare would be responsible for up to two times the Contract price, as it may be increased through the addition of more fareboxes.
- Limitations on types of damages: Typically, RT is entitled to pursue all forms of damages against a defaulting contractor, with no limits on the types of damages that may be sought. Genfare proposed to limit its liability to direct damages, so that RT could not pursue

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indirect, incidental, special, consequential, punitive or similar damages including, but not limited to, lost profits, lost revenues, loss of data or business interruption losses. It is particularly significant to note that Genfare has defined “lost revenues” as a type of indirect damages for purposes of this Contract. That means that in the event of a product failure that does not meet the “Failure Trend” threshold, RT will be unable to pursue, from Genfare, any revenues lost as a consequence of a farebox failure.

- Indemnification: The defense and indemnity clause in RT’s standard form of contract is very broad. Genfare has proposed, and Staff has agreed, to narrow the indemnity in two respects: (1) the indemnity would only extend to claims that are “directly attributable” to Genfare’s actions, rather than those arising out of or connected to Genfare’s actions; and (2) Genfare would not be required to indemnify RT for RT’s passive negligence.

As described in the August 11th Issue Paper, because of the impossibility of expanding the existing vault system and the financial infeasibility of replacing the entire farebox system at one time, Staff recommends that Board approve a noncompetitive and sole source procurement and award a Contract to Genfare for the purchase of an initial order of 30 Fast Fare fareboxes and delegate authority to the General Manager/CEO to execute amendments to the Contract. The Contract will include options that allow RT to purchase up to 210 fare boxes. Based on current funding available, as noted in the fiscal impact section, RT is currently seeking to purchase 30 of the 210.

RESOLUTION NO. 14-10-_____

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

October 27, 2014

REPEALING RESOLUTION NO. 14-08-0084, APPROVING A NONCOMPETITIVE AND SOLE SOURCE PROCUREMENT, AWARDED A CONTRACT TO GENFARE FOR THE PURCHASE OF FAST FARE FAREBOXES AND DELEGATING AUTHORITY TO THE GENERAL MANAGER/CEO TO EXECUTE AMENDMENTS TO THE CONTRACT

WHEREAS, on August 11, 2014, this Board authorized a noncompetitive and sole source contract award to Genfare for Fast Fare Fareboxes; and

WHEREAS, subsequent to the approval, Genfare notified RT that it would be unable to provide the smart card dispensing units required by the Contract until after the initial delivery; and

WHEREAS, after approval, Genfare also notified RT of proposed changes in the Contract terms and conditions that materially alter the risk allocation; and

WHEREAS, the Board desires to approve the Contract with the modified provisions.

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

THAT, Resolution No. 14-08-0084 is hereby repealed.

THAT, Genfare provides fareboxes that are uniquely compatible with RT's existing four vault system, due to the proprietary nature of the vault system.

THAT, selection of another vendor's fareboxes would require either addition of two additional vaults (practically impossible) or wholesale replacement of the farebox system (financially infeasible).

THAT, pursuant to Section 1.405 of RT's Procurement Ordinance it has been determined that the Public Works, Supplies or Services can be provided by only one firm and that efforts to seek competition would be futile.

THAT, the Contract between Sacramento Regional Transit District, therein referred to as "RT," and Genfare, therein referred to as "Contractor," whereby Contractor agrees to provide 1 LUSC trim unit, 30 fareboxes and infrastructure upgrades, and RT may exercise options to purchase up to 180 additional fareboxes at pre-established prices, as specified, for an amount not-to-exceed \$534,640.00, plus applicable state and local taxes, is hereby approved.

THAT, the authority is hereby delegated to the General Manager/CEO to execute amendments to the Contract to add additional fareboxes at the option prices specified in the Contract, contingent upon available funding.

THAT, the Chair and General Manager/CEO are hereby authorized and directed to execute said Contract.

PHILLIP R. SERNA, Chair

A T T E S T:

MICHAEL R. WILEY, Secretary

By: _____
Cindy Brooks, Assistant Secretary