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TO: BOARD OF DIRECTORS

THROUGH: ARTHUR T. LEAHY *AL*
CHIEF EXECUTIVE OFFICER

FROM: *Michelle Lopes Caldwell*
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**SUBJECT: CURRENT BUS AND LIGHT RAIL VEHICLE
PROCUREMENTS**

ISSUE

State Assembly Bill AB1097, signed into law by the Governor of California on October 2, 2010, allows public agencies conducting federally funded rolling stock procurements to provide evaluation scoring preferences for proposals that exceed the Buy America Requirement of 60% domestic content. The state law, sponsored by Bay Area Rapid Transit (BART), takes effect January 1, 2012.

It is a viable option to implement the new law in a new Bus procurement that would replace the existing 700 Bus Buy RFP. This would require a decision to cancel the existing Bus RFP for 700 buses and implement the new law and its scoring preference in a new solicitation. The reason this option may be considered for the bus procurement but is not a viable option for the Light Rail Vehicle (LRV) procurement is because the program schedule for delivery of buses is far more flexible than the Light Rail Vehicle program.

Staff is prepared to present the LRV award recommendation in February 2012. The award must be made at this time to preserve program and LRV delivery schedules. Staff believes the U.S. Employment Plan incorporated in the current LRV procurement will effectively promote the Board's job creation objectives.

DISCUSSION

Buses

The bus procurement for 700 revenue vehicles included a U.S. Employment Program which was approved by the FTA in May 2011. It is possible that the implementation of the new law providing for higher domestic content will improve

incentives for new job creation in the United States, if the new law is coupled with the U.S. Employment Program in a new bus procurement.

In order to issue a new solicitation for 40' CNG buses, staff must be able to address bus retirements over the next 18 months while it gains FTA concurrence and conducts the new solicitation. In June 2011, the Board authorized staff to exercise the Contract Option for up to 100 CNG high capacity composite buses if necessary to preserve an existing state grant. Additionally, in January 2012, staff will bring to the Board a recommendation to purchase 50 additional high capacity CNG buses under existing Contract Options Metro holds with North American Bus Industries (NABI). These two actions will provide Metro with maximum flexibility to conduct a new procurement while still meeting vehicle replacement requirements through August 2013.

The purchase of 150 high capacity CNG vehicles will not only provide Metro with vehicles needed through August 2013 to implement a new procurement, but it also will do so at a \$18,063,589 savings against the current Option Contract price if all 150 vehicles are procured.

Light Rail Vehicles

On May 6, 2011, Metro received a favorable response from the Federal Transit Administration (FTA) to our request to implement a new jobs program as part of our Best Value trade-off evaluation process for LRV RFP P3010. Based on the FTA's guidance, staff released formal amendments to its LRV solicitation to create Metro's U.S. Employment Program. That program will measure the value of new U.S. jobs created by Proposers to LRV P3010. Staff believes that the Board's objective of creating new jobs tied to rail car production can be accomplished by the existing U.S. Jobs program.

Moreover, if staff were to alter the evaluation/award criteria for the LRV procurement at this late stage of the process, it would be necessary to allow Proposers in the competitive range to reconsider and potentially revise their current offers. Metro would then have to rescore and renegotiate key elements of the proposed offers. That action would result in a delay of at least four months to our current procurement schedules. A four month delay in the delivery of production LRVs would negatively impact new rail cars requirements for Expo II and the Foothill Extension.

According to BART, the FTA has provided only verbal assurances that the new law has FTA concurrence. It would be prudent to go back to the FTA with any changes to existing procurements to assure our funding partner is in agreement with any new elements of the LRV procurement. Based on past experience, the effort to gain written FTA concurrence could further impact Metro's LRV procurement schedule beyond the four months needed to renegotiate requirements of the new law.

NEXT STEPS

Staff will continue with the execution of the LRV procurement under its existing evaluation criteria format to protect vital deliveries of LRVs for Foothill II and Expo II. Metro will return to the Board in January to discuss the option for issuing a new bus procurement that includes both the new California law that grants preferences for offers that exceed 60% U.S. Content and Metro's U.S. Employment Program.

Prepared by:
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