

MINUTES
METROPOLITAN TRANSIT AUTHORITY
BOARD OF DIRECTORS
SPECIAL BOARD MEETING
March 4, 2009

The Special Board Meeting of the Metropolitan Transit Authority of Harris County, Texas Board of Directors was convened and called to order at 2:08 p.m. by Board Chairman, Mr. David S. Wolff. Board Members present were Mr. George DeMontrond, III, Vice Chairman; Mr. Jackie L. Freeman, Board Secretary; Mr. Burt Ballanfant; Mrs. Carmen Orta; Mr. C. Jim Stewart, III; Bishop James W.E. Dixon, II; and Mrs. Trinidad Mendenhall Sosa. Board Member Mr. Gerald B. Smith was not present. The members present constituted a quorum.

Board Chairman Mr. David Wolff convened the meeting and called on Mr. Jackie Freeman, Board Secretary, for consideration of the order of business, approval of a resolution for METRO Solutions, Phase II. Mr. Freeman moved that the Board approves the resolution authorizing the President & CEO to execute and deliver a contract with Parsons Transportation Group, Inc. as the facility provider for the METRO Solutions, Phase II project for a total contract value of up to \$1.46 billion, and to issue an initial Notice To Proceed under the respective and applicable contracts in amount of up to \$632 million in accordance with the Contract Scope of Summary. Board Member Mrs. Trinidad Mendenhall Sosa seconded the motion.

Board Chairman Mr. Wolff deferred a vote on the motion and asked for President & CEO, Frank Wilson, to make a presentation on the proposed resolution and the METRO Solutions, Phase II, project.

Mr. Wilson began his comments by thanking the board for calling this Special Meeting. Mr. Wilson stated that the METRO staff is presenting a comprehensive contract for the Board's consideration. Further, Mr. Wilson highlighted that the contract establishes the commercial terms and conditions that will govern METRO's relationship with the private sector partner through the development, finalization of the development, and the construction for a period of five years. Mr. Wilson stated that the contract specifies the scope of work, implementation of a time table, and cost of all elements of the program. Also, Mr. Wilson noted that the contract governs a full range of services, including the five-year proof-of-concept period where the operations will be by the facility provider and their partners over an extended period of time to insure that the product METRO invested in is actually the product that will be delivered. Mr. Wilson stated that the transaction is a culmination of thousands of hours of effort on the part of METRO staff, METRO's private sector partners, and the METRO Board Members.

Mr. Wilson articulated that one of the key elements of the contract was the establishment of a single point of responsibility so that METRO has one entity to hold responsible for the integration of all the elements of this program. Mr. Wilson stated

that this one-entity approach is an attempt to avoid claims, change orders, and any potential litigation that could occur when there is no defined responsibility. Mr. Wilson informed that another of the key objectives was a parent guarantee that would insure that the participating entity has the financial wherewithal to stand behind and guarantee the work performed and/or expected.

Mr. Wilson stated that the way the contract was structured, the major participants, such as Parsons, Kiewit, Stacy Witbeck, have all issued a parent guarantee for the work for which they have responsibility. The firms, Mr. Wilson noted, have agreed to joint and several liability in the contract. Therefore, if any one of the entity fails to perform, the other entities are held responsible for full and complete performance and are liable.

Mr. Wilson informed that the contract contains provisions for an extended warranty of a five year period of operation in which the principal partners will be responsible for the work done over that maturation period. He stated that the agreement also included an audit provision so that METRO could seek corrective action in the event performance and expectations were not up to industry standards.

He stated that the contract also contains "off-ramp" provisions in order to terminate the contract for either cause or convenience. He stated that the contract termination terms called for payment to the contractor for the work that has been completed, some modest demobilization fee, with no profit and no penalties.

The contract, Mr. Wilson stated, contained provisions that gave METRO the ability to inflate or deflate the cost based on indices that are published and well understood in the industry. Further, the contract contained performance incentives and penalties of up to \$50 million, which include safety, quality, less intrusion in the neighborhood, and achieving public-policy objectives.

Mr. Wilson advised that the contract is subject to multiple notices to proceed that are driven by financing. The negotiated price of \$1.46 billion for four lines calculates to be at an estimated cost of \$73 million per mile.

Mr. Wilson elaborated that a component of the contract called for the purchase of rail cars. The negotiated price per rail car was less than other transit authorities purchase price established in 2003. CAF, a Spanish firm, was a capable rail car builder who offered a good price and a guarantee on delivery. The rail car vehicles were 70 percent low floor, with six doors rather than four, which allowed for more efficient boarding and alighting. Construcciones y Auxiliar de Ferrocarriles ("CAF"), the supplier, was committed to compliance with both the Americans with Disabilities Act and Buy America.

Mr. Wilson stated that the small business program was another critical element in the contract, with incentives to achieve approximately 41 percent small-business goal. Depending on the expenditure achievement, there are incentives and disincentives.

Chairman Wolff asked Mr. Wilson to elaborate on the incentives to the contractor, which are outlined in the contract and to explain how such incentives will be determined by relative community boards in each corridor.

Mr. Wilson responded and stated that the level of incentives is up to \$15 million, with flexible and broad criteria, so that the community can set the criteria depending on its needs. Mr. Wilson explained that the incentives will be based on a scoring system with community, METRO, and contractor participation.

Chairman of the Board, Mr. Wolff, recognized Board Member Bishop James W.E. Dixon, II.

Board Member Dixon thanked Mr. Wilson and commended the METRO staff for the immeasurable hours and hard work expended on this project. Board Member Dixon asked whether METRO will be able to audit the disadvantaged business and small business efforts of all the participating contractors.

Mr. Wilson responded and noted that there is a continuous audit of the contractor throughout the reporting requirements in the contract and that the contractor will provide a utilization plan in advance. He also stated that there is oversight in compliance through METRO staff and through METRO's internal program advisor, A.O. Phillips.

Board Member Orta stated that she wanted to make sure that someone like A.O. Phillips would oversee the audit and review processes and to give all persons an opportunity to solicit business on the project.

Chairman of the Board, Mr. Wolff, recognized Board Secretary, Jackie Freeman.

Board Secretary Freeman inquired as to whether subsequent Notices To Proceed would be dictated by when the full funding grant agreement is received.

Mr. Wilson responded that although full funding grant agreements are key, the overarching control seems to be the financial marketplace; the sufficient capacity in the marketplace to fund the program.

Referring to the presentation made by Mr. Wilson, Mr. Wilson noted and reminded all that there is a major shop facility in the East End Corridor and a rail over pass on Harrisburg. He stated that METRO is committed to working with the community and all interested parties in order to design the rail bridge that would leave options open for solutions to take the work either under or over the road.

Boar Member Ballanfant asked whether the small/disadvantaged business program would be sacrificing quality and the requirement for obtaining a good price from the contractors.

Mr. Wilson responded and noted that there neither a sacrifice of quality nor price.

Board Member Ballanfant asked about the warranty against defects in the contracts.

Mr. Wilson responded by stating that there were some issues and difficulties with getting the contractor to accept responsibility for certain stray current conditions related to the Main Street Rail Line. Mr. Wilson also stated that the Main Street Rail Line is one of the best projects in terms of performance after construction. However, noted Mr. Wilson, we made sure that the provisions of this contract make every attempt to avoid any potential warranty issues regarding performance during or after construction situation.

Board Member Ballanfant asked whether METRO could seek an alternative contractor if this contract does not deliver a price that the METRO Board believes is reasonable.

Mr. Wilson responded that there is an option to obtain an alternative contractor with a price that suits METRO and the Board.

Board Member Ballanfant asked whether there is an off-ramp in the contract if METRO does not get Federal Transit Administration approval or Federal Government participation.

Mr. Wilson responded to Mr. Ballanfant's inquiry and advised him that METRO is not obligated under the contract to do all the work unless it has the financial capacity to do so.

Board Member Ballanfant asked whether the University Line was included in this contract.

Mr. Wilson responded to Mr. Ballanfant's inquiry regarding the University Line and advised Mr. Ballanfant that the University line is not included. However, the University Line is the next rail project to commence and such commencement is about nine months behind this METRO, phase II project.

Board Member Ballanfant asked whether there is an interconnection between the Uptown and University Corridors.

Mr. Wilson responded and advised that it would not be prudent to build the Uptown Line if METRO did not hope to build the University Line. Mr. Wilson also stated that if the University Line is proceeding as METRO expects, there would be no reason to hold back the Uptown line. Mr. Wilson further informed that the potential cost for the Uptown Line is approximately \$3 million in order to keep the development going.

Board Chairman Wolff then invited Mr. Drew Masterson, with First Southwest Company ("First Southwest"), to the podium for Mr. Masterson's financial presentation.

Mr. Masterson stated that First Southwest and Brandford Shank serve as METRO's financial advisors on this METRO Solutions, Phase II, contract. Mr. Masterson presented financial information regarding METRO's financial capacity to accomplish the METRO Solutions, Phase II, project. Mr. Masterson stated that METRO has very high bond ratings in place at AA and AA3 in overall financial capacity. Mr. Masterson explained that the process for determining METRO's financial capacity involved examination of METRO's immediate capital projects, including the five Light Rail Lines, Signature Bus, Park and Rides, High Occupancy Toll Lanes, commuter rail on 90A, Main Street Rail Line upgrades, safe bus radio replacements, advanced transit plans, transit ways, and future costs for these projects. Mr. Masterson highlighted that these projects, collectively, could cost approximately \$3.8 billion.

Mr. Masterson stated that the examination of METRO's financial capacity also involved looking at development projects, facility expansion and modernization, and historical capital expenditures. Mr. Masterson further stated that these expenditures, through 2035, could total approximately \$4.2 billion.

Mr. Masterson stated that the sources of METRO's funds were also examined to determine financial capacity including, sales tax revenues, fare box revenues, federal formula grants, new start grants, and other sources funds, which could total approximately \$37.7 billion.

Mr. Masterson stated that, almost through 2035, METRO has an approximately \$5 billion cushion. Mr. Masterson stated that the economist with whom METRO works and the information that is gathered from the economists are reflected in the scenario that that I am presenting to you. Basically, the reduction in sales tax associated with lower sales tax growth rates is the difference between last summer and this summer; so almost a \$5 billion reduction in the projected sales tax. Mr. Masterson stated that the general mobility commitments are maintained in the financial model. Mr. Masterson also advised that if financial costs come in significantly higher, METRO will have to offset that effect somewhere else or delay it.

Mr. Masterson stated that the financial markets are challenging at this time but that proceeding with the first Notice To Proceed was a very reasonable thing to accomplish in this financial market. Mr. Masterson stated that it is anticipated that three basic categories of financing will be used; \$90 million of the first Notice To Proceed for the North and Southeast Corridors; stimulus funds or voted sales tax bonds; \$118 million for the vehicle component; \$32 million for vehicles in the East End Corridor for a total in the East End Project of \$150 million. Additionally, METRO will also use Commercial Paper or Build America bonds. The Build America Bonds are a new concept in the stimulus bill that is designed for construction projects. Mr. Masterson opined that he believed that Commercial Paper capacity exists for METRO's first Notice To Proceed.

Board Chairman, Mr. Wolff, asked if there were any members of the Board who had any questions of Mr. Masterson.

Board Member Orta stated that with respect to the vendors that do, or want to do, business with METRO to make sure they can do the work and are financially capable of doing the work requested.

Board Chairman Wolff opened up the meeting or public comments and invited those members of the public, who had pertinent and relevant questions or comments, to proceed to the podium, state his or her name, ask related questions, or make his or her comments.

1. **Mr. Barry Klein**: Mr. Klein stated that it was his understanding that the 2003 Referendum required that METRO have a full funding grant agreement before proceeding with the project. Mr. Klein also stated that he was disappointed that the Intermodal Terminal was omitted from the cost of the plan. Mr. Wilson responded to Mr. Klein and informed him that the referendum did not state that the full funding was required. Mr. Wilson additionally stated that Federal funding is already committed and is being spent on the North and Southeast lines. Mr. Wilson further noted that the Intermodal is not being advanced at this juncture.
2. **Mr. Jeff Mosely**: Mr. Mosely stated that he is the President & CEO of the Greater Houston Partnership. He congratulated METRO on moving forward with the project and that the business community, through the partnership, is a strong proponent of METRO Solutions. Chairman Wolff thanked Mr. Mosely for the support of the Greater Houston Partnership. Board Member Ballanfant asked Mr. Mosely for his opinion about the experience in North Texas in the implementation of the Light Rail System. Mr. Mosely stated that the Dallas Area Rapid Transit was warmly embraced and it was especially received with its mix of light rail and commuter rail. Mr. Wilson thanked Mr. Mosely and commented that the METRO Project will serve as an economic engine to create jobs.
3. **Ms. Jolanda Jones**: Ms. Jones stated that she is a Houston City Council Member and that she is behind rail. She stated that had submitted some questions, in writing, to METRO and that has not yet received a response. Mr. Wilson informed Councilmember Jones that the staff was compiling the information and making every effort to be ensured that she is provided with accurate information.
4. **Ms. Tina Arauyo**: Ms. Arauyo stated that she represents the East Downtown Management District. Ms. Arauyo stated that the East End is the future site of the Dynamo Stadium and where Texas Southern University will be playing their home football games. Ms. Arauyo stated that the stadium will be the place where the Southeast and East lines converge. Ms. Arauyo highlighted that she was very encouraged by METRO's plans and that it is very important that Light Rail serve the east downtown community.
5. **Mr. Preston Rowe**: Mr. Rowe stated that he represents Super Neighborhood Number 68 in which the Southeast Line will serve, including the Palm Center.

He congratulated the Board on moving forward and offered to be a point of contact for the dissemination of information concerning the METRO Solutions project.

6. **Mr. Ted Richardson**: Mr. Richardson asked for clarification regarding the first Notice To Proceed and the expenditures on the East End, North, Southeast and Uptown rail corridors and whether the cost was for a complete and operational project. Mr. Wilson responded and informed Mr. Richardson that the cost was for a complete and operational project and directed Mr. Richardson to the slide presentation.
7. **Mr. Christof Spieler**: Mr. Spieler stated that he represents the Citizens Transportation Coalition. Mr. Spieler stated that the community is happy that METRO has taken another step in the direction of progress. He also urged that the facility provider make information available to the public as the project progresses and suggested more convenient hours of operation for the corridor offices.
8. **Ms. Daphne Scarbrough**: Ms. Scarbrough stated that she represents the Richmond Avenue Mobility Coalition for the Quality of Life. Ms. Scarbrough asked for clarification on the bond issue regarding the construction of the North and Southeast lines and the total amount for the contract with Parsons. Chairman Wolff directed Ms. Scarbrough to the visual presentation made by Mr. Wilson and stated that the cost was \$1.46 billion for all four lines.

This concluded the public comment portion of the meeting.

Chairman Wolff stated that before he calls for a vote on the matter he would like to make some comments for the benefit of all who are present today. He thanked the Board for its hard work in reaching a milestone in the building of the METRO Solutions Project. He stated that this is the culmination of many hours of hard work, persistence, and the commitment of the METRO staff and on the commitment of this Board of Directors. He stated that it is this Board's objective to improve transit in Houston since the 2003 Referendum. Chairman Wolff stated that since the 2003 Referendum METRO has conducted a thorough environmental review and engineering studies to meet the demanding and complex requirements of the Federal Transit Administration. Chairman Wolff further noted that that METRO has held hundreds of meetings with the public, elected officials, and the Federal Transit Administration. METRO, Chairman Wolff advised, looked at approximately 60 alignment alternatives on one corridor. A contract was negotiated with WGI (Washington Group, Inc.), Chairman Wolff reminded, but that in the end, it was not a contract that was in the public's best interest. Chairman Wolff commended the staff on their efforts in working to achieve contract terms with Parsons that are innovative and that addressed budgetary concerns. Approximately 35 percent, or \$335 million dollars, of the contract will help build small business and disadvantaged business in the city of Houston, Chairman Wolff informed. These rail lines, the

Chairman noted, along with the Main Street Rail line, which is the most successful light rail line ever developed in the United States, will serve as the backbone of a regional system that will serve commuters and the public for generations to come.

Chairman Wolff then called for consideration of the Resolution. Board Secretary Freeman moved for approval and passage of the Resolution. Board Member Mendenhall Sosa seconded the motion and all Board Members who were present voted in favor of the motion.

MOTION NO. 2009-08

RESOLUTION NO. 2009-12

Authorization for the President & CEO to execute and deliver comprehensive agreements for the Development, Design, Construction, and Vehicle Supply for METRO Solutions, Phase 2 with Parson Transportation Group, Inc. ("Parsons") acting as the facility provider, and an Operations and Maintenance contract with Houston Operations and Maintenance, LLC an entity jointly owned by Parsons and Veolia Transportation.

There being no other matters to come before the Board for its consideration, the meeting adjourned at 3:37 p.m. The next regularly-scheduled board meeting is scheduled for March 19, 2009, at 1:00 p.m.

Respectfully submitted,



Pauline E. Higgins
Senior Vice President, General Counsel, and Corporate Secretary
Metropolitan Transit Authority of Harris County, Texas