



ALAMEDA-CONTRA COSTA TRANSIT DISTRICT

MINUTES

Board of Directors - Regular Meeting

AC Transit General Offices
2nd Floor Board Room
1600 Franklin Street, Oakland, CA 94612

Wednesday, July 24, 2019 at 5:00 PM
Closed Session - 3:45 PM

MEMBERS OF THE BOARD OF DIRECTORS

JOE WALLACE, PRESIDENT (WARD 1)
ELSA ORTIZ, VICE PRESIDENT (WARD 3)
GREG HARPER (WARD 2)
MARK WILLIAMS (WARD 4)
DIANE SHAW (WARD 5)
H. E. CHRISTIAN PEEPLES (AT-LARGE)
JOEL YOUNG (AT-LARGE)

BOARD OFFICERS

MICHAEL A. HURSH, GENERAL MANAGER
DENISE C. STANDRIDGE, GENERAL COUNSEL
LINDA A. NEMEROFF, DISTRICT SECRETARY

1. CALL TO ORDER

The Alameda-Contra Costa Transit District Board of Directors held a meeting on Wednesday, July 24, 2019.

The meeting was called to order at 3:47 p.m. for the purpose of Closed Session. All Board members were present with the exception of Director Williams who arrived at 4:04 p.m. The Board convened in Closed Session to discuss the items 8A-8C as listed on the agenda. Closed Session concluded at 4:27 p.m.

President Wallace called the Board of Directors meeting to order at 5:00 p.m.

2. ROLL CALL

Present: Ortiz, Wallace, Harper, Williams, Peeples, Young, Shaw

4. PUBLIC COMMENT

Jennifer Rodrigues spoke about a bus being late and an incident on line 28.

5. MODIFICATIONS TO THE AGENDA

There were no modifications to the agenda.

6. CONSENT CALENDAR

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|---------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------|
| 6.A. | Consider approving Board of Directors minutes of May 8, 2019. | <u>19-162</u> |
| Ayes: Harper, Williams, Shaw, Peeples, Young, Ortiz, Wallace | | |
| 6.B. | Consider approving the minutes from the May 15, 2019, Joint Meeting of the Board of Directors and the Retirement Board. | <u>19-271</u> |
| 6.C. | Consider approving the minutes from the June 12, 2019, Joint Meeting of the Board of Directors and the Accessibility Advisory Committee. | <u>19-214</u> |
| 6.D. | Consider approving Board of Directors minutes of July 10, 2019. | <u>19-143</u> |
| 6.E. | Consider approving amendments to Board Policy 101, Board of Directors Rules for Procedure. | <u>19-272</u> |
| 6.F. | Consider approving amendments to Board Policy 110 - Public Hearing Process for the Board of Directors. | <u>19-244</u> |
| 6.G. | Consider the repeal of Board Policy 511 - Community Involvement Program, with the caveat that Resolution No. 2033, which is part of the policy, remain in effect as a stand-alone document. | <u>19-251</u> |
| 6.H. | Consider the adoption of Resolution No. 19-024 establishing the Appropriations Limit for Fiscal Year 2019-20 at \$529,396,700. | <u>19-194a</u> |
| 6.I. | Consider receiving the Monthly report on Investments for May, 2019. | <u>19-237</u> |

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- 6.J. Consider authorizing the General Manager to exercise a one-year extension of the Stratagen Software License and Support Agreement (SLSA) for ADEPT, AVL/MDT and IVR support for East Bay Paratransit (EBP). [19-257](#)
- 6.K. Confirm the Board President's approval to authorize the General Manager to attend and speak at the House Transportation & Infrastructure Panel in Washington D.C. on Tuesday, July 23, 2019. [19-249](#)
- 6.L. Consider approving the award of a five-year contract to Van Scoyoc Associates, Inc. for Federal advocacy services. [18-307a](#)
- 6.M. Consider approving a construction allowance to the contract with Ray's Electric for repairs at the Emeryville Division (D2) necessary to comply with the Private Sewer Lateral Ordinance required by the City of Emeryville. [17-196c](#)

7. REGULAR CALENDAR

External Affairs Items - Chair Ortiz

- 7.A. Consider receiving the monthly legislative report and approval of legislative positions. [19-254](#)

Director of Legislative Affairs and Community Relations Claudia Burgos presented the staff report and advised that staff had changed its recommendation on SB 742 (Allen) to SUPPORT based on new information that the legislation would be amended to give local public transit operators priority.

Director Williams asked if any polling had been done in Contra Costa County related to the transportation funding measure. Ms. Burgos advised that polling was conducted in March and the finding was that Contra Costa voters were supportive of transit investment.

Director Harper suggested that the District's position on SB 328 (School Start Times) be changed from OPPOSE to SUPPORT IF AMENDED to exempt any school district which had a single bus service to a multi-school system, such as AC Transit where bell time coordination is very important. Vice President Ortiz commented that one of the reasons AC Transit has not been able to mass any opposition to the bill is because there are very few public transit systems providing school bus service. Ms. Burgos responded that there still is the issue within school districts of staggered bell times, which vary. General Manager Michael Hursh added that if schools start later in the morning, the schedule will interfere with rush hour service and there just won't be enough equipment to meet the demand. There did not appear to be broad support for Director Harper's suggestion at this time.

MOTION: PEEPLES/WALLACE to receiving the monthly legislative report and approve the legislative positions recommended by staff, including a SUUPPORT position on SB 742 (Allen). The motion carried by the following vote:

Ayes: Ortiz, Wallace, Harper, Williams, Peeples, Young, Shaw

Finance and Audit Items - Chair Harper

- 7.B.** Consider adoption of Resolution Nos. 19-026 and 19-027 to allow the District to enter into a three-year \$35.0 million revolving line of credit (LOC) to support delivery of the East Bay Bus Rapid Transit Project (BRT) with Bank of the West (BotW), using the California Statewide Communities Development Authority (CSCDA) as a conduit issuer. **19-221b**

There was no presentation of the staff report. Chief Financial Officer Claudia Allen introduced Peter Schellenberger with Public Financial Management, Devon Brennan with Orrick, and Ted Neu from Bank of the West.

MOTION: WALLACE/ORTIZ to adopt Resolution Nos. 19-026 and 19-027 to allow the District to enter into a three-year \$35.0 million revolving line of credit (LOC) to support delivery of the East Bay Bus Rapid Transit Project (BRT) with Bank of the West (BotW), using the California Statewide Communities Development Authority (CSCDA) as a conduit issuer. The motion carried by the following vote:

Ayes: Ortiz, Wallace, Harper, Williams, Peeples, Young, Shaw

Planning Items - Chair Peeples

- 7.C.** Consider receiving Metropolitan Transportation Commission's report on the performance of the Line 97 South Corridors Project. **19-256**

Transportation Planning Manager Jim Cunradi presented the staff report. Mr. Cunradi addressed technical questions and questions about coordination amongst various cities. He also explained that while the TSP system as a robust data-collecting tool, it is up to the District to further investigate how to use the system to its benefit. General Manager Hursh added that once the system is in place, AC Transit is willing to take the lead in partnering with traffic engineers and policy makers in the region to review the data.

MOTION: ORTIZ/WALLACE to receive the Metropolitan Transportation Commission's report on the performance of the Line 97 South Corridors Project. The motion carried by the following vote:

Ayes: Ortiz, Wallace, Harper, Williams, Peeples, Young, Shaw

- 7.D.** Consider receiving the monthly progress and operational readiness report on the East Bay Bus Rapid Transit (BRT) project. **19-243**

Director of BRT David Wilkins presented an update on project construction; BRT Outreach Manager Steven Jones gave an overview of public outreach activity; and Contracts Compliance Administrator Phillip Halley spoke about the District's progress towards meeting workforce utilization and Disadvantaged Business Enterprise goals.

Vice President Ortiz asked if revenue service was still planned for the end of the year, to which Mr. Wilkins responded that it was. She further inquired about the nature of the complaint concerning water. Mr. Jones advised that the contractor had been using water from private business while laying concrete. Staff has addressed the problem with the contractor.

Vice President Ortiz asked if the DBE/SBE figures had improved over the last few months, saying that the District may want to provide updated information to Senator Barbara Lee who received information last April. Mr. Halley advised that he would review and report back. Executive Director of External Affairs, Marketing and Communications Beverly Greene advised that she had provided updated information to the Senator last month.

Director Harper asked if the environmental review process for the Northern Layover Facility would result in a delay of federal funds. Mr. Wilkins clarified that the facility had received federal and state environmental clearance about ten days ago.

Public Comment:

Jerry Grace commented that the BRT project reminded him of the project on Van Ness in San Francisco. He wanted to make sure the businesses were being communicated with about the length of the project and disruption to businesses.

MOTION: ORTIZ/WALLACE to receive the monthly progress and operational readiness report on the East Bay Bus Rapid Transit (BRT) project. The motion carried by the following vote:

Ayes: Ortiz, Wallace, Harper, Williams, Peeples, Young, Shaw

- 7.E. Consider receiving report on service changes scheduled for implementation on August 11, 2019, in conjunction with the Fall Sign-up. [19-253](#)

Service Planning Manager Michael Eshleman presented the staff report.

Director Harper asked for clarification on the proposed changes for Line 57. Mr. Eshleman clarified that the additional stops are proposed to accommodate construction in the area.

MOTION: WILLIAMS/YOUNG to receive report on service changes scheduled for implementation on August 11, 2019, in conjunction with the Fall Sign-up.. The motion carried by the following vote:

Ayes: Ortiz, Wallace, Harper, Williams, Peeples, Young, Shaw

Operations Items - Chair Shaw

- 7.F. Consider receiving an update on the various technologies being developed for transit buses and operators. [Requested by Director [19-248](#)

Harper - 10/10/18]

Technical Services Manager Stuart Hoffman presented the staff report.

Director Harper was pleased with the findings and level of detail in the FTA report and suggested that the District modify its electric bus procurement to require inclusion of driver assisting technologies from bus manufacturers. Related to additional operator assistance technology, Director Young asked for clarification on the fact that bus manufacturers may be held liable in accident lawsuits in delaying the implementation of such technology. Mr. Hoffman advised that the part suppliers are currently not willing to indemnify bus manufacturers from liability and thus the manufacturers are cautious and limited in terms of implementing new technologies.

Public Comment:

Jerry Grace commented on a recent crisis event handled by a bus operator.

MOTION: ORTIZ/YOUNG to receive an update on the various technologies being developed for transit buses and operators. The motion carried by the following vote:

Ayes: Ortiz, Wallace, Harper, Williams, Peeples, Young, Shaw

- 7.G.** Consider directing the General Manager to take the necessary steps to implement a civil administrative or hybrid civil-criminal fare evasion citation and adjudication process. **19-208a**

Protective Services Manager Kerry Jackson presented the staff report. General Manager Michael Hursh suggested that the Board direct staff to develop a civil citation procedure, which can be expanded upon later. The Board would determine the fine. It was suggested that the same adjudication process for parking fines be used for fare evasion.

Members of the Board commented on the inability of other transit agencies to recover fines for fare evasion and that the point was to embarrass or inconvenience the fare evader in order to deter and/or change behavior. It was also suggested that there be a trial period after which the effectiveness of the citation process would be reviewed.

Chief Operating Officer Salvador Llamas advised that what the Board was considering was process to decriminalize fare evasion.

There was a general consensus to direct staff to leave the existing criminal process in place (and not enforce it) and develop a civil citation process for further review and discussion by the Board. It was also believed that a pilot of the new civil process could yield enough data to determine its effectiveness in reducing fare evasion. No further action was taken.

Public Comment:

Kennard Plummer, ATU Local 192, spoke in support of decriminalizing the citation.

Direction was given to leave the existing criminal process in place and develop a civil citation process for further review and discussion by the Board. No action was taken.

Board Administrative Matters:

- 7.H.** Consider adoption of Resolution No. 19-022 authorizing the General Manager to transfer ownership of three surplus transit buses to Those Angels, Inc. pursuant to Board Policy 461. **19-230**

General Counsel Denise Standridge announced that Director Williams recused himself due to a conflict of interest on Item 7.H. Director Williams left the dais at 6:26 p.m.

[A handout including organizational information about Those Angels, Inc. was provided at the meeting for the Board's consideration.]

General Counsel Denise Standridge presented the staff report, noting that the District had received a written request for the donation of three bus from Those Angels, Inc. She recommended that the District allow the organization six months to secure transport of the buses and at that review the request again if they are unable to secure transport. She further introduced Mr. Joseph was available to address questions.

Concerns were raised as to whether the donated buses would actually be used for school service in Haiti. Additional questions arose as to the type of bus being requested since this type of bus is typically not used to deliver school service.

Mr. Joseph advised that Those Angels would be willing to agree to any conditions specified by the Board as to the use of the vehicles. He added that the MCI buses were chosen because of their ability to maneuver the road conditions in Haiti. Director Peeples pointed out that the MCI buses were five feet longer, just as wide as a typical bus, and heavier making them more difficult to maneuver.

President Wallace suggested that the item be continued to the next meeting in order for staff to amend the resolution as discussed.

Director Harper also requested information on the charity's 501(c)(3) status with the federal government or any evaluation of the charity by a monitoring organization for charities.

This matter was Continued to the August 7, 2019 Board meeting.

- 7.I.** Consider the procurement protest filed by Roofing & Solar Construction, Inc. in connection with the District's Training and Education Center Roofing Project. **19-105b**

Director of Procurement and Materials Gene Clark presented staff's justification for recommending denial of the protest filed by Roofing and Solar Construction, Inc. Contracts Compliance Administrator Phillip Halley added that as of the date RSC submitted its supplemental protest documentation, the State of California had still not re-certified RSC as a Small Business Enterprise.

When asked who would be awarded the contract if the Board denied the protest, Mr. Clark responded that due to the need to replace the roof at the Training and Education Center before winter, the Invitation For Bid (IFB) was being re-bid with a closing date of August 8, 2019, to which RSC could submit another bid. Director Harper felt that since all three of the original bidders submitted their bids late, all three should be reconsidered to see who would get the job. Ms. Standridge advised that this would give an unfair advantage to any other potential bidders who may have otherwise submitted a late bid. She recommended that anyone who wanted to submit a bid, including RSC, submit their bid timely, with all required documentation, and the District would open it and re-evaluate it. She further recommended that the Board deny the protest, uphold the District's decision to re-post, and review all bids when opened on August 8th.

Attorney Jonathan Bowne, with Last and Faoro, appeared on behalf of the protesting party (RSC), stating his client's dissatisfaction with the re-bidding the project on the grounds that it gave the other bidders, whom he believed materially failed to meet the requirements of the original IFB, another opportunity to bid on the work with knowledge of the price offered by RSC.

President and CEO of RSC, Cassy Fabiani, commented on the need to repair the roof in a timely manner due to the rising cost associated with keeping the roof watertight in the winter. She also felt it was improper of the District to re-bid the work and complained about the protest process, believing that RSC would have an opportunity to appeal several more times. She further stated that RSC had met the guidelines, had met and exceeded the goals, that RSC's supplier and sub-contractor met the goals, and believed there had not been any declaration that the small business certification was required at the time of bid as she had been involved in other protests where she was able to provide certifications by the time of award. She added that she was not aware that her small business certification had expired.

RSC's estimator, Cary Fabiani, advised that they belong to Local 81 in Oakland and utilized Oakland manpower. He felt the District did not want to work with RSC and believed the company met the goals even though they weren't required when a good faith effort was enough. He further commented on the difficulty of the project, adding that RSC was probably the only firm that could get the work done.

Ms. Standridge advised that despite the comments offered by Ms. Fabiani, of which most were noted in RSC's protest and were previously considered by procurement staff and herself, her recommendation was to deny the protest and to uphold the District's re-posting of the IFB which would be opened on August 8th. This would allow RSC time to file a protest, which may be heard at the next Board meeting on August 7th, if filed within five business days of the written decision. Vice President Ortiz moved Ms. Standridge's recommendation.

In response, Mr. Bowne pointed out that there were two ways to meet the SBE requirements: 1) the prime bidder is certified, or 2) the sub-contractors are certified. He added that the project had a 15% goal and if 15% of the project was to be performed by certified sub-contractors, the prime would meet the requirements. He further pointed to Exhibit 7 from the Supplemental Bid Protest document filed by his office, which is a copy of the Prime Contractor & Subcontractor/Supplier Report submitted as part of RSC's bid, stated that it listed the SBE subcontractors that would be used. Mr. Bowne advised that the form listed that Bay Counties Construction & Maintenance, a certified SBE, would be perform 18% of the project. In addition, he pointed to the June 18th submission (Exhibit 8, email labelled #7) from the bidder to the District confirming that Bay Counties would perform 18% of the project. He also directed the Board's attention to Exhibit 5, page 2 which confirmed Bay Counties SBE certification. He advised that RSC had met the requirements stated in the bid documents by listing Bay Counties on the bid form and by providing documentation that Bay Counties was certified and was performing in excess of 15% of the project. He added that there was nothing in the bid documents that established that the submission was out of compliance, noting that RSC's bid was timely and responsive.

Mr. Halley reiterated to the Board that his office and the procurement department had reviewed the bid and bid documents that were submitted as part of the RSC's bid package. He then showed the Board the Prime Contractor & Subcontractor/Supplier report that was received by the District as part of RSC's bid package (incorporated into the file by reference as Exhibit A). He pointed out that the report showed MC Mechanical listed at 15%, Bay Counties Construction & Maintenance listed at 15% and that neither business was identified as a small business on the form. Mr. Halley further added that staff had reached out to the two businesses and asked if they were Certified Small Businesses and as told they were not. He concluded by saying that even though one of the businesses had obtained their certification, it was well after the bid due date and open date. Ms. Standridge again stated that it would be an unfair advantage if a bidder is allowed additional time that others are not.

Director Peoples commented that he would support the motion because he was supportive of staff, but was uncomfortable with the process, believing that improvements were needed. He added that it was not entirely clear to him whether certifications needed to be in place on the day of bid versus the day of award and pointed out that the initial denial letter didn't say anything about the Small Business Certification. Ms. Standridge advised that the issue had been addressed by the department, adding that because the notice of non-award didn't technically state the certification, staff re-issued it and it does not change her opinion.

Director Young inquired if the SBE certification was required at the time of bidding or the time of award. Mr. Halley advised that Small Business Certification for any of the prime or sub-contractors wasn't necessarily required, the requirement was to meet the small business utilization goal and that means a business is a Certified Small Business at the time bids are due. The prime contractor does not have to be Small Business

Certified as the goal can be met through subcontracting and must add up to 15% for the IFB. Mr. Bowne responded that Board Policy 466 addresses how the program is supposed to be implemented, pointing the Board to Section 4, subsection c (Policy Guidelines) "The District will require all bidders to provide a list of the SBE subcontractors to be utilized to meet the SBE goal and will require Good Faith Effort documentation from bidders not meeting the SBE goal prior to award of the contract." He believed that Board Policy 466 established a point of compliance prior to award of the contract. Director Young commented that because the protest was not about RSC's ability to do the work, he was inclined to grant the protest.

MOTION: ORTIZ/SHAW to approve the staff recommendation to deny the protest and, uphold staff's decision to have the rebid Invitation for Bids opened on August 8, 2019. The motion passed by the following vote:

Ayes: Shaw, Peeples, Ortiz, Wallace

Nayes: Harper, Young

Recused: Williams

8. CLOSED SESSION/REPORT OUT

There was nothing to report out of Closed Session.

8.A. Conference with Legal Counsel – Potential Litigation

(Government Code Section 54956.9(b)) (Two Cases)

8.B. Conference with Labor Negotiators

(Government Code Section 54957.6):

Agency Designated Representative:

- General Manager Michael Hursh;

- Acting Executive Director of Human Resources Nathaniel Kramer;

Employee Organizations: ATU Local 192, AFSCME Local 3916, IBEW Local 1245,
Unrepresented Employees

8.C. Public Employee Performance Evaluation

(Government Code Section 54957)

Title: General Manager, General Counsel, District Secretary

9. AGENDA PLANNING

9.A. Agenda Planning Pending List

19-020m

Director Harper requested a report on how and when pass-ups on Transbay lines are going to stop. (Vice President Ortiz concurred)

Director Harper requested that messages on buses about using the back door as often as possible also be provided in Cantonese and Mandarin. (Vice President Ortiz concurred)

Director Williams requested a report on the Las Vegas program that allows violators to pay parking tickets with school supplies and the possibility of developing a similar program. (Director Young concurred)

10. GENERAL MANAGER'S REPORT

10.A. General Manager's Report for July 24, 2019.

[19-107](#)

The item was presented for information only.

11. BOARD/STAFF COMMENTS

(Government Code Section 54954.2)

Members of the Board commented on meetings and events attended since the previous meeting.

12. ADJOURNMENT

There being no further business to come before the Board of Directors, the meeting adjourned at 7:22 p.m. The next meeting of the Board is scheduled for August 7, 2019.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Linda A. Nemeroff", with a stylized flourish at the end.

Linda A. Nemeroff
District Secretary