

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT
300 Lakeside Drive, P.O. Box 12688, Oakland, CA 94604-2688

Board of Directors
Minutes of the 1,863rd Meeting
May 14, 2020

A regular meeting of the Board of Directors was held on May 14, 2020, convening at 9:02 a.m. via teleconference, pursuant to Governor Gavin Newsom's Executive Order N-29-20 and the California Shelter-in-Place mandate. President Simon presided; Patricia K. Williams, District Secretary.

Directors Present: Directors Allen, Ames, Dufty, Li, McPartland, Raburn, Saltzman and Simon.

Absent: None. Director Foley entered the Meeting later.

President Simon gave opening remarks and instructions on the virtual meeting, accessing presentation materials online, Public Comment, and Board Members' remarks.

Director Foley entered the Meeting via telephone.

Consent Calendar action items brought before the Board were:

1. Approval of Minutes of the Meeting of April 23, 2020.
2. Resolution Consolidating 2020 District Elections.
3. Extension of Agreement No. 6M2049 with Macias, Gini & O'Connell, LLP for External Audit Services.

Consent Calendar report brought before the Board was:

1. Fiscal Year 2020 Third Quarter Financial Report.

Director Raburn made the following motions as a unit. Director Dufty seconded the motions.

1. That the Minutes of the Meeting of April 23, 2020 be approved.
2. That Resolution No. 5441, Resolution of the Board of Directors of the San Francisco Bay Area Rapid Transit District requesting the Boards of Supervisors of Alameda County, Contra Costa County, and the City and County of San Francisco to provide for the consolidation of a District election, electing members of the Board of Directors, with the State of California general election, to be held on November 3, 2020, be adopted.
3. That the General Manager be authorized to extend Agreement No. 6M2049 to Macias, Gini & O'Connell LLP for another year to provide independent audit services for fiscal year 2020 to the District, Retiree Health Benefit Trust (RHBT) and Capitol Corridor Joint Powers Authority (CCJPA) for a total maximum compensation of \$244,544.00.

President Simon called for Public Comment on Consent Calendar. No comments were received.

The motions brought by Director Raburn and seconded by Director Dufty carried by unanimous roll call vote. Ayes: 9 – Directors Allen, Ames, Dufty, Foley, Li, McPartland, Raburn, Saltzman, and Simon. Noes: 0.

President Simon called for general Public Comment.

Ms. Williams read a written comment submitted by Jack Evans into the record.

The following individuals addressed the Board via telephone:

Aleta Dupree
John Arantes
Buddy Roark

Director McPartland, Chairperson of the Administration Committee, brought the matter of COVID-19 Update: Impact of and Responses to COVID-19 before the Board. He requested that PowerPoint presentation materials for the COVID-19 Update be labeled as such.

Ms. Tamar Allen, Assistant General Manager, Operations; Chief of Police Ed Alvarez; Ms. Pamela Herhold, Assistant General Manager, Performance and Budget; Ms. Alicia Trost, Chief Communications Officer; Ms. Gia Ilole, Assistant General Manager, Administration; and Mr. Robert Powers, General Manager, presented the item. The presentation contained sections on Front Line and Public Safety Efforts, Ridership, Advocacy, and Employee and Labor Partner Engagement.

Aleta Dupree addressed the Board via telephone.

The item was discussed, with the following highlights:

Director Allen thanked BART employees.

Director Ames inquired about and/or commented on employees' health and safety, federal funding, capital projects, High Efficiency Particulate Air (HEPA) filters, security at Dublin/Pleasanton Station, ridership, rider confidence, social distancing, station cleanliness, and new faregates.

Director Dufty thanked BART employees and labor representatives, commented on federal funding, ridership, and BART Police coverage, and commended Mr. Powers.

Director Li recognized BART employees and inquired about and/or commented on continuing service, the face covering requirement, procuring face coverings, and federal funding.

Director McPartland inquired about and/or commented on masks, the face covering requirement, and HEPA filters, commended Mr. Powers, and requested information regarding providing childcare centers.

Director Raburn inquired about and/or commented on safety, ridership and social distancing, BART Police Department staffing, mask compliance issues, personal strap hangers, and leading by example.

Director Saltzman thanked BART employees and commented on federal funding, regulations associated with funding, social distancing, staggered start times, and ridership.

Director McPartland commented on staggered start times and social distancing.

Director Foley thanked BART employees and unions and commented on safety, rider confidence, and communication.

President Simon recognized BART employees' service and inquired about and/or commented on providing resources for childcare services, closure of educational institutions in the fall, and ridership.

Director Allen asked whether the faregate presentation would be provided before or after the vote regarding the FY21 budget and commented on the provisions attached to federal funding.

Director McPartland brought the matter of Fiscal Year 2020/2021 Budget Overview before the Board. Mr. Powers; Ms. Herhold; Mr. Michael Eiseman, Director of Financial Planning; Ms. Tamar Allen; and Mr. Christopher Simi, Director of Budgets, presented the item.

Ms. Williams read written comments submitted by Laura Tolhoff of the San Francisco Bay Area Planning and Urban Research Association (SPUR) and Kelli Fallon of the Bay Area Council into the record.

Aleta Dupree addressed the Board via telephone.

The item was discussed, with the following highlights:

Director Allen inquired about and/or commented on cost reductions, COVID-19 operating measures, ridership, budget scenarios, additional cost reductions, projects, arranging a Board Budget Workshop, the Fiscal Year 2021 (FY21) Budget and her support of Budget Option A, and operating costs associated with the Santa Clara Valley extension, and requested information regarding weekly ridership by station.

Director Ames inquired about and/or commented on economic recovery scenarios, ridership, social distancing, the COVID-19 virus vaccine, federal funding/funding assistance, cost and salary reductions, the FY21 Budget and support of Budget Option A, rider confidence, payment via mobile phone, the new faregates, HEPA filters, health and unemployment issues, and opening the Berryessa Station, and requested information regarding cleaning with ultra-violet lighting.

Director Dufty indicated that he would follow up with questions for staff at a later time.

Director Li inquired about and/or commented on the service scenarios, economic recovery, retaining employees, closing hours, contact-less payment, an account-based Clipper® system and system improvements, taxpayers, federal funding, and support for the FY21 Budget Option B, and requested information regarding elimination of the Clipper Card fee, distribution of free Clipper Cards, and open payment methods.

Director McPartland commented on the Clipper Card fee, cleanliness and decontamination, foggers, emergency management, world-wide findings/responses to COVID-19, and flexibility and responsiveness regarding service and ridership.

Director Raburn commented on information provided by consultants, information regarding the activities of agencies throughout the world and the United States, ridership, social distancing, train length and service, funding for public health measures, providing reliable service, retaining employees, the COVID-19 virus vaccine, and support for FY21 Budget Option B as it provided the best opportunity for quickly ramping up service when needed.

Director McPartland commented on human resources and support for FY21 Budget Option B.

Director Saltzman commented on support for FY21 Budget Option B, retaining employees, ridership, the importance of BART, social distancing, increasing service, service and fare revenue, quarterly budget reviews, and restoring service.

Director Foley commented on the FY 21 Budget Option B, funding public transit, Aleta Dupree's comment regarding contact-less payment, not supporting the Clipper Card fee, and coordinating service plans with transit partners and regaining riders' trust.

Director McPartland relayed Director Dufty's comment on the FY21 Budget Option B.

President Simon commented on the FY21 Budget Option B, BART's service to the region, retaining consultants, and maintaining the institution.

Director Dufty, Chairperson of the Engineering and Operations Committee, brought the matter of Award of Contract No. 20LZ-130, Train Control Room Battery Systems Replacement, Phase 3, before the Board. Ms. Tamar Allen; Mr. Myat San, Group Manager, Electrical and Mechanical Engineering; Mr. Powers; and Mr. Maceo Wiggins, Director of the Office of Civil Rights, presented the item.

The item was discussed. Director Dufty asked whether the bidders understood the tolling period for Board Members' requests for a review of the General Manager's protest decisions, and requested that Mr. Matthew Burrows, General Counsel, comment on the basis of the rescission of the Board's authorization to award Contract No. 20LZ-130 to Becker Electric, Inc. (Becker) and the Federal Transit Administration's (FTA) requirements.

Travis Becker and Vadim Vydrug of Becker addressed the Board via telephone.

Discussion continued. Director Dufty asked Mr. Becker whether he received a copy of the District's letter regarding the General Manager's protest decisions and the ten-day tolling period for Board Members' requests for a review of the General Manager's decisions and commented on the letter. Mr. Becker responded to Director Dufty's question and comment.

Director Allen asked whether the letter regarding the rescission of the authorization of the contract award included the legal authority for the rescission, whether Becker received a copy of the cover letter and draft protest decisions that were issued to the Board Members, and whether Becker was given an opportunity to respond to the cover letter and draft protest decisions. Director Allen commented on the flaws with the letter that was issued to the Board and the second low bid, inquired about the Board Rule regarding protests, and requested that the legal authority for the rescission of the authorization of the contract award be provided.

Director Allen made a motion to (1) suspend Board Rule 3-5.4(a); (2) allow Board Members to respond to the proposed protest decisions issued by the General Manager; (3) allow staff to conduct further investigation; and (4) continue the award of Contract No. 20LZ-130, Train Control Room Battery Systems Replacement, Phase 3, to the next Board Meeting. Director Raburn seconded the motion.

Discussion continued, with the following highlights:

President Simon asked for clarification of the substitute motion.

Director Allen commented on the letter she received regarding the draft protest decisions and her substitute motion and asked of clarification of options available to the Board.

Director Allen rescinded her initial motion and proposed a substitute motion to reject all bids and re-bid Contract No. 20LZ-130, Train Control Room Battery Systems Replacement, Phase 3. Director McPartland seconded the substitute motion.

Maria Icenogle of Icenogle Construction Management, Inc. (Icenogle) addressed the Board via telephone.

Discussion continued, with the following highlights:

Director McPartland commented on re-bidding contracts and due process.

Director Raburn commented on the Board Rules, removing the contract, following procedures, and Icenogle's capacity, and requested information regarding Icenogle's prior work with BART.

Director Saltzman commented on the Board Rules and the options presented by staff.

Director Dufty asked whether re-bidding the contract would be costly for the bidders.

Director Raburn asked for the cost that BART would incur if the contract were re-bid.

Director Allen commented on Ms. Icenogle's comment regarding the apparent low bid.

Director McPartland commented on the bid and protest processes and fairness.

Director Dufty asked whether the General Manager would be comfortable with re-bidding the contract.

President Simon commented on the firms' comments and the burden on bidders caused by re-bidding the contract.

Director Ames commented on staff's comments, case law, the firms' comments, and re-bidding the contract.

Director Dufty addressed Ms. Icenogle and Mr. Becker.

The substitute motion brought by Director Allen and seconded by Director McPartland carried by unanimous roll call vote. Ayes: 9 – Directors Allen, Ames, Dufty, Foley, Li, McPartland, Raburn, Saltzman, and Simon. Noes: 0.

Director Dufty brought the matter of Award of Agreements for Design Support during Construction for BART's Train Control Modernization Program before the Board. Mr. Carl Holmes, Assistant General Manager, Design and Construction; Mr. Javier Martinez, Group Manager, Capital Projects, Core Capacity Project Delivery; Mr. Scott Van Dussen, Senior Project Manager, Extensions; and Ms. Tamar Allen presented the item.

The item was discussed. Director Dufty asked staff to comment on SYSTRA Consulting Inc. (SYSTRA), asked whether SYSTRA has previously worked with BART, and commented on Parsons Transportation Group Inc.'s (Parsons) involvement in the train control project.

Director Raburn moved that the General Manager be authorized to award Agreement No. 6M8168 to Parsons Transportation Group Inc. and Agreement No. 6M8169 to SYSTRA Consulting Inc. to provide Design Support during Construction Services in support of BART's Communications Based Train Control Contract, in an amount not to exceed \$45,000,000.00 for each agreement, pursuant to notification to be issued by the General Manager, and subject to the District's Protest Procedures and FTA's requirements related to protests. Director Allen seconded the motion.

Discussion continued. Director Raburn commented on Disadvantaged Business Enterprise (DBE) figures, subcontractors, and future BART employees.

Ms. Williams read written comments submitted by the following individuals into the record:

David Turner of Turner Engineering Corporation
Parkash Daryani of Auriga Corporation
Cesar Montes de Oca of UNICO Engineering

The following individuals addressed the Board via telephone:

Aleta Dupree
Lori Colangelo of Parsons
Frederic Bana of SYSTRA
Bradley Banks of Countervail Engineering
Carlos Melendez of UNICO Engineering

Discussion continued, with the following highlights:

Director Ames inquired about and/or commented on the project, the scope of work, detailed information regarding the scope, schedule, and budget for large projects, driverless trains, and train service.

Director Dufty requested that a virtual workshop regarding scope issues be arranged.

Director Ames inquired about and/or commented on adding driverless train technology later, ridership, and train service.

Director McPartland commented on life safety, driverless trains, and evacuation of trains.

Director Dufty commented on funding for the project and the subcontractors.

Director Ames commented on the presence of a Community Service Officer on driverless trains.

The motion brought by Director Raburn and seconded by Director Allen carried by unanimous roll call vote. Ayes: 9 – Directors Allen, Ames, Dufty, Foley, Li, McPartland, Raburn, Saltzman, and Simon. Noes: 0.

Director Dufty brought the matter of Change Order to Contract No. 09AF-111A, TBT Cross Passage Doors Replacement, with DMZ Builders, for Door Replacement and Re-sequencing (C.O. No. 33) before the Board. Ms. Mitra Moheb, Manager of Engineering Programs, Strategic Engineering, and Ms. Tamar Allen presented the item.

Director McPartland moved that the General Manager be authorized to execute Change Order No. 33, Door Replacement Re-Sequencing, for Contract No. 09AF-111A, TBT Cross Passage Doors Replacement Project, in the amount of \$1,200,000.00. President Simon seconded the motion.

The item was discussed. Director Allen asked whether the Change Order consolidates delays, for clarification of the cost of conflicts, and for confirmation that the delays were caused by the District.

The motion brought by Director McPartland and seconded by President Simon carried by unanimous roll call vote. Ayes: 9 – Directors Allen, Ames, Dufty, Foley, Li, McPartland, Raburn, Saltzman, and Simon. Noes: 0.

Director Saltzman, Chairperson of the Planning, Public Affairs, Access, and Legislation Committee, brought the matter of West Oakland BART Transit Oriented Development Update before the Board. Mr. Holmes; Mr. Sean Brooks, Director of Real Estate and Property Development; Mr. Paul Voix, Principal Property Development Officer; Systems Development; and Mr. Charlie Ream, Senior Planner, Systems Development, presented the item.

Ms. Williams read a written comment submitted by Cheryl Fabio into the record.

The following individuals addressed the Board via telephone:

Alan Dones
Chun Wai Tse of China Harbour
Dirk Hallemeier of MacFarlane Partners

The item was discussed, with the following highlights:

President Simon commented on the project, the financing partner, community involvement, and the amount of proposed affordable housing.

Director Ames commented on the project and asked how BART can be assured that commercial entities will be present in the development.

Mr. Dones addressed the Board via telephone.

Discussion continued, with the following highlights:

Director Ames commented on employment centers in the East Bay and BART's transit-oriented development (TOD) policy regarding employment centers in the East Bay.

Director Li commented on the West Oakland neighborhood, the transportation demand management (TDM) plan for West Oakland, the parcels within the development, affordable housing, and accessibility to West Oakland Station during construction.

Director Raburn commended Mr. Dones and BART staff.

Director McPartland commented on the development of housing in Oakland.

Director Saltzman commented on the West Oakland neighborhood and community outreach and support, and requested information regarding the office space parcel and that staff provide revised ridership estimates at the next Board Meeting.

Director Saltzman brought the matter of Update on BART and Valley Transportation Authority Phase I before the Board. Mr. Carl Holmes; Mr. Shane Edwards, Chief Maintenance and Engineering Officer; and Ms. Trost presented the item.

The item was discussed, with the following highlights:

Director Raburn commended BART staff and commented on the new BART system map.

Director Ames inquired about and/or commented on the expansion of the system, coating and waxing station platforms, and requested information regarding the Santa Clara Valley Transportation Authority's (SCVTA) feedback regarding expected revenue.

Aleta Dupree addressed the Board via telephone.

President Simon announced that the order of agenda items would be changed.

Director Dufty, Chairperson of the Personnel Review Special Committee, reported that the Committee had met on May 7, 2020, and that there was no announcement to be made.

President Simon called for the General Manager's Report. Mr. Powers reported that the Metropolitan Transportation Commission's (MTC) Programming and Allocations Committee ranked BART's Train Control Modernization Program application as number one in the region and recommended support, indicating that the awarded program would be funded by the California Department of Transportation's (Caltrans) Solutions for Congested Corridors Program; and that Mr. Jeffrey Lau, Chief Safety Officer, System Safety, and staff advised Mr. Powers that the California Public Utilities Commission (CPUC) announced preliminary approval of BART's Public Transportation Safety Action Plan (PTSAP).

President Simon called for Board Member Reports, Roll Call for Introductions, and In Memoriam requests.

Director Dufty gave remarks regarding Courtney Brousseau and expressed his condolences to Dir Li.

Director Raburn requested that the Meeting be adjourned in honor of Tim Schott, a long-time advocate and colleague of BART and the Capitol Corridor Joint Powers Authority.

Director Raburn reported that he had attended the Alameda County Home Together Workshop and a conference of the University of California Davis Institute of Transportation Studies.

President Simon thanked Director Raburn for his In Memoriam request for Tim Schott.

Director Saltzman thanked Board Members for their In Memoriam requests for Tim Schott and Courtney Brousseau.

President Simon reported that she would participate in the City and County of San Francisco's Economic Recovery Task Force on behalf of BART, commented on the transit community, and gave remarks regarding Courtney Brousseau.

Director Li offered her condolences to the family of Tim Schott, gave remarks regarding Courtney Brousseau, and requested that the Meeting be adjourned in honor of Courtney Brousseau, community activist and public transit enthusiast.

President Simon gave closing remarks addressed to the families of Tim Schott and Courtney Brousseau.

The Meeting was adjourned at 3:08 p.m.

Patricia K. Williams
District Secretary