



## EXECUTIVE DECISION DOCUMENT

<b>GENERAL MANAGER APPROVAL:</b> <div style="float: right; border: 1px solid black; padding: 2px;"> <small>DocuSigned by:</small>  <i>Michael Jones</i>  <small>47000790F2D7463...</small> </div>		<b>GENERAL MANAGER ACTION REQ'D:</b> Approve and Send to Board		
<b>DATE:</b> 7/11/2022      7/20/2022		<b>BOARD INITIATED ITEM:</b> No		
<b>Originator/Prepared by:</b> Linda Lee <b>Dept:</b> Strategic Engineering <div style="border: 1px solid black; padding: 2px; margin-top: 10px;"> <small>DocuSigned by:</small>  <i>Linda Lee</i>  <small>9FA454A5AF83469...</small> </div> <b>Signature/Date:</b> <div style="text-align: right;">7/18/2022</div>	<b>General Counsel</b> <div style="border: 1px solid black; padding: 2px; margin-top: 10px;"> <small>DocuSigned by:</small>  <i>Jana Belan</i>  <small>F8FD7B3A73E74E8...</small> </div> <div style="text-align: right;">7/18/2022 [ ]</div>	<b>Controller/Treasurer</b> <div style="border: 1px solid black; padding: 2px; margin-top: 10px;"> <small>DocuSigned by:</small>  <i>Chris Gan</i>  <small>EE11C8CEEEA04FD...</small> </div> <div style="text-align: right;">7/18/2022 [ ]</div>	<b>District Secretary</b> <div style="text-align: right;">[ ]</div>	<b>BARC</b> <div style="border: 1px solid black; padding: 2px; margin-top: 10px;"> <small>DocuSigned by:</small>  <i>Shane Edwards</i>  <small>8128A2EB2F014F3...</small> </div> <div style="text-align: right;">7/19/2022 [ ]</div>

### Sole Source Procurement for Maintenance Vehicle Consist (MVC) (Two Thirds Vote Required)

#### PURPOSE:

To request Board authorization for the General Manager to negotiate and execute a contract with Shimmick/California Engineering Contractors (CEC) Joint Venture (JV) for the sole source procurement of Maintenance Vehicle Consist (MVC), which consists of three (3) locomotives, thirteen (13) flat cars with attached accessories, and associated spare parts in accordance with California Public Contract Code Section 20227. The amount of this sole source procurement is estimated to be nine million two hundred thousand dollars (\$9,200,000.00), including 10.25% sales tax and 10% contingencies. Two thirds vote required.

#### DISCUSSION:

Locomotives serve as a crucial vehicle within the District for the moving of equipment and the support of the District's state of good repair as well as upcoming critical in-house projects such as the A77 interlocking replacement project (currently in progress) and the upcoming K-Line interlocking replacement project that will start in 2023.

In 1969 and 1970, the District purchased two (2) locomotives following completion of the legacy system construction. While these locomotives have served the District well, they are well past their 25 year useful lives, requiring the District to undertake ongoing maintenance and costly repairs.

Efforts were made to procure two (2) new locomotives under Contract 15TD-220 in 2015



“66-inch Wide Gauge 50 Ton Locomotive” and four (4) new locomotives with Invitations For Bid (IFB) 9070 in 2019 and IFB No. 9070A “60 Ton Wide Gauge, Center Cab” in 2021, but, each time, all bids were deemed non-responsive. The District has been working on a procurement package for four (4) new locomotives, however, if successful, the earliest the District can receive the first locomotive would be in 2025 due to lead time associated with design and manufacture.

Consequently, the District has sought a used set of locomotives compatible with BART operational requirements until a new procurement for locomotives can be developed in order to address the increasing amount of maintenance and capital work that will be occurring within the District in the coming years mainly due to aging infrastructure. If there is a delay in purchasing the used locomotives, upcoming maintenance and capital work would be impacted leading to inability to maintain state of good repair and potential train delays. Recently, the District has been offered a rare opportunity to purchase a pre-owned, operational Maintenance Vehicle Consist (MVC). This MVC was purchased by Shimmick/CEC JV in 2018 in order to undertake work for the TransBay Tube (TBT) retrofit project. Shimmick/CEC JV is the contractor for the TBT retrofit project and is required to demobilize the equipment at the end of that project.

Site visits were made on June 9 and June 15, 2022, to inspect the MVC. Based on visual inspection by engineering staff, the condition of the MVC appears to be in excellent or “like new” condition. Additionally, because of the demands and stringent requirements of the TBT project, the TBT contractor has to complete daily inspections and regular maintenance on the MVC by qualified technicians to prevent delays during construction. Samples of maintenance records were submitted and reviewed by the District.

Federal Transit Administration (FTA) Circular 4220.1F, Chapter VI, subparagraph 3.i(1)(b) states that a recipient of FTA funding can make a sole source award under certain circumstances, including where “Unique or Innovative Concept” and “Substantial Duplication Costs” would preclude competitive award to the recipient.

This sole source procurement of the MVC is considered a “Unique or Innovative Concept” as the MVC fits the description of a used, low-cost maintenance vehicle solution for the District specifically fabricated to fit BART’s unique sixty-six inch (66”) track gauge and BART clearance envelope with special equipment integrated to complete tasks that can save enormous labor during construction. In addition, the MVC is already on District property and operations personnel are already trained and familiar with operating the MVC. Furthermore, because the District has already made a substantial investment of its own resources into the production of this MVC for the TBT project, the cost and time needed to design, solicit, and manufacture a brand new locomotive and set of flat cars would constitute ‘Substantial Duplication Costs’ for the District when the District is only in need of a used, low-cost train consist at this time to conduct maintenance activities. If purchased new from a vendor, there would be an additional \$800,000 estimated cost to the District; for shipping



and handling, mobilizing, testing, commissioning (approximately \$540,000), and operators training (approximately \$260,000). Since the MVC is already on District property and BART operators are already familiar with this equipment, this amount is considered a savings to the District.

Pursuant to the Public Contract Code Section 20227, the Board may direct the purchase of any supply, equipment or material without observance of competitive bidding upon a finding by two-thirds of all members of the Board that there is only a single source of procurement and that the purchase is for the sole purpose of duplicating or replacing equipment currently in use. Under the criteria discussed above for 'Unique or Innovative Concept' and 'Substantial Duplication Costs', this MVC would constitute a 'single source of supply' solely for the purpose of replacing the District's legacy locomotives.

Staff is now seeking to enter into direct negotiations with Shimmick/CEC JV for the sole source purchase of the MVC. The scope of work for this procurement will consist of the transfer of ownership of the MVC to the District along with the purchase of spare parts, attached accessories, and complete maintenance records specific to the MVC. BART anticipates that transfer of the MVC would commence at the end of 2022, following contract completion of the TBT project.

The amount of this sole source procurement is estimated to be nine million two hundred thousand dollars (\$9,200,000.00), including 10.25% sales tax and 10% contingencies. The engineer's estimate was calculated to be \$9,601,390.53, including sales tax, for the current cost of the MVC using the depreciation method. The District completed an internal audit and found that the engineer's estimate is fair and reasonable.

Pursuant to the District's Disadvantaged Business Enterprise ("DBE") Program, the Office of Civil Rights reviewed the scope of work for this Sole Source procurement and determined that there were no DBE subcontracting opportunities; therefore, no DBE participation goal was set for this procurement.

The Office of General Counsel will approve the Contract as to form. The Procurement Department will review the Contract to confirm compliance with the District's procurement standards.

## **CAPITAL FISCAL IMPACT:**

Funding of \$9,200,000 for the sole source procurement of the MVC is included in the total Project Budget for FMS # 15TD003 – FY 2018 NRVE Procurement.

The table below lists funding assigned to the referenced project and is included to track funding history against spending authority. Funds needed to meet this request will be



expended from the following sources:

<b>Fund Description</b>	<b>Amount</b>
F/G 8524/8529/8530/8532 - Capital Improvement Allocation	\$6,356,119
F/G 3015/3017/3609 - Federal Transit Administration	\$22,149,750
<b>TOTAL</b>	<b>\$28,505,869</b>

As of 07/11/2022, \$28,505,869 is the total budget for this project. BART has expended \$331,851, committed \$1,682,215, and reserved \$0 to date. This action will commit \$9,200,000 leaving an available fund balance of \$17,291,803 in the fund sources for this project.

The office of Controller/Treasurer certifies that funds are currently available to meet this obligation.

This action is not anticipated to have any Fiscal Impact on unprogrammed District reserves.

**ALTERNATIVE:**

The Board may elect not to authorize the General Manager to execute this sole source procurement for the MVC with Shimmick/CEC JV. Choosing not to execute this sole source procurement would result in increased risks to maintenance and capital improvement projects and continued costly maintenance and repairs of the existing locomotives.

**RECOMMENDATIONS:**

Recommend that the Board approve the following motion:

**MOTION:**

Pursuant to California Public Contract Code Section 20227, the Board of Directors finds that Shimmick/CEC JV is the single source for the purchase of the MVC described herein.

The Board authorizes the General Manager to negotiate and execute a contract with Shimmick/CEC JV for the purchase of the MVC for an amount not to exceed \$9,200,000.00 (including applicable taxes).



To Request Board Authorization to Negotiate and Execute a Contract for the Sole Source Procurement of MVC