

**American Public Transportation Association
Business Members Procurement Committee**

Sunday, October 12
10:30 a.m. - 12 p.m.
Lanier Grand Ballroom-D
4th Floor, Hilton Americas
Houston, TX

AGENDA

1. Welcome & Introductions Cornell

2. Reading of the Anti-trust Statement

The cardinal rule in keeping an association's operations within anti-trust laws is that there should be no agreements – express or implied – which restrain the member's freedom to make independent decisions in matters that affect competition. Each member must be completely independent to set prices, establish production and sales levels, choose the markets in which he or she will operate and select his or her customers and suppliers.

3. Approval of notes – Rail conference **Attachment 1**

Updates

- | | |
|---|----------------|
| a. Procurement Handbook | Cornell |
| b. LAANE/Jobs to Move America | Barberis |
| d. US trade talks (and Buy America rules) | Garcia-Colberg |

4. Upcoming activities

- | | |
|---|---------------------------|
| a. A&E procurement issues | Grill Attachment 2 |
| b. Working Groups' output – how to use? | Cornell/ WG leads |
| c. Monitoring US content and
US Jobs Programs requirements | Cornell |

5. New Business	Attachment3 All
-----------------	---------------------------

6. Adjourn

ATTACHMENT 1

Business Members Board of Governor's
Procurement Committee Notes
Rail Conference – Montreal Canada
June 14, 2014

Attendees

Committee Members

John Andreas	James Harper	Patrick Scully
John Barberis	Hugh Harrison	Paul Smith
Buddy Coleman	Dave Hillock	Jim Srygley
Natalie Cornell	John Kardos	Jeff Wharton
Joe Gibson	Jack Martinson	Chuck Wochele

Non-Committee Members

Stanley Grill	Bob Nixon	Richard Wieczorek
Rick Landell	Brett Rekola	Jeff Young
Gabriele Mack	Kevin Sudano	

Previous meeting notes were accepted as presented. Chairman Natalie Cornell presented a brief report on the issue of American content in the proposed changes to the Buy America policy, which was an agenda item for the Government Affairs Committee.

Upon approval of notes, the chair adjusted the order of the agenda to accommodate members who needed to leave early. Pat Scully provided an overview of an earlier discussion regarding Buy America in the Government Affairs. The chair pointed out disparities between FTA & FRA policies. Fran Hooper further emphasized that the discussion and proposed policy change includes sub-suppliers.

Someone asked if anyone had approached the transit property GMs to discuss [the impact of these changes on them] and can cost increases be quantified to make their case? Pat Scully emphasized that the BMBG needs to understand that this is a political issue that must be treated from a sensitive position. It was mentioned that Dorval Carter would be in attendance on the next day and that members should express their concerns to him. The chair asked Pat Scully to elevate member concerns to the Procurement Steering Committee. She further asked if anyone had a perspective on the impact of the bill. Hearing none, she stated that members should start reporting information as they receive it. The committee will continue to monitor the bill and re-activate their efforts accordingly. Additional discussion included thoughts that it was too late to stop this bill and that the current administration staff all have transit backgrounds and would make a powerful opponent. Bob Nixon, John Barberis, Jack Martin and Dave Hillock volunteered to work with Government Affairs on this issue.

Procurement Handbook - The chair passed around sample formats for the new updated Procurement Handbook and solicited feedback. The 1st draft is expected by the end of June. Natalie stated that an Architectural & Engineering section is missing and needs to be added, especially the Terms & Conditions. Paul Smith, Jim Harper and Stan Rosenblum volunteered to review the draft.

EXPO Learning Center – Fran Hooper provided an overview of the Procurement Sessions. A notice will be issued soon advertising the 7-8 sessions. A sponsor is being solicited for the attendees' lunch.

Meeting adjourned

Meeting adjourned.

ATTACHMENT

2

TRANSIT AGENCY PROCUREMENT ISSUES FOR A&E FIRMS

Rev. 10-03-14

A&E challenges with contracting with transit properties

1. Rate caps
2. No escalation in rates
3. Decline in profit margin – 10% to 6 – 8%. Clients ask for lower profit margins during the contracting process at the same time that A&E services are becoming much more complex. There is a misalignment with profit and risk.
4. Inconsistent guidance from the different FTA regions creates contracting confusion.
5. Transit clients' reluctance to deviate from FTA web site contracting terms due to fear of impact on their FTA grants.
6. "On-calls", consultant "benches" and IDIQ's for planning and engineering firms with multiple firms. Clients ask multiple eligible firms on list to bid on task orders. Since these firms have been pre-qualified as to value, this type of competition on task orders results in competition based on price not value.
7. Lack of trust between client and consultant. Results in win/loss approach rather than collaboration.
8. Negotiating contract terms and conditions at the same time as scope and fee. Since there is often difficulty closing the scope and fee negotiations, the client is reluctant to address at the same time any requested changes in contract terms and conditions.
9. Transit agencies' paradigm is different than with DOTs. Transit agencies need substantial outside resources to sustain their operations and therefore the funding agencies have more control. DOT's are self-sustained with the gas tax and therefore have more control themselves. Therefore the DOT's seem to have more flexibility in negotiating contract terms.
10. Cost of proposals when agencies required technical and oral proposals on small contracts
11. Broadening of indemnification clauses
12. Slow/delayed payments
13. Exclusions from OH rates that are stricter than FTA

Suggestions

1. Have conversations (clients, A&E's and FTA) more broadly with FTA about how we can contract around value and risk and aligning that with the contracts and the clients expected outcomes
 - a. Less experienced transit properties want to save a lot on A&E's up front so they can add more dollars to construction and O&M. but need to think of A&E in the total lifecycle costs of the project – why not leverage the best resources to leverage the rest – 10% A&E work leverages 90% of the remaining project.
 - b. Important to have A&E's in dialogue so that our ideas can be discussed, such as contracting partnering sessions.
 - c. FTA has a contracting web site. Rather than first defer to its web site, FTA should talk about the specific issue with more active discussion and partnering.

2. Need more partnering for the scope and fee so that the contracting/business terms can be better negotiated.
3. The negotiation of the profit margin should depend on risk.
 - a. Most agencies require consultants to use the Federal Acquisition Regulation (FAR) rate, which means that agencies cannot negotiate an A&E's overhead. But they should negotiate profit margin.
 - b. Clients should reward firms that better manage their overhead.
4. Education about what clients are asking consultants to perform, because A&E services are much more complex with additional specialty services than even 5 years ago. The current contracting documents do not recognize today's project environment.
5. Leverage a national organization (e.g., APTA, ACEC and BMBG) on procurement changes.

ATTACHMENT

3

1 "(2) A recipient may transfer amounts under paragraph (1) to existing
2 local training programs supported by the Secretary, the U.S. Department of Labor, and
3 the U.S. Department of Education."

4 (b) CONFORMING AMENDMENT.--The analysis for chapter 53 is amended by
5 striking the item relating to section 5322 and inserting the following:

6 "5322. Workforce development programs."

7 **SEC. 3006. GENERAL PROVISIONS.**

8 Section 5323 is amended--

9 (1) In subsection (i), by redesignating paragraphs (1) and (2) as (2) and
10 (3), respectively and inserting a new paragraph (1) to read as follows:

11 "(1) ACQUISITION OF BASE-MODEL BUSES.--A grant for the
12 acquisition of a base-model bus for use in public transportation may be up to 85
13 percent of the net project cost.";

14 (2) in subsection (j),

15 (A) by revising paragraph (2)(C) to read as follows:

16 "(C) ROLLING STOCK PROCUREMENT.--When procuring
17 rolling stock (including train control, communication, traction power
18 equipment, and rolling stock prototypes) under this chapter--

19 "(i) the cost of components and subcomponents produced in the
20 United States--

21 "(I) for fiscal year 2015 is more than 60 percent of the cost of all
22 components of the rolling stock;

23 "(II) for fiscal year 2016 is more than 70 percent of the cost of all
24 components of the rolling stock;

25 "(III) for fiscal year 2017 is more than 80 percent of the cost of all
26 components of the rolling stock; and

27 "(IV) for fiscal year 2018 is more than 90 percent of the cost of all
28 components of the rolling stock;" and

29 "(ii) final assembly of the rolling stock, including rolling stock
30 prototypes, has occurred in the United States; or ";

1 (B) by redesignating paragraphs (3) through (9) as paragraphs (4) through
2 (10), respectively; and

3 (C) by inserting a new paragraph (3) following paragraph (2), to read as
4 follows:

5 "(3) ROLLING STOCK COST AND ASSEMBLY.--Beginning in fiscal
6 year 2019, when procuring rolling stock, including rolling stock prototypes, the
7 cost of the components and subcomponents produced in the United States shall be
8 100 percent and final assembly shall occur in the United States."; and

9 (3) by inserting a new subsection at the end to read as follows:

10 "(s) VALUE CAPTURE REVENUE ELIGIBLE FOR LOCAL SHARE. --

11 Notwithstanding any other provision of law, a recipient of assistance under this chapter
12 may use the revenue generated from value capture financing mechanisms as local
13 matching funds for capital projects and operating costs eligible under this chapter."

14 **SEC. 3007. PUBLIC TRANSPORTATION LOCAL HIRING.**

15 (a) CONTRACT REQUIREMENTS.--Section 5325 is amended--

16 (1) in subsection (a) by striking "Recipients of assistance" and inserting
17 "Except as provided in subsections (k) and (l), recipients of assistance";

18 (2) in subsection (h), by striking "A grant awarded" and inserting "Except
19 as provided in subsections (k) and (l), a grant awarded"; and

20 (3) by inserting a new subsection (l) at the end to read as follows:

21 "(l) LOCAL HIRING.--

22 "(1) IN GENERAL.--A recipient of assistance may post job opportunities
23 on State job banks and with One Stop Centers established under the Workforce
24 Investment Act, and may advertise and award a contract for construction
25 containing requirements for the employment of individuals residing in or adjacent
26 to any of the areas in which the work to be performed is for construction work
27 required under the contract, provided that--

28 "(A) all or part of the construction work performed under the
29 contract occurs in an area that has

30 "(i) a per capita income of 80 percent or less of the national
31 average; or