



# Citizens' Oversight Committee Meeting Minutes

<b>Meeting No. 4 – Scheduled Meeting</b>	<b>Meeting Date</b> January 6, 2009			
<b>Meeting Time</b> 4:30 – 5:55 p.m.	<b>Recorded By</b> A. Charles			
<b>Attendees:</b> <table style="width: 100%; border: none;"> <tr> <td style="width: 33%; vertical-align: top;"> <b>Current Members:</b>  Amin Almuti  H. Andy Franklin  Linda Lautenberger  Elmo Wedderburn  James Zumwalt </td> <td style="width: 33%; vertical-align: top;"> <b>Alternates:</b>  Bob Barksdale  Larry Donovan  William Kaplan </td> <td style="width: 33%; vertical-align: top;"> <b>Staff:</b>  Angela Charles  Tom Horton  Oji Kanu  Kathy Mayo  Molly McArthur </td> </tr> </table>		<b>Current Members:</b> Amin Almuti H. Andy Franklin Linda Lautenberger Elmo Wedderburn James Zumwalt	<b>Alternates:</b> Bob Barksdale Larry Donovan William Kaplan	<b>Staff:</b> Angela Charles Tom Horton Oji Kanu Kathy Mayo Molly McArthur
<b>Current Members:</b> Amin Almuti H. Andy Franklin Linda Lautenberger Elmo Wedderburn James Zumwalt	<b>Alternates:</b> Bob Barksdale Larry Donovan William Kaplan	<b>Staff:</b> Angela Charles Tom Horton Oji Kanu Kathy Mayo Molly McArthur		
<b>Agenda Item</b>	<b>Action Taken</b>			
<i>Welcome &amp; Introduction</i>	Introduction of Members, Alternates, and Staff present.			
<i>Public Comment</i>	No comments.			
<i>Review of Administrative Matters</i>	The COC members reviewed the minutes from the October 14, 2008 meeting. It was noted that on page 5, last paragraph, second to last sentence the word “appropriately” should be added to read “if the funds are being spent appropriately”. The committee members voted unanimously to approve the corrected minutes for posting on the BART website.			
<i>Presentation by Procurement Department</i>	<p>Oji Kanu, Manager of Contract Administration, provided an overview of the procurement process. The procurement process is driven by the Procurement Manual. There are four phases of the process, Pre Advertisement, Pre Bid, Pre Award and Post Award.</p> <p>In the Pre Advertisement phase, the Project is identified. A kickoff meeting is held with the designers, engineers, Insurance Department, and Procurement Department to strategize the method for the contract, design build, design bid build, etc.</p>			



## Citizens' Oversight Committee Meeting Minutes

At the 95% submittal the project is brought back to Procurement. Based on the funding source being used (Federal vs. non-Federal), the boiler plate to be used in the contract documents is determined. At 95% the project is also reviewed by the Insurance Department and Office of Civil Rights.

At the 100% submittal, the contract book is sent to BART Legal. The contract cannot be advertised until Legal review is complete.

In the Pre Bid phase, advertisements are placed in the Daily Constructor and other media sources. Advance notice is sent to bidders using a mailing list that is arranged by license or category. The notice is sent to all the contractors listed in the category for the contract. The advertisement information is also posted on the BART website and sent to 18 plan rooms for prospective bidders. A Pre Bid meeting is held where BART staff explains critical elements of the contract requirements, such as insurance and bonding, DBE program requirements and the scope. This is also an opportunity for primes and subs to network.

In the Pre Award Phase, the bids are received. Contracts over \$10K are advertised. All contracts over \$100K require Board action. The District Secretary receives all of the bids and publicly opens them. They are then reviewed by the staff. A COC member asked if the Board approval of the contract award is a public process. Staff confirmed that it is. An Executive Decision Document, or EDD, goes



## Citizens' Oversight Committee Meeting Minutes

through a review process before going to the Board for action. A COC member asked if contractors can appeal the decision at the Board. Staff indicated that the appeal is not done at the Board. A contractor can submit a Pre Bid protest concerning the content of the Bid Documents and a Pre Award protest concerning the Board's action authorizing staff to award the contract.

Award of the contract is subject to the District protest period. If the contract is federally funded it is also subject to appeal to the sponsoring federal agency. Notice of Intent to Award is sent to all bidders, initiating the protest period.

In the Post Award phase, if there is no protest, a Notice of Award is issued. Award of the contract is not made until a signed notice is received from the General Manager. The contractor then has 10 days to bring in bond and insurance documentation. The documents are then reviewed by the Legal Department. A COC member asked if companies can prequalify for bond and insurance. Staff indicated that this is not allowed. After the documents are reviewed by BART Legal, NTP is issued and then the contract is turned over to the project team. A COC member asked who administers the contract during the Post Award phase. Staff indicated that after the contract is executed it returns to project. NTP is issued and a Resident Engineer, or RE, is assigned. A COC member asked if the RE has contact administration authority. Staff indicated that the contract names the project manager as the authority and he delegates to the RE. Any change order over \$100K must be reviewed by project staff and BART Legal. Anything



## Citizens' Oversight Committee Meeting Minutes

	<p>over \$200K must go to the Board for approval.</p> <p>A COC member asked if the Procurement Department is involved with the project or has a role to play in early design. Staff indicated that Procurement does not have a lot of involvement in the early design. The technical side is left to the project team and Procurement handles the administrative side.</p>
<p><i>Subcommittee Recommendation</i></p>	<p>Molly McArthur provided an overview of the recommendation for sub committees for the Citizens' Oversight Committee. Staff is recommending the creation of Ad Hoc Subcommittees for specific issues. The COC Chairman would nominate two members of the COC for each Ad Hoc Subcommittee. The Ad Hoc Subcommittee would attend a site visit or view materials and report back to the Committee. The Ad Hoc Subcommittee would be dissolved after reporting back to the Committee and re-nominated as needed.</p> <p>If needed, separate subcommittees can be established to review different components of an issue. For example, if a construction contract has both seismic and general engineering interest, subcommittees of two members can be created for each area.</p> <p>A COC Member asked if this format would conflict with the Brown Act. Staff responded that it would not; there is no quorum with only two members.</p> <p>A COC Member commented that the format sounds good, but</p>



## Citizens' Oversight Committee Meeting Minutes

suggested that Members have the opportunity to interface or have a presentation with the engineers for the underground and above ground contracts. The COC Member would like to know how the contractors are interfacing with the technical community and how the construction manager is working with contractors. The COC Member indicated that he would like to hear from the technical people how they are working with the subs. Staff indicated that this would involve bringing the consultant staff to the COC meetings. While it may be possible to have the construction managers attend a COC meeting, making a presentation is not in their current scope of work. A COC Member asked if this might fall under their obligation to report to BART. Staff indicated that this might be doable and that the construction update might cover it. The COC Member commented that it might be better for the construction manager to come to the Committee to answer their questions rather than having the Committee go out to the field.

Staff asked if the Ad Hoc Subcommittee recommendation seemed to be workable. A COC Alternate asked if this would satisfy the issue with the Brown Act. A COC Member expressed concern regarding working around the Brown Act. Since the COC will be meeting throughout 2009 there is no rush to get information. The COC Member indicated that he would be willing to wait to get information at the full Committee. Site visit management might be the only reason to have an Ad Hoc Subcommittee. The Member commented that he would vote for two members for site visits, but would not agree with



## Citizens' Oversight Committee Meeting Minutes

	<p>Ad Hoc Subcommittee for other issues. Staff indicated that the Subcommittee would make a presentation to the full committee after meeting separately. The COC Member indicated that he would rather have the information first hand.</p> <p>Staff asked if it would be preferable to have a presentation on a topic then have an Ad Hoc Subcommittee created if needed. There was general concurrence with this method. The COC Members and Alternates were in agreement on the creation of Ad Hoc Subcommittees. Staff will prepare procedures for the Ad Hoc Subcommittees.</p>
<i>Additional Operability Retrofits Presentation</i>	<p>Tom Horton provided an overview of a presentation scheduled to be given to the BART Board on January 8, 2009 regarding Additional Operability Retrofits for the BART System. In 2002 the BART Board chose a reduced operability retrofit option, and told staff to find a way to do more operability. In 2004 Regional Measure 2 and the general obligation bond funds were approved, which fully funded the program with operability in the core system. In 2005 environmental clearance was completed for outside of the core for safety only. From 2005 to 2008 the program has generated a substantial cost savings and the program is in the black. The amount available is insufficient to upgrade the entire system, but additional operability level retrofits can be completed with the funds available.</p> <p>A COC Alternate commented that the program team must be anticipating that bids will continue to come in between 25-30% below</p>



## Citizens' Oversight Committee Meeting Minutes

the engineers estimate.

The program team created three alternatives for additional operability retrofits that BART could afford and that would gain something substantial.

A COC Member asked if the team has calculated a break even time line in cost revenue. If you spend more to get a better system have you figured out how long to break even? Staff responded that the primary benefit of the earthquake retrofits is not revenue generation for BART but reduced impact to the community due to getting BART back in operation sooner. Staff has not attempted a cost benefit analysis of this factor.

A COC Member asked if the Fremont line had been considered for operability upgrades. Staff responded that it had, but that it was too expensive due to the number of piers involved.

A COC Member asked if there was any environmental risk. If you do a higher level of environmental clearance would other agencies possibly decide additional clearance would be needed? Staff indicated that this had been discussed with the environmental consultant and is one of the factors to be presented to the Board for its decision.

A COC Member asked if there was any chance of additional environmental work jeopardizing the work already done. Staff



## Citizens' Oversight Committee Meeting Minutes

responded that according to our Federal government sources the additional environmental study for the additional work will not affect other parts of the program. The program only has to review additional work, not work already done.

A COC Member asked if the Alternative that staff is recommending would be advertised as one contract or two separate contracts. Staff indicated that there would likely be several contracts.

A COC Member expressed concerns regarding the economically challenged people living in the areas not being addressed, particularly between Lake Merritt and the Coliseum. Staff responded that it was not economically feasible to retrofit the part of the system. Retrofits from Lake Merritt to Coliseum alone are estimated at over \$220 million.

A COC Member asked if the soils were part of the reason for the great expense along the Fremont line. Staff confirmed that along A-Line the soils were bad.

A COC Member asked if increasing the column footing could be avoided by weakening the column. Staff responded that weakening the column was considered and rejected because the rebar is close together, and it was difficult to determine the exact location of column reinforcement. BART's Chief Engineer wants to protect the foundation because if the existing piles break, it would affect train operation, and





## Citizens' Oversight Committee Meeting Minutes

BART would have no way of knowing if the foundation is intact.

A COC Member asked if the modified operability retrofit area is the C-Line. Staff indicated that the C Line is included, and that after a Hayward Fault event BART will be able to operate between the Concord Station, or from the Pittsburg/Bay Point Station to the Berkeley Hills Tunnel with the option. C-line is the highest ridership line.

A COC Member asked where BART would get funding needed to repair damage due to an earthquake. Staff indicated that BART is self insured and would look to FEMA for additional funds.

A COC Member asked about the retrofit to the Berkeley Hills Tunnel. Staff indicated that it could find no feasible retrofit for the tunnel due to the difficulty of remaining the tunnel and the impact that the work would have on train operations. BART has a concept level design for post-earthquake repair of the Berkeley Hills Tunnel.

COC Members and Alternates indicated that the additional operability retrofits would be an excellent use of the money.

A COC Alternate asked if there any Board members had expressed opinions (prior to the Board meeting) regarding the additional retrofits. Staff indicated that there has been intensive outreach to the Board, and some members actually like what we're doing. Several are



## Citizens' Oversight Committee Meeting Minutes

	<p>reluctantly agreeing.</p> <p>A COC Alternate asked if an analysis had been done of the number of people impacted and of the cost benefit due to the additional retrofits. Staff responded that there hasn't been analysis to that level.</p>
<i>Project Update</i>	<p>Project staff provided an overview of project progress to date. A COC member asked about the requirement to revalidate the environmental clearance when contracts are issued. Staff replied that at the construction phase, the federal funding agencies require that environmental activity be revalidated before a contract is advertised. The revalidation is pretty routine unless there is a major change to the contract. A COC member indicated that this type of requirement would be helpful for the COC to know about, as it could potentially cause a delay to the schedule. A COC member asked if any large changes were expected that could create a problem with the environmental clearance. Staff indicated that there was nothing anticipated that would do that. BART took an approach to be conservative during the environmental review. They estimated for the greatest environmental impact. Having less impact is not a problem.</p> <p>A COC member asked if the Rockridge, West Oakland, and the Underground Stations were all separate contracts. Staff indicated that they are separate contracts. A COC member asked how many stations are included in the Underground Stations contract. Staff clarified that two stations - the Muni Church Street Station, which is owned by</p>



## Citizens' Oversight Committee Meeting Minutes

BART, and the Lake Merritt Station – are underground and the MacArthur Station tracks are on a berm. A COC member asked what type of upgrade is being done on the underground stations. Staff responded that the retrofit is mostly wrapping columns.

A COC member asked if the LMA Dismantling project is part of the scope of the job and is funded with Bond Funds. Staff confirmed that it is partially funded by the bond funds. A COC member asked how the removal of the radio tower was related to the Earthquake Safety program. Staff clarified that the removal of the radio tower is necessary because the tower sat atop LMA, and LMA was found to be seismically unsafe. The tower provides radio coverage for the entire system, so it had to be relocated. Staff further explained that the retrofit for this building is to remove it, as it was not cost effective to retrofit.

A COC member asked about quality checking and how the committee can ensure that is being done. Staff responded that quality checking during design is performed by the general engineering consultant. BART also reviews the design in-house and the construction manager is often brought in early to review for constructability. During construction, the contractor does all of the QC. BART retains quality assurance consultants to ensure that quality control is working. A COC member asked for clarification regarding the separation of the company providing quality assurance and the contractor. Staff clarified that the QA consultants work for the construction



## Citizens' Oversight Committee Meeting Minutes

	<p>management consultants, which are hired directly by BART. They are further separated from the RE, since the RE works with the contractor to maintain cost and schedule. The QA consultant works for the project manager. A COC member commented that the QA/QC process could be a topic for discussion at a future meeting.</p> <p>A COC member asked if properties would be acquired or leased as part of the ROW. Staff responded that there are temporary acquisitions or access rights, depending on the area. In some cases there are leases, as with Caltrans for lay down areas. A COC member asked if the temporary acquisitions are with residents or with cities. Staff responded that there are both residential and city properties involved. A COC member asked if the rights are handled by Procurement or Legal. Staff responded that there is a department for Real Estate, which does acquisitions as well as protects BART's property rights.</p> <p>A COC member asked who is paying for the advanced utility relocations and how the rates are being estimated. Staff responded that BART is paying for the relocations and the utilities generally have established rates for this kind of work. BART has an ongoing master contract with agencies such as PG&amp;E. A COC member asked if they were going to be able to meet the schedule. Staff indicated that to date they have been meeting the schedule.</p>
<i>Financial Report</i>	The project has expended \$122 million in bond funds. The third and final tranch will most likely be issued next year.



## Citizens' Oversight Committee Meeting Minutes

A COC member asked what is the encumbered amount, or total amount that BART has contracted for construction. Staff estimated that it was around \$100 million. The COC member asked if this included soft costs or if it was just construction. Staff confirmed that this is just construction.

A COC member asked how BART was finding the bidding climate. Staff responded that the climate is very favorable. On the last contract advertised, BART had 12 bidders on a \$50 million contract. The engineer's estimate was \$50.6 million and there were six bids below \$40 million. The COC member asked if in light of the credit crisis if any of the contractors are talking about difficulties with getting bonding. Staff responded that there has not been any indication of that. The COC member asked about the solvency of the bonding companies. Staff responded that they haven't heard anything about any issues with bonding companies, but BART will keep track of this for the future. A COC alternate asked if there was a 10% contingency of \$3.5 million kept in the budget for the contract last advertised. Staff responded that it was a 15% contingency. The COC alternate asked if when BART showed the committed project it would indicate \$38 million rather than \$33.4 million. Staff confirmed that this is correct.

Staff reported that there is some slippage in the design schedules. So far this is not anticipated to impact program completion, because the construction durations can be reduced. Currently it appears that some



## Citizens' Oversight Committee Meeting Minutes

of the projects will finish earlier than expected. A COC member asked if there was something systemic in the design that was causing the delays. Staff responded that the program initially did not allocate sufficient time for right of way acquisition, and that this is now included in design.

Staff reported that due to the favorable bidding climate the project is increasing the management reserve, which is up to \$158 million. Staff also reported that it appears that the project will be substantially under budget. This will provide an opportunity for BART to extend the operability retrofits and make good use of the under runs. A COC member asked if the bond measure allows for use of funds for this. Staff responded that it provides the flexibility to do so. A COC member asked if the recovery period for the core is 90 days. Staff responded that it is estimated at 2-3 weeks, using some very robust earthquakes as the model.

A COC member asked if on the program cost section of the Bond Financial report it would be possible to add line items for litigation and settlements. Staff indicated that it would be possible to have the line added; however, there is no litigation currently for the project. The COC member asked if it would be necessary to add a line for overtime on the construction section. Staff responded that the construction contracts are fixed-price and would not incur overtime.

A COC member asked if the cost saving research done with U.C.



## Citizens' Oversight Committee Meeting Minutes

	<p>Berkeley on retaining walls has saved a significant amount of money. Staff responded that the work has mostly resulted in avoidance of additional cost, since it validated BART's approach to the retaining wall issue. The study was paid for in part by the BART to San Jose project, and they have been able to reduce some costs based on the study's results.</p> <p>Staff provided a review of the Contracting Status Report and the Anticipated Cash Flow Graph requested at the last meeting.</p>
<i>New Business Items</i>	None.
<i>Selection of Future Meeting Time and Date</i>	The next COC meeting is scheduled for Tuesday, April 7, 2009.
<i>Request to Add Items to Future Agenda</i>	<ol style="list-style-type: none"><li>1) Overview of Procurement Department</li><li>2) Subcommittee recommendations</li><li>3) Overview of investment of the bond funds by Controller/Treasurer</li><li>4) Overview of the funding project funding plan</li></ol>
<i>Public Comment</i>	No comments.
<i>Adjournment</i>	Meeting was adjourned at approximately 5:55 p.m.