

**MINUTES OF SPECIAL BOARD MEETING
OF
SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY
MAY 28, 2015**

The Special Meeting of the Board of the Southeastern Pennsylvania Transportation Authority was held on Thursday, May 28, 2015 at 3:09 PM, in the Board Room of the Authority, with the Chairman in the Chair.

Present

Attending the meeting were the following Board Members:

Pasquale T. Deon, Sr., Chairman
Thomas E. Babcock Vice Chairman
Beverly Coleman
Rina Cutler
Honorable Dwight Evans
Robert D. Fox, Esquire
Honorable Stewart J. Greenleaf
Kevin L. Johnson, P.E.
John I. Kane (via telephone)
Daniel J. Kubik
Kenneth E. Lawrence, Jr.
William J. Leonard, Esquire
William M. McSwain, Esquire (via telephone)
Honorable Michael A. Vereb

Present from the staff:

Joseph M. Casey, General Manager
Jeffrey D. Knueppel, Deputy General Manager
Gino J. Benedetti, Esquire, General Counsel
Richard G. Burnfield, Chief Financial Officer/Treasurer
Stephen A. Jobs, Controller
Carol R. Looby, Secretary
Kim Scott Heinle, AGM, Customer Service
Ronald G. Hopkins, AGM, Operations
Francis E. Kelly, AGM, Government & Public Affairs

Mr. Deon called the Special Meeting of the Board to order. The Pledge of Allegiance was observed.

Mr. Deon announced that John Kane and Bill McSwain would be participating by telephone.

Mr. Deon stated that the Board met in Executive Session just prior to the meeting to discuss legal matters.

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Mr. Deon then asked Gino Benedetti to present the following resolution,

"A. Second Amendment to the Contract with Titan Outdoor LLC for Transit and Railroad Advertising Services"

Mr. Benedetti stated that the purpose of the amendment was to obtain the Board's authorization to execute a second amendment to set the contract with Titan Outdoor LLC concerning transit and railroad advertising.

Mr. Benedetti stated that the amendment changed the advertising standards in the contract in response to recent court decisions concerning free speech rights for advertisers. He stated that based upon those recent court decisions, the amendment changed the following advertising standards:

"It clarifies and reemphasizes SEPTA's intent that the space used for advertising is a non-public forum not open for public discourse or debate or rather a revenue source designed to enhance our passengers experience;"

"It prohibits political or opinion advertisements;"

"It prohibits false advertisements and any advertisements that disparage or offend any person;"

"It prohibits any advertisements that incite lawless actions or breaches in the public peace;"

"It prohibits advertising concerning any illegal activity;"

"It prohibits advertising concerning tobacco or firearm products."

"It prohibits any advertising that threatens or adversely affect the public image of SEPTA; and

"It requires the advertisers to protect SEPTA against any claim brought against SEPTA based upon the advertisement."

Mr. Benedetti stated that staff was requesting the Board to authorize and adopt the Resolution.

In response to Mr. Deon, Mr. Kane acknowledged his presence.

Mr. Deon then called for speakers wishing to address the above agenda item.

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Speakers

Justin Kweder, Esquire

Mr. Kweder introduced himself to the Board and said he was an attorney in Philadelphia. He said that he deals with civil liberty issues, especially freedom of speech issues.

Mr. Kweder stated that the agenda item being proposed pertains to free speech in Philadelphia and in America and he stated was a very broad subject. He said that he would like to present some philosophical broad sight to the Board and to make the Board aware of some of the predictable practical consequences of what the adoption of this language meant, as well as the pools of risk that the Board would be creating that would face the Authority in the future if this language was adopted.

Mr. Kweder stated that the proposed language would create a sea change for what SEPTA had done with its advertising space. He stated that for decades, literally for generations, SEPTA had held its advertising space out to the public as a designated public forum. He stated that this term, designated public form, was not something that he made up. He said it is a term of art, and it has been recognized by the Third Circuit. Mr. Kweder stated that it was reiterated again in the case that brought people here last year.

Mr. Kweder stated that what the language has done was to close that public forum, which he said has existed for many, many years. He stated there were people in this city, in this state, in this region and in this country who truly believe in the importance of these public forums. He stated that if the language would be changed, it would be challenged in the form of constitutional challenges in the federal courts, in the state courts, in front of boards. Mr. Kweder stated it would be challenged on as many fronts as possible, and as many ways as possible, and in as many venues as possible. He mentioned that it would cost the Authority a tremendous amount of money just to defend it, which would be a cost. Mr. Kweder commented that assuming that SEPTA would win those challenges, those challenges that would drag on for many years because they deal with very difficult issues of free speech, form and due process. Mr. Kweder predicted the cost to the Authority would be tens of thousands, if not hundreds of thousands, of dollars, if not millions of dollars, in just legal fees alone. He stated that even more problematic pool of risk that the Authority would face was that those who would challenge the closing of this forum would go after the Authority's advertisers. Mr. Kweder said that if this scheme that the Authority was trying to put in place, the closing the forum, was to be upheld by the court through these challenges, then the content of the advertising on all of SEPTA's property must be completely and utterly viewpoint-neutral, and nearly stripped of all content.

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Mr. Kweder closed by saying that by adopting this language, the Authority was creating the possibility that any ad that was rejected and approved by the censor at SEPTA would become actionable. He said that those actions could take the form of federal lawsuits for civil rights discrimination.

Lorraine Brill

Ms. Lorraine Brill approached the podium and said that she previously was on SEPTA's Citizen Board. She mentioned that for many years she represented her group at public hearings. Ms. Brill stated that she did not know what the Resolution that was being discussed, but she said that anything that takes away the public hearings was not a good thing.

Ms. Brill stated that if what one reads what all the judges do when they check the public hearings and all the things that were said, we do not want to lose the importance of public hearings. She stated she was unsure what the Board was voting on, but she said that we do not want to lose the public hearings.

In response to Ms. Brill's statement and in response to Mr. Deon, Mr. Benedetti stated that the Resolution does not affect the Authority's public hearing process.

Chairman Deon then entertained a motion to adopt the Resolution. Ms. Cutler moved, Mr. Kane seconded, and the following Resolution was unanimously adopted.

A. SECOND AMENDMENT TO THE CONTRACT WITH TITAN OUTDOOR LLC FOR TRANSIT AND RAILROAD ADVERTISING SERVICES

"WHEREAS, on April 24, 2014 the Board authorized SEPTA to award a contract ("Contract") to Titan Outdoor, LLC ("Titan") under which Titan sells transit and railroad advertising which is placed upon SEPTA's vehicles (interiors and exteriors of buses, trackless trolleys, and light rail vehicles; and commuter railroad cars), facilities and stations; and

WHEREAS, on October 23, 2014 the Board authorized the parties to enter into a first amendment to the Contract to address advertisements with political content and/or that pertain to political activities; and

WHEREAS, in light of recent court decisions pertaining to advertising standards and First Amendment constitutional issues, staff has recommended that SEPTA enter into a proposed second amendment ("Second Amendment") to the Contract with respect to (i) property allocated for advertising being "non-public forums; and (ii) that SEPTA will retain strict control over the nature of the all new advertisements accepted for posting; and

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WHEREAS, under the proposed Second Amendment to the Contract certain advertising content would be prohibited, including, but not limited to, advertisements (i) promoting or opposing a political party, or are political in nature or contain political messages; (ii) expressing or advocating an opinion, position or viewpoint about economic, political, religious, historical or social issues; (iii) contain material that is false or would constitute a tort of defamation or invasion of privacy; (iv) that are intended to be disparaging, disreputable or disrespectful to any persons, groups, businesses or organizations; (v) that are directed at a person or group that is so insulting, degrading or offensive as to be reasonably foreseeable that it will incite or otherwise produce lawless action; (vi) that pertains to illegal activity; (vii) that promotes the sale or use of tobacco; (viii) that threatens the public image of SEPTA; and (ix) promotes the sale of firearms; and

WHEREAS, the proposed Second Amendment will also implement an indemnification clause in favor of SEPTA for any amounts the Authority is required to pay as a result of defending lawsuits occasioned by advertising; and

WHEREAS, staff requested that the General Manager recommend that the Board authorize SEPTA to enter into the proposed Second Amendment of the Contract with Titan under the terms set forth above and more fully described in the pertinent staff summary; and

WHEREAS, the General Manager made the recommendation.

NOW, THEREFORE, BE IT RESOLVED, that the Board hereby authorizes SEPTA to execute the proposed Second Amendment to the Contract for Transit and Rail Advertising with Titan Outdoor, LLC under the terms and conditions set forth above and more fully described in the pertinent staff summary.

FURTHER RESOLVED, that the Board hereby authorizes the General Manager to execute all documents, in form approved by the Office of General Counsel, and to do any and all other things which are necessary and proper in order to effectuate the purpose of this Resolution."

Mr. Deon then asked Jeffrey Knueppel to present the following two Resolutions:

B. Award of a Contract Pursuant to a Request for Proposals

- 1. To Siemens Industry, Inc., for the purchase of 13 high speed electric locomotives, for a total contract amount (including the option) not to exceed \$154,394,083.**

C. Authorization to Award a Contract for A Procurement

1. To E. R. Stuebner, Inc., for general construction services, for a total contract amount not to exceed \$26,152,000; to Ray Angelini, Inc., for electrical construction services, for a total contract amount not to exceed \$2,432,392; and to Guy M. Cooper, Inc., for mechanical construction services, for a total contract amount not to exceed \$1,020,950, for the provision of all labor, materials, tools and equipment for the Lansdale Parking Garage and Area Improvement Project.

Mr. Knueppel said the purpose of this request was to obtain Board authorization to award a contract for the purchase of thirteen (13) high-speed electric locomotives and to obtain authorization to award an option order of up to five additional high-speed electric locomotives if SEPTA elected to exercise all or part of the option. He noted that SEPTA required the purchase of these high-speed, high performance electric locomotives to enable the retirement of the Authority's current fleet of seven AEMm-7 electric locomotives and the eventual retirement of one ALP-4 locomotive.

Mr. Knueppel commented that the Authority's current fleet of seven AEM-7's was 28 years old and that they have reached the end of their useful life, while the one ALP-44 locomotive was currently 20 years old.

Mr. Knueppel noted that the Authority's regional rail ridership had increased approximately 50 percent over the last 15 years and that replacing the eight locomotives with up to 18 new locomotives would enable SEPTA to increase service capacity on its regional rail lines. He stated that this would be done in conjunction with the Authority's planned purchase later this year for up to 55 new multi-level rail cars. He noted that the new locomotives would have significantly better acceleration and tractive effort characteristics than the current locomotives and would typically be used on express and limited trains.

Mr. Knueppel reported that in December 2014 SEPTA solicited proposals for the base order of 13 locomotives with an option to purchase up to five additional locomotives. He noted that one proposal, from Siemens Industry Inc., Mobility Division, was received by the April 10, 2015 due date. He reported that the proposal was independently rated based on technical merit by members of SEPTA's technical evaluation committee. He said the proposal evaluation criteria included technical approach, relevant experience and past performance, program management and manufacturing approach and testing, training and quality assurance approach. Mr. Knueppel said that upon concluding the technical proposal review it was determined that the proposal

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submitted was acceptable.

Mr. Knueppel mentioned that the only other viable proposer, Bombardier, did not submit a proposal because their production facility was overseas and they would not comply with Buy America. He noted that Siemens' initial pricing of \$163,357,268 for 18 locomotives, inclusive of publications and training, spare parts, special tools and diagnostics and test equipment was negotiated down approximately 16 percent to \$154,394,083, resulting in a cost savings of approximately \$9,000,000. Mr. Knueppel said the negotiated amount was within 1 percent of SEPTA's reconciled estimate.

Mr. Knueppel said this base order of locomotives, under the contract, was scheduled to be delivered from June 2018 through November 2018, with the option, should the Authority exercise it, to be delivered by January 2019.

Mr. Knueppel requested the Board's authorization to enter into this contract with Siemens Industry Inc., for the purchase of 13 locomotives and the option to purchase up to an additional five locomotives at a total amount not to exceed \$154,394,083.

Mr. Knueppel then presented the next agenda item. He stated the purpose of this request was to obtain Board authorization to award and execute three contracts for general, electrical and mechanical contractors for the Lansdale Parking Garage and Area Improvements Project. He mentioned that the three contractors would provide all labor, materials, tools and equipment related to the demolition and construction of the Lansdale Parking Garage and surrounding area. He noted that the work to be performed would include site preparation, installation of foundations, stormwater management systems, construction of a five-story precast parking garage and pedestrian overpass, foundations and structures, installations of elevators, stair towers, reconfigured surface parking lot, station area improvements including ADA accessible paths, parking control equipment and signage and installation of mechanical, plumbing and electrical systems, fire protection, hvac, led lighting, communications and security systems.

Mr. Knueppel reported that the bid opening for the three contracts was held on May 15th, and that three bids were received for general construction, five bids were received for electrical construction and four bids were received for mechanical construction. He noted that the lowest responsive and responsible bidders were E. R. Stuebner, Inc., for general construction, at a total amount not to exceed \$26,152,000; Ray Angelini, Inc., for electrical construction, at a total amount not to exceed \$2,432,392; and Guy M. Cooper, Inc., for mechanical construction, at a total amount not to exceed \$1,020,950. He said the DBE goal for this project was set at 18 percent for general construction, 11 percent for electrical construction and

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7 percent for mechanical construction, and that all contractors recommended for award of contracts have satisfactorily responded to the DBE goal.

Mr. Knueppel said the technical bid review meetings had been held with all contractors and all had exhibited a complete understanding of the project and confirmed availability of resources to staff the project. He noted that the general construction bid was within 1.2 percent of SEPTA's estimate and that the electrical bid was within 7.6 percent of SEPTA's reconciled estimate and that the mechanical bid was within 4.8 percent of SEPTA's estimate. He noted that construction was expected to be completed 548 calendar days after issuance of Notice to Proceed. Mr. Knueppel mentioned that the project would be funded by Act 89 "Rebuilding SEPTA for the Future" funds.

Mr. Knueppel requested the Board's authorization to enter into the contracts with E. R. Stuebner, Inc., for general construction, Ray Angelini, Inc., for electrical construction and Guy M. Cooper, for mechanical construction.

Mr. Deon then called for speakers wishing to address the above agenda items.

Speaker

Caleb Stone

Mr. Stone requested the usage of the new push-pool trains on local sets similar to New Jersey Transit's Montclair-Boonton Line. He noted that their stations were close together similar to SEPTA's stations.

Chairman Deon asked Mr. Knueppel to meet with Mr. Stone following the meeting.

Chairman Deon then entertained a motion to adopt the Resolutions. Ms. Cutler moved, Mr. Leonard seconded, and the following Resolutions were unanimously adopted.

B. AWARD OF A CONTRACT
PURSUANT TO A REQUEST FOR PROPOSALS

"WHEREAS, SEPTA, which has need for the services as described below, has advertised and solicited proposals from firms wishing to propose; and

WHEREAS, SEPTA staff has requested that the General Manager recommend that the Board authorize the award contracts to the firms listed below because said firms were the successful proposers in the areas for which the request for proposals was issued; and

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WHEREAS, the General Manager recommended that the Board authorize the award of the contracts.

NOW, THEREFORE, BE IT RESOLVED, that the Board hereby authorizes SEPTA to award subject to the following conditions and the General Manager to execute the following contracts, in form approved by the Office of General Counsel, subject to the concurrence of the funding agencies, if required, and contingent upon and subject to the proposers satisfactorily meeting all requirements of the terms and conditions of the relevant request for proposals, including the provision of any required insurance certificates and full compliance with any applicable Disadvantaged Business Enterprise (DBE) requirements:

1. To Siemens Industry, Inc., for the purchase of 13 high speed electric locomotives to replace the Authority's existing fleet of AEM-7 vehicles that are past their useful life, along with the option to order up to five additional locomotives to be exercised at the sole discretion of SEPTA, with delivery of the base order of vehicles scheduled from June 2018 through November 2018, as described in the staff summary on this subject, for a total contract amount (including the option) not to exceed \$154,394,083, Request for Proposal No. 14-237-JFK - High Speed Electric Locomotives."

C. AUTHORIZATION TO AWARD A CONTRACT FOR A PROCUREMENT

"WHEREAS, SEPTA advertised and invited bids for the supplies identified below; and

WHEREAS, the firm listed below was the lowest responsive and responsible bidder to the invitation for bids; and

WHEREAS, staff requested that the General Manager recommend that the Board authorize SEPTA to award the contract identified below; and

WHEREAS, the General Manager made the recommendation to the Board.

NOW, THEREFORE, BE IT RESOLVED, that the Board hereby authorizes SEPTA to award and for the General Manager or his designee to execute the contract identified below in form approved by the Office of General Counsel, subject to and contingent upon the concurrence of the funding agencies, if required, and contingent upon and subject to the vendor satisfactorily meeting all requirements of the bid terms and specifications, including full compliance with any applicable Disadvantaged Business Enterprise requirements:

1. To E. R. Stuebner, Inc., for general construction services, for a total contract amount not to exceed \$26,152,000; to Ray Angelini, Inc., for electrical construction services, for

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a total contract amount not to exceed \$2,432,392; and to Guy M. Cooper, Inc., for mechanical construction services, for a total contract amount not to exceed \$1,020,950, for the provision of all labor, materials, tools and equipment for the Lansdale Parking Garage and Area Improvement Project, with services to be performed over a period of 548 calendar days after issuance of Notice-to-Proceed, as described in the staff summary on this subject, Sealed Bid No. 15-072-MJP - Lansdale Parking Garage & Area Improvement Project."

Adjournment

There being no further business to come before the Board at this Special Meeting, it was moved by Ms. Cutler, seconded by Representative Evans and unanimously adopted that the meeting be adjourned at 3:23 PM.

A transcript of this meeting was made by an official court reporter and is made a part of the original minutes.

Carol R. Looby
Secretary