

MINUTES

**TRANSBAY TRANSIT CENTER PROGRAM
COST REVIEW COMMITTEE MEETING**

Friday, February 16, 2018

1:30 p.m. to 3:30 p.m.

TJPA Office
201 Mission Street, Suite 2100
San Francisco, CA

COMMITTEE MEMBERS

Ben Rosenfield, City and County of San Francisco (CCSF) Controller (Chair)
Steve Heminger, Executive Director of the Metropolitan Transportation Commission (MTC)
Mark Zabaneh, Executive Director of the Transbay Joint Powers Authority (TJPA)

Secretary
Michelle Dea

ORDER OF BUSINESS

1. Call to Order

The meeting was called to order at 1:31pm.

2. Roll Call

Present: Nadia Sesay (Alternate for Ben Rosenfield [Chair]), Mark Zabaneh, Steve Heminger

3. Action Item:

Approving the Minutes of the November 17, 2017 Meeting

There was no public comment.

Steve Heminger motioned to approve the minutes, seconded by Mark Zabaneh. The minutes of the November 17, 2017 meeting were approved without objection.

4. Discussion Item:

Status Updates from Planning Department and Office of Community Investment and Infrastructure (OCII) on Projects in the Redevelopment Area/Transit Center District

Ms. Sesay presented the item.

Ms. Sesay stated that based on feedback from the last Cost Review Committee (CRC), the handout now includes revenue sources broken down by components, indicating how many properties are needed for the following: the Transbay project (Phase 1), an additional \$150 million to fully fund the project, and repayment of the entire \$250 million amount, in the event that the full City loan amount is drawn. Ms. Sesay stated that based on what is currently known, the projects that are needed to help repay the loan for City Financing are on target and that expected completion is by year 2020. She stated that the estimated completion would be roughly three years from execution of the loan documents, which is a good timeframe.

There was no public comment.

5. Discussion Item:
Facility Readiness Update

Erika Elliot from TJPA's asset management team presented the Leasing Updates portion of the item.

Mr. Heminger questioned if there would be no permanent tenants until approximately one year after the transit center opens, based on the presentation. Ms. Elliot replied that after the ribbon-cutting ceremony, pop-up tenants will operate from 6 to 18 months, as permanent tenants open within that time period.

There was no public comment.

6. Discussion Item:
Program Budget and Construction Status Update

Dennis Turchon, TJPA Senior Construction Manager presented the item.

Mr. Turchon noted that the Substantial Completion date of June 1, 2018 moved from mid-May since the last CRC meeting. Mr. Heminger inquired about an August to September timeframe mentioned in a recent news article. Mr. Alameida clarified that the timeframe in the article was in reference to his comment during the February TJPA Board meeting, on his fears of transit readiness being pushed out to fall 2018. Mr. Alameida stated that the project team is pressuring the Construction Manager/General Contractor (CM/GC) to develop a recovery schedule and take additional measures to address subcontractor performance issues.

Mr. Heminger asked whether the project team has considered other measures such as termination for default, calling on a performance bond, or directing the CM/GC to terminate its electrical subcontractor. Mr. Alameida stated that the project team expects the responsibility to be on the CM/GC and its subcontractors. He further stated that liquidated damages have been assessed in accordance with the contract, after the CM/GC missed the Substantial Completion in December 2017. Mr. Alameida added that consequences could potentially be worse for TJPA if it intervened as suggested. In response to Mr. Heminger's comment on terminating the electrical subcontractor, Mr. Fremier, MTC Deputy Executive

Director for Operations, stated that TJPA is following Public Contract Code and that subcontractor substitutions go through a long arduous process.

Mr. Heminger inquired whether there are electricians employed by the City and County of San Francisco. Mr. Alameida replied that the City has a small building repairs and renovations group, but the City's electricians would not have adequate manpower to alleviate issues with the electrical work. He further stated that lack of or ineffective management by the CM/GC's electrical subcontractor has been the underlying issue.

Mr. Heminger inquired whether the contingency and reserves account for possible increases in compensation requests by the CM/GC due to the assessment of liquidated damages. He further stated that when the City and MTC established contributions to the project, there was an assumption that a risk management system was in place and that some figures were earmarked for risks. Mr. Alameida confirmed that the assumptions were correct. He stated that potential change orders and claims will be one of the drivers for changes to the Estimate at Completion (EAC). However, Mr. Alameida advised that the revised EAC should be viewed as an interim forecast because at the end of the project, the project team may back-charge the CM/GC for costs associated with the delays. Mr. Zabaneh stated that the project team is assessing the project needs because some contracts for soft costs will need to be extended due to the schedule delays. Mr. Zabaneh noted that the current EAC does not account for liquidated damages.

7. Discussion Item/Possible Action:
Funding Sources for Tenant Improvements

Sara DeBord, TJPA Chief Financial Officer (CFO), presented the item.

Ms. DeBord stated that the budget for base building and tenant improvements (TI) amount is approximately \$36 million. A fiscal year 18-19 operating budget forecast was presented, comparing forecasts from November 2017 and January 2018 and while the forecast was higher for base building and TI, that was due to schedule shifts, not an increase in the total amount of \$36 million. Ms. DeBord noted that if the January 2018 forecasted amounts materialized, then contributions would be required from AC Transit and San Francisco Municipal Transportation Agency (SFMTA) Ms. DeBord stated that packets provided to the committee include Letters of Support from bus operators, AC Transit and SFMTA, requesting the use of City Financing for the full amount of base building and TI.

Ms. DeBord stated that TJPA understood Chair Rosenfield's previous decision to defer the final decision until forecasted budgets are more solidified in spring 2018. She stated that the CRC previously provided an indication that \$25 million in City Financing could be used for base building and TI, and that TJPA wanted to confirm that it was acceptable to move forward with committing and expending the funding. Ms. Sesay stated that she was not present at the last CRC meeting and inquired if it was agreed upon to use the \$25 million. Secretary Dea stated that during the last meeting, the committee did not take an action on the agenda item, but provided an indication that \$25 million would be acceptable. Ms. Sesay stated that the committee would not take an action at this time.

Mr. Heminger asked how much AC Transit and SFMTA would need to contribute, if only \$25 million of the \$36 million request is approved. Ms. DeBord stated that if TJPA had to use other funding sources to cover the balance of the \$36 million, the costs would have to come from the transit operators. Mr. Heminger inquired if the contributions totaling to \$800,000 from both operators pair with a \$25 million or \$36 million budget for base building/TI. Ms. DeBord replied that it would pair with the \$25 million because less than \$25 million is needed for the next fiscal year. She stated that in fiscal year 2019-2020, the contributions would either increase significantly if only \$25 million is approved, or not as significantly, if \$36 million is approved.

Mr. Heminger asked if TJPA would draw from MTC's funding of \$100 million within the bridge loan, if either the \$25 million or \$36 million amount is approved. Mr. Zabaneh replied yes and stated that the Contingency Cost slide of the Construction Update notes the use of the \$93 million Program Reserve for building and tenant improvements. Mr. Zabaneh stated that when Chair Rosenfield gave an indication of future approval of the \$25 million amount during the last meeting, he also noted that there would be continued discussion on the remaining \$11 million. Ms. Sesay stated that based on previous communications with Chair Rosenfield, there are uncertainties with the \$11 million balance and that more information is needed in the coming weeks. She noted that Community Facilities District (CFD) funds cannot be used to repay funding spent on building and tenant improvements.

There were discussions between TJPA and the committee on de-obligating and re-obligating fund sources associated with the train box and the park. Mr. Heminger expressed discomfort with not taking an action regarding the building and tenant improvements. He inquired about the fund source for the \$25 million TI budget and asked what fund sources will be shifted. Ms. DeBord replied that there is a combination of local funds.

Mr. Heminger asked Mr. Zabaneh how much funding is currently needed to award contracts related to building improvements for the Greyhound and Amtrak spaces. Mr. Zabaneh replied that approximately \$1.5 million is the immediate need and TJPA will be receiving additional bids in the next several months for tenant improvements. Mr. Heminger questioned whether the committee should take action on a portion of the \$25 million amount for building and tenant improvements. It was determined that this item would be continued when Chair Rosenfield is present and a special meeting of the CRC would be held in March.

Public comment:

Chris Andrichak, AC Transit Director of Management and Budget, stated that AC Transit sent a letter to the TJPA, requesting the use of City Financing for TI. He stated that it would be unfortunate if AC Transit had to contribute funding and cancel service to Transbay. Mr. Andrichak expressed concerns with AC Transit's budget outlook for the next year and reiterated AC Transit's request to use City Financing for TI.

Greg Harper from the AC Transit Board and TJPA Board echoed Mr. Andrichak's request and stated that AC Transit has a meeting the next day and would like to schedule as much service as possible. Mr. Harper stated that the sooner that funding decisions are made, the sooner AC Transit can schedule services for Transbay.

8. Action Item:
Expenditure and Commitment of Proceeds of the City Financing that Require CRC Approval

Sara DeBord, TJPA CFO, presented the item.

Ms. DeBord stated that TJPA does not have a request for additional commitment or expenditure authority at this time. She stated that the committee previously authorized commitments up to \$175 million and cash draws up to \$145 million. To date, approximately \$144 million has been committed, and \$103 million has been drawn. Ms. DeBord stated that TJPA is not requesting draws as CFD proceeds are being used first. She stated that TJPA plans to provide an updated cash flow in the next meeting.

Mr. Zabaneh asked if contracts for TI can be awarded, based on the previous authorization. Ms. DeBord stated that TJPA could award the contracts within the previous \$175 million authorization, if that is acceptable to the committee. Ms. Sesay stated that TJPA already has authority to commit up to \$175 million and that no action is needed. Ms. DeBord stated that Ms. Sesay's direction was acceptable.

There was no public comment.

9. Discussion Item/Possible Action:
Opportunity to Comment on Contracts, Change Orders and Contract Amendments that Require CRC Review

Sara DeBord, TJPA CFO, and Dennis Turchon, TJPA Senior Construction Manager presented the item.

Mr. Heminger stated that TJPA has been requesting approval for the use of City Financing on additional legal costs every few months, with costs exceeding \$1 million per request. He asked if TJPA had a complete cost estimate for legal costs and when the services are expected to end. Mr. Zabaneh stated that a budget was presented to TJPA, however, the legal budget is confidential. Mr. Heminger requested a closed session for a briefing on the legal costs. Mr. Zabaneh replied that TJPA would discuss Mr. Heminger's request with legal counsel.

Mr. Heminger inquired about the construction change orders and asked if TJPA is proposing to use CM/GC Contingency for disputes related to the temporary facilities. Mr. Turchon stated that CM/GC Contingency can be used in the interim and that TJPA can attempt to recover costs from the responsibility party at a later time. Mr. Heminger asked if remaining CM/GC Contingency funds at the end of the project would be split between the CM/GC and TJPA. Mr. Turchon replied affirmatively.

Ms. Sesay inquired about a \$7.4 million line item in the Construction Changes Log for the transit center. Mr. Turchon stated that the \$7.4 million value is carried as an exposure for

electrical work and that TJPA has not determined merit for the amount provided by the CM/GC. Mr. Alameida added that this topic directly addresses Mr. Heminger's earlier question regarding carrying amounts for risk, and confirmed that TJPA has been carrying some amounts in the EAC for exposures that have been submitted by the CM/GC. Mr. Alameida stated that at the end of the project, TJPA will need to analyze whether any or some of the exposure will materialize. He stated that the \$7.4 million request is somewhat of a counterpoint to back-charges and liquidated damages assessed by TJPA.

Public Comment

Jim Patrick stated that AC Transit is a major customer who has indicated that it needed the financing to ensure adequate operations. Mr. Patrick expressed concerns with how the financing is being allocated. Mr. Patrick stated that he feels financing needs to be provided for building and tenant improvements and to not do so would be a dereliction of duty.

10. New Business

- Agenda for Next Meeting

Ms. Sesay stated that a special meeting needed to be scheduled. Mr. Heminger requested a closed session related to legal costs.

11. Public Comment

This item allows members of the public to comment generally on matters within the CRC's purview that are not on the agenda.

Mr. Harper thanked the committee for its questions.

12. ADJOURN - The meeting was adjourned at 2:42 p.m.

The Ethics Commission of the City and County of San Francisco has asked us to remind individuals that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance [Campaign and Gov't Conduct Code, Article II, Chapter 1, § 2.100, et seq.) to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at 25 Van Ness Avenue, Suite 220, San Francisco, CA 94102, telephone (415) 252-3100, fax (415) 252-3124 and web site: www.sfethics.org.