

## ATTACHMENT 2

### OCTOBER 16, 2019 MINUTES

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A regular meeting of the Regional Transportation Authority (RTA) was convened at 2:30 p.m. on Wednesday October 16, 2019 in the Board Room of the Association of Central Oklahoma Governments (ACOG), 4205 N. Lincoln Blvd., Oklahoma City, Oklahoma. This meeting was held as indicated by advanced notice filed with the Oklahoma County Clerk and by notice posted at the ACOG office at least twenty-four (24) hours prior to the meeting.

#### RTA Board of Directors Present

Ken Bartlett	Del City
James Boggs	Edmond
Aaron Budd	Midwest City
Steve Eddy	Moore
Marion Hutchison	Norman
Mary Melon	Oklahoma City
Brad Henry	Oklahoma City

#### RTA Board of Directors Absent

None

#### Municipal Staff Support Present

Shawn O’Leary, Dir. of Public Works	Norman
Billy Harless, ADA Project Director	Midwest City

#### Guests Present

Jim Hatt, Asst. Division Manager	ODOT, Rail Division
Derek Sparks, Government Relations	Greater Oklahoma City Chamber
Kathryn Holmes	RTA Consultant
Pete White, Attorney	ACOG Legal Counsel
Mike Patterson	HNTB
Heidi Katz	HNTB
Steve Jagosh, Project Coordinator	ODOT, Office of Mobility & Public Transit

#### ACOG Staff

Mark W. Sweeney	Executive Director
John Sharp	Deputy Director
Jennifer Sebesta	Manager, TPS
Hayden Harrison	Project Coordinator II, TPS
Hannah Nolen	Associate Planner, TPS
Gwendolyn Gordon	Administrative Assistant

1. **Welcome and Introductions**

Director Brad Henry called the meeting to order. He welcomed everyone and entertained introductions. There was a quorum.

2. **Review and Approval of the September 30, 2019 Minutes**

Director Ken Bartlett asked to amend the September 30, 2019 minutes to change the word existed to exited.

Director Marion Hutchison made motion to approve the September 30, 2019 minutes with correction. Director Mary Melon moved to approve corrected minutes. Director Ken Bartlett seconded the motion. The motion carried. (7-0)

3. **RTA Monthly Financial Report**

Mark Sweeney highlighted the information in the agenda memorandum. He said the financial report was sent out to the Board in advance of the RTA meeting. Director Brad Henry inquired about the highlighted 100 percent on page 3-2 and asked if it was local funds; not 80/20 funds. Mark Sweeney answered yes, it was local funds. Director Ken Bartlett asked if the total expenditures for September, is the amount needed to be subtracted from the funds remaining dated August 31, 2019 and that would equal the remaining balance for September. Mark Sweeney answered yes, that is correct.

Director Brad Henry asked if there were any further questions. There were no further questions.

4. **Report on establishment of RTA bank accounts and transfer local funds from ACOG to RTA and discuss and consider approval of Resolution adopting banking procedures**

Mark Sweeney gave the Board the chronological order of steps to transfer funds from ACOG to the RTA. Mr. Sweeney said the following:

Today, October 16, the official custodial/custodian and banking resolution needs to be approved and signed at the RTA meeting. Tomorrow, October 17, ACOG will fax the official custodian banking resolution to ACOG's Chase Bank representative.

Friday, October 18, the Chase Bank representative will be in the ACOG office and will request the account name change, Tax ID number change, new signature cards, new BDC form, and new pledge agreement.

Mr. Sweeney said it is possible the Chase Bank representative will need the minutes from the October 16 meeting, in addition to the official custodian and banking resolution in order to make these changes.

Mr. Sweeney said when available, the RTA will authorize signers and sign the actual signature cards. Then checks and deposit slips will be ordered after account changes have been made. He said Chase Bank will need one (1) notice prior to transferring money to the new account for them to have collateral in place. He said in order to transfer the funds from Bank of America to the new account at Chase Bank, checks must be written and signed by one ACOG Board Officer at the next ACOG Board meeting on October 31, 2019. If everything above is in place, the transfer of checks will be deposited into the Chase account using remote quick deposit the evening of October 31, or the morning of November 1.

Mr. Sweeney said the new ACOG and RTA Chase Bank accounts will both do overnight sweeps, like 9-1-1 ACOG does now. He will discuss with Chase Bank the base balance necessary that will not be swept overnight.

He said the RTA needs to establish controls and procedures over claims approval as well as how and when they are paid.

Director Ken Bartlett asked if the effective date of the accounting would be all checks written until the end of the month with the existing bank, then November 1, will be with the new bank. Mr. Sweeney answered, yes.

Director Brad Henry asked Mr. Sweeney to explain the sweeping of the account. Mr. Sweeney said it is placing the money in various investments and is a way to generate greater revenue for the funds that we have. It produces more income than a regular interest-bearing account. He said it is a process ACOG did years ago and stopped and now is going back to.

Director James Boggs asked if ACOG could disclose what funds RTA will be investing in. Mr. Sweeney said yes, he will provide information at the next RTA meeting.

Director Brad Henry asked for a motion to approve the Resolution for establishment of RTA bank account and transfer of local funds from ACOG to RTA.

Director Ken Bartlett made a motion to approve. Steve Eddy seconded the motion. The motion carried. (7-0)

**5. Discuss and consider approval of Assignment and Assumption Agreement relating to the RTA Consultant's Agreement for Professional Services**

Director Brad Henry said the way RTA was formed was lengthy, and during the process ACOG retained its consultant, Kathryn Holmes. He said the specific scope of work in her agreement with ACOG is related to RTA activities and engagements. Mr. Henry said they felt like it would be more appropriate for her contract to be directly with RTA and not ACOG. He asked Kathryn Holmes if she had anything to add.

Ms. Holmes said with the formation of the RTA, it is important to take steps in developing what the federal government calls Institutional Capacity. She said to become a federal grant recipient, the federal government looks at legal capacity, technical capacity, and financial capacity. Ms. Holmes said having RTA act as a legal entity is an important process, and this is part of that process. RTA needs to start managing its own money, managing its own consultants, and procuring services for its own benefit. She said this is important to establish for the government and other entities who will be overseeing the funding; and it shows that RTA is not a shell but a real entity and has substance.

Director Brad Henry said the request came from the RTA Board to ACOG, to assign the RTA Consultant's contract to the RTA.

Director Ken Bartlett had initial reservations on reassigning Kathryn Holmes contract to the RTA Board because he did not get a chance to read her contract. His concerns were the initial money RTA would have to spend without ACOG that was initially setup through 2021. He said we do not have a clue on how this is going to be financed and

we do not know how long the money available will last. He felt the RTA is moving too fast to take the consultant contract away from ACOG.

Director Brad Henry said the money for Kathryn Holmes contract is being transferred to the RTA new bank account. He asked the question to the Board if they wanted RTA's consultant to report to ACOG when the RTA is paying for her? He said in this situation, there is potential for conflict of interest to arise. He feels RTA needs to start standing on its own and he is intent on seeing the RTA succeed. He said this is a small step and not a rush to do anything out of the ordinary. He said if we are going to act like a Board that makes its own decisions, it makes sense to be able to direct our consultant and she needs to report directly to the Board.

Director Marion Hutchison said that ACOG will still be engaged by providing the staff and acting Executive Director. The only difference is the consultant, Kathryn Holmes, will report to the RTA Board and not ACOG. Director Ken Bartlett asked if Ms. Holmes was going to copy ACOG on all emails she sends to the Board. Director Hutchison said yes, for ACOG to be able to do their job.

Mark Sweeney said he and Director Brad Henry discussed moving the contract over to RTA, and whether there was a competitive process requirement. Mr. Sweeney said if there is a requirement, we need to verify that.

Director Henry said he researched it and asked attorneys at Crowe and Dunlevy for assistance. He said Kathryn Holmes' contract was competitively bid by ACOG and has a broad scope of work on behalf of the RTA. Therefore, it is blessed by the Attorney General. Director Henry said he is very confident RTA meets the requirements of moving the contract from ACOG to the RTA. He said Crowe and Dunlevy has the same opinion as he has, and he feels they are one of the best law firms in the State of Oklahoma.

John Sharp said in discussing the contract with ACOG's finance department, there was one change that was needed on the first page under recitals. Where it says ACOG is a nonprofit corporation, it should be changed to "public agency."

Director Brad Henry made a motion to amend the Assignment and Assumption Agreement, changing ACOG from "nonprofit corporation" to "public agency."

Director James Boggs moved to amend the Assignment and Assumption Agreement. Director Marion Hutchison seconded the motion. The motion carried. (7-0)

Director Brad Henry made a motion to approve the Assignment and Assumption Agreement and request the ACOG Board to do the same at the next ACOG Board meeting on October 31. Director Mary Melon moved to approve the agreement. Director Aaron Budd seconded. The motion carried. (7-0)

**6. Discuss and consider approval of Resolution adopting RTA Procurement Policy and Procurement Procedures Manual**

Kathryn Holmes started with a correction to the Policy. She said in the first sentence, strike the words "adhere to" and to now read: It is the policy of RTA to conduct all procurement transactions in a manner providing full and open competition.

Ms. Holmes said the Procurement Policy is one of the most important documents from a federal prospective. It is one of the pieces they look for in authorizing federal funding, because of competitive processes at the heart of the federal grant system. They want to ensure that you are going to give opportunities to all those qualified to participate in awarding federal funding.

Ms. Holmes said she separated the Policy and Procurement Procedures Manual into two parts because she thinks it is important to have the policy posted on the website. It states the philosophy of the Board: that it will follow a competitive process, that it will follow a code of ethics, and a conflict of interest policy, and references the applicable federal contracting requirements and gives the location of those in law so that anyone who is interested can find the circulars of government procurement procedures for a federal grant.

Ms. Holmes said the Procurement Procedures Manual, as drafted, encompasses everything RTA will ever need to have in place. She said in fifteen years when the RTA has a fully operational system, whether it is a bus system or rail system, or staffing an office, and office supplies, this manual is a broad approach to the procurement program. She said it will be a long time before this manual will be fully utilized but a portion of the manual will be used in the next couple of years. She drafted it so that it is fully compliant with all the federal requirements, so the RTA Board will not have to go back and revisit it as it grows over time and becomes a more complex organization.

Ms. Holmes said she sent a copy of the Policy and Procurement Procedures Manual to the Federal Transit Administration (FTA) and asked for their concurrence or suggestions, and if there were changes that needed to be made.

Ms. Holmes said she did receive a few changes from the FTA and wanted to advise the Board, and have the changes reflected in the Procurement Procedures Manual and that she will update the Board later.

Ms. Holmes said there are seven (7) changes that are necessary in the Buy America regulation that went into effect on October 1, and most of these changes are driven by that federal law. Because of the law, 70 percent of the components must be made in America.

The first change is on page 18, Step 7: Insert Before if the procurement involves rolling stock that the vendor must submit a certificate of compliance with FTA Buy America Requirements.

The second and third changes are on page 41, Section B-45, Item 2; change the value from \$100,000 to \$150,000. The same change needs to be made on page 45, Section IV. Item 2.

The fourth change is on page 54, Section 5.4 Appeals: change the language from The Protester **has the right to:** to now read: The Protester **may** appeal in writing to the Federal Transit Administration.

The fifth change is on page 58, Section 6.2 Noncompetitive Negotiation: the FTA asked her to rewrite this entire section to clarify the "Sole Source Procurement" and if there was adequate competition.

The sixth and seventh changes are on page 64, Section 7.4.1, and page 68, Section 7.4.4-1: Change the percentage from (60) to (70) percent because of the new Buy America law.

Ms. Holmes said the FTA told her some of the links in the Procurement Procedures Manual did not work, and she promised to go through and check each link. She said the FTA said the document is legally sufficient and approved both the Policy and Procurement Procedure manual.

Mark Sweeney said the Procurement Procedures Manual makes a reference to RTA's petty cash, RTA attorney, and RTA procurement administrator. He said he assumes these positions will evolve once the RTA gets to a point where they can fill those positions. Director Henry said that is a long way off and right now ACOG would fill those duties on behalf of the RTA.

Mark Sweeney asked Kathryn Holmes if there was a section in the Procurement Procedure Manual that makes a reference to cooperative purchasing options for the RTA, and what section it is in. Kathryn Holmes said she did not remember the section it is in. Ms. Holmes said it is not available for purchases over the \$100,000 limit and it specifically refers to the OMES contract.

Mr. Sweeney said he wanted the RTA to have that option in the RTA procurement policy because it will save the RTA money over time. Ms. Holmes could not find the section but promised it is in the Procurement Procedure Manual.

Director Marion Hutchison asked for clarity on Buy America and the 70 percent. Kathryn Holmes said 70 percent of the components must come from America and the final assembly must be done in the United States.

James Boggs asked Mark Sweeney if the Board could get a redline copy of the RTA Procurement Policy and Procurement Procedures Manual document with the changes made by Kathryn Holmes. Mr. Sweeney said yes, he would provide the board members a redline copy.

Director Brad Henry asked for a motion to approve the seven amendments given by Kathryn Holmes. Director Steve Eddy moved to approve the amendments. Director Marion Hutchison seconded the motion. The motion carried. (7-0)

Director Brad Henry asked for a motion to approve the Resolution, RTA Procurement Policy and Procurement Procedures Manual. Director Marion Hutchison moved to approved. Director James Boggs seconded the motion. The motion carried. (7-0)

**7. Discuss and consider approval of and process for finalizing RFP for Consulting Services, including establishment of RFP Evaluation Committee**

Director Brad Henry said he previously had sent the Board members a draft of the RFP that they authorized Kathryn Holmes at the last meeting to prepare. He stated in the email to the board members that documents should be kept confidential. Mr. Henry said the reason for the confidentiality is because the RFP will have a formal release date and the RFP will identify the scope of work and various aspects of work. He said if it got into the hands of potential vendors early, it would cause all sorts of problems and have

allegations of unfair advantage. Director Henry turned the meeting over to consultant Kathryn Holmes to tell the Board where she is on the RFP and what the process is going forward.

Kathryn Holmes said she wanted to talk about the importance of this Board being sensitive to the confidentiality requirements, and to the process. Ms. Holmes said if you have not received a phone call from a potential vendor, you can expect one soon. Ms. Holmes said she got a call this week from a potential bidder asking her to have lunch and wanting to share information about their firm. Ms. Holmes said she declined the invitation because it would be inappropriate and would disqualify them from the competition. She encouraged each RTA Board member and ACOG staff to take the same position because it is important. We want to make sure people are not disqualified and have this process subject to a protest. Director Brad Henry said the point Kathryn Holmes made is specifically outlined in the RFP.

Kathryn Holmes said this is a draft and that the scope she hopes can be narrowed at some point in the next couple of weeks. She is waiting for guidance from the FTA about RTA's ability to narrow the scope. She said she talked about this on her call with the FTA and the person who needs to advise her was out of the office until next week. She was told to expect to receive the guidance next week or shortly thereafter, from the person in the FTA who will make determination about whether she can narrow the scope. Ms. Holmes hopes that it can be narrowed because it will speed the process along. She said it is determined by if we can rely on prior work that has been performed.

Ms. Holmes put together an RFP outline assuming the broadest scope because it is easier to take things out than to add things in. The RFP cannot be finalized until she gets the guidance from RTA in the next couple of weeks.

She said there are some additional provisions she wants to add about how and when the cost proposal will be considered and details about financial data, they would want the bidders to provide to the evaluation team and the Board in determining their financial capacity.

Ms. Holmes said there is a federal requirement for a major contract like this to seek Disadvantaged Business Enterprise (DBE). She said the DBE goal is established on a per contract basis. She said the determination of that goal is going to depend on where the funding comes from. Ms. Holmes said right now the planning funds for this study is Federal Highway Administration (FHWA) money flowing through Oklahoma Department of Transportation (ODOT) to Association of Central Oklahoma Governments (ACOG) as a subrecipient of ODOT. Therefore, ODOT is the grant recipient of FHWA planning money.

Ms. Holmes said this is not an FTA procurement; it is a FHWA procurement. She said the procurement manual is a Department of Transportation (DOT) compliant procedures manual and is covered regardless which federal agency would oversee. Ms. Holmes said they were unclear if this would be overseen by the FTA or FHWA. They were informed it would be overseen by FHWA, and ACOG is a subrecipient of ODOT. Her question is if ACOG is a subrecipient of ODOT, would the RTA have to be a subrecipient of ODOT. The guidance she received is this is a local level decision made by ODOT and they will have the conversation with FHWA. She said the next step is for

the RTA and ACOG to get together with ODOT and have the conversation how best we should proceed because ODOT is the real grant recipient. She said until that happens, we cannot establish the Disadvantaged Business Enterprises (DBE) goal. She said we must figure out a structure from a funding prospective, then the DBE will follow the funding source set in that goal. Ms. Holmes said there are several pieces that need to fall in place before releasing the RFP.

Kathryn Holmes said the RFP calls for an evaluation committee that would be members of the Board that will be working to finalize the details in the RFP itself, and to be involved in the evaluation of the bids as they come in. The Board will be required to make the decision but there will be a subcommittee for the early work. She said there will also be a technical advisory committee, who would be technical advisors, and the Board can decide who can be on it.

Director Brad Henry stressed to the Board that the Evaluation Committee will not make the final decision as the Board will decide the bidder. He also said the Evaluation Committee will be a subset of the Board members.

Director Brad Henry wanted the Board to authorize him as Chair to appoint the Evaluation Committee which would be three (3) Board members, and that committee would work with Kathryn Holmes to finalize the RFP.

Director Brad Henry asked the Board if anyone is interested in serving on the Evaluation Committee, to let him know.

Director Marion Hutchison made a motion to approve the process of finalizing the RFP and have the Chair appoint the Evaluation Committee. Director Steve Eddy seconded the motion. The motion carried. (7-0)

**8. Discuss and consider approval of Subrecipient Funding Agreement**

Director Brad Henry asked that this item be pulled from the agenda at this time.

**9. Public Comments**

None

**10. New Business**

None

**11.. Adjourn**

Director Brad Henry asked for a motion to adjourn the meeting. Director Ken Bartlett made a motion to adjourn. Director Mary Melon seconded the motion. The motion carried. (7-0) The meeting adjourned at 4:04 p.m.