AC TRANSIT DISTRICT **Board of Directors** Executive Summary		**GM Memo No. 09-129** Meeting Date: June 24, 2009	
Committees:			
Planning Committee	☐	Finance and Audit Committee	☒
External Affairs Committee	☐	Operations Committee	☐
Rider Complaint Committee	☐	Paratransit Committee	☐
Board of Directors	☐	**Financing Corporation**	☐

SUBJECT: Consider the Adoption of Resolution No. 09-029 authorizing the Acquisition of Hydrogen Generation, Compression, Storage, and Dispensing Systems for Installation at the District's Emeryville and Oakland Facilities by Use of the Negotiated Procurement Process Authorized under State Law.

RECOMMENDED ACTION:

☐ **Information Only** ☐ **Briefing Item** ☒ **Recommended Motion**

Adopt Resolution No. 09-029.

Fiscal Impact:

This procurement will be funded by several grants including:

- CARB Hydrogen Highway Grant: $2.7 million (allocated)
- FTA Clean Fuels Grant: $4 million (allocated)
- Bay Area Regional Grant: $2 million (allocated)
- CARB Additional Hydrogen Highway Grant: $1.2 million (not yet allocated)
- DOE Clean Cities Grant Proposal (BAAQMD Application): $2.5 million (not yet awarded)
- FTA "TIGGER" Grant Proposal for Oakland Station: $8 million (not yet awarded)

Background/Discussion:

The District desires to construct a new Hydrogen Energy Station at AC Transit's Emeryville Division and to replace and expand the outdated hydrogen infrastructure at the Hydrogen Energy Station located at AC Transit's Oakland Seminary Division. These stations will increase the District's daily fueling capacity from 150 kilograms (one kilogram is equivalent to one gallon of diesel fuel) to approximately 420 kilograms. This expansion is necessary to support the daily operation of 12 new, next-generation fuel

BOARD ACTION: **Approved as Recommended [ ]** **Other [ ]**
Approved with Modification(s) [ ]

The above order was passed on: _____.
Linda A. Nemeroff, District Secretary
By _____

cell hybrid buses presently being manufactured in compliance with CARB's mandated Advanced Zero-Emission Bus (ZEB) demonstration program.

Each station involves a four-stage development process: 1) Alternatives Analysis and Preliminary Engineering; 2) Procurement of a Turnkey Hydrogen System; 3) Final Design and Engineering; and 4) Construction, Installation, and Commissioning.

The hydrogen system is the technological heart of the station and features four major components, each integrated with one another and together controlled by system software and a centralized controller: 1) a generation system that actually produces hydrogen; 2) a compression system that pressurizes the gas in order to provide the buses with sufficient quantities of fuel; 3) a storage system of tanks and gauges to provide backup supply to fuel multiple buses; and 4) a dispensing system that can handle fueling accurately and safely. The hydrogen generator could include various configurations of an electrolyzer (splits the water molecule into hydrogen and oxygen using grid or solar/wind power) and an onsite or offsite methane reformer (injects steam into natural gas to form hydrogen. These systems have been the subject of rapid technological improvements over the past several years. Accordingly, evaluation of factors in addition to price is essential to obtain the broadest range of competing products as well as to ensure fitness of purpose and to obtain the best value for the District and the granting agencies.

Staff has evaluated the feasibility of several different procurement scenarios with regard to the acquisition of the hydrogen system. Including the procurement of the hydrogen system in the eventual construction contract was prohibitive from a critical path planning and scheduling perspective. Whereas the system is very technical and specialized in nature, the actual construction of the site and installation of the equipment represents more generic work and will most certainly involve local contractors and subcontractors.

Bidding each component piece of the system individually for integration by the eventual General Contractor presented an unacceptable level of risk for the District, since all the component elements must work together as a complete system. Utilizing a single Request for Proposal for the acquisition of a pre-configured hydrogen system from a "Tier 1" hydrogen specialty company, to be installed by a General Contractor as a "single component" of the Hydrogen Energy Station, represents the best balance of acceptable risk and planning/scheduling issues.

These acquisitions are included in the project budgets submitted to the California Air Resources Board and FTA in response to their respective grant solicitations, and normally would not require special Board approval. However, because staff desires to purchase these systems through competitive negotiation, instead of by sealed low bid competition, Board approval is required.

Section 20217 of the California Public Contract Code authorizes an alternative method of procurement for rolling stock and certain specialized technological equipment used in

transit operations. This statute was enacted in recognition of the fact that many of these products are undergoing rapid technological changes and that it is in the public interest to allow the procuring agency to consider the broadest range of competing products and to evaluate a number of factors in addition to price. Because of recent advances in the technology and sophistication of hydrogen generation, compression, storage, and dispensing systems, staff believes it is in the best interests of the District to proceed with this acquisition using a best value, negotiated procurement, in lieu of low bid, as low-bid procurement does not allow consideration of factors other than price.

Since federal funds will be used for this procurement, the RFP will incorporate FTA-requirements in accordance with the Department of Transportation mandated Disadvantaged Business Enterprises (DBEs) program. Proposers will be asked to identify DBE subcontractors who may be utilized under the contract and the anticipated percentage of their participation. Because this RFP seeks the acquisition of a specialized and pre-configured hydrogen system, it is unclear whether the undertaking affords a realistic opportunity for subcontracting.

However, once the hydrogen system supplier has been selected, staff intends to issue an Invitation for Bids (IFB) for the construction and installation work. Based on past experience, staff believes that the construction phase of this project offers a significant opportunity for subcontracting. Therefore, Purchasing staff intends to make a concerted effort to work with potential contractors to encourage them to include and identify SBE and DBE subcontractors in their responses to the solicitation for construction and installation work.

To proceed with a negotiated procurement under section 20217, the Board must make a finding, by two-thirds vote of all members that the purchase of these hydrogen generation systems by low-bid competition does not constitute a method of procurement adequate for the District's needs. Such a finding authorizes the issuance of Request for Proposals (RFP) and the consideration of factors such as fitness of purpose, manufacturer's warranty, performance reliability, standardization, life cycle costs, delivery timetables, support logistics and the like.

Proposed Resolution No. 09-029 sets forth the necessary findings required to authorize procurement of this hydrogen generation system by negotiated procurement.

Prior Relevant Board Actions/Policies:

None

Attachments:

Attachment A: Proposed Resolution No. 09-029

Approved by: **Rick Fernandez, General Manager**
Kenneth Scheidig, General Counsel
Prepared by: **Jaimie Levin, Director of Alternative Fuels Policy and Marketing**
Date Prepared: **June 11, 2009**

ALAMEDA-CONTRA COSTA TRANSIT DISTRICT

RESOLUTION NO. 09-029

A RESOLUTION AUTHORIZING THE AQUISITION OF A HYDROGEN SYSTEM BY COMPETITIVE NEGOTIATION

WHEREAS, pursuant to California Public Contract Code Section 20217(b), the Alameda-Contra Costa Transit District Board of Directors may direct the purchase of hydrogen systems by competitive negotiation upon a finding of a two-thirds vote of all members of the Board that the purchase of individual system components in compliance with the provisions of the Public Contract Code generally applicable to the purchase of equipment does not constitute a method of procurement adequate for the District's needs; and

WHEREAS, the District needs to acquire Hydrogen Systems through negotiated procurement for the following reasons:

- During the past few years there have been rapid technology advances for Hydrogen systems including generation, compression, storage, and dispensing systems which have become increasingly sophisticated;
- Using traditional procurement procedures in compliance with the provisions of the Public Contract code for the acquisition of equipment, materials, and supplies (Invitations for Bids and contract award to the lowest responsive bidder) would not allow the District to consider evaluative factors other than price;
- The use of the negotiated procurement process will enable the District to obtain the best value for the public investment with various factors considered and refined in the procurement process, including fitness of purpose, manufacturer's warranty, performance reliability, standardization, life cycle costs, delivery timetables and support logistics.
- The low bid only purchase of the required hydrogen system would not permit adequate consideration of the above-referenced factors.

NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE ALAMEDA-CONTRA COSTA TRANSIT DISTRICT DOES RESOLVE AS FOLLOWS:

SECTION 1: The Board finds, based on reasons identified in this resolution, that the purchase of hydrogen generation, compression, storage, and dispensing components in compliance with the low-bid provisions of the California Public Contract Code generally applicable to such a purchase, does not constitute a method of procurement adequate for the District's needs.

SECTION 2: The Board authorizes the General Manager to proceed with the purchase of a hydrogen system, comprised of fully integrated generation, compression, storage, and dispensing components, by competitive negotiation in accordance with the provisions of California Public Contract Code Section 20217 and the District's procurement procedures.

SECTION 3: This resolution shall become effective immediately upon its passage and adoption by five affirmative votes of the Board of Directors.

PASSED AND ADOPTED THIS ____ day of July 2009

_____
Ryan "Rocky" Fernandez, President

ATTEST:

_____
Linda Nemeroff, District Secretary

I, Linda Nemeroff, District Secretary for the Alameda-Contra Costa Transit District, do hereby certify that the foregoing Resolution was passed and adopted at a Regular Meeting of the Board of Directors held on the _____ day of June 2009 by the following roll call vote:

AYES: DIRECTOR(S):

NOES: DIRECTOR(S):

ABSENT: DIRECTOR(S):

ABSTAIN: DIRECTOR(S):

_____
Linda Nemeroff, District Secretary

Approved as to Form:

_____
Kenneth C. Scheidig, General Counsel