

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: Public Works

BOARD AGENDA # *C-3

Urgent

Routine

AGENDA DATE November 15, 2011

CEO Concur with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Approval to Authorize the Purchase of One (1) 2011 Class E-IC Thirty-Two Foot Bus for the Stanislaus County's Stanislaus Regional Transit (StaRT) Public Transit Bus Fleet from Creative Bus Sales, Inc.

STAFF RECOMMENDATIONS:

1. Authorize the purchase of one (1) 2011 Class E-IC thirty-two foot bus in the amount of \$195,036 for Stanislaus County's Stanislaus Regional Transit (StaRT) public transit bus fleet from Creative Bus Sales, Inc.
2. Authorize the Public Works Transit Division Manager to sign and execute all necessary documents.

FISCAL IMPACT:

The purchase order with Creative Bus Sales, Inc. is for \$195,036. The total project cost is \$215,199, including \$9,752 for contingency (5% of the purchase order) and \$10,411 for bus inspection costs. The contingency costs are within Federal and State guidelines. The project will be funded by \$84,504 of Federal American Recovery and Reinvestment Act (ARRA) funds allocated to Stanislaus County and \$130,695 in State Public Transportation Modernization, Improvement, and Service Enhancement Account (PTMISEA)-Proposition 1B Transit funds. Funding is included in the Public Works Local Transit System's Fiscal Year 2011-2012 budget. There is no impact on the County General Fund.

BOARD ACTION AS FOLLOWS:

No. 2011-707

On motion of Supervisor Chiesa, Seconded by Supervisor Withrow

and approved by the following vote,

Ayes: Supervisors: O'Brien, Chiesa, Withrow, De Martini, and Chairman Monteith

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) X Approved as recommended

2) _____ Denied

3) _____ Approved as amended

4) _____ Other:

MOTION:

Christine Ferraro

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

Approval to Authorize the Purchase of One (1) 2011 Class E-IC Thirty-Two Foot Bus for the Stanislaus County's Stanislaus Regional Transit (StaRT) Public Transit Bus Fleet from Creative Bus Sales, Inc.

DISCUSSION:

The Stanislaus County Public Works Transit Division oversees the operation of Stanislaus County's intercity public transit system, Stanislaus Regional Transit (StaRT). This purchase will replace a twenty-five (25) foot bus for the StaRT Medivan service that provides non-emergency medical transportation to Bay Area medical facilities. A larger bus is needed due to increased passenger demand for this service. The 2011 Class E-IC bus is thirty-two (32) feet long and will have an increased seating capacity of eight additional seats. The bus is projected to have a ten-year service life. The twenty-five foot bus will continue to be used in the StaRT fleet.

Under Federal Transit Administration (FTA) guidelines, local agencies have the opportunity to take advantage of the economy of scale and to maximize their buying power and minimize their costs through "assignability" provisions of another agency's procurement process. On September 3, 2010, Morongo Basin Transit Authority (MBTA) signed an agreement with Creative Bus sales, Inc for the purchase of Paratransit vehicles on behalf of the California Association for Coordinated Transportation (CalACT) [Exhibit A]. On September 30, 2011, the California Department of Transportation (Caltrans) and CalACT approved the assignment of the bus to Stanislaus County [Exhibit B]. With the Board's approval, the Public Works Transit Division will move forward with the purchase of one Creative Bus Sales' 2011 Class E -IC thirty-two foot bus from the CalACT/MBTA competitive procurement process that has been set up through the California Association for Coordinated Transportation (CalACT) transit association. By taking advantage of the assignment of the bus, the Transit Division will be able to purchase the bus at \$195,036. The assignment will also enable the Transit Division to have the bus in service much earlier than if the Transit Division did its own procurement.

The Division has secured \$84,504 of Federal American Recovery and Reinvestment Act (ARRA) funds allocated to Stanislaus County and \$130,695 in State Public Transportation Modernization, Improvement, and Service Enhancement Account (PTMISEA)-Proposition 1B Transit funds for the bus purchase. Including sales tax contingency costs and bus inspection costs, the total project cost is \$215,199. Pending approval, the tentative delivery date is spring 2012.

POLICY ISSUES:

The recommended actions are consistent with the Board's priority of A Well Planned Infrastructure System and Efficient Delivery of Public Services by ensuring a public transit system that is compliant with State efficiency standards. The actions are also consistent with the Board's priority of A Healthy Community by supporting a transit service that helps lessen the use of vehicles and valley air pollutants.

Approval to Authorize the Purchase of One (1) 2011 Class E-IC Thirty-Two Foot Bus for the Stanislaus County's Stanislaus Regional Transit (StaRT) Public Transit Bus Fleet from Creative Bus Sales, Inc.

STAFFING IMPACT:

There is no staffing impact associated with this item.

CONTACT PERSON:

Brad Christian, Manager, Public Works Transit Division. Telephone: (209) 525-4130

MBTA CONTRACT # 10-01-CBS

AGREEMENT REGARDING PURCHASE OF PARATRANSIT VEHICLES.

THIS AGREEMENT is made and entered into on September 3, 2010 between and among **CREATIVE BUS SALES, INC.**, a California corporation, with its principal place of business located at 13501 Benson Street, Chino, California ("SELLER"), and **MORONGO BASIN TRANSIT AUTHORITY ("MBTA")**. SELLER and MBTA may be referred to herein individually as "Party" or collectively as "Parties."

RECITALS

WHEREAS, MBTA, by its Request for Proposals #10-01 duly advertised for written bids to be submitted on or before 12:00 p.m. on July 2, 2010 for the purchase of Paratransit Vehicles ("BUSES") on behalf of the California Association for Coordinated Transportation ("CALACT") by the MBTA; and

WHEREAS, the MBTA's RFP is attached hereto as Exhibit "A", and is incorporated herein by reference as if set forth in full; and

WHEREAS, SELLER submitted a sealed bid in response to MBTA's Notice Inviting Bids; and

WHEREAS, after it was determined that SELLER was the successful responsive and responsible bidder; and

WHEREAS, SELLER's bid in response to MBTA's Notice Inviting Bids is attached hereto as Exhibit "B", and is incorporated herein by reference as if set forth in full; and

WHEREAS, the MBTA Board of Directors has authorized the General Manager via Resolution No. 09-04 to award contracts and General Manager accepted SELLER'S bid through agreement by and between SELLER and MBTA upon the terms and conditions set forth herein; and

WHEREAS, MBTA has fully complied with all federal, state, and local laws governing the public bidding process for the purchase of the BUSES;

NOW, THEREFORE, incorporating the foregoing recitals herein, for and in consideration of the promises and of the mutual covenants and agreements herein contained, SELLER and MBTA hereby agree as follows:

WITNESSETH:

1. **CONTRACT DOCUMENTS.** This Agreement, along with all

Exhibits referenced herein, and including without limitation, all documents referenced in said Exhibits shall hereinafter be referred to as the "Contract Documents".

2. **DESCRIPTION OF BUSES PURCHASED.** SELLER hereby agrees that it shall sell the BUSES as more particularly described in RFP #10-01 (attached hereto as Exhibit "A") to any and all CalAct/MBTA participants who desire to purchase such BUSES from SELLER.

3. **CONTRACT PRICING.** SELLER hereby agrees to sell such BUSES as more particularly described in RFP #10-01 (attached hereto as Exhibit "B") under the terms and conditions set forth in RFP #10-01.

4. **DELIVERY.** SELLER shall deliver F.O.B. per terms and conditions of MBTA RFP #10-01 Section 7.0, subsection 2.

5. **PAYMENT BY COOPERATIVE PARTICIPANTS.** SELLER shall collect payment from CalAct/MBTA participants within forty five (45) days after the delivery and acceptance of the BUSES by the participant, and a receipt of an invoice thereof, per RFP #09-02, Section 7.0, subsection 5.

6. **NO ASSIGNMENT.** Neither this Agreement, nor any interest in it, may be assigned or transferred by any party.

7. **NO ATTORNEYS' FEES.** If litigation is required to enforce or interpret the provisions of this Agreement, neither SELLER nor the Cooperative shall be entitled to an award of attorneys' fees or costs, but shall be entitled to any other relief to which it may be entitled by law.

8. **MERGER AND MODIFICATION.** This Agreement sets forth the entire agreement between the parties and supersedes all other oral or written representations. This Agreement may be modified only in a writing approved by the MBTA Board and signed by all both Parties.

9. **GOVERNING LAW.** The laws of the State of California will govern the validity of this Agreement, its interpretation and performance. Any litigation arising in any way from this Agreement shall be brought in San Bernardino County, California.

10. **NO WAIVER OF DEFAULT.** The failure of any Party to enforce against another party any provision of this Agreement shall not constitute a waiver of that party's right to enforce such a provision at a later time, and shall not serve to vary the terms of this Agreement.

11. **FURTHER ASSURANCES.** Each Party shall execute and deliver such papers, documents, and instruments, and perform such acts as are

necessary or appropriate, to implement the terms of this Agreement and the intent of the parties to this Agreement.

12. **BINDING EFFECT; CONTEXT; COUNTERPARTS.** Subject to Paragraph 6, the rights and obligations of this Agreement shall inure to the benefit of, and be binding upon, the parties to the contract and their heirs, administrators, executors, personal representatives, successors and assigns. Whenever the context so requires, the masculine gender and includes the feminine and neuter, and the singular number includes the plural. This Agreement may be executed in any number of counterparts, each of which shall be considered as an original and be effective as such.

13. **NON-INTEREST.** No officer or employee of the MBTA shall hold any interest in this Agreement (California Government Code section 1090).

14. **CORPORATE AUTHORITY.** Each individual signing this Agreement on behalf of an entity represents and warrants that he or she is respectively, duly authorized to sign on behalf of the entity and to bind the entity fully to each and all of the obligations set forth in this Agreement.

15. **INDEMNIFICATION.** SELLER shall indemnify, defend, and hold harmless MBTA, its officers, agents and employees against any and all liability, claims, actions, causes of action or demands whatsoever against them, or any of them, before administrative or judicial tribunals of an kind whatsoever, arising out of, connected with, or caused by SELLER'S employees, agents, independent contractors, companies, or subcontractors in the performance of, or in any way arising from, the terms and provisions of this Agreement whether or not caused in part by a party indemnified hereunder, except for MBTA's sole active negligence or willful misconduct.

16. **WARRANTY.** The BUSES are warranted by SELLER to be new and to be free from defects in material and workmanship pursuant to and in accordance with those certain manufacturer's warranties collectively attached hereto as Exhibit "B", and incorporated herein by reference as if set forth in full. During said warranty periods, the BUSES shall maintain structural and functional integrity. The warranty is based on regular operation under operating conditions prevailing in the purchaser's operating area.

17. **WARRANTY OF FITNESS.** SELLER hereby warrants that the BUSES and all materials furnished shall meet the requirements and conditions of the Contract Documents and shall be fit for the purposes intended. Acceptance of this warranty and acceptance the BUSES and materials to be manufactured or assembled pursuant to the specifications in these Contract Documents shall not waive any warranty, either express or implied.

18. **NOTICE.** All notices relative to this Agreement shall be given in

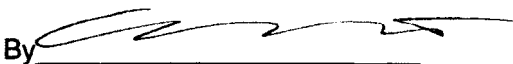

writing and shall be personally served or sent by certified or registered mail and be effective upon depositing in the United States mail. The Parties shall be addressed as follows, or at any other address designated by proper notice:

MBTA: Joe Meer
General Manager
Morongo Basin Transit Authority
62405 Verbena Road
Joshua Tree, CA 92252

SELLER: Anthony Matijevitch
President
Creative Bus Sales, Inc.
13501 Benson Avenue
Chino, California

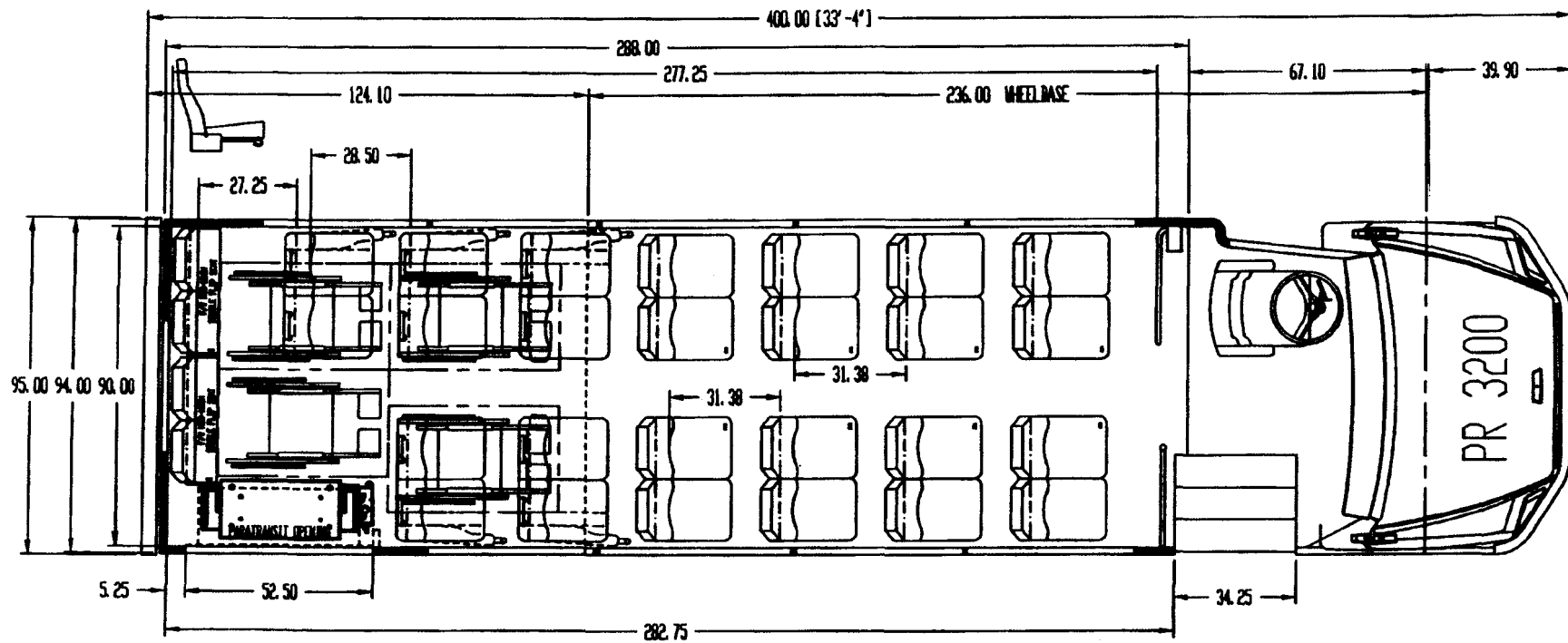
19. EXECUTION. This Agreement is effective upon execution by both Parties. It is the product of negotiation and all parties are equally responsible for authorship of this Agreement. Section 1654 of the California Civil Code shall not apply to the interpretation of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

CREATIVE BUS SALES, INC., a corporation	Morongo Basin Transit Authority
By  Anthony Matijevitch, President	By  Joe Meer, General Manager



2011 Class E-IC Bus



BUS MUST BE 65 GAL SIDE MOUNTED FUEL TANK DUE TO FLOOR PLAN LAYOUT
 CAN NOT HAVE BODE DOOR OR 40" DOOR WITH SIDE MOUNTED FUEL TANK

REV	DATE	ECN	DESC. OF CHANGES	BY	APP'D	ECN #	W/A	DO NOT SCALE	MATERIAL: FREEMAN - MID HIGH	PURCH./MFG.: HFL
									TOLERANCES UNLESS OTHERWISE NOTED XX = .03 .XXX = .000 X = 1"	TITLE: FLOORPLAN IF-331RL 236" W/B (30 PASSENGERS / (4) W/C'S
									DRAWN BY S SWIENTONOWSKI	DATE: 9/16/11
									CHK	DATE:
									SCALE:	MODEL: DEFENDER NAVISTAR 3200
									APP'D	DATE:



September 30, 2011

Stanislaus Regional Transit
1010 10th St., Ste 3500
Modesto, CA., 95354

Re: Cooperative Letter of Assignment

Dear Mr. Christian:

The CalACT-MBTA Vehicle Purchasing Cooperative is pleased to assign one option for one Class E, IC Bus to be purchased from Creative Bus Sales from RFP #10-01.

Please be advised that assignment of said vehicles does not constitute a recommendation or endorsement of this product by the Cooperative. Stanislaus Regional Transit as the purchaser is responsible for its choice of vehicle product and options selected. **Stanislaus Regional Transit is responsible for vehicle inspection, acceptance and enforcement of any contract provisions.**

Purchasers of hybrid and low floor vehicles in particular are advised that these vehicles be considered by the Cooperative as developmental in nature. Purchasing agencies are urged to exercise due diligence in evaluating the suitability of these vehicles for their operating environment. In particular, the Cooperative urges you to read and understand the Altoona test report for the vehicle you are purchasing. Copies of the solicitation documents containing contract provisions are available at www.CalACT.org

By accepting assignment, Stanislaus Regional Transit agrees to hold harmless, indemnify and defend the Cooperative as per Section 6.0 (6) of RFP #10-01 from any and all liabilities. Thank you so much for purchasing your vehicles through the Cooperative. If you have any questions please call me at 916-920-8018.

Sincerely,

Jacklyn Montgomery

Jacklyn Montgomery
Executive Director

Cc: Jay Holzuter, Creative Bus Sales