

# Metropolitan Transportation Commission Programming and Allocations Committee

October 9, 2019

Agenda Item 3b

## Regional Measure 3: Preserving RM3 Eligibility for Sponsors Awarding Contracts

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**Subject:** Request for the MTC Executive Director, or designee to send upon request, letters to Regional Measure 3 (RM3) project sponsors clarifying that awarding contracts prior to allocation does not preclude future RM3 eligibility. Approval to actually use future RM3 funds would still require further Commission action.

**Background:** Regional Measure 3 was approved by voters on June 5, 2018. On January 1, 2019, BATA implemented the first dollar of the associated toll increase allowed by the measure. Unfortunately, collected revenues are being held in escrow while RM3 remains in litigation. RM3 funds are currently not being allocated to projects.

Meanwhile, sponsors of projects listed in the RM3 expenditure plan have expressed varying degrees of interest and capacity to move forward with RM3 projects while awaiting the availability of RM3 funds. Project sponsors would like to proceed with award of contracts without being precluded from receiving RM3 funds and if allocations proceed.

### **MTC Policy Precedent**

MTC has established precedent through the Regional Measure 2 Policies and Procedures (MTC Resolution No. 3636, Revised) regarding project sponsors' advertising, bid opening and award of contracts prior to allocation of bridge toll funds. Under the heading "Authority to Expend", the policies and procedures states:

*"The project sponsor must obtain the Commission's approval of the allocation and description of eligible costs prior to incurring costs. Project sponsors shall not receive reimbursement for costs incurred prior to MTC approval of the allocation of funding. Project sponsors shall proceed solely at their own risk in advertising, opening bids, or awarding a contract prior to an allocation of RM2 funds. The advertising, bid opening, or awarding of a contract by the sponsor shall in no way prejudice the Commission into making an allocation they deem unsuitable. Final allocation decisions will be subject to the availability of funds."*

Staff intends to include a similar provision in any Regional Measure 3 Policies and Procedures brought to the Commission for approval.

**SMART to Windsor Extension and Letter Request**

The RM3 expenditure plan includes \$40 million for SMART, under the project description: *“Sonoma-Marín Area Rail Transit District (SMART). Provide funding to extend the rail system north of the Charles M. Schulz-Sonoma County Airport to the Cities of Windsor and Healdsburg. The project sponsor is the Sonoma-Marín Area Rail Transit District.”*

To date, SMART has awarded a \$15.7 million contract for train control systems on the Windsor extension, and anticipates awarding a contract for track, stations, and other infrastructure later this month. To ensure future costs on this contract are not precluded from eventual RM3 eligibility, SMART has requested a letter from MTC stating that award of the contract prior to allocation does not preclude SMART from receiving RM3 funds in the future.

SMART intends to proceed with the contract prior to securing RM3 funds, and will manage risk through limited notices-to-proceed that do not exceed available funding from other sources.

**Issues:** Regional Measure 3 remains in litigation. Any contract award by project sponsors that relies on eventual RM3 funds are performed at-risk to the project sponsor.

**Recommendation:** Direct the MTC Executive Director, or designee to send a letter to SMART clarifying that the upcoming contract award for the SMART to Windsor extension does not preclude eligibility for future RM3 funds for that contract, and to send similar letters to other RM3 project sponsors as requested.

**Attachments:** None.

  
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