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ONE HUNDRED EIGHTH CONGRESS

# Congress of the United States

## House of Representatives

COMMITTEE ON GOVERNMENT REFORM

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July 9, 2004

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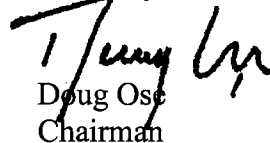
The Honorable Emil H. Frankel  
Assistant Secretary for Transportation  
Policy and Intermodalism  
Department of Transportation  
400-7<sup>th</sup> Street, S.W.  
Washington, DC 20590

Dear Mr. Frankel:

This letter follows up on your June 28, 2004 answers to my May 28th post-hearing questions after the May 18th hearing of the Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs, entitled "How Can We Maximize Private Sector Participation in Transportation?"

Please hand-deliver the agency's response to the Subcommittee majority staff in B-377 Rayburn House Office Building and the minority staff in B-350A Rayburn House Office Building not later than noon on July 26, 2004. If you have any questions about this request, please call Subcommittee Staff Director Barbara Kahlow on 226-3058. Thank you for your attention to this request.

Sincerely,



Doug Ose  
Chairman

Subcommittee on Energy Policy, Natural  
Resources and Regulatory Affairs

Enclosures

cc: The Honorable Tom Davis  
The Honorable John Tierney

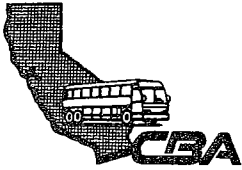
Q1. DOT's Enforcement of Private Sector Participation Requirements. Post-hearing Question 4 asked, "The government-wide grants management common rule provides various remedies for grantee noncompliance ... (codified by DOT at 49 CFR §18.43(a)). Has DOT enforced Sections 5306(a) and 5307(c) under these provisions?" Your answer stated, "Only in extreme cases in which there is a lack of good faith efforts by a grantee does FTA resort to formal enforcement measures. In all of the instances identified above [including the Sacramento Regional Transit District (SACRT)], the grantees took actions voluntarily to bring themselves into compliance."

In addition, with regard to SACRT, Question 4 asked, "Because of the deficiency finding, what follow-up actions did DOT take to ensure ongoing and full compliance with the July 2001 SOP?" Your answer stated, "FTA will continue to monitor Sacramento Regional Transit's adherence to its standard operating procedure for public and private sector participation both informally and through the triennial review process. Additionally, FTA has addressed this subject with the grantee during FTA's regular quarterly review meetings, and FTA has received assurances" and "FTA's finding that Sacramento Regional Transit 'met the minimum statutory requirements for public notice and comment in section 5307' was based upon FTA's review of the entire administrative record compiled on the Amador protest, including the public hearing notices and transcripts."

- a. What proof (i.e., beyond "assurances") does the Department of Transportation (DOT) have for specific compliance by SACRT with its July 2001 Standard Operating Procedure (SOP) to correct DOT's August 2000 triennial deficiency finding relating to compliance with the private sector participation requirements? Please provide all published notices in the specific publications of general circulation, as stipulated in the SOP. Please also provide the specific proof in the administrative record for the Amador protest.
- b. What specifically is DOT doing to "monitor" SACRT's ongoing adherence beyond its quarterly review meetings?

Q2. DOT Enforcement of Restrictions on Use of Equipment. Post-hearing Question 5 asked, "The government-wide grants management common rule provides that a grantee "must not use equipment acquired with grant funds to provide services for a fee to compete unfairly with private companies that provide equivalent services" (codified by DOT at 49 CFR §18.32(c)(3)). Has DOT enforced this provision to ensure that local government mass transit providers do not unfairly compete with existing private sector mass transit providers?" Your answer merely referred to DOT policy from 1984 to 1994. What has the current Administration done to enforce this restriction?

- Q3. Public Takeovers. Post-hearing Question 8 asked, “Is Amador an isolated case or are there other examples of public takeovers with Federal funds of cost-effective private sector mass transit services?” Your answer stated, “FTA has no record of any other examples of this type?” What about the current proposal for a public takeover of the cost-effective Tourmobile service in Washington, DC? What is DOT’s view of this proposal?
- Q4. Amador Case. In post-hearing followup, the California Bus Association (CBA) filed a May 25, 2004 California Freedom of Information Act (FOIA)-like request (under the California Public Records Act) of SACRT and found that, in fact, SACRT had not fully complied with its July 2001 SOP with regard to the proposed public takeover of Amador’s mass transit contract. A copy of CBA’s request and its July 6, 2004 findings are attached. What is your reaction to these documents? Does DOT have evidence of compliance that was not included in the documents provided by SACRT? If so, please provide it to the Subcommittee. If not, what do you recommend that Amador now pursue to remedy the harm it suffered?



## California Bus Association

*Promoting Professionalism, Safety & Integrity in the Motorcoach Industry*

May 25, 2004 – Revised Request

Beverly A. Scott  
General Manager/CEO  
Sacramento Regional Transit  
PO Box 2110  
Sacramento, CA 95812-2110

Dear Ms. Scott,

This is a request under the California Public Records Act, California Government Code Sections 6250-6270.

I. The California Bus Association (CBA) is requesting:

- 1- Pre and post 7/1/2001 Standard Operating Procedure (SOP) notification in the "Sacramento Daily Recorder", "Nichi Bei Times", and "El Hispano" through 2002.
- 2- All other written documentation of Federally required "*consultation with interested parties, including private transportation providers*" (SOP) by Sacramento Regional Transit (SACRT) related to the development of the Program of Projects of 12 new buses earmarked for the State shuttle service to start in April 2003.
- 3- Public hearing notifications sent by SACRT to each local private bus operator and notifications to shuttle bus riders on shuttle buses through 2002.

II. CBA is also requesting information related to:

- A- Regional Transit ISSUE PAPER Agenda Item No. 15 Board Meeting Date 08/26/02, and;
- B- Regional Transit ISSUE PAPER Agenda Item No. 17 Board Meeting Date 1/27/03.

Both Agenda items of 8/26/2002 and 1/27/2003 state, in part, the following: "*The State currently contracts with Amador Stage lines to provide this service. A few years ago, the State expressed interest in having RT provide this service with CNG buses. (Amador's fleet runs on diesel fuel). At that time, RT did not have the required number of peak buses available to operate this service. Earlier this year, RT contracted with Orion for the procurement of about 100 new CNG buses, of which 67 will be replacement buses and 33 will be allocated for new service. Twelve (12) buses have been earmarked to operate the State shuttle service. (The last sentence was included in the 08/26/02 Board item only.)*"

Pursuant to above referenced Agenda Items dated 8/26/2002 and 1/27/2003, CBA is requesting the following written information:

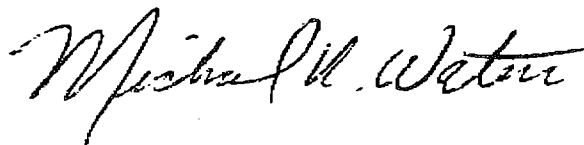
- 1- Dates of meetings and telephone conversations with the Department of General Services (DGS) and SACRT starting with the first contact between both parties to the present date relating to the State Shuttle Service as stated above;
- 2- All written notes from meetings or telephone conversations and e-mails or written communications, summaries of communications, drafts of contract language or drafts of provisions in draft contracts or transcripts of meetings held with DGS; initial drafts of contracts between the two parties to review, written responses to different draft agreements from both parties, all draft maps and schedules, and additional appendixes and/or attachments to final contract agreement;
- 3- All internal SACRT departmental written or electronic memos reviewing, summarizing and critiquing the state of negotiations and proposed changes to draft contract agreements between SACRT and DGS from the start of negotiations to present;
- 4- All grant information submitted to funding entities including requests for additional information and responses from SACRT to these funding entity requests;
- 5- All written or electronic correspondences to and from all interested parties, written summaries or memos of telephone conversations generated by CBA's Emergency Protest of the State Shuttle service.

On behalf of the CBA we appreciate your continued assistance and please do not hesitate to contact my office if you have any questions regarding this request.

CBA looks forward to the opportunity to review these requested materials within the next two weeks.

All materials copied by CBA will be forwarded to the Chairman of the House Government Reform for Subcommittee on Energy Policy, Natural Resources, and Regulatory Affairs.

Sincerely,



Michael Waters, President  
California Bus Association

CC: Congressman Doug Ose  
Emil Frankel, Assistant Secretary for Transportation Policy



## *California Bus Association*

*Promoting Professionalism, Safety & Integrity in the Motorcoach Industry*

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July 6, 2004

Congressman Ose, Chair  
Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs  
2157 Rayburn House Office Building  
Washington, DC 20515-0001

RE: May 18<sup>th</sup> Hearing – Private Sector Participation  
Testimony Follow-up

Dear Chairman Ose:

Subsequent to your May 18, 2004 hearing on private sector participation in transportation, the California Bus Association (CBA) sent a May 25, 2004 request for documents letter to Sacramento Regional Transit (SACRT) under the California Public Records Act (see enclosed). This request was based on the Department of Transportation's testimony during your hearing and certain questions you raised relating to Federal public notification and consultation requirements.

CBA recently received SACRT's response to CBA's detailed questions. They reveal:

Exactly when SACRT entered into private discussions with the State of California's Department of General Services (DGS) to succeed a privately contracted local bus shuttle service prior to SACRT's formal request for Federal capital funds to purchase the necessary expansion buses worth over \$2.4 million, and;

All notifications to private operators and shuttle bus riders starting from June 1999 to August 2003. This timeframe includes a 2000 FTA audit showing SACRT was not in statutory compliance throughout the grant-making process, as alleged in CBA's emergency complaint to FTA. This audit finding was disclosed in FTA's decision denying CBA's protest. This timeframe pre-dates and post-dates the FTA audit whereby SACRT was alleged to have cured this Federal deficiency.

CBA is also enclosing relevant correspondences that it has received so far, and it wishes to summarize what was discovered from its request for information:

1. SACRT staff and DGS staff were communicating as early as 2000 to enter into a sole source contract exclusive of private sector participation.

11020 Commercial Parkway • Castroville, CA 95012

831.633.1755 • 800.664.2877 • FAX 831.633.1934 • [www.cbabus.com](http://www.cbabus.com) • e-mail: [cbabus@redshift.com](mailto:cbabus@redshift.com)

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An e-mail communication on January 3, 2001 from DGS to SACRT requested a letter to confirm prior discussions about taking over shuttle operations. A February 2, 2001 letter from SACRT affirmed *"the discussions that you have had with regional Transit (RT) staff concerning the operation of the State's Downtown Peripheral Shuttle Bus service."* The letter then makes the following statement, which explains why private operators were barred from the Federal process prior to this letter and subsequent to this letter: *We are in the process of purchasing additional buses that will be delivered during the latter part of 2002. We anticipate having sufficient buses to provide this service by January 2003.* The bus manufacturer had production problems; so, the start of service was delayed until April 2003.

2. The files submitted to CBA from June 1999 through August 2003 contain no notification in the general circulation newspaper, the Daily Recorder, regarding the shuttle bus expansion project. This timeline of documents covers the period that FTA's audit found a private sector participation breach, consistent with CBA's complaint. The timeline covers the development of a new Standard Operating Procedure (SOP), specifying notification in the Daily Recorder, that was to be implemented July 1, 2001, and the timeline includes the public notification process throughout 2002.

Further, on November 6, 2001, SACRT, before the public hearing on the shuttle bus takeover, published a notice of annual capital budget for Fiscal Year 2002 in the Daily Recorder. This fact alone proves that SACRT published notifications in this general circulation newspaper, except when SACRT was in the process of taking control over a privately operated bus service.

Therefore, the barring of private sector participation through the notification process occurred prior to FTA's deficiency finding and continued throughout the decision-making process despite the adoption of a new SOP guaranteeing proper notification and FTA's August 5, 2003 decision that no Federal violations had occurred.

3. As CBA's complaint stated, there was no evidence in the files submitted to CBA that SACRT consulted, involved or encouraged in any way local private operators as required by Federal statutes and regulations presented at your hearing on May 18, 2004.
  4. There can be no doubt from review of documents that the core of discussions between SACRT and DGS leading up to a final agreement was a third party sole source agreement hinged on SACRT's preemptively taking over all state shuttle bus service.
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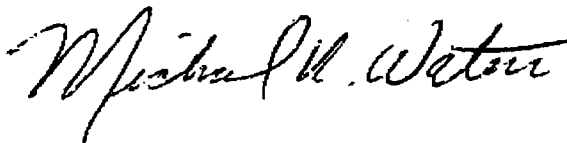
Congressman Ose, Chair  
July 6, 2004  
Page 3 of 3

CBA would like to conclude by taking this opportunity to respond to certain issues raised at the May 18<sup>th</sup> hearing, including a response by DOT to one of your questions. For the record, during the complaint process, CBA presented evidence that the Amador's mass transit bus service was no different than "point to point" bus service offered by FTA recipients across the USA, i.e., it was not a charter service.

Finally, in the June 28, 2004 correspondence to your subcommittee, DOT cites a "Master Agreement" as a condition of funding as one of several ways DOT/FTA requires private sector participation.

This is correct, and CBA included the Master Agreement provisions in its complaint. This agreement is important in the Amador case because DOT/FTA has a vehicle to ensure 100 percent grantee compliance of private sector participation requirements. Section 13 of the Master Agreement requires full private sector participation in the development of plans requiring Federal grants and Section 11 gives DOT/FTA the right to require SACRT to pay back all or a portion of the \$2.4 million in funds for expansion buses if any of the requirements of the agreement are not implemented. DOT/FTA, therefore, has the right to resolve this issue with SACRT consistent with Federal statutes and regulations.

Sincerely,



Michael R. Waters  
President  
California Bus Association

Enclosures

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Mark Lonergan - LETTER

Page 1

From: "Bow, Tim" <Tim.Bow@dgs.ca.gov>  
To: 'Mark Lonergan' <mlonergan@sacrt.com>  
Date: Wed, Jan 3, 2001 12:45 PM  
Subject: LETTER

Mark

Happy New Year... Hope you had a good holiday.

Just checking on the status of that letter. Please let me know, I'm getting a lot of pressure from our executive office of it.

Thanks

Tim



Sacramento Regional  
Transit District  
A Public Transit Agency  
and Equal Opportunity Employer

Mailing Address:  
P.O. Box 2110  
Sacramento, CA 95812-2110

Administrative Office:  
1400 29th Street  
Sacramento, CA 95816  
(916) 321-2800  
29th St. Light Rail Station/  
Bus 34, 38, 50, 67, 68

Light Rail Office:  
2700 Academy Way  
Sacramento, CA 95815  
(916) 648-8400

Public Transit Since 1973

February 2, 2001

Timothy Bow, Chief  
Department of General Services  
Office of Fleet Administration  
802 Q Street  
Sacramento, CA 95814

Dear Mr. Bow:

This is to affirm the discussions that you have had with Regional Transit (RT) staff concerning the operation of the State's Downtown Peripheral Shuttle Bus service.

As a partner, RT is committed to working with the State to provide the existing peripheral parking lot shuttle service. We are also interested in opening discussions with the State and others over the development of a downtown circulator service that would better meet the changing travel patterns within Sacramento's downtown area.

At the present time, RT's bus fleet is committed to existing service. RT will not have sufficient equipment to operate the peripheral shuttle bus service in June when the State's current contract expires. We are in the process of purchasing additional buses that will be delivered during the latter part of 2002. We anticipate having sufficient buses to provide this service by January 2003.

We understand that this delay will not deter the State's commitment to continue with this partnership and we look forward to the opportunity of working with the State to provide the shuttle bus service. Our goal will be to have the needed agreements for this service approved by the RT Board of Directors no later than June 2002.

Although future planning and agreement discussions could transition to our Planning Department, Mr. Mark Longergan, Deputy Chief Operating Officer, will continue as your contact with RT. We appreciate the State's desire to work with RT, and look forward to an expanding partnership focused on improving public transportation in Sacramento.

Sincerely,

Pilka Robinson  
General Manager

c: Mark Longergan, Deputy Chief Operating Officer, RT

Timothy Bow

-2-

February 2, 2001

bc: Mike Wiley, Director of Customer Services, RT  
Doug Wentworth, Director of Planning & IS, RT  
Azadeh Doherty, Planning Manager, RT