



**Regional
Transportation
Authority**

175 W. Jackson Blvd,
Suite 1650
Chicago, IL 60604
312-913-3200
rtachicago.org

INDEX of DOCUMENTS

Northeastern Illinois Public Transit Task Force

GENERAL RTA BACKGROUND, POLICIES, PROCEDURES, ETHICS, BOARD

1. RTA Act: 70 ILCS 3615 *et seq.*
2. State Officials and Employees Ethics Act: 5 ILCS 430/1. *et seq.*
3. *The RTA in Northern Illinois* by Joseph A. Tecson
4. RTA Factbook - 2012
5. Chairman Gates initiatives memoranda:
 - a. Improve transit agency transparency and accountability
 - b. Prioritize capital investments
 - c. Mandate lobbyist registration
 - d. Improve regional planning and coordination
 - e. Increase joint procurements, disadvantaged business enterprise participation, transparency and consistency in the procurement process
6. RTA Employee Handbook
7. RTA Ethics Policy
8. RTA HR Recruitment and Selection Procedures
9. RTA Policy Statement on Sexual Harassment
10. RTA Policy Statement on Equal Employment Opportunity & Affirmative Action Plan
11. RTA Policy Statement Regarding Persons with Disabilities
12. Sample Statement of Economic Interests
13. RTA Whistleblower Policy
14. Online 2012 Employee Ethics Training Program for RTA employees
15. C List/H List Issues under Section 5-45 of the State Ethics Act training materials
16. RTA Board By-Laws
17. RTA Director Disclosure Form
18. Ethics Training for Directors provided by the OEIG
19. Seyfarth Shaw At Work training materials:
 - a. Managing Within The Law at The Regional Transit Authority
 - b. Respect, Accountability and Professionalism at RTA
 - c. Navigating the ADA and FMLA at RTA
20. Workplace Answers™ training materials
21. RTA Procurement Rules
22. Northeastern Illinois Regional Transportation Authority Disadvantaged Business Enterprise Program – February 22, 2012



23. Regional Transportation Authority Customer Satisfaction Study-2012
24. RTA Employment Application
25. Transcripts from RTA Special Board Meeting Regarding Clifford Severance Agreement 7/10/13
26. Transcripts from RTA Special Board Meeting Regarding Clifford Severance Agreement 7/17/13
27. RTA Request for Proposal Template
28. RTA Vendor/Contractor Certification Form
29. RTA Procurement Training
30. RTA Procurement Guide
31. RTA Certifications and Assurances Form
32. RTA DBE Opportunities Form
33. RTA Severance Policy and Procedures
34. RTA DBE Report, June 1, 2013
35. RTA DBE Report, December 1, 2013
36. RTA Severance Agreements 2009 to Date
37. Statement of Alexander Clifford to RTA Board July 17, 2013
38. Statement of Alexander Clifford to RTA Board July 17, 2013 Part 2
39. RTA Audit of Clifford Separation Agreement
40. RTA Invitation For Bid Template

FINANCE

100. Determining the Equitable Allocation of Public Funding for RTA System - Interim Report
101. Budget Books
 - a. 2007
 - b. 2008
 - c. 2009
 - d. 2010
 - e. 2011
 - f. 2012
 - g. 2013
102. Popular Annual Financial Reports (PAFR) and Annual Reports
 - a. 2006
 - b. 2007
 - c. 2008
 - d. 2010
 - e. 2011
 - f. 2012
103. Comprehensive Annual Financial Reports (CAFR)
 - a. 2008

- b. 2009
- c. 2010
- d. 2011
- e. 2012
- 104. Special-Purpose Combining Financial Statements
 - a. 2007
 - b. 2008
 - c. 2009
 - d. 2010
 - e. 2011
 - f. 2012
- 105. Report on Project Management Oversight
 - a. 2013
 - b. 2012
 - c. 2012
- 106. Regional Report Cards
 - a. 2007
 - b. 2008
 - c. 2009
 - d. 2010
 - e. 2011
 - f. 2012
- 107. Sub-Regional Reports
 - a. 2009
 - b. 2010
 - c. 2011
 - d. 2012
- 108. Regional Peer Report Cards
 - a. 2007
 - b. 2008
 - c. 2009
 - d. 2010
 - e. 2011
- 109. Sub-Regional Peer Reports
 - a. 2009
 - b. 2010
 - c. 2011
- 110. Capital Asset Condition Assessment
 - a. 2010
 - b. 2011
- 111. Strategic Performance Measures – 2012

112. CTA Dan Ryan Track Value Engineering Report – 2012
113. CTA Wilson Station Value Engineering Report – 2013
114. Metra Healy Station Value Engineering Report – 2012
115. Triennial Safety Report – 2010
116. FTA’s Triennial Review of RTA 2011
117. FTA’s Triennial Review of RTA 2008
118. RTA Pension Plan Financial Report
 - a. 2008 and 2009
 - b. 2009 and 2010
 - c. 2011 and 2012
119. Regional Transportation Authority Pension Plan – Plan Administration Manual
120. Public Act 098-0108
121. RTA Ten Year Financial Plan 2013-2022
122. RTA Ridership Report- 2012

PLANNING

200. Regional Transit Strategic Plan 2013-2018
201. Transit Priority Initiatives Report to Illinois General Assembly 2011
202. RTA Office of Planning and Programming Quarterly Reports of SFY 2013 - 1st, 2nd and 3rd Quarters
203. RTA Unified Work Program Quarterly Report for SFY 2013 – 1st and 3rd Quarters
204. RTA Unified Work Program Quarterly Report for SFY 2012 Year-End Report - 2nd Quarter
205. FTA Quarterly Narrative Reports for multiple grants
206. 2010 RTA Travel Market Analysis
207. Initiative for the Chicago Southland Transit Region Implementation Study Village of Homewood, Aug. 2012
208. Initiative for the Chicago Southland Transit Region Implementation Study - August 2012
209. Initiative for the Chicago Southland Transit Region Implementation Study City of Blue Island - Aug. 2012
210. Initiative for the Chicago Southland Transit Region Implementation Study City of Oak Forest - Aug. 2012
211. Village of Hoffman Estates Flexible Transit Service Operations Plan - March 19, 2013
212. Lake Villa Downtown TOD Plan - September 11, 2013
213. Naperville Metra Station Bus Depot and Commuter Access Feasibility - March 2012
214. Progress Report on the Development and Implementation of a Regional Open Standards Fare Payment System - May 2012
215. Zoning and Transit-Oriented Development - March 9, 2011
216. Streamlining the Entitlement Process for Transit-Oriented Development - October 2012

- 217. Tools and Techniques for Facilitating Effective TOD Value Capture, A White Paper - July 2009
- 218. Commuter Rail Fare Collection White Paper - February 2012
- 219. Alternative Fuels White Paper - June 2012
- 220. HOT for Transit? Transit's Experience of High-Occupancy/Toll Lanes
- 221. Senior and Disabled Reduced Fare Programs: A Peer Review of Policies
- 222. The Chicago Regional Green Transit Plan-2012
- 223. RTA Coordinated Public Transit-Human Services Transportation Plan
- 224. RTA Program Management Plan: FTA Section 5310 Enhanced Mobility of Seniors and Individuals with Disabilities

AUDIT

- 300. RTA Risk Assessment Final Report - 2011
- 301. State Auditor General Performance Audit Executive Summary – 2007, volume 1
- 302. State Auditor General Performance Audit – 2007, volume 2
- 303. State Auditor General Follow-up Report on Status of Recommendations from 2007 Performance Audit (2009)
- 304. Report Digest of Performance Audit - 2007
- 305. State Safety Oversight Program: Audit of the RTA - Sept. 22, 2010

REGIONAL ACCESSIBILITY

- 400. Human Services Transportation Plan – September 2007
- 401. RTA ADA Oversight and Technical Assistance Plan
- 402. Review of the RTA ADA Paratransit Eligibility Certification Program Final Report – October 7, 2011



**Regional
Transportation
Authority**

175 W. Jackson Blvd,
Suite 1650
Chicago, IL 60604
312-913-3200
rtachicago.org

January 17, 2014

Secretary Ann Schneider
Co-Chair Northeastern Illinois Public Transit Task Force
2300 South Dirksen Pkwy
Springfield, IL 62764
ann.schneider@illinois.gov

George Ranney
Co-Chair Northeastern Illinois Public Transit Task Force
30 West Monroe Street
Chicago, IL 60603
granney@cm2020.org

RE: Response to December 6, 2013 and December 24, 2013 Requests for Information

Dear Co-Chairs Schneider & Ranney:

Below, please find responses to the questions posed on behalf of the Northeastern Illinois Public Transit Task Force in your letters dated December 6, 2013 and December 24, 2013. Some of our responses reference the thousands of pages of documents that the RTA has previously provided the Task Force. These documents, along with an index, were provided to each Task Force member electronically and have subsequently been uploaded to the Task Force's website. However, several of our responses reference documents that have not been previously provided, but those new documents, and an updated index, are included with this response.

We have attempted to answer each of the questions posed to the best of our abilities, but found that a number of the questions were broad and/or subject to multiple interpretations. Please let us know if you would like additional information.

Best Regards,

A handwritten signature in blue ink that reads "Joseph G. Costello" with the initials "JGC" written below it.

Joseph G. Costello
Executive Director





**Regional
Transportation
Authority**

175 W. Jackson Blvd,
Suite 1650
Chicago, IL 60604
312-913-3200
rtachicago.org

January 17, 2014

DECEMBER 6, 2013 REQUEST

3. In connection with your response to question 3, please describe the process that is followed when a conflict of interest is identified and the actions that are or may be taken to resolve such conflict.

Board of Directors

The actions taken depend upon the type of conflict involved, how and when it is discovered. The RTA's policies require that *potential* conflicts are reported and/or discovered prior to becoming *actual* conflicts whenever possible. Statutory conflicts, such as those in which a Board of Directors (Board) member is found to have possibly or inadvertently violated Section 3.01 of the RTA Act, are reported to the Director in question so that s/he can resolve the conflict.

Conflicts involving matters which must be voted upon by a Board member, if discovered prior to the vote: the Board member recuses him/herself from the vote and refrains from otherwise being involved in the decision making process. Conflicts discovered after a vote or other deliberative processes are referred to the RTA Ethics Officer to take appropriate action including possible referral to the OEIG, if warranted.

Conflicts involving matters that do not necessarily require a board vote but which nonetheless violate our policies or the State Officials and Employees Ethics Act (the Ethics Act) would also be reported to the OEIG, if warranted.

Employees

If a conflict of interest exists and is timely reported by an employee, the employee must refrain from being involved in any decision making with regard to the underlying matter. Other involved employees would be informed of the potential conflict so that separation is maintained between the conflicted employee and the underlying matter. If an employee fails to timely report a conflict the matter is referred to the RTA Ethics Officer to take appropriate action including possible referral to the OEIG, if warranted.



5. In connection with your response to question 5, please provide your recommendation on whether term limits should be imposed on Directors and if so, what said term limit should be.

Pursuant to the RTA Act, a board member serves a five year term once appointed to the RTA Board. There are a number of statutory mechanisms by which a board member's tenure may end (expiration of term and appointment of a new member, resignation, removal, etc.). We leave it to the Illinois General Assembly to decide whether additional limits should be placed on an individual's ability to serve on the RTA Board.

9., 10., 11. In connection with your response to questions 9, 10, and 11, please describe with specificity the internal controls and monitoring related to employment actions or discrimination based upon political reasons or factors, and indicate when this policy was first put in place. In so doing, we ask that you direct us to the precise policy and page addressing this matter. In addition, please direct us to the pamphlet or material that your agency uses to disseminate policy positions that inform directors and employees that there shall be no discrimination or preferential treatment based upon political reasons or factors, and state when it was first used.

In making employment related decisions, the RTA is governed by Section 2.14 of the RTA Act which expressly prohibits discrimination based upon political reasons or factors. It provides: "No unlawful discrimination, as defined and prohibited in the Illinois Human Rights Act, shall be made in any term or aspect of employment nor shall there be discrimination based upon political reasons or factors." We have previously provided the Task Force with documents specifically outlining our hiring process. Specifically, section 7.4 of our Employee Handbook reiterates the standards set forth in the RTA Act in this regard. **Documents 6, 8.**

RTA managers attended a training session on Advanced Management Skills which included guidance on complying with Section 2.14 of the RTA Act. This training took place in 2013 as a part of our management training program. We do not know whether "formal" training specific to this prohibition has been conducted in years past.

14. In response to question 14, you wrote that a whistleblower may contact the "RTA Ethics Officer" amongst other entities. For your agency's Ethics Officer, please identify (a) the process for selection and hiring the individual to hold this office; (b) the performance and factors considered for any employment action taken in connection with this position, including, but not limited to a change in salary, promotion within the office, or termination from the position; (c) identify (i) the individual currently serving in this position and (ii) the individuals to have held this position for the last seven years; (d) the background and history for this office, including the creation of the position and its enabling resolution; and (e) any reports or findings issued by this office in the last seven years. This material can be provided in a manner to redact information considered "private" under Illinois FOIA and other related laws.

The current process for selecting the RTA's Ethics Officer is to evaluate the qualifications of the agency's most senior personnel, and if qualified, the Executive Director recommends the appointment to the Board and the Board appoints the Ethics Officer. After the Board names the Ethics Officer, the name and resume of the recommended individual are provided to the OEIG.

The Ethics Officer is evaluated on his/her performance of the position's written requirements. The current Ethics Officer is the Deputy Executive Director of Audit, Michael Zumach, who reports to the Board of Directors. Mr. Zumach has served as Ethics Officer since April 2013. Prior to Mr. Zumach, Ms. Catherine Clark, Internal Audit Manager, was the Ethics Officer.

The Ethics Officer position was created by RTA Ordinance in June, 2011. The position was later filled with the selection of Ms. Clark in 2011. The duties of the office are further delineated in the RTA's Ethics Policy. **Document 7.**

The Ethics Officer position does not routinely issue public reports. Pursuant to the Freedom of Information Act (FOIA) and the Ethics Act, any other documents prepared by the Ethics Officers are exempt from release. Therefore these documents cannot be released, even in a redacted form, without jeopardizing the statutory confidentiality that is afforded to those documents.

15. In response to question 15, you wrote that "[t]here have been no published OEIG or Executive Ethics reports regarding the RTA." Please indicate the relevant time frame for this statement. Further, please indicate the individual or office responsible for conducting investigations of RTA for the seven years prior to the establishment of the OEIG's authority over the RTA.

Since the inception of the OEIG's jurisdiction over the transit boards (July 1, 2011), there have never been published OEIG or Executive Ethics reports regarding the RTA. We are unclear regarding the Task Force's specific definition of "investigations" but assume in our response that the intention is to inquire regarding the responsibility for resolving any potential wrongdoing. Prior to the OEIG's jurisdiction, an Ethics Officer (beginning in 2011), the Executive Director, internal Audit staff and the General Counsel, along with any other relevant supervisory staff handled any matters warranting "investigation."

17. In response to question 17, you wrote that monthly training sessions are conducted by a law firm retained by the RTA, and employees are required to complete online workplace-related training. How often are employees required to complete ethics training?

Pursuant to the Ethics Act, employees are required to complete ethics training within 30 days of starting employment. Thereafter, all employees are required to complete ethics training annually. The training materials are prepared and any revisions modifying the materials to

make them agency-specific are approved by the OEIG. Compliance is reported to the OEIG annually.

The RTA Board members are subject to the same requirements for initial training and thereafter annual training. Compliance is reported to the Office of the Governor annually.

Additionally, the RTA has and will continue to conduct internal training on a variety of topics including ethics.

19. In response to question 19, you wrote “RTA staff has been asked to direct all communications from elected officials to the RTA’s Government Affairs Department.” Please indicate how RTA addresses contact between directors or officers and elected officials, or their representatives, concerning official business. Further, please provide copies of any correspondence or notes, records, or logs regarding communications, including, but not limited to phone calls, letters, and email, between the Government Affairs Department and elected officials, or their representatives, regarding hiring, firing, or promotions of executives or employees, and purchasing and procurement, during the last three years. Further, please describe any known exceptions to this general practice, and provide any correspondence or notes, records, or logs regarding communications between RTA officers, employees, or directors and elected officials, or their representatives, regarding hiring, firing, or promotions of executives or employees, and purchasing and procurement, during the last three years. The responsive material can be provided in a manner to redact information considered “private” under Illinois FOIA and other related laws.

Elected officials serve as an invaluable conduit to the communities and citizens they represent and the RTA works every day with state and local elected officials and staff. Complying with this broad request would be unduly burdensome to the RTA, but RTA is willing to work with the Task Force in narrowing the scope of the request if you so choose.

23. In response to question 23, you wrote that RTA makes no inquiry “into current or prospective employees’ familial relationships, nor is any such relationship considered in the hiring process.” Please describe the process by which RTA actively enforces section 7.13, Nepotism, of the RTA Employee Handbook.

Our prior response was partially inaccurate; our employment application does inquire whether a hiring candidate has a prohibited relationship with an existing employee. A copy of the form application is attached. **Document 24.**

1. Please provide any documents reflecting any contacts by persons outside RTA regarding the hiring and/or promotion and/or granting of salary increases (or requests for hiring, promotion or salary increases) for Members of the RTA Senior Executive Team during the last five years. The materials can be provided in a manner to redact information considered “private” under Illinois FOIA and other related laws. The materials should include, but are not limited to, letters of reference and notes or memoranda or emails involving references by outside persons, including but not limited to, elected or appointed officials.

We have searched every current senior staff member’s personnel file and found no record of contact outside the RTA regarding any personnel action. Personnel files are where such records would be maintained by the agency, as a matter of course. Due to the breadth of the request, we have no efficient mechanism to thoroughly search for, and conclusively determine whether there are in fact, other responsive documents.

2. Please provide a comprehensive list of all internal or external investigations, audits, analyses, or related reviews of RTA or its employees during the last seven years, including those conducted by any inspectors general, the OEIG, Illinois Department of Transportation, and the U.S. Department of Transportation, and whether we may arrange to review these documents. This list and the subsequent materials can be provided in a manner to redact information considered “private” under Illinois FOIA and other related laws. Further, please describe the policy of RTA regarding whether reports of past investigations are available for review by the general public.

Copies of all public RTA audit reports are made available to the RTA Board of Directors, agency management, the media and the public and can be accessed online on the RTA website at <http://rtachicago.com/about-the-rt-a/audits.html>. Many of these documents were provided to the Task Force in response to a prior request. **Documents 300-305**. Additionally, a vast amount of data and a number of RTA studies can be found at <http://www.rtams.org/rtams/home.jsp>.

Pursuant to the Ethics Act, documents related to investigations conducted by the OEIG and other Ethics Officer-generated documents are exempt from disclosure. In order to remain compliant with the Ethics Act we must respectfully decline to provide these documents. We have no policy regarding inspection of documents by the public other than to fully comply with FOIA and other applicable statutes.

Various reviews of the RTA are conducted by the U.S. Department of Transportation on a regular basis. Many of these documents are available on our website (www.rtachicago.com) or were previously provided as part of our response to a prior request. **Documents 116, 117, 402**. We have also enclosed an additional document reviewed and approved by the FTA. **Document 224** (RTA Program Management Plan: FTA Section 5310 Enhanced Mobility of Seniors and Individuals with Disabilities). Last, also enclosed is the 2013 update to the Human Services Transportation Plan provided as part of a prior submission. **Document 223**.

Due to the breadth of the request, it is difficult to discern the full scope of responsive documents. Please advise if additional or different documents are desired.

3. Please provide copies of any records of discussions by the RTA Board of Directors during the last seven years regarding patronage or any issues related thereto, including, but not limited to, those in Board minutes and presentations to the Board.

Minutes from January 2006 through December 2013 for our open meetings and any minutes subsequently released from closed meetings can be found on our website at <http://rtachicago.com/meetings/board-minutes.html>. Attached please also find transcripts of meetings in 2013 during which the Alex Clifford severance agreement and related matters are discussed. **Documents 25 and 26**. Also attached are responsive documents from those meetings as well as the RTA's audit of the Clifford severance agreement. **Documents 37, 38, 39**. Respectfully, we choose to maintain the statutory confidentiality afforded any documents related to closed meetings of our Board.

4. Please identify the reasons why people and/or entities lobby your Agency. In addition, please provide any and all policies, procedures, and controls in place regarding the people and/or entities who lobby your Agency.

The RTA is required by law to hold public meetings within the RTA region regarding our budget, strategic plan and other statutorily specified topics. The public, as well as elected officials including mayors, village presidents, village board members, county board presidents/chairs and city council members, often voice their opinion or request specific projects or geographic areas on which they would like the RTA to focus. Any of these interactions might be considered "lobbying" though we are unclear whether this is the sort of request to which the question refers. Any conversation or interaction with an RTA official must comply with all governing Illinois and federal law, (including the Ethics Act) as well as any internal RTA policies and the RTA's Procurement Rules and Regulations (PRRs). Ethics training and procurement training of RTA personnel addresses contact regarding RTA procurements, gift bans, etc. **Documents 21, 27, 28, 29, 30**.

5. Identify the agency's revolving door policies, procedures, and controls governing the relationship and interactions between the agency and current or departing board members or agency employees, specifically, but not limited to, procurement, lobbying, and other agency issues. Provide copies of any such policies, rules, regulations, or requirements and identify the date of implementation.

The RTA is responsible for adhering to the State's revolving door requirements since coming under the jurisdiction of the OEIG and being required to comply with the Ethics Act. The RTA has implemented processes to ensure that the individuals covered by sub-sections C and H of Section 5-45 of the Ethics Act are aware of their responsibilities, and the process for complying. Ultimately the Ethics Officer is responsible for ensuring compliance with the Ethics Act.

With regard to the "C" list of employees referenced above, the Agency determined that all employees at or above the manager level (job classification level 32) would be added to the "C" list. In addition, employees who are below level 32 that had involvement in a procurement action were added to the list. This list was provided to the Cook County Clerk's

office and used to verify compliance with the filing requirements. The list is updated annually. As individuals leave the Agency, the Ethics Officer determines whether the departing employee is on the "C" List, and if so, whether s/he has complied with the Act.

6. Identify the RTA's revolving door policy regarding (a) current or departing board members of RTA and their service or business relationships with CTA, Metra, and Pace and (b) RTA's relationship with current or departing board members of CTA, Metra, and Pace. Provide copies of any such policies, rules, regulations, or requirements and identify the date of implementation.

With regard to *sitting* RTA Board members, while *revolving door* statutory provisions are not applicable, it would likely be a violation of the RTA Ethics Policy to accept compensation from a Service Board while simultaneously making budget and other decisions with regard to that Service Board. A number of specific 'doing business' conflicts of interest are set forth in the policy. **Document 7.**

The RTA monitors compliance with the revolving door requirements for vendors that do business with the RTA. For each RTA procurement, vendors are required to complete a Vendor/Contractor Certification (VCC) and an RTA Certifications and Assurances form (both Attached). **Documents 28 and 31.** The VCC form requests information on the vendor's type of entity, owners/key individuals, and the name of any associated lobbyist. The Certification and Assurances form requires the vendor to certify that:

1. No member of the RTA's Board of Directors, RTA Board member's spouse or an immediate family member of the RTA Board member living in the RTA Board member's residence, or RTA employee has, or will have, a direct pecuniary interest in the contract to which this Certification relates.
2. No member of the RTA's Board of Directors, RTA Board Member's spouse or an immediate family member of the RTA Board member living in the RTA Board Member's residence, or RTA employee holds more than a 7.5% ownership interest in the VC.
3. If any member of the RTA's Board of Directors, RTA Board Member's spouse or an immediate family member of the RTA Board member living in the RTA Board Member's residence, or RTA employee holds an ownership interest in VC of 7.5% or less, that ownership interest shall be disclosed in writing and attached to the Certification.

7. Identify the policies, procedures, and controls in place regarding your agency's (a) procurement process, including bidding and price tracking; and (b) communications between board members or employees and past, current, or potential vendors regarding agency business and procurement. Provide copies of any such policies, rules, regulations, or requirements and identify the date of implementation.

Our PRRs, Ethics Policy, Ethics Training for Directors by the OEIG and the State Officials and Employees Ethics Act were previously submitted. **Documents 2, 7, 18, 21.** Attached please also find a copy of our boilerplate procurement solicitation documents, Procurement Guide and Procurement Training. **Documents 27, 29, 30, 40.** We require that proposers and bidders refrain from contact with anyone affiliated with the RTA (other than the designated

procurement department personnel) during an active procurement *re the solicitation*. Employees and Board members are aware of this prohibition. Contact other than during an active procurement might also be prohibited by ethics requirements depending on the circumstance.

8. In connection with procurement, identify the policies, procedures, and controls in place regarding your agency's (a) requirements and goals regarding the involvement of Disadvantaged Business Enterprises ("DBE"); (b) public reporting and disclosure regarding the success or progress of those requirements and goals; (c) agency procedure for validating an entity's DBE status; and (d) communications by and between the agency, or board members or employees thereof, and public officials on behalf of DBEs. Provide copies of any such policies, rules, regulations, or requirements and identify the date of implementation.

The Ethics Act, RTA's Ethics Policy, DBE Program document and PRRs were previously submitted in response to a prior Task Force request. **Documents 2, 7, 21, 22.** Attached are additional responsive documents: the DBE Opportunities Form, VCC, Procurement Guide, Procurement Training, DBE Report submitted to the FTA (December 2013), Annual DBE report to the General Assembly (October 2013). **Documents 28, 29, 30, 32, 34, 35.**

A current or prospective vendor's DBE status is verified via the Illinois Department of Transportation's website, which houses data regarding the status of vendors certified by one of the five members of the Uniform Certification Program (UCP). If the vendor is certified outside Illinois's UCP, RTA staff searches the appropriate database for current certification information. The vendor may present a letter or other document from the certifying agency as proof of current DBE status. RTA staff may also contact the alleged certifying agency directly for verification if need be.

9. Identify the agency's policies, procedures, and controls in place regarding debarment and suspension of individuals or companies seeking to do business with your agency, including (a) what steps, if any, the agency takes to determine if a vendor or contractor has been debarred or suspended; (b) what practices the agency undertakes to notify the relevant authorities of conduct by vendors or contractors that could lead to debarment or suspension; and (c) what procedures, if any, are in place to share such information with CTA, Pace, and Metra.

The RTA has previously provided our PRRs, which contain the parameters regarding debarment of companies. **Document 21.** Also attached is a copy of our VCC in which all current and prospective vendors must attest that they have not been debarred from doing business by any other government agency. **Document 28.** No vendor has been debarred by the RTA.

DECEMBER 24, 2014 REQUEST

1. A comprehensive list of all severance agreements, with associated dollar amounts, of any severance agreement your agency has entered into in the last five years.

Please see the attached list. **Document 36.**

2. A detailed report on your agency's policies, practices, and procedures governing your agency's actions related to severance agreements.

All of the RTA's policies, practices, and procedures governing our actions related to severance agreements can be found in the enclosed RTA's Severance Policy and Procedures. **Document 33.**



Coordinated Public Transit-Human Services Transportation Plan



2013 Update

Acknowledgements

The Coordinated Public Transit Human Services Transportation Plan was managed by the Regional Transportation Authority (RTA).

The RTA would like to thank the Project Advisory Committee for providing oversight, reviewing interim work products, and sharing data and information over the course of the project. The Project Advisory Committee is comprised of a diverse group of stakeholders representing the target populations, geography and transportation interests of the region.

Table of Contents

Introduction	3
History of the HSTP	3
MAP-21 Section 5310 Enhanced Mobility of Seniors and Individuals with Disabilities	4
Approach to Updating the HSTP.....	5
HSTP 2013 Update Public involvement and Adoption Process.....	6
Chapter 1: Overview of Study Area	7
Overview of Study Area.....	7
Table 1-1 2010 Target Populations by County	7
Table 1-2 2010 Proportion of Target Populations by County	7
Assessment of Available Services	8
On-going Coordination Activities	11
Chapter 2: Service Limitations, Gaps, Needs and Strategies	14
Centralized Information	14
Spatial Limitations	14
Temporal Limitations	15
Program Eligibility and Trip Purpose Limitations	15
Service Redundancies.....	16
Service Quality and Miscellaneous Issues	16
Sustainability	17
Strategies	17
Chapter 3: Local Program Policies.....	19
Federal Requirements	19
Local Program Policies	20
Table 3-1 MAP-21 Section 5310 Multi-Year Approach.....	20
Section 5310 Program Selection Team	21
Section 5310 Program Selection Criteria.....	21
Section 5310 Program Selection Process.....	24

Appendix A: Inventory of Transportation Providers

Introduction

The Coordinated Public Transit-Human Service Transportation Plan (HSTP) was first developed in 2007 by the Regional Transportation Authority (RTA) to meet the requirements of the New Freedom and Job Access Reverse Commute (JARC) programs. Upon the signing into law of the new surface transportation legislation, Moving Ahead for Progress in the 21st Century (MAP-21), on July 6, 2012, it became apparent that the HSTP should be updated to conform to the new legislation. Much of the original HSTP is still relevant, particularly with regard to its assessment of needs, and is incorporated as an Appendix to this update. It is important to note that the federal circular that would further clarify and detail the requirements of the MAP-21 Section 5310 program has yet to be finalized. Therefore, any inconsistencies that may be found between the plan and final requirements as published in a circular governing the program will be resolved in accordance with the final regulations.

History of the HSTP

In 2007, The Regional Transportation Authority (RTA) led a collaborative planning effort to identify and recommend regional and local strategies that encourage the most effective use of available community transportation services to enhance mobility for the region's older adults, persons with disabilities and persons with low incomes. The planning effort was known as Connecting Communities through Coordination. The scope of the project includes the six-county RTA region, comprising Cook, DuPage, Kane, Lake, McHenry and Will counties, plus areas in CMAP's planning area; Kendall County, Sandwich Township (DeKalb County), Somonauk Township (DeKalb County), and Aux Sable Township (Grundy County) and was built upon existing coordination plans in the region or plans that were in the process of being developed. This planning process culminated in the adoption of the Coordinated Public Transit-Human Services Transportation Plan or HSTP in the RTA Board in October 2007. The HSTP, in meeting the requirements of Safe, Accountable, Flexible, Efficient Transportation Equity Act – A Legacy for Users (SAFETEA-LU), allowed the region to access federal funding associated with:

- FTA Section 5310 – Transportation for Individuals who are Elderly and Individuals with Disabilities. This program provided capital funding for private, non-profit entities (and if none, public entities) that are involved in transporting older adults and persons with disabilities.
- FTA Section 5316 (JARC) – This program provided funding for projects/services that improve access to transportation services to employment and related activities for welfare recipients and eligible low-income individuals and to transport residents of urbanized and non-urbanized areas to suburban employment opportunities.
- FTA Section 5317 – New Freedom Program. This program provided funding for projects/services that provide new public transportation services and public transportation alternatives beyond those required by the Americans with Disabilities Act (ADA).

The primary objectives of the HSTP were to access federal funding for needed transportation services and become a resource for supporting and encouraging local coordination efforts. The region has accomplished many of those objectives during the past six years. Since the adoption of the HSTP, 33 projects were funded through the JARC and New Freedom Programs. Several of the projects operate as multi-jurisdictional services underscoring the coordination taking place in the region.

MAP-21 Section 5310 Enhanced Mobility of Seniors and Individuals with Disabilities

MAP-21 consolidates two former programs, the Elderly and Disabled Program (formerly Section 5310) and the New Freedom Program (Section 5316), into the Section 5310 Enhanced Mobility of Seniors and Individuals with Disabilities. The MAP-21 Section 5310 Program, just as its forerunners were, is a formula grant program. It is designed to continue the goals and eligible activities of the previous programs including supporting capital projects that are planned, designed, and carried out to meet the special needs of seniors and individuals with disabilities when public transportation is insufficient, inappropriate, or unavailable. It may also be used for public transportation projects that exceed the requirements of ADA that improve access to fixed-route service and decrease reliance by individuals with disabilities on complementary paratransit, and for alternatives to public transportation that assist seniors and individuals with disabilities. Any projects to be funded with Section 5310 funding must be derived or included in a locally developed human services coordinated plan, such as the HSTP as updated. The legislation discontinued JARC as a stand-alone program, and instead allows eligible recipients of Section 5307 to utilize these funds to support JARC projects.

The legislation also affected designated recipient requirements. A designated recipient is the agency that assumes the responsibility for managing a Federal Transit Administration grant program like Section 5310. Prior to MAP-21 only a state's department of transportation could be the designated recipient for Section 5310. Consequently, the Illinois Department of Transportation (IDOT) was the sole designated recipient of Section 5310 for the entire state. MAP-21, however, allows the RTA and IDOT to be co-designated recipient for northeast Illinois.

The co-designation status has been approved by the Chicago Metropolitan Agency for Planning (CMAP), the Metropolitan Planning Organization (MPO) for northeast Illinois. Under this arrangement, IDOT will be responsible for project selection and the award of Section 5310 funded paratransit vehicles and RTA will be responsible for all other Section 5310 projects. This arrangement is further explained in Chapter 3. The projects RTA will be responsible for selecting and awarding will essentially consist of projects that are similar to those funded through the New Freedom Program that RTA administers for those grantees who have projects still receiving assistance with funds previously awarded under SAFETEA-LU.

Approach to Updating the HSTP

As was the case during the development of the 2007 HSTP, the RTA again relied on the input of the HSTP Project Advisory Committee (PAC). The PAC is comprised of representatives from the RTA Service Boards; the Chicago Transit Authority (CTA), Metra, and Pace, the Illinois Department of Transportation (IDOT), the Chicago Metropolitan Agency for Planning (CMAP), the seven counties, human service agencies that reflect populations of seniors, individuals with disabilities, and low-income individuals, and private non-profit and private for profit agencies. PAC members were invited to participate in a total of five meetings between December 2012 and July 2013. A full list of the representative agencies on the PAC is provided below:

- TMA of Lake-Cook
- Metra
- Lake County
- Ray Graham Association
- Cook County Department of Transportation Highway
- Continental Air Transport
- Center for Neighborhood Technology (CNT)
- Chicago Transit Authority (CTA)
- Illinois DOT (IDOT)
- DuPage County
- Will County
- McHenry County
- Northeast Illinois Area Agency on Aging
- Kane County Association for Individual Development (AID)
- Chicago Metropolitan Agency for Planning (CMAP)
- Pace
- Mayor's Office for People with Disabilities (MOPD)
- Council for Jewish Elderly
- Chicago Urban League
- Kendall County
- Kane County
- Hanover Township
- City of Naperville

Based on a review of the original HSTP, the PAC agreed that much of the 2007 plan (accessible online at <http://rtachicago.com/images/stories/Initiatives/JARC/NF/HSTP.pdf>) was still pertinent and only a brief update to the key elements of the HSTP was required. The 2013 HSTP Update includes information from the original plan when pertinent to the subject under discussion and is organized in the following manner:

- Chapter 1: Overview of the Study Area and Transportation Services
- Chapter 2: Service Limitations, Gaps, Needs and Strategies

Coordinated Public Transit-Human Services Transportation Plan - 2013 Update
REGIONAL TRANSPORTATION AUTHORITY

- Chapter 3: Local Program Policies
- Appendix A: Inventory of Transportation Providers

HSTP 2013 Update Public involvement and Adoption Process

Upon endorsement from the PAC, the RTA will open a 30 day public comment period by posting the draft HSTP 2013 Update on the RTA website and solicit feedback from the following groups:

- CMAP Human & Community Development Committee
- RTA Regional Citizens Advisory Board
- RTA ADA Advisory Committee

At the conclusion of the Public Comment Period, RTA staff will incorporate any changes to the HSTP and communicate those changes to the PAC. The final HSTP will then be presented to the following groups (in order) for adoption:

- CMAP Transportation Committee
- CMAP MPO Policy Committee
- RTA Board of Directors

Chapter 1: Overview of Study Area

Overview of Study Area

The scope of the project includes the six-county RTA region, comprising Cook, DuPage, Kane, Lake, McHenry and Will counties, plus areas in CMAP’s planning area; Kendall County, Sandwich Township (DeKalb County), Somonauk Township (DeKalb County), and Aux Sable Township (Grundy County). There are currently more than 8.4 million people living in the seven-county study area. Approximately 9% are persons with disabilities, 11% are aged 65 and over and 13% are individuals with low income. Cook County with 62% of the region’s population also has the highest proportion of each of the target populations residing in the county. This information is shown for each county and for the study area in Tables 1-1 and 1-2.

Table 1-1 2010 Target Populations by County

Region	Total Population	Persons with Disabilities	Aged 65 and Over	Low Income
Cook	5,194,675	515,926	620,329	820,759
DuPage	916,924	70,159	106,398	56,849
Kane	515,269	37,802	49,690	52,042
Kendall	114,736	7,032	8,382	4,360
Lake	703,462	50,566	73,093	57,684
McHenry	308,760	24,174	31,320	21,304
Will	677,560	51,097	62,814	48,107
Total	8,431,386	756,756	952,026	1,062,355

Table 1-2 2010 Proportion of Target Populations by County

Region	2010 Percentage of regional population	Persons with Disabilities	Aged 65 and Over	Low Incomes
Cook	61.6%	9.9%	11.9%	15.8%
DuPage	10.9%	7.7%	11.6%	6.2%
Kane	6.1%	7.3%	9.6%	10.1%
Kendall	1.4%	6.1%	7.3%	3.8%
Lake	8.3%	7.2%	10.4%	8.2%
McHenry	3.7%	7.8%	10.1%	6.9%
Will	8.0%	7.5%	9.3%	7.1%
Total	100.0%	9.0%	11.3%	12.6%

Source:

Census Bureau's American Community Survey 2009-2011

CMAP: New U.S. Census Data Analysis – Overview of Trends in the Senior Population

Assessment of Available Services

The seven-county study area contains a multitude of transportation services, ranging from large regional transit operators to small local providers. A summary table listing all community transportation services in the seven-county region is provided in Appendix A.

Regional Transportation Authority (RTA)

The RTA provides financial oversight and regional planning—including coordination—for regional public transportation operators (“service boards”) in Northeastern Illinois: Chicago Transit Authority (CTA), Metra, and Pace. As the transportation funding body for the region, the RTA has also been involved in overseeing the ADA paratransit services in the region.

Overview of the CTA¹

The Chicago Transit Authority (CTA) is the operator of buses as well as subways and elevated rapid transit primarily within the City of Chicago and forty surrounding suburbs. On an average weekday, nearly 1.6 million rides are taken on CTA, providing 83% of the public transit trips in the six-county region. The CTA operates 1,200 rail cars over eight routes and 224.1 miles of track, and has approximately 1,781 buses that operate over 129 routes and 1,959 route miles. All 129 bus routes are fully accessible to customers with disabilities. Lifts and ramps on all buses are available for use upon request by anyone who has trouble with steps, even temporarily. The catchment of people living or working within $\frac{3}{4}$ of a mile of a bus stop is approximately 3.5 million.

From 1981 through June 2006, the CTA also operated paratransit services, including Special Services, a shared-ride, door-to-door service, and the Taxi Access Program (TAP), a taxi subsidy program available to Special Services customers. Beginning in 1992, Special Services served as the CTA’s response to its ADA complementary paratransit obligation. For most of these years, Special Services was provided through turn-key contracts with three private carriers (Cook-DuPage Transportation, SCR Transportation, and Art’s Transportation). Per House Bill 1663, passed in July 2005, Pace took over the responsibility for Special Services and TAP, and hence assumed these Special Services contracts on July 1, 2006.

Overview of Metra²

Metra is the largest commuter rail system in the nation geographically; serving a six-county region of more than 3,700 square miles Metra operates 11 fully accessible rail lines with more than 700 trains that serve over 241 stations throughout the six-county area of Northeast Illinois. Since Metra assumed railroad operations for Northeastern Illinois in 1985, ridership grew by 35.6 percent, for an average annual growth rate of 1.3 percent. Metra provides over 81.7 million rides annually.

¹ Source information used for this Overview section included: CTA website www.transitchicago.com.

² Source: Metra website www.Metrarail.com

Coordinated Public Transit-Human Services Transportation Plan - 2013 Update
REGIONAL TRANSPORTATION AUTHORITY

Overview of Pace³

Pace is the premier suburban transit provider, safely and efficiently moving people to and from work, school and other regional destinations. Pace serves tens of thousands of daily riders with fixed route bus service, ADA paratransit service, vanpools, Community Transit Services, and carpool and vanpool coordination through the Pace RideShare Program. Pace service is available to the 5.2 million residents of Cook, DuPage, Kane, Lake, McHenry and Will counties, an area of over 3,500 miles encompassing a wide range of demographic profiles and environments from urban to exurban.

Approximately 200 accessible fixed routes operate in 186 communities and provide a daily average of 135,492 trips. Fixed route services include regular bus routes and Pace's Express Service Network (ESN). Pace's ESN services are long distance, express trips designed to improve connectivity throughout northeastern Illinois and provide access to jobs, schools, medical care that may not be available in a rider's local area. ESN also includes Pace's Express Service to Popular Destinations (ESPD) which provides bus service to many events and activities in the suburbs and Chicago.

Pace's ADA Paratransit Service provides prearranged origin-to-destination service for persons with disabilities whose eligibility has been determined by the regional certification process managed by the Regional Transportation Authority (RTA). This service is operated with over 1,100 vehicles and provides almost 4 million trips annually. Service rules are governed by the federal Americans with Disabilities Act.

The Vanpool Incentive Program provides Pace vans for work-related trips. Vehicles with lifts or ramps are available for participants with mobility devices. Variations of the program include Traditional Vanpools, Metra Feeder Vanpools and Advantage Vanpools. Carpool and vanpool partners can be found by registering at PaceRideShare.com. Pace RideShare is an automated, free matching service to assist with forming new, or joining existing, carpools and vanpools. Pace operates over 750 vanpools and provides over 2,000,000 trips annually.

Pace's Community Transit Services, like Commuter Links, Local Circulators, Dial-a-Rides (not ADA), Call-n-Rides, and Employee Shuttles, are local transportation services that use smaller capacity vehicles to provide short trips within communities. Mobility Direct and the Taxi Access Program provide ADA paratransit-eligible riders with taxi-based alternatives to Pace ADA Paratransit Service in the city of Chicago. During peak periods, Pace's Dial-a-Ride program includes over 80 services operated in conjunction with counties, townships, municipalities, businesses, agencies and individuals, providing approximately 1,500,000 trips annually.

Area Agencies on Aging

Transportation for seniors is funded in part with Federal Title IIIB funding which, in Illinois, is distributed by the Illinois Department of Aging to 13 Area Agencies on Aging (AAA) around the state. Each AAA is responsible for delivery of services to seniors in its area, including

³ Source: Pace

transportation. Each AAA develops an Area Plan which details these services, noting that each Area Plan must be approved by the Illinois Department of Aging. Each AAA makes the decisions about what to fund and how to deliver the services. Federal Title IIIB funding requires a local match. In Illinois, this local match is provided partially by the state at about 5%, which is used for both administration match (at 65%) and service match (at 35%). The greater portion of the local match that is required to deliver services is generated by local communities. By statute, rider donations cannot be used as part of the local match; instead, they are to be used for service expansion. In the seven-county region, there are three AAAs:

- Chicago Department of Aging (City of Chicago) – CDOA has four transportation programs listed on its website, but only one, Emergency Medical Transportation Services, is funded with Title IIIB funds.
- Suburban AAA (suburban Cook County) – The Suburban AAA provides Title IIIB funds to ten transportation programs in 2006. Organizations receiving transportation funding include local units of government, senior centers, and human service agencies.
- Northeastern Illinois AAA (DuPage, Lake, Kane, Kendall, McHenry and Will Counties) -- NIAAA funds senior transportation through human service agencies, Case Coordination Units and local units of government.

Township and Municipal Sponsored Services

There are slightly more than 100 township and municipal sponsored community transportation services in the study area. These services include a combination of community bus service, dial-a-ride services, and taxi subsidy programs. Most services are limited to township or municipal boundaries, with exceptions allowed to regional medical facilities. There are, however, several sub-regional services where groups of townships are collaborating to provide dial-a-ride services for larger service areas. Some services are available to members of the general public with others available to targeted segments of the population, typically persons with disabilities and older adults.

In many cases, dial-a-ride services are provided jointly by local governments and Pace and administered as part of Pace's existing contracts with service providers. The level of Pace subsidy to townships and municipalities varies by region. A general overview of the number of township and municipal sponsored community transportation services available by county and by type are listed in Appendix A.

Local Human Service Transportation Programs

There is also a network of approximately 80 human service transportation programs in the study area, including organizations that fund or operate transportation services for clients and specific segments of the population. The majority of these services provide transportation to and from medical facilities and specific programs and services, including employment and job-related activities. A listing of human service organization community transportation services is also provided as part of Appendix A.

On-going Coordination Activities

Since the inception of the JARC/New Freedom program, 33 projects have been awarded totaling \$76 million (\$45 million of Federal funds). Additional information on all projects is available at www.rtams.org. Included in the program are door-to-door services, fixed route services, reverse commuter rail service, volunteer driver transportation service and small car loan program. Regional successes that have been achieved with some level of consistency across the study area include:

- **Pace Regional Call Center** - The Regional Call Center takes reservations from eligible low-income individuals, senior citizens, and persons with disabilities for demand response services, assign the appropriate Sponsor subsidy (funding source), assign the vehicle type, and assign trips to the appropriate service provider and monitors service delivery. Consumers have access to various transportation programs for which they are eligible from one central location.
- **Metra Sunrise Express** - The Sunrise Express is an early morning reverse commute train which operates on the Metra UP North Line from Chicago to Waukegan. This service enables reverse commuters to meet 7AM work start times of north suburban employers. Other benefits include a viable suburb-to-suburb option for commuters living north of Chicago and an additional inbound train. Metra implemented the project April 2, 2007 with JARC funding that was exhausted in October 2011. In its last year of funding the project averaged 8,121 trips per month. Metra continues to provide the service with its own funds.
- **Safer Foundation Ways to Work** – This JARC project provided reverse commute employment transportation for low-income persons who have criminal records and are residing in Cook County. The daily service was operated by a private contractor that covered three employment shifts transporting individuals to and from five designated pick-up points in the City of Chicago to employers located in the suburbs. In its last year of funding this project averaged 153 trips per month. The Safer Foundation is continuing the service with its own resources.
- **Hanover Township Volunteer Express** - Volunteer driver New Freedom project supplementing the services offered by Hanover Township's Dial-A-Bus program. Volunteer drivers utilize their own vehicles to provide door-to-door service to the elderly and disabled requesting service outside of the township radius. The service averages approximately 49 trips per month by 3 volunteers.
- **Ride in Kane** - The AID, Ride in Kane project coordinates and provides paratransit services in Kane County by optimizing transportation resources for older adults, person with disabilities and low-income individuals. The service transports them to jobs and

Coordinated Public Transit-Human Services Transportation Plan - 2013 Update
REGIONAL TRANSPORTATION AUTHORITY

employment supportive activities. The project partners include private, non-profit organizations and local units of government. Currently, these partners are the Association for Individual Development, Aurora Township, Batavia Township, City of Batavia, Blackberry Township, Campton Township, City of Geneva, City of Elgin, Dundee Township, Dundee Park District, Village of Gilberts, Village of Campton Hills, Two Rivers Head Start, Hesed House/PADS of Aurora, Kane County, Kaneville Township, INC Board of Aurora, Senior Service Association, City of St. Charles, St. Charles Township and the Village of South Elgin. The 12,200 monthly trips provided by this service originate or terminate within Kane County. Service may be provided up to 7 days per week, 24 hours per day.

- DuPage County Transportation To Work - Ride DuPage to Work is a service of the Ride DuPage system designed to enable persons with disabilities greater opportunities to obtain and maintain employment through more affordable transportation.
- Kendall Community Transit Program - The vehicles and operations funded by this program will be used for demand responsive paratransit service to provide door-to-door service for populations of the disabled, low income, and senior populations in the urban portions of Kendall County. The project is designed to be the first phase of a countywide general public transportation system.
- Lake County Northwest Demonstration Project – This JARC and New Freedom project provides weekday dial-a-ride service in Antioch, Avon, Grant, Lake Villa, Fremont, and Wauconda townships. A portion of the service is a flexible route connecting three Metra stations on the NCS Line and Milwaukee District - North Line with residential areas to offer greater access to employment opportunities primarily for individuals with limited mobility and other transit dependent populations. The project is an outgrowth of the Lake County Inter/Intra County Paratransit Transportation Study funded through the Community Planning program. Current ridership is averaging 1,300 each month.
- McHenry County Service Integration and Coordination - The project integrated four separate dial-a-ride services into one service allowing for standardization of service hours, fares, and call ahead requirements. This made the service more reliable for work trips and easier for persons with disabilities. The project location and Origin or Destination locations for service encompasses the townships of Dorr, Greenwood, and McHenry including the Cities of Crystal Lake, Woodstock and McHenry. The service provides 7,800 trips per month.
- Salvation Army Ways to Work - The JARC WTW program provides small, short-term, low-interest loans to low-income families for the purpose of purchasing or repairing a car to get to work, childcare, and to pursue educational or job training opportunities.

Coordinated Public Transit-Human Services Transportation Plan - 2013 Update
REGIONAL TRANSPORTATION AUTHORITY

- Will County Mobility Management Program - This JARC and New Freedom project provides transportation and mobility management services for persons with disabilities, the elderly and low-income individuals residing in eastern Will County townships. The program is an outgrowth of the county's coordinated paratransit plan funded through the RTA's Community Planning program.

Chapter 2: Service Limitations, Gaps, Needs and Strategies

Service limitations, gaps and unmet needs were assessed in each of the seven counties that comprise the study area. As noted in the previous chapter, the region has many successful services that have made great strides in overcoming or mitigating many of the limitations noted here. However, service gaps and unmet needs persist despite on-going efforts to improve the quality of community transportation services through innovative use of resources and equipment.

Centralized Information

Three counties currently offer a central resource listing available transportation services but in both cases transportation directories list services available within the sponsoring county only. The lack of centralized information outside of these areas means there is no single source for individuals seeking to find transportation options, eligibility requirements, fares and service hours, nor is there a region wide directory providing information on available community transportation services. Ideally, resource directories should be developed for each county individually as well as compiled into a regional directory. Resource guides should be updated annually and available in hard copy at several locations, on-line, in multiple formats and languages and potentially incorporate interactive trip making/scheduling options.

Spatial Limitations

Spatial limitations in community transportation were observed in every county in the study area. However, as noted in the previous chapter, several services have been implemented during the past 5-8 years that have addressed some of these limitations on the county level. In most cases the limitations resulted in similar types of service gaps:

- Township and municipal sponsored dial-a-ride services are typically limited to the sponsoring jurisdictions' boundaries, with some exceptions allowed, typically for medical facilities. Limiting travel to township or municipal borders, even in cases where services are provided by groups of townships and municipalities, makes it difficult for some travelers to access educational, medical, service, shopping and employment centers outside of their dial-a-ride service area.
- Community transportation services are especially limited in rural areas. Recognizing that serving rural areas with population densities often results in low productivity and high per trip costs, there are unmet needs for individuals living in these areas seeking travel to/from local and regional service areas.

REGIONAL TRANSPORTATION AUTHORITY

- Many areas provide subsidized taxi programs, which do provide opportunities for persons with disabilities, older adults and sometimes individuals with low incomes to cross township and municipal borders. Such services, however, are most appropriate for occasional travel. High per trip costs to the traveler, even with the subsidy, mean taxi services typically cannot support daily employment trips.

Temporal Limitations

Service hours on most public dial-a-ride services are limited to weekdays during normal business hours, typically between 9 a.m. and 5 p.m. Again, many of these temporal limitations have been addressed by expanding hours on services that operate at the county level. Across the study area, temporal limitations create service gaps for travelers:

- A lack of weekend service – Dial-a-ride services are generally not available, or are much more limited, on weekends. While some ADA paratransit services and human service transportation is provided, these services are typically not available to all members of the target populations.
- Service hours are not typically structured to effectively support employment. Many employment opportunities, particularly for persons with low incomes, require that transportation be available before 9 a.m., after 6 p.m., and on weekends.
- Service hours that start at 9 a.m. and end at 5 p.m. also make it difficult for individuals who are seeking local connections to regional transportation infrastructure such as Pace and Metra in order to access regional services, find employment or attend job training services in neighboring counties or in downtown Chicago.

Program Eligibility and Trip Purpose Limitations

Program eligibility and trip purpose limitations also result in gaps and unmet needs in existing services. For example:

- Many of the existing dial-a-ride services are available to subsets of the three target populations. As a result, some populations, especially individuals with low incomes, have limited access to the transportation resources.
- ADA paratransit services are only available to ADA certified customers. Human service transportation programs are likewise available to program clients only.
- Several transportation programs are limited to taking people to/from medical appointments. Recognizing that medical trips are essential, an unmet need voiced across the study area is a lack of opportunities for people to make quality of life trips to go shopping, conduct personal errands or visit friends and families.

Service Redundancies

Service redundancies were identified in nearly every county in the study area. In most cases, service redundancies were identified as examples of multiple services available for one or more population sub-groups and at specific times of day, locations and trip types. Redundant services are most likely to occur under the following circumstances:

- Transportation services are oriented towards specific programs or services. For example, in areas where public parks and recreation agencies have vehicles to shuttle program participants from their homes to the program site, such transportation services were frequently redundant with township and/or municipality sponsored dial-a-ride services. Similar cases were also identified among human service agency transportation programs. While the motivation for offering reliable transportation is to meet specific program needs, such services nevertheless frequently overlap with other transportation programs.
- Municipal and village sponsored transportation services are frequently provided in locations where township or regional dial-a-ride services already exist. In many cases, redundant municipal services resulted from the geographic conundrum created by a situation where a single municipality, located within parts of four townships, each of which may offer service only within their individual township boundaries, may mean an individual cannot easily travel within municipal borders. Such fragmented service delivery, however, creates a situation requiring multiple, often redundant services.
- In many cases, local community transportation services, including human service transportation programs and publicly sponsored dial-a-ride services overlap with ADA services. Such overlaps typically occur for certain individuals, along specific routes and during specific times of the day.

Service Quality and Miscellaneous Issues

Unmet needs and gaps in services were also identified in association with service quality, issues of affordability and other miscellaneous issues. These gaps and unmet needs include:

- Demand for many community transportation services exceeds the supply and capacity of local providers making it difficult for users to schedule trips. Many operators struggle to balance demand for same-day requests and subscription trips with the need to provide service to a wider population.
- Same-day service requests typically cannot be accommodated, except through taxi subsidy programs.
- Limited ability to book subscription service. The ADA paratransit services and many of the dial-a-ride services limit subscription trips. Without the ability to book on-going

Coordinated Public Transit-Human Services Transportation Plan - 2013 Update
REGIONAL TRANSPORTATION AUTHORITY

regular trips, riders cannot be ensured regular rides. This limits their usefulness of the service for work or school trips that have set schedules.

- Concerns over the quality of service were voiced across the study area. In most cases, people reported concerns with taxis showing up on time (or showing up at all), as well as with driver training and familiarity with the program clientele and program operations.
- Concerns over affordability for some ADA customers and others who may use these services regularly, if not daily.

Sustainability

A major issue raised by service providers is sustainability. Organizations involved in some of the successful on-going coordination efforts expressed a concern that without a sustainable, long-term funding source to support their services, the services are in jeopardy.

Strategies

In consultation with the PAC, the strategies highlighted in the original HSTP were reorganized under these main topics. The use of these strategies is expected to address the service gaps, limitations, and needs moving forward.

- Improving Service Integration
 - Contracting with Agency Operators
 - Contracting with Common Service Providers
 - Short Term Loans
- Improving Accessibility
 - Accessibility Improvements at Non-Key Rail Stations
 - Improving Access to Fixed-Route Bus Routes
- Tools that Improve Productivity
 - Tools that Improve Data Integrity, Fare Collection, Cost Sharing/Allocation, Billing/Reporting, and Transfers
 - Consolidating Functions
 - Centralized Information
 - Tools that Support Live Dispatch
 - Sharing Resources
- Flexible Transit Services
 - Agency/Employment “Tripper” Services
 - Community Bus Routes
 - Taxi Subsidy Programs

Coordinated Public Transit-Human Services Transportation Plan - 2013 Update
REGIONAL TRANSPORTATION AUTHORITY

- Volunteer Driver/Escort Programs
- Reverse Commute

Chapter 3: Local Program Policies

Federal Requirements

As noted in the Introduction, MAP-21 consolidates two former programs, the Elderly and Disabled Program (formerly Section 5310) and the New Freedom Program (Section 5316), into the Section 5310 Enhanced Mobility of Seniors and Individuals with Disabilities. The MAP-21 Section 5310 Program, just as its forerunners were, is a formula grant program that is authorized for two years from October 1, 2012 through September 30, 2014. It is designed to continue the goals and eligible activities of the previous programs including supporting capital projects that are planned, designed, and carried out to meet the special needs of seniors and individuals with disabilities when public transportation is insufficient, inappropriate, or unavailable. It may also be used for public transportation projects that exceed the requirements of ADA that improve access to fixed-route service and decrease reliance by individuals with disabilities on complementary paratransit, and for alternatives to public transportation that assist seniors and individuals with disabilities. Any projects to be funded with Section 5310 funding must be derived or included in a locally developed human services coordinated plan, such as the HSTP as updated.

The legislation also affected designated recipient requirements. A designated recipient is the agency that assumes the responsibility for managing a Federal Transit Administration grant program like Section 5310. Prior to MAP-21 only a state's department of transportation could be the designated recipient for Section 5310. Consequently, the Illinois Department of Transportation (IDOT) was the sole designated recipient of Section 5310 for the entire state. MAP-21, however, allows the RTA and IDOT to be co-designated recipient for northeast Illinois. The co-designation status has been approved by the Chicago Metropolitan Agency for Planning (CMAP), the Metropolitan Planning Organization (MPO) for northeast Illinois. Under this arrangement, IDOT will be responsible for project selection and the award of Section 5310 funded paratransit vehicles and RTA will be responsible for all other Section 5310 projects. The projects RTA will be responsible for selecting and awarding will essentially consist of projects that are similar to those funded through the New Freedom Program that RTA administers for those grantees who have projects still receiving assistance with funds previously awarded under SAFETEA-LU.

One unique aspect of the legislation is how it defines capital projects and how much funding must ultimately be allocated to particular types of capital projects. MAP-21 Section 5310 expands the definition of capital to incorporate operating contracts, provided the grantee is a private non-profit agency or a government agency that is designated by the governor as a coordinating agency. In addition, it further requires that at least 55% of the funds awarded in the region must be for capital projects that are awarded to private non-profit agencies or a government agency that is designated by the governor as a coordinating agency. While capital projects may be awarded to a government agency that is not designated as a coordinating agency, that funding may not be counted toward meeting the 55% threshold amount. The

Coordinated Public Transit-Human Services Transportation Plan - 2013 Update
REGIONAL TRANSPORTATION AUTHORITY

impact of these requirements on local program policies is discussed in the following section of the report.

Local Program Policies

A major focus of discussion amongst the PAC was the approach to utilizing MAP-21 Section 5310 funding. Based on current estimates, it is anticipated that the Northeastern Illinois region will receive approximately \$12 million during federal fiscal years 2013 and 2014. The PAC agreed to combine all MAP-21 funds into a multi-year approach. Table 3-1 illustrates that approach:

Table 3-1 MAP-21 Section 5310 Multi-Year Approach

Allocation	5310 Funding	Notes
IDOT PT Vehicles	\$3,600,000*	To IDOT for the competitive selection and funding of paratransit vehicles for agency use by private non-profit providers or by government agencies designated as a coordinating agency by the governor. IDOT will conduct a separate Call for Projects for vehicles. The RTA Call for Projects will not accept applications for vehicles.
RTA Admin Funds	\$400,000	For RTA programmatic administration purposes.
Existing Projects	TBD	Amount TBD based on existing grantee interest, projections of how long existing funding will last, and with the goal of supporting existing projects until 9/30/16.
Other Projects	TBD	Amount TBD based on allocation to Existing Projects and future competitive selection process.
TOTAL	\$12,000,000	

* - Consideration may be given to allocating additional funds beyond the \$3.6m to the purchase of paratransit vehicles. This possibility would exist if all other project funding needs beyond paratransit vehicles are met or there are insufficient recommended project awards in addition to paratransit vehicles that can count toward meeting the 55% minimum threshold requirement.

Notes:

- o At least 55% of awards (\$6.6 million) must be used for projects that meet the MAP-21 definition of "capital". Under the current scenario, the \$3.6 million allocation to IDOT would count toward this floor, requiring that an additional \$3 million in Existing or Other Projects to be used for capital.

As noted in Table 3-1, \$3.6 million is planned to be allocated to IDOT over the current two-year life of the program for the paratransit vehicle portion of the program. This \$3.6 million allocation for the purchase of paratransit vehicles will be counted toward meeting the 55% threshold. This means that out of the remaining balance of \$8.4 million, an additional \$3 million must be for projects that that may be counted toward meeting the 55% threshold requirement. As mentioned earlier, operating projects may be counted as capital, if the grantee for the operating project is a private non-profit agency and contracts for service. Projects administered by government agencies that serve as grantees and contract for operating service are only eligible if designated by the governor as a coordinating agency. In our region, no government agency has been so designated as yet.

Given this situation, the PAC agreed to require all operating projects, even those that may technically qualify under the law as a capital project to require a 50% local match that is

standard for an operating project. To do otherwise would mean that some projects, although identical in all respects except for the status of the grantee, would have different matching requirements. Thus in some instances, a government agency would be required to provide a 50% match, while a private-non-profit agency would be required to provide 20% match. To eliminate this difference, those projects that are classified as capital, even though they are operating projects in the traditional sense, would be required to provide the equivalent of a 50% of the operating budget. Subsequently, all approved operating projects, whether technically classified as capital or operating, would be reimbursed for 50% of its operating expenses. The end result is that all funded operating projects will receive reimbursement for 50% of approved operating expenses.

Section 5310 Program Selection Team

An important topic of discussion at several PAC meetings was the makeup of the project selection team for the RTA administered portion of the program. Under SAFETEA-LU, the project selection team was made up of two members from both RTA and CMAP, and one representative from IDOT. The project selection team was tasked with evaluating applications and developing a program of projects. Applications from RTA, CMAP, or IDOT were not allowed. The PAC ultimately agreed to continue the same makeup for the MAP-21 Section 5310 Program. However, the RTA indicated the desire to submit applications for 5310 funding. Therefore, the RTA will recuse itself from scoring its own application(s) to ensure a fair and transparent project selection process. Separately, IDOT will evaluate paratransit vehicle grant applications in fulfillment of their role as designated recipient for that portion of the program.

Section 5310 Program Selection Criteria

The selection criteria for both RTA and IDOT administered projects may be subject to revisions but such revisions are not expected to be substantive and will be discussed with the PAC prior to adjustment.

RTA Administered Section 5310 Projects

The following set of program selection criteria was developed based on the federal requirements, the strategies described in Chapter 2, and in accordance with input from the PAC. The specific criteria will evaluate the applications in accordance to:

- Project Eligibility (Eligible/Not Eligible)
 - Proposed project addresses: (a) public transportation projects planned, designed, and carried out to meet the special needs of seniors and individuals with disabilities when public transportation is insufficient, inappropriate, or unavailable; (b) public transportation projects that exceed the requirements of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.); (c) public transportation projects that improve access to fixed route service and decrease reliance by individuals with disabilities on complementary paratransit; and (d)

Coordinated Public Transit-Human Services Transportation Plan - 2013 Update
REGIONAL TRANSPORTATION AUTHORITY

alternatives to public transportation that assist seniors and individuals with disabilities with transportation.

- Project application identifies and addresses an unmet need identified in the Human Services Transportation Plan (HSTP). This should include: (1) a description of the project; (2) identification of the unmet needs (which is/are addressed by the project); (3) how the project will address the unmet need(s), e.g., in terms of serving new riders, a new area, a new day and/or times, a higher frequency, less advance notice, more driver assistance, etc.; and (4) an estimated quantification of benefits. Any additional obligations, e.g., the provision of ADA complementary paratransit as a result of implementing a new fixed bus route in a previously unserved area, should be noted.
- Local match will be supplied.
- Consistency with the HSTP and its Strategies (Points Awarded)
 - (20 PTS) Project employs one or more strategies that:
 - Improves Service Integration
 - Improves Accessibility
 - Improves Productivity
 - Provides Flexible Transit Services
 - (10 PTS) Project markets to the target population and promotes public awareness
- Coordination (Points Awarded)
 - (25 PTS) Project Utilizes or Coordinates with existing public transportation providers and private human service agencies; or reflects partnerships with non-transit entities and/or private non-profit/for-profit organizations.
 - (20 PTS) Project address strategies and recommendations reflected in the CMAP GOTO2040 Plan and RTA Strategic Plan.
- Sustainability (Points Awarded)
 - (15 PTS) Significant support is demonstrated for the project (in terms of letters of support).
 - (10 PTS) The submitting agency/organization has an approach for obtaining support (financial or otherwise) for the project over the long term.

IDOT Administered Section 5310 Projects

The selection criteria for Paratransit Vehicle applications received by IDOT will include:

Criteria 1: Level of Existing Services (Maximum 3.0)

- Inexperienced (new agency, new to transportation services or fleet administration) 0.0 – 1.0 Points
- Experienced (transportation services offered, new to 5310 program) 1.0 – 2.0 Points

Coordinated Public Transit-Human Services Transportation Plan - 2013 Update
REGIONAL TRANSPORTATION AUTHORITY

- Established (current grantee, history of transportation services within the program) 2.0 – 3.0 Points
- Only available provider for specialized/private services, very active coordination partner 3.0 Points

Criteria 2: Application (Maximum 3.0)

- Incomplete (missing information, difficult to understand, ineligible request) 0.0 – 1.0 Points
- Effective (new or primary transport services for elderly or disabled riders) 1.0 – 2.0 Points
- Established (current grantee, history of transportation services within the program) 2.0 – 3.0 Points

Criteria 3: Equipment Utilization (Maximum 3.0)

- Low (less than 5,000 miles per year) INELIGIBLE
- Poor (5,000 – 8,000 per year) 0.0 – 1.0 Points
- Fair (8,000 – 15,000 per year) 1.0 – 2.0 Points
- Excellent (15,000 or more per year) 2.0 – 3.0 Point

Criteria 4: Administration/Fleet Control (Maximum 3.0)

- Poor (incomplete records, lack of detailed recordkeeping) 0.0 – 1.0 Points
- Limited (planning documents complete, lacking long-term vision) 1.0 – 2.0 Points
- Excellent (long-term strategic planning, expansion of services planned) 2.0 – 3.0 Points
- Comments: no current maintenance plan, no manual for all vehicles

Criteria 5: Vehicle Maintenance/Driver Training (Maximum 4.0)

(Note: Examples of maintenance and training policies should be included with submission)

- Poor (no maintenance plans, no training policy, no records) 0.0 – 1.0 Points
- Fair (incomplete maintenance plan and training records) 1.0 – 2.0 Points
- Satisfactory (following suggested maintenance plan, offers required training) 2.0 – 3.0 Points
- Excellent (comprehensive maintenance plan and records, periodic refresher training required) 3.0 – 4.0 Points

Criteria 6: Coordination Efforts (Maximum 4.0)

- Inactive (not currently participating in meetings, planning, or service provision) INELIGIBLE
- Participant (an agency that regularly attends planning meetings only) 0.0 – 2.0 Points
- Active Participant (an agency that routinely meets committee requests with data, information, and resources in the development of strategy planning) 2.0 – 3.0 Points
- Leadership Participant (an agency that routinely volunteers leadership, data, and resources to coordination planning and service provision) 3.0 – 4.0 Points

- Comments: Letters of support attached, but no indication of the level of coordination involvement

Section 5310 Program Selection Process

Upon agreement of the multi-year approach, 5310 program selection team, and 5310 program selection criteria, the PAC developed and agreed upon the following steps for the Section 5310 Program Process:

- 1) The RTA will develop a Section 5310 program application in accordance with the selection criteria and process approved as part of the HSTP.
- 2) The RTA will submit the required Program Management Plan (PMP) to the FTA.
- 3) IDOT will solicit and evaluate applications for paratransit vehicles as part of its Consolidated Vehicle Procurement program.
- 4) The RTA will reach out directly to existing project grantees, and if they are interested they will submit a Section 5310 application. These applications will not be evaluated using selection criteria. The application is required to get a better understanding of needed funding, how long it will last, and how much of the requested funding may be applied to capital.
- 5) The RTA will review the applications, determine aspects of the project that can be considered capital, and prepare a recommended allocation for existing projects for discussion with the 5310 Project Selection Team. The recommendation will also identify a mark that can be used for the competitive call for other projects along with an updated target of where we stand on the 55% capital floor.
- 6) The RTA and the 5310 Project Selection Team will come to an agreement on the allocation to existing projects, share and discuss the results with the PAC, and finalize the available funding mark for the competitive call for projects.
- 7) The RTA will launch a 5310 program website explaining all aspects of the program based off of the adopted HSTP including goals, eligible projects and activities, eligible applicants, timeline, and available funding for the competitive call for projects.
- 8) The RTA will issue a competitive call for new projects and conduct the necessary outreach.
- 9) Applications received will be evaluated by the 5310 Project Selection Team and scored using the agreed upon selection criteria from the HSTP and the results shared and discussed with the PAC.
- 10) A proposed Program of Projects (POP) will be released for public comment. Various CMAP, RTA, and other committees may receive informational presentations in order to solicit feedback.
- 11) The proposed POP will be presented to the RTA Board for adoption.
- 12) The RTA will submit the POP to CMAP for inclusion in the TIP.
- 13) The RTA will work with successful applicants to execute appropriate agreements.
- 14) Once all agreements are executed, the RTA will submit the 5310 grant application to the FTA.
- 15) Once the RTA grant application is approved by the FTA, sub-recipients may initiate their projects.

Coordinated Public Transit-Human Services Transportation Plan - 2013 Update
REGIONAL TRANSPORTATION AUTHORITY

- 16) The RTA will conduct compliance oversight activities in accordance with the 5310 Program Management Plan.
- 17) The RTA will re-convene the PAC and 5310 Project Selection Team if and when additional funding is made available through either an extension of MAP-21 or new legislation.
- 18) The HSTP may be amended to incorporate projects awarded Section 5310 funding by either RTA or IDOT in northeast Illinois if subsequently required by federal regulations.

Employment

Check box if we may contact current employer for a reference.

Most Recent Employer _____
Name

Address _____
Address City, State, Zip

Phone (_____) _____
Area Code/Number

Position Held _____
Title

Type of Business _____

Dates of Employment From: _____ To: _____

Immediate Supervisor _____
Name/Title

Reason for Leaving _____

Starting Salary _____ Ending Salary _____
\$ Per Month/Year \$ Per Month/Year

Duties and Responsibilities _____

Employer _____
Name

Address _____
Address City, State, Zip

Phone (_____) _____
Area Code/Number

Position Held _____
Title

Type of Business _____

Dates of Employment From: _____ To: _____

Immediate Supervisor _____
Name/Title

Reason for Leaving _____

Starting Salary _____ Ending Salary _____
\$ Per Month/Year \$ Per Month/Year

Duties and Responsibilities _____

Employment

Employer _____
Name

Address _____
Address City, State, Zip

Phone (____) _____
Area Code/Number

Position Held _____
Title

Type of Business _____

Dates of Employment From: _____ To: _____

Immediate Supervisor _____
Name/Title

Reason for Leaving _____

Starting Salary _____ Ending Salary _____
\$ Per Month/Year \$ Per Month/Year

Duties and Responsibilities _____

Employer _____
Name

Address _____
Address City, State, Zip

Phone (____) _____
Area Code/Number

Position Held _____
Title

Type of Business _____

Dates of Employment From: _____ To: _____

Immediate Supervisor _____
Name/Title

Reason for Leaving _____

Starting Salary _____ Ending Salary _____
\$ Per Month/Year \$ Per Month/Year

Duties and Responsibilities _____

Education

School Attended	Name	City, State, Zip	Highest Level Completed	Course of Study/Major	Degree Awarded
High School					
College					
Graduate School					
Business or Trade School					

Additional Information

Please list any additional information regarding your qualifications such as computer and software knowledge, professional designations or certifications and/or special equipment you can operate.

Business/Professional References

Name	Company	Title	Telephone Number

I certify that the information contained in this application is true and correct and that I have not knowingly withheld any pertinent facts or circumstances.

I understand that, if employed, any falsification or misrepresentation of information shall be grounds for refusal of or separation from employment whenever discovered. I understand that I will be required to submit proof of education, certification and work authorization at the time of hire.

I authorize the Regional Transportation Authority or its representatives to make a thorough investigation of my past employment, education and activities; and I release from all liability all persons, companies and corporations supplying such information. I indemnify the Regional Transportation Authority or its representatives against any liability which may result from making such an investigation.

I understand that nothing contained in this employment application or in the granting of an interview is intended to create an employment contract between the Regional Transportation Authority and myself for employment or for the providing of any benefit. No promises regarding employment or duration of employment have been made to me and I understand that no such promise or guarantee is binding upon the Regional Transportation Authority unless made in writing and signed by the Executive Director.

Applicant Signature

Date

071013 RTA SPECIAL BOARD

1

STATE OF ILLINOIS)
COUNTY OF C O O K) SS.

BEFORE THE REGIONAL TRANSPORTATION AUTHORITY

IN THE MATTER OF:)
A SPECIAL MEETING OF THE BOARD)
OF DIRECTORS OF THE REGIONAL)
TRANSPORTATION AUTHORITY)

REPORT OF PROCEEDINGS taken in the above-entitled matter, taken before THE BOARD OF DIRECTORS OF THE REGIONAL TRANSPORTATION AUTHORITY, wherein the audio was transcribed by STEVEN J. BRICKEY, CSR, a notary public within and for the County of Cook and State of Illinois, at 175 West Jackson Street, 16th Floor Board Room, Chicago, Illinois, on the 10th day of July, 2013.

L.A. COURT REPORTERS, LLC. (312) 419-9292

2

A P P E A R A N C E S:

071013 RTA SPECIAL BOARD
CHAIRMAN: MR. JOHN S. GATES, JR.
BOARD MEMBERS: MR. ANTHONY K. ANDERSON
MR. JAMES BUCHANAN
MR. WILLIAM R. COULSON
MR. L. TYRONE CRIDER, SR.
MR. PATRICK J. DURANTE
MR. NABI R. FAKRODDIN
MR. JOHN V. FREGA
MR. PHIL FUENTES
MR. AL JOURDAN
MR. DWIGHT A. MAGALIS
MR. CHRISTOPHER C. MELVIN, JR.
MS. SARAH PANG
MR. J.D. ROSS
MR. DONALD L. TOTTEN
MR. DOUGLAS M. TROIANI
SECRETARY: MS. AUDREY MACLENNAN

L.A. COURT REPORTERS, LLC. (312) 419-9292

3

1 SECRETARY MACLENNAN: Mr. Chairman,
2 are we ready so I can make my perfunctory
3 announcements?

4 CHAIRMAN GATES: Yes. Go ahead.

5 SECRETARY MACLENNAN: If everybody
6 would kindly have a seat and quiet down. We audio

071013 RTA SPECIAL BOARD

7 record our meetings so I would ask that the board
8 members and our distinguished guests for today
9 please remember to push the button when you are
10 going to speak so your little red light comes on
11 your microphone and then push it again when you're
12 finished. That is the only way our recording
13 system picks up your voice clearly and completely.
14 That is all I have to say.

15 CHAIRMAN GATES: Good morning
16 everyone. I apologize for starting a little late,
17 but we are here to call to order a special meeting
18 of the board of directors of the Regional
19 Transportation Authority. Joe, would you kindly
20 give the invocation.

21 DIRECTOR CRIDER: Yes, thank you.
22 Please assume an attitude of prayer. God
23 Almighty, in our meeting today we ask that you
24 guide our hearts and our minds in the spirit of

L.A. COURT REPORTERS, LLC. (312) 419-9292

4

1 fairness, bright thought and speech. Impart your
2 supreme wisdom upon our considerations so that our
3 affairs may reach successful conclusion. Thank
4 you for being our source of guidance today. Amen.

5 CHAIRMAN GATES: Amen. Would
6 everyone please stand for the pledge. I pledge
7 allegiance to the flag of the United States of
8 America and to the republic for which it stands
9 one nation under God, indivisible with liberty and
10 justice for all. Audrey, could you call roll?

071013 RTA SPECIAL BOARD
SECRETARY MACLENNAN: Yes. Director

11

12 Anderson?

13

DIRECTOR ANDERSON: Here.

14

SECRETARY MACLENNAN: Director

15 Buchanan?

16

DIRECTOR BUCHANAN: Here.

17

SECRETARY MACLENNAN: Director

18 Coulson?

19

DIRECTOR COULSON: Here. I'm on the

20

phone.

21

SECRETARY MACLENNAN: Reverend

22

Crider?

23

(No response.)

24

SECRETARY MACLENNAN: Director

L.A. COURT REPORTERS, LLC. (312) 419-9292

5

1 Durante?

2

(No response.)

3

SECRETARY MACLENNAN: Director

4

Fakroddin?

5

DIRECTOR FAKRODDIN: Here.

6

SECRETARY MACLENNAN: Director

7

Frega?

8

DIRECTOR FREGA: Here.

9

SECRETARY MACLENNAN: Director

10

Fuentes?

11

DIRECTOR FUENTES: Here.

12

SECRETARY MACLENNAN: Director

13

Jourdan?

14

DIRECTOR JOURDAN: Here.

15 071013 RTA SPECIAL BOARD
SECRETARY MACLENNAN: Director
16 Magalis?
17 DIRECTOR MAGALIS: Here.
18 SECRETARY MACLENNAN: Director
19 Melvin?
20 DIRECTOR MELVIN: Here.
21 SECRETARY MACLENNAN: Director Pang?
22 DIRECTOR PANG: Here.
23 SECRETARY MACLENNAN: Director Ross?
24 DIRECTOR ROSS: Here by phone.

L.A. COURT REPORTERS, LLC. (312) 419-9292

6

1 SECRETARY MACLENNAN: Director
2 Totten?
3 DIRECTOR TOTTEN: Here.
4 SECRETARY MACLENNAN: Director
5 Troiani?
6 DIRECTOR TROIANI: Here.
7 SECRETARY MACLENNAN: Chairman
8 Gates?
9 CHAIRMAN GATES: Here.
10 SECRETARY MACLENNAN: We have a
11 quorum of 14 present with two absent and if the
12 record would note that Director's Coulson, Jourdan
13 and Ross are participating via phone and have
14 completed the necessary paperwork to do so.
15 CHAIRMAN GATES: Good. Good
16 morning, everyone. As it is the RTA's role to
17 provide financial oversight of all three service
18 boards, we have called a meeting of the RTA board

071013 RTA SPECIAL BOARD

19 today to a special session to hear a statement
20 from Metra Board Chairman Brad O'Halloran and ask
21 additional questions to follow up.

22 This is part of our audit
23 responsibility. As you may know the RTA does not
24 have the ability to engage in criminal

L.A. COURT REPORTERS, LLC. (312) 419-9292

7

1 investigations and so forth so our purpose today
2 is that audit function and we are auditing Metra,
3 not Mr. Clifford, and we have asked Metra to
4 appear today as part of that audit. As has been
5 widely reported in the media, the high dollar
6 figure associated with Mr. Clifford's departure
7 warrants a closer examination of the agreement and
8 we appreciate Chairman O'Halloran's willingness to
9 come here today and shed some light on the details
10 of that agreement.

11 We hope that the chairman is
12 able to provide insight into Metra's decision --
13 decision-making process and help this board and
14 the public better understand the rationale behind
15 the separation agreement. With that, I'd like to
16 call on Chairman O'Halloran. I believe he has a
17 statement.

18 CHAIRMAN O'HALLORAN: Thank you,
19 Chairman Gates. Chairman Gates, members of the
20 RTA board, thank you for having me here today. I
21 will be doing this again later this week so I
22 appreciate getting the chance to first speak with

23 fellow mass transit leaders. The main topic of
24 discussion is the recent separation agreement with

L.A. COURT REPORTERS, LLC. (312) 419-9292

8

1 our former executive Alex Clifford.

2 Consistent with the terms of
3 that agreement I am here to explain my vote on the
4 issue and to provide this oversight body with
5 factual information concerning events that
6 occurred during Mr. Clifford's employment. Also,
7 there are additional details of certain events
8 that are being provided to RTA's internal auditors
9 and the process of getting your auditor's
10 information has already begun. My views may not
11 reflect the views of all the board members
12 although I believe they are shared by a number of
13 them.

14 There has been a lot of
15 speculation so I appreciate the opportunity to
16 provide you with the facts regarding Clifford's
17 departure. In addition, while I have your
18 attention, I want to tell you about our plans to
19 move the agency forward with the sense of urgency.
20 I've asked our staff to put together an aggressive
21 work plan and what you will hear today, pending
22 the approval of our board of course, are major
23 initiatives to improve how we serve our riders.
24 Several of the initiatives were on the back burner

L.A. COURT REPORTERS, LLC. (312) 419-9292

1 while we were dealing with the issues of
2 Mr. Clifford's contract.

3 Regarding Mr. Clifford's
4 separation agreement, there have been a lot of
5 dispersions cast at me and the board, but the
6 problem is most of the critics have been flat-out
7 wrong. The most reckless charge has been that we
8 paid Clifford hush money. That is a loaded
9 phrase, but here are the facts. We released the
10 full and entire separation agreement to the media
11 and the public immediately after the Metra board's
12 vote to approve it. Yes, it contains a
13 confidentiality clause that bars both Metra and
14 Mr. Clifford from talking about their disputes or
15 the settlement negotiations. As our legal counsel
16 and every employment lawyer will tell you, this is
17 standard language in these types of agreements.

18 Even though the separation
19 agreement contained a confidentiality clause, we
20 insisted on contractual provisions that allows
21 Metra to do exactly what I'm doing here today,
22 which is to discuss this settlement in public and
23 provide information to your auditors. As most of
24 you know, employers seldom discuss the reasons

L.A. COURT REPORTERS, LLC. (312) 419-9292

1 that an employee leaves even if that employee is
2 the chief executive officer. The reason is that
3 under our laws employees no matter how high level

071013 RTA SPECIAL BOARD

4 have certain rights and talking about specific
5 issues with an employee can create legal problems
6 for the employer.

7 In fact, the Illinois state
8 legislature has specifically deemed the
9 discussions involving public boards like Metra or
10 local municipalities regarding personal issues
11 take place in executive session. I will tell you
12 that I and others on the board had legitimate
13 areas of disagreement with Mr. Clifford. On the
14 issues where there were disagreements, you may
15 agree with Mr. Clifford, you may agree with me and
16 other board members, but in the end it's the Metra
17 board that has to make the tough decisions. Many
18 of our disputes concern the board's oversight of
19 Metra.

20 As you know, the board took a
21 lot of heat over its failure to properly oversee
22 Phil Pagano. We have undertaken efforts to make
23 sure that such oversight is never lacking again.
24 Despite the agency's history with Pagano,

L.A. COURT REPORTERS, LLC. (312) 419-9292

11

1 Mr. Clifford believed board oversight of him was
2 overreaching.

3 For example, the board was not
4 advised in advance of executive level hires. When
5 Mr. Clifford was hired, he represented to the
6 board that he would inform the board of hiring
7 decisions of key high level personnel before they

071013 RTA SPECIAL BOARD

8 were made. There were multiple instances where
9 the Clifford -- where Mr. Clifford failed to
10 inform the board of key hires in advance. These
11 high level hires without notification included one
12 of our deputy executive directors who was
13 introduced to the board for the first time at a
14 board meeting after he was hired.

15 This particular hire turned out
16 to be a great addition, but still I believe the
17 board should have been informed. One of the
18 issues of which I had a concern included our
19 relationship with unions.

20 For the first time in Metra's
21 history, our unions filed for federal contract
22 mediation. Metra's two largest unions, the BLET
23 and the UTU, are in formal mediation proceedings
24 right now. Collective bargaining agreements are

L.A. COURT REPORTERS, LLC. (312) 419-9292

12

1 incredibly expensive and time-consuming. Prior to
2 this last round of negotiations, Metra and its
3 unions had an excellent working relationship. I
4 believe we need to rebuild those relationships. I
5 was also concerned with certain contracts. One
6 issue I had pertained to the \$337,000 contract
7 with Avery Grimes who Mr. Clifford hired to help
8 run the agency almost immediately after
9 Mr. Clifford arrived at Metra.

10 Now, I'm not going to go through
11 every disagreement, but these are just a few

071013 RTA SPECIAL BOARD

12 examples of my concerns. Much has been written
13 about Mr. Clifford's illusion in a newspaper
14 interview this past Spring that he resisted
15 political pressure for jobs and contracts. One
16 incident that I believe was being referenced by
17 Mr. Clifford was the Englewood Flyover Project.
18 This \$93 million railroad bridge project is taking
19 place on the southside of Chicago where the
20 majority of the residents in that neighborhood are
21 African-American. When the contract for this
22 project was initially presented to the board, less
23 than one half of one percent of the proposed
24 budget was awarded to firms that represented that

L.A. COURT REPORTERS, LLC. (312) 419-9292

13

1 community. Many community leaders and elected
2 officials as well as board members of Metra felt
3 that this was a slap in the face to the community
4 and Metra found itself in the middle of a
5 political crisis.

6 Incensed Congressman Bobby Rush
7 and Congressman Danny Davis promised to cutoff
8 funding for that project. Every major capital
9 project in the City of Chicago over the past 25
10 years of which I am aware has had an aggressive
11 outreach program to ensure participation by the
12 African-American community and its businesses. So
13 when Mr. Clifford first submitted the project to
14 the board for approval, the board, led by acting
15 Chairman Larry Huggins, insisted in considering

071013 RTA SPECIAL BOARD

16 all options. Larry wisely worked with the
17 Congressmen and community leaders to encourage a
18 solution. A crisis was averted, but Mr. Clifford
19 believed that it was improper for the board or its
20 chairman to undertake discussions with political
21 and community leaders.

22 Mr. Clifford believed that the
23 board should have voted to have approved the
24 contract without any further investigation.

L.A. COURT REPORTERS, LLC. (312) 419-9292

♀

14

1 Needless to say I and most other board members
2 believe our actions in taking time to properly
3 evaluate this critical issue were necessary and
4 appropriate. Further to point to the Flyover
5 Project as an example of political pressure to
6 award contracts is absurd.

7 This was not a situation where
8 someone was allegedly trying to get a contract for
9 a relative or a supporter. This was a situation
10 where the board was trying to address a major
11 insult to an entire community. Another example of
12 what Mr. Clifford believed to be improper
13 political pressure arose on meetings he and others
14 had with the leaders of the Illinois General
15 Assembly's Latino Caucus. I was not at those
16 meetings. That occurred without -- before me.
17 But my understanding is that the leaders of the
18 caucus wanted to see more Latinos in senior
19 management at Metra and asked if Mr. Clifford

071013 RTA SPECIAL BOARD

20 would consider resumes provided by the caucus.

21 Mr. Clifford refused.

22 Personally, I believe it was a legitimate
23 conversation for leaders of the Hispanic community
24 to raise with Metra's executive director.

L.A. COURT REPORTERS, LLC. (312) 419-9292

15

1 Mr. Clifford was free to agree, to take the
2 request under advisement or as he did reject it
3 outright. The board would have supported him, but
4 at no time prior to the board's review of
5 Mr. Clifford's performance did he come to us and
6 claim that he was being subjected to improper
7 political pressure.

8 Neither to our knowledge did he
9 take any such allegations to the Office of the
10 Executive Inspector General. My purpose in
11 raising these issues is not to debate them.
12 Again, different people have different opinions.
13 What my duty and board duty is to oversee Metra in
14 the best way we know how and that is what we are
15 doing.

16 That is also why we sought to
17 initiate a formal review process of Mr. Clifford,
18 which is -- which was discussed at length in
19 public. That is when the real problems arose.
20 Here are the facts.

21 After the board publically
22 launched its evaluation process, one of our board
23 members contacted Mr. Clifford. This board member

071013 RTA SPECIAL BOARD

24 told Mr. Clifford that as a result of this process

L.A. COURT REPORTERS, LLC. (312) 419-9292

16

1 his contract may not be renewed and it would not
2 be counted against him if he started looking for
3 another job. Keep in mind that Mr. Clifford was
4 not being told that his contract would not be
5 renewed. Only that it was a chance. Surprisingly
6 to me, Mr. Clifford responded by stating that he
7 wanted to discuss his contract renewal before the
8 evaluation process was even completed. I as
9 chairman declined to do so. Also, surprisingly
10 Mr. Clifford told this board member that he was
11 being retaliated against for his refusal to go
12 along with politically motivated patronage and
13 contract requests. Mr. Clifford did not provide
14 the details of such requests and I did not know if
15 his allegations had any merit, but it was the
16 first time that I had heard such allegations and
17 it appeared to me that Mr. Clifford had not turned
18 them over to the proper authorities.

19 Therefore, I immediately
20 instructed our counsel to turn Mr. Clifford's
21 allegations over to the Office of the
22 Executive Inspector General which they did. This
23 highlights the claim that we acted in secrecy is
24 nonsense. Clifford made accusations of violations

L.A. COURT REPORTERS, LLC. (312) 419-9292

1 of policy and perhaps law and I referred those
2 complaints immediately to the Inspector General.
3 If we were interested in deep-sixing these claims,
4 we would have swept them under a rug. If there
5 truly was a violation of any law, I am confident
6 that the Inspector General will take action.
7 After a separate investigation that we
8 commissioned by a former US Attorney, I believe
9 there were no legal violations. Those allegations
10 were turned over four months ago and well before
11 this separation agreement was negotiated. Further
12 as everyone knows the RTA has now begun an audit
13 of Clifford's separation agreement.

14 we have already provided
15 relevant facts including Clifford's allegations.
16 That means that there are now two independent
17 bodies investigating Clifford's allegations as
18 well as the circumstances of the separation
19 agreement. So of course that leads to the
20 question of why we gave Mr. Clifford such a
21 generous severance package that pays him beyond
22 the end of his contract and I certainly for one am
23 happy to finally have the opportunity to explain.

24 of course I can only explain to

L.A. COURT REPORTERS, LLC. (312) 419-9292

1 you my vote although I'm sure I echo sentiments of
2 the other eight board members Republicans and
3 Democrats who hail from Cook, DuPage, Will and

4 Lake Counties. Mr. Clifford -- let me add and
5 Kane County. Mr. Clifford and his attorney argued
6 that if his contract were not renewed such
7 nonrenewal would be in retaliation for his
8 reporting alleged illegal conduct to the board.
9 Under Illinois law, it does not matter if
10 Mr. Clifford did not report such alleged illegal
11 conduct until after he was told that his contract
12 renewal was in jeopardy.

13 It does not even matter if the
14 alleged conduct was actually illegal or not.
15 Under the law in Illinois, Clifford could bring a
16 case in court arguing that because of his mere
17 reporting he had a legal right to have his
18 contract renewed. Again, his argument was not
19 just that he had a right to finish his contract,
20 it was that his contract should be renewed.

21 As frustrating as it is, such is
22 the state of Illinois law. While we think we
23 could have won a lawsuit, it would have taken
24 years and cost millions of dollars in attorney

L.A. COURT REPORTERS, LLC. (312) 419-9292

19

♀
1 fees and time on the part of our employees. There
2 have been public statements that Clifford would
3 have been willing to work through the rest of his
4 contract than just leave. I can categorically
5 tell you that this is not true. Immediately after
6 turning over Clifford's allegations to the
7 Inspector General, Metra retained Attorney Joe

8 Gagliardo who you see next to me today to try to
9 resolve its disputes with Clifford.

10 Some of you may know
11 Mr. Gagliardo as he has represented the State of
12 Illinois, the City of Chicago and numerous other
13 government entities in high stakes employment
14 litigation. Mr. Gagliardo spent several weeks
15 attempting to negotiate a resolution. When no
16 progress could be made, Metra and Clifford agreed
17 to mediate in front of Donald P. O'Connell, the
18 former Chief Judge of the Circuit Court of Cook
19 County.

20 Judge O'Connell is not only
21 widely respected as a mediator he, himself, ran
22 the county courts, a large government entity. The
23 settlement that was approved by the board was
24 substantially less than what Mr. Clifford

L.A. COURT REPORTERS, LLC. (312) 419-9292

20

1 initially demanded. It was negotiated over the
2 course of weeks and it was recommended by
3 Judge O'Connell. We believe that Judge O'Connell
4 recognized the cost that litigation would impose
5 on Metra. If Clifford would have been willing to
6 simply work through the rest of his contract and
7 then leave, we would have been happy to agree to
8 that deal.

9 In fact, we offered pretty much
10 that exact deal and Mr. Clifford rejected it. I
11 can tell you that neither I nor the eight other

12 directors who voted for this deal liked it, but we
13 liked the alternatives less. As I will discuss in
14 a moment, we have more important things to do than
15 fight a lawsuit. So why not have Clifford just
16 finish out that last several months of his
17 contract? Here was the problem we faced.

18 Metra had an executive director
19 who threatened litigation against it. That
20 dispute was seeping into every facet of the
21 organization. No one could move ahead on any
22 project. In fact, we believed that Mr. Clifford
23 was checking his personal attorneys on operational
24 and administrative issues. In other words, things

L.A. COURT REPORTERS, LLC. (312) 419-9292

21

1 had degenerated to the point where Metra's
2 executive director was communicating with this
3 board only after consulting with his personal
4 attorney. That, my friends, is no way to run a
5 railroad. I and others on the board decided that
6 we had a greater responsibility and this dispute
7 needed to end. We also knew that unless there was
8 a settlement there would be a lawsuit. This was a
9 collective decision by nine board members with
10 backgrounds varying from railroad consultant, to
11 banker, to lawyer, to business owner, to former
12 school teacher. We agreed that the cost of this
13 settlement was a small price to pay given all of
14 the challenges faced by Metra.

15 The several months that we spent

071013 RTA SPECIAL BOARD

16 on Clifford's employment status came at a bad time
17 for this agency. Important projects that needed
18 to move forward were on the back burner. These
19 projects addressed things that our riders really
20 care about. Improving reliable service, enhancing
21 safety and security and reinvesting in our
22 stations and our trains.

23 Now, let me get to a couple of
24 these initiatives. We've got some slides we're

L.A. COURT REPORTERS, LLC. (312) 419-9292

22

1 going to produce. One of the areas we were moving
2 too slow and had conflicting information given to
3 us was that in providing WiFi to our riders. We
4 need to move on this. Any of these things that
5 you will see today we want to put time dates on
6 them as to when Metra is going to get these done.
7 We'll begin work on a WiFi pilot project on our
8 Rock Island line by the end of this calendar year.
9 Similarly we need to allow passengers to pay with
10 credit on our trains and at all of our stations.
11 We will be implementing this program by July of
12 2014 or sooner. Our riders deserve to take
13 advantage of every tool to see if their trains are
14 on time. We will begin enhancing our realtime
15 Train Tracker and data sharing tools as early as
16 the Fall of this year.

17 We've seen in recent months that
18 our vaunted on time reliability has slipped. This
19 is the core of what Metra is all about. I've

20 asked Don Orseno, who is our deputy executive
21 director chief operating officer, to form a task
22 force to address service delays so that Metra can
23 maintain a 95 percent or better on time
24 performance on all of our lines. The task force

L.A. COURT REPORTERS, LLC. (312) 419-9292

‡

23

1 will include key leaders from Metra's operation as
2 well as our purchase service agreement carriers
3 like the Burlington Northern and the Union Pacific
4 Santa Fe and the freight carriers.

5 We need to start working
6 collaboratively to fix our challenges. In
7 addition, we'll be launching a new Metra Gateway
8 Program to clean up our stations, cars and improve
9 wave finding station signage. We need to paint
10 and repair. We need to make sure our stations and
11 cars are clean. We need to enhance security
12 presence. Signs will help daily riders,
13 occasional riders and tourists. Not only do our
14 customers deserve trains on time, but our train
15 cars must be clean and so should the stations.

16 An important part of our
17 customer service initiative will be our
18 recommitment to enhancing safety and security.
19 Safety and security of our customers is our top
20 priority. In partnering with the Illinois
21 Association of Chiefs of Police to assist in the
22 recruitment and selection of a new police
23 executive, we will be forming a blue ribbon panel

071013 RTA SPECIAL BOARD
24 that will be chaired I'm proud to say by Orland

L.A. COURT REPORTERS, LLC. (312) 419-9292

24

1 Park Police Chief and former Secret Service agent
2 Tim McCarthy.

3 In addition, that panel will
4 have a member of the chief of police from each of
5 our collar counties as well, as well as a
6 representative from the state police. We will
7 have this blue ribbon panel review reforms and
8 recommendations to enhance our police department
9 and help Metra find a new leader. As the former
10 chairman of the Illinois Association of Chiefs of
11 Police, Tim can provide invaluable resources for
12 us to help the police department, which has been
13 strapped for resources and hampered by leadership
14 issues.

15 This will be -- they will report
16 to us within the next 60 to 90 days. Alex
17 Wiggins, who is our deputy executive director
18 administration, Don Orseno and their leadership
19 team will focus on strengthening our relationships
20 with the leaders of organizations that are key to
21 our success. We obviously have work to do with
22 our Illinois congressional delegation, our
23 partners in state government and with our freight
24 and passenger railroad partners. We also need to

L.A. COURT REPORTERS, LLC. (312) 419-9292

25

071013 RTA SPECIAL BOARD

1 work with our unions who had a rocky relationship
2 with our now departed leader. Finally, we need to
3 work more closely with the communities we serve
4 throughout the Chicagoland area.

5 We need to be engaging our
6 stakeholders in a collaborative and not combative
7 way. As you know, Chairman Gates, and members of
8 the committee, Metra for some reason has not taken
9 advantage of leveraging up to \$1 billion of RTA
10 bonding authority to tackle critical state of good
11 repair projects throughout our system. We will
12 start to leverage that and meet state of good
13 repair needs, fund preliminary engineering design
14 on key capital projects and develop a deep bench
15 of shovel ready construction projects. We're
16 going to start looking at pursuing innovative
17 funding and other financing options as well.

18 We will get to work on critical
19 projects throughout the system. I think we've got
20 a list here of some of the ones we're going to
21 move right to the forefront: Calumet Racine; Burr
22 Oak; 59th Street; Mayfair, Grayland and Healy;
23 River Forest; Peterson Ridge and Hubbard woods;
24 Hickory Creek; Romeoville; Downers Grove. This

L.A. COURT REPORTERS, LLC. (312) 419-9292

26

1 planning is already underway and with the
2 leveraging of some of our funds we can get all of
3 this moving much more quickly. We will focus on
4 being more of a team player in serving the region

071013 RTA SPECIAL BOARD

5 with the RTA and our fellow transit service boards
6 at the CTA and Pace.

7 From finance, to planning, to
8 better serve the reverse commuter, to jointly
9 promoting the transit benefit program with
10 employers, to making better connections among the
11 agencies, we know we need to work together. Our
12 riders want to get from their office or school to
13 the train station and from their train stop to
14 home. We're going to do our part to make this a
15 more seamless experience. Our riders are our top
16 priority and we have not done a good job for them
17 recently with our service problems and some of our
18 fare policies. One important incentive for our
19 regular riders was the popular 10-ride ticket.
20 Once we increased the price of the 10-ride, sales
21 declined dramatically. Eight percent in revenue,
22 18 percent in tickets. That hurt revenues and
23 ridership.

24 At our next board meeting, I

L.A. COURT REPORTERS, LLC. (312) 419-9292

27

1 will propose the Metra board roll back the 10-ride
2 fare to its previous price. I look at it as that
3 was new Coke. We're going to go back to old Coke.
4 We look at it as a policy that our riders have
5 spoken and we're going to listen. I will bring
6 this to the board at our next meeting. It's the
7 least we can do for our customers. Yes, we had a
8 tough call to make and we had to agree to a

071013 RTA SPECIAL BOARD

9 controversial separation agreement with
10 Mr. Clifford. But now that this distraction is
11 behind us I'm excited for the future of Metra.
12 The men and women who work there have been waiting
13 for an opportunity to aggressively move the agency
14 forward, increase reliability, a renewed
15 commitment to the safety and security of our
16 riders and our commitment to reinvestment in our
17 infrastructure. These are our priorities in the
18 days ahead.

19 well, I thank you for this long
20 diatribe in listening so patiently. It's great to
21 have an opportunity to address you, address
22 everyone here and, of course, we're here to answer
23 your questions. Thank you very much.

24 CHAIRMAN GATES: Good. Thank you,

L.A. COURT REPORTERS, LLC. (312) 419-9292

28

1 Chairman O'Halloran. That was quite an extensive
2 presentation, but even so I, myself, and the board
3 members would like to ask you a few questions.
4 I'll start off with a few and then turn it over to
5 my colleagues.

6 Getting back to the separation
7 agreement. Even if there was a threatened lawsuit
8 by Mr. Clifford and it warranted a settlement, why
9 pay him anything more than was required under his
10 contract? In other words, you paid for a real
11 estate agent, you paid for moving expenses, legal
12 fees and other things. why go into these other

071013 RTA SPECIAL BOARD

13 areas instead of just what was required under the
14 contract?

15 MR. GAGLIARDO: Yes, Chairman Gates.
16 Obviously any potential piece of litigation has
17 many moving parts. So in terms of the costs on --
18 it's important that as Chairman O'Halloran said we
19 got to the numbers only after an extensive
20 mediation with one of the preeminent mediators in
21 the City of Chicago and the State of Illinois, the
22 former Chief Judge of the Circuit Court of Cook
23 County and the agreement that Metra approved was
24 the result of an almost 12-hour mediation, arms

L.A. COURT REPORTERS, LLC. (312) 419-9292

29

1 length negotiation where there were all kinds of
2 different issues discussed. The moving expenses
3 became an issue because he had -- Mr. Clifford had
4 moved here from California when he was initially
5 hired and so he had been given relocation expenses
6 back then. The relocation expenses provided under
7 the settlement agreement actually only have to be
8 paid if, in fact, he moves.

9 So if he were to find a job
10 within the Chicago area and, you know, not move,
11 Metra would have no obligation to pay any of those
12 expenses and those expenses are only payable based
13 on evidence that the expenses were actually
14 incurred by him. So as you can imagine over a
15 period of 12 hours there were a number of
16 positions taken by the parties. There were a

17 number of arguments being made by the parties and
18 at the end of the day the agreement was one that
19 Judge O'Connell was recommending that the parties
20 accept and I think both sides were probably
21 unhappy with the recommendation, but went forward
22 with it.

23 CHAIRMAN GATES: So the answer to
24 this is this was part of a larger compromise and

L.A. COURT REPORTERS, LLC. (312) 419-9292

30

1 these were the labels that you happened to pick,
2 is that sort of --

3 MR. GAGLIARDO: Yes. Well, it was
4 part of that his feeling -- Mr. Clifford's feeling
5 was that it was more likely that in order to be
6 able to get a job similar to what he -- the
7 position he held at Metra that he would likely
8 have to go to a different jurisdiction and as the
9 result of that he would incur expenses. That
10 would be called damages in the event of a lawsuit
11 such as, you know, the commission he'd have to pay
12 to sell his place here as well as any relocation
13 expenses to physically move him from Chicago to
14 wherever he goes.

15 CHAIRMAN GATES: Particularly then
16 why continue to pay him for 2014, 2015? What
17 incentive does that give him to look for another
18 job? I mean, he is going to get his compensation
19 anyway? Why go out and look for another job? It
20 certainly doesn't fit in my mind.

071013 RTA SPECIAL BOARD

21 MR. GAGLIARDO: The reason is as --
22 as was previously discussed, the problem was he
23 wasn't only claiming that if he got terminated now
24 he would have a claim. He was claiming whether he

L.A. COURT REPORTERS, LLC. (312) 419-9292

31

1 got terminated now or his contract wasn't renewed
2 that he was going to be asserting a claim. From
3 his vantage point, he felt that because he had a
4 three-year contract for the first term that he
5 would have at least another three-year contract
6 and his argument was that if you looked at his
7 predecessor's tenure who was there for 20 years he
8 could have an argument for more than just another
9 three-year term.

10 So this was a back and forth
11 about what his damages might be and what the
12 damages would be if, in fact, a lawsuit were
13 filed. So his claim would be if my contract is
14 not renewed then what ends up happening is I lose
15 the three years of compensation.

16 So what we did although we
17 agreed to pay him beyond his contract term, it's
18 important to know that under the -- his contract
19 even if he had not been terminated he would have
20 been entitled to close to \$200,000. That was
21 absent any termination, absent any settlement
22 agreement. So when you start -- you know, you
23 look at that and then you look at the payments on
24 the back end for the last year they only have to

071013 RTA SPECIAL BOARD

L.A. COURT REPORTERS, LLC. (312) 419-9292

32

1 be made if he is earning less than what he was
2 earning at Metra and then, again, in answer to
3 your question, sir, the reason why that would be
4 is his argument was "Look, I am going to be
5 damaged because I'm not going to have a contract
6 extension for three years. So at a minimum you
7 owe me that compensation." Our position was
8 "Look, you're not entitled to the renewal, but in
9 any event if we're willing to work something out
10 with you we can't have you get a windfall where
11 you go get another job and then we're paying you."
12 So there ends up being that setoff for that last
13 year and in terms of the incentive to get a job
14 while this is a lot of money and I'm not being --
15 I don't want to offend anybody when I say this or
16 sound disrespectful. It's not going to be enough
17 for him to retire and, frankly, he has been saying
18 all along that his biggest concern was his ability
19 to go out and get another job.

20 So it's clear that he's had a
21 continuous work history, that he is interested in
22 getting another job and, frankly, for someone in
23 the position he was in and the type of position
24 that he is seeking it would probably be very

L.A. COURT REPORTERS, LLC. (312) 419-9292

33

1 detrimental for him to just decide to sit out that
2 last year to collect money because he doesn't have
3 to work.

4 CHAIRMAN GATES: It does not seem to
5 be, you know, incentivize him to get another job.
6 It seems to incentivize him not to get another
7 job. Do you know if Mr. Clifford is, in fact,
8 looking for work?

9 MR. GAGLIARDO: Yes.

10 CHAIRMAN GATES: Is this likely to
11 be paid or is it not likely to be paid?

12 MR. GAGLIARDO: Our hope is that
13 it's not likely to be paid. I do know based on
14 the information that his counsel has given me that
15 he is actively seeking employment.

16 CHAIRMAN GATES: This overall
17 settlement that the judge suggested and that both
18 parties accepted was there any sort of cost
19 benefit analysis done by -- by Metra?

20 MR. GAGLIARDO: Yes. You know,
21 unfortunately this is one of those areas where
22 there isn't any certainty. What I can tell you
23 I've been a labor and employment lawyer for 35
24 years. I have been with my law firm 25 years and

L.A. COURT REPORTERS, LLC. (312) 419-9292

34

1 a managing partner. We're a labor and employment
2 law firm. I'm the chair of the litigation group.
3 Before that, I spent ten years as a lawyer for the
4 City of Chicago and I was the first deputy

5 corporation counsel under Mayor's Washington and
6 Sawyer and I also worked under Mayor's Bilandic,
7 Byrne, Washington and Sawyer. So I've had
8 extensive experience litigating these types of
9 cases especially in the public sector.

10 The problem becomes this is a
11 case that clearly, and it was obvious from the
12 mediation, there were factual disputes. This was
13 not a case where I could as a lawyer tell Chairman
14 O'Halloran "You know what, I'm going to be able to
15 file a motion to dismiss. The case is going to be
16 dismissed" or "I'm going to file a motion for
17 summary judgment."

18 Although there may have been
19 reasons to do that in general this, to me, was a
20 case that was going to have multiple claims. It
21 was going to go on for multiple years. There was
22 going to be extensive motion practice, there was
23 going to be extensive written discovery and there
24 were probably going to be at a minimum 30 or 40

L.A. COURT REPORTERS, LLC. (312) 419-9292

35

1 depositions.

2 when you start looking at the
3 numbers, again, until a case was filed and until
4 it started moving I can't say with any
5 specificity, but what I can say is that based on
6 my experience I think that the cost of defense in
7 and of itself, even if successful in defending
8 against the claims, which I believe the claims

9 were defensible, the cost of defense would have
10 exceeded the cost of the settlement, the entire
11 cost of the settlement. And then what you also
12 have to factor in is that there is the intangible
13 impact on Metra, on its morale, on its operations,
14 its ability to move forward of having litigation
15 going on with its former executive director. That
16 is a very substantial impact and it applies
17 whether it's a public body or a private employer.
18 That you can't put a dollar sign on it, but it is
19 very significant and then the other part of it is
20 that if there had been litigation, if there would
21 have been a settlement down the road or if
22 Mr. Clifford would have been successful in part of
23 that litigation, he would have been entitled to
24 his attorney fees.

L.A. COURT REPORTERS, LLC. (312) 419-9292

36

1 Now, just to give you a
2 perspective, the agreement provides that we would
3 pay his lawyer \$75,000. Okay. I saw what his
4 lawyer's time records were. His lawyer's fees far
5 exceeded \$75,000, far exceeded \$100,000 and there
6 was not even a complaint filed. So what I was
7 looking at is if we started moving forward with
8 this case and got entrenched in litigation and
9 then there was a desire to settle it a year from
10 now, a year and a half from now there was no way
11 it was ever going to be settled without factoring
12 in his attorney fees and so you're aware a

13 substantial amount of the fees that he had
14 incurred with his lawyer were already paid by him.

15 So they were out of -- they were
16 out-of-pocket expenses for him already and -- and
17 because we didn't pay the whole amount I'm
18 assuming that, you know, that he -- he has some
19 substantial amount to workout with his lawyer that
20 was not paid through the agreement.

21 CHAIRMAN GATES: Good. I'd like to
22 open it up for questions by my colleagues on the
23 board and may come back with some others later on.
24 Director Magalis?

L.A. COURT REPORTERS, LLC. (312) 419-9292

37

1 DIRECTOR MAGALIS: I would like to
2 clarify a couple of things. The document that I
3 received that was the separation agreement and the
4 employment agreement was a document that Jourdan
5 sent to me that supposedly is on the Sun Times web
6 page. Is that the document or are those the
7 documents that reflect the agreements? They have
8 signatures on them. I'm assuming they are the --

9 MR. GAGLIARDO: Yes. I mean, I'm
10 assuming. I haven't gone to the Sun Times web
11 page, Director, but if the -- if the document is
12 signed and it has a date of 6/21/13 --

13 DIRECTOR MAGALIS: Yes, it does.

14 MR. GAGLIARDO: -- for Chairman
15 O'Halloran and 6/13/13 for Mr. Clifford?

16 DIRECTOR MAGALIS: Yes, I just want

17 to make sure that what I had read was what I was
18 looking at. I guess the first question I have is
19 that the employment agreement for Clifford is
20 dated February 1, 2011, which would mean, to me,
21 that that is when he was hired. The separation
22 agreement says that he was hired under
23 resignation, that he had been working with Metra
24 since February 11th, 2010. So I was trying to

L.A. COURT REPORTERS, LLC. (312) 419-9292

38

1 calculate the cost of this impact, but with the
2 two dates being a year off I'm not sure what date
3 is correct.

4 MR. GAGLIARDO: No, the actual date
5 that is correct is his employment agreement
6 commenced February 1, 2011, for three years.

7 DIRECTOR MAGALIS: So in your
8 separation agreement under the agreement, the
9 first -- under the first now therefore number one
10 it says since February 11th, 2010.

11 MR. GAGLIARDO: Correct. That
12 should be -- that should be February 11th, 2011.

13 DIRECTOR MAGALIS: Should be
14 February 1, 2011, right?

15 MR. GAGLIARDO: Right. Actually I
16 believe it was.

17 DIRECTOR MAGALIS: Or 2011.

18 MR. GAGLIARDO: It might have been
19 February 11th when he actually started working,
20 but it would have been February 1 or February 11.

21 DIRECTOR MAGALIS: Okay. So the
22 calculations that you did in determining the cost
23 was based on the agreement of February 11, 2010 or
24 February 11, 2011?

L.A. COURT REPORTERS, LLC. (312) 419-9292

39

1 MR. GAGLIARDO: No, it was based on
2 2011 because the contract -- his contract would
3 have run out in February of 2014 and he was saying
4 that he should get a renewal plus. So a three
5 year renewal plus and -- and the 2011 is the
6 correct date, sir.

7 DIRECTOR MAGALIS: Okay. The
8 follow-up question I guess now that I understand
9 that. I did not go through the calculations
10 because of that question and I would like to know
11 what is your estimated cost for this contract
12 through August 11th, 2015, which is the worst case
13 scenario the way I understand it would be if he
14 was not able to get -- did not receive other
15 employment, what is the cost of this agreement?

16 MR. GAGLIARDO: All right. Absent
17 any reimbursement that I mentioned the cost of the
18 agreement is approximately \$718,000.

19 DIRECTOR MAGALIS: The other
20 observation I'd just like to make is the
21 employment agreement was seven pages, the
22 separation agreement is 14 pages. It's amazing
23 how complicated it is to unwind an employment
24 arrangement. The \$20,000 that was paid to move

071013 RTA SPECIAL BOARD

L.A. COURT REPORTERS, LLC. (312) 419-9292

40

1 Clifford here that he could use for anything he
2 wanted in the employment agreement as the chairman
3 mentioned doesn't compare very favorable to the
4 \$75,000, for example, that is in there for his end
5 of separation agreement whether it is for moving
6 expenses or helping him out with his existing
7 house and when you look at numbers like that you
8 wonder about some of the other numbers and I guess
9 to move on to that was he terminated for cause or
10 was this a mutually agreed upon issue, he was not
11 terminated for cause?

12 MR. GAGLIARDO: He was not
13 terminated for cause and he resigned pursuant to
14 this agreement.

15 DIRECTOR MAGALIS: And did either
16 part -- did anyone determine that either party
17 breached this employment contract?

18 MR. GAGLIARDO: I don't believe so.
19 I don't believe that anybody concluded that the
20 other one breached that.

21 DIRECTOR MAGALIS: You gave him a
22 three percent adjustment on his salary. His
23 employment contract with you simply stated that
24 based on your board's review of his performance he

L.A. COURT REPORTERS, LLC. (312) 419-9292

41

1 was eligible for a three percent adjustment. When
Page 35

071013 RTA SPECIAL BOARD

2 I look at that, it looks like you're giving him
3 the maximum rating that you can give a person for
4 his performance because you gave him the three
5 percent.

6 MR. GAGLIARDO: Well, it wasn't --
7 you're absolutely right, Director. It was in his
8 employment contract that he could receive up to a
9 three percent increase on his base and that was
10 part of the negotiation. A lot of times there
11 isn't a guess or art or science to this. You end
12 up spending 12 hours going back and forth about
13 what someone thinks they should get and what the
14 other side, in this case us, thinks they should be
15 giving instead and you end up compromising it at
16 different points in time.

17 His position was so you
18 understand -- so you understand the context is
19 that in his opinion he had been performing very
20 well and was entitled to the three percent and he
21 also took the position that he had agreed to defer
22 the three percent pay increases. That's why they
23 weren't already in his pay. He said that he had
24 agreed to defer them so once he knew he was going

L.A. COURT REPORTERS, LLC. (312) 419-9292

42

1 to be leaving he wanted that compensation rolled
2 into what he believes he should have been paid.

3 DIRECTOR MAGALIS: So he was given
4 the highest performance he could be given, which
5 was the three percent --

071013 RTA SPECIAL BOARD

6 MR. GAGLIARDO: Yes.

7 DIRECTOR MAGALIS: -- in your
8 arrangement?

9 CHAIRMAN GATES: Director Magalis,
10 just one clarification to that question. So if
11 you looked at his performance reviews that would
12 have been done, does it reflect that his
13 performance was at the highest level?

14 MR. GAGLIARDO: Well, it's a little
15 bit of a difficult question to answer. Let me
16 just explain. He had not received a formal
17 evaluation after the first year and I think
18 initially at that point in time things seemed to
19 be going along very well. It was in early March
20 of this year that it got announced that he was
21 going to actually be formally evaluated and then
22 that is part of there is a timeline that I'm happy
23 to go through with you so, again, you understand
24 the timing and the way this arose, but -- but

L.A. COURT REPORTERS, LLC. (312) 419-9292

♀

43

1 Director, in response to your question he had not
2 been formally evaluated and now his resignation
3 has taken place before the evaluation process that
4 was announced in March 2013 was actually
5 implemented.

6 DIRECTOR MAGALIS: Last comment I
7 guess I have at this point was that you mentioned
8 during the discussion that you turned documents
9 over to the Inspector General and so forth?

071013 RTA SPECIAL BOARD

10

MR. GAGLIARDO: Yes.

11

DIRECTOR MAGALIS: To your

12

knowledge, had Clifford filed any documents of his

13

own with the Inspector General prior to your

14

filing or with any other agency that you know of?

15

MR. GAGLIARDO: Not that we know of.

16

DIRECTOR MAGALIS: Thank you.

17

DIRECTOR FREGA: I have a question.

18

CHAIRMAN GATES: Director Frega?

19

DIRECTOR FREGA: This was a

20

three-year contract I understand that Metra had

21

with Mr. Clifford. What made him think that he

22

was at a six year contract? He eluded to the fact

23

that he perceived that he was going to get another

24

three-year extension. Have we learned anything

L.A. COURT REPORTERS, LLC. (312) 419-9292

♀

44

1

from this? The next guy we hire are we hiring him

2

for three years or are we hiring him for six

3

years?

4

MR. GAGLIARDO: Director, in answer

5

to -- your question is a good question. In answer

6

to it, it was a three year agreement. You know,

7

we don't know what would have ended up happening

8

had this unfolded, the performance evaluation ever

9

took place. What I can tell you is that his

10

position was that if his contract was not renewed

11

that it had to be for some improper purposes that

12

would allow him to bring a case in court. And so

13

he took the position that his career -- he could

071013 RTA SPECIAL BOARD

14 have had a career at Metra that went way beyond an
15 additional three years, but in terms of what
16 happens with the next person I think until that
17 person is actually identified and somebody sits
18 down to negotiate with him or her about their
19 employment at this point I can't answer the
20 question about what the next term of the contract
21 would be and that would actually be a -- I'm
22 sorry. That would be a question that the Metra
23 board would have to answer.

24 DIRECTOR ANDERSON: Another

L.A. COURT REPORTERS, LLC. (312) 419-9292

45

1 question.

2 CHAIRMAN GATES: Director Anderson?

3 DIRECTOR ANDERSON: Is there a
4 reason why you did not do a performance review
5 annually with him? Is there a reason why that
6 wouldn't have been done?

7 CHAIRMAN O'HALLORAN: Director, as
8 maybe you're aware, I became chair -- I was
9 elected in November 2012 and became -- actually
10 took over in December. One of the first things
11 that was clear to me was that there was no formal
12 review process. So through the committee process,
13 which we had just instituted, we put to that
14 particular employment practices committee a whole
15 outline, if you will, of how a formal review in my
16 opinion and the committee's opinion should have
17 taken place and should take place in the future

071013 RTA SPECIAL BOARD

18 whether it would have been Mr. Clifford or any
19 other future potential executive director.

20 So there was no formal process.
21 I felt very strongly there had to be a formal
22 process that had both subjective and objective
23 criteria. Things like a 360 review, things like
24 peer review, input from some of our stakeholders,

L.A. COURT REPORTERS, LLC. (312) 419-9292

46

1 et cetera, not just a, you know, here is my
2 presentation of everything that Metra has
3 achieved, but the specific parameters and targets
4 that would have been put in place. Those have not
5 been put in place. why? I'm not sure.

6 DIRECTOR ANDERSON: So would that
7 extend to a broader group of people in Metra? So
8 would that suggest that whether it's the
9 management team or all of its employees are all of
10 the folks at Metra not being -- been given
11 performance reviews?

12 CHAIRMAN O'HALLORAN: I'm pleased to
13 report that every other area of Metra has a formal
14 process in place. A very formal process. The
15 executive director -- I don't know if it was
16 historical. I don't know if it was -- I don't
17 know why. I've never, frankly, seen anything of
18 that nature, but every other senior management all
19 the way through there is a formal process in place
20 as there should be.

21 DIRECTOR TROIANI: Mr. Chairman?

071013 RTA SPECIAL BOARD

22 CHAIRMAN GATES: Yes, Director
23 Troiani?

24 DIRECTOR TROIANI: So I'm wondering,

L.A. COURT REPORTERS, LLC. (312) 419-9292

47

1 and maybe you've already explained this, but just
2 looking at this from a little different level.
3 Why couldn't you have let him finish the term of
4 his contract, which was coming up in the next few
5 months I take it, and then given him significantly
6 diminished responsibilities? Don't you think he
7 would have left on his own or were you not able to
8 do that?

9 MR. GAGLIARDO: No, he would not
10 have done that. In fact, I can tell you that
11 there were some discussions that involved not
12 significantly diminishing his duties and his
13 position was that would, in effect, be a
14 constructive termination.

15 DIRECTOR TROIANI: And you think
16 that was subject to a lawsuit?

17 MR. GAGLIARDO: Yes.

18 CHAIRMAN GATES: Go ahead, Director
19 Pang.

20 DIRECTOR PANG: So, Chairman
21 O'Halloran, in your opening statement you
22 certainly in my opinion tiptoed up to some cause
23 issues that would have effected a renewal of the
24 contract and then, Mr. Gagliardo, you talked about

1 a defensible claim. So how did those factors
2 enter into a separation agreement that just
3 appears incredibly generous?

4 MR. GAGLIARDO: Well, you know, I
5 think over 97 percent, close to 98 percent of all
6 civil cases settle and that's here in the state
7 court, in the federal court and nationwide. And
8 what that -- one of the things that that indicates
9 is that the cost of litigation and the uncertainty
10 that comes with it of risk and the disruption
11 oftentimes significantly outweighs what you could
12 do in terms of controlling -- controlling your
13 destiny.

14 So while this was not cause,
15 we're not claiming there was cause just so there
16 is no -- no confusion about that. What it ended
17 up there were obviously some disagreements as
18 Chairman O'Halloran identified, but then what
19 happened was once the claims were asserted it now
20 became a matter of figuring out "Okay. You know,
21 where does the agency go from here?" And it could
22 have said "Okay. You know, we'll let him continue
23 to work and we'll let him sue us," which would
24 have created a very difficult set of

1 circumstances, it was clear that if he got

2 terminated -- because he could be terminated and
3 then paid six months under the contract and paid
4 his insurance. However, it was clear -- I mean,
5 he -- that was going to result in litigation as
6 well.

7 So every which way we turned
8 there was going to be a lawsuit. It was only
9 going to be a question of when it was going to
10 take place and so looking at whether or not he --
11 you know, we should wait and let him finish out
12 his term, there were, you know, considerations of
13 what would that mean to operations and then the
14 fact that we're going to be in this litigation
15 come February of 2014 anyway. We might as well
16 address the issue right now and then, you know,
17 have a role in what direction the agency is able
18 to move in starting, for example, from today
19 forward or from the settlement agreement forward
20 in terms of moving forward with its initiatives
21 and being able to serve the public as its, you
22 know, been established to do and so in the big
23 picture again it goes back to this between I'm
24 convinced that the cost of defense alone, even if

L.A. COURT REPORTERS, LLC. (312) 419-9292

50

1 successful, would have eclipsed the cost of this
2 settlement and then the noneconomic impact, which
3 is -- can't be quantified, but is substantial and
4 then the potential for incurring more attorney
5 fees for his lawyer. It just in my legal opinion

6 based on my experience made sense to have peace
7 and then be able to control your destiny rather
8 than being involved in litigation for the next
9 two, three, four, five years and having, you
10 know -- I always tell employers "Look, you're in
11 the business of running a business. You're not in
12 the business of litigating these cases. Every
13 once in a while you have to do it for whatever
14 reason, but when there is a settlement that makes
15 sense you should take advantage of it because
16 litigation becomes a huge distraction and drain on
17 your organization, your resources and frankly
18 morale and maybe public perception."

19 It could even effect who might
20 want to come and be the next executive director.
21 I mean, so there are a whole series of
22 ramifications that flow from getting embroiled in
23 protracted litigation.

24 DIRECTOR PANG: That's -- that's

L.A. COURT REPORTERS, LLC. (312) 419-9292

51

1 very understandable and you've mentioned morale
2 and disruption. This, too, this settlement has
3 caused I assume some morale issues and quite a bit
4 of disruption, public trust issues. How are
5 you -- how do you think this is going to move you
6 beyond those issues and how did that factor into
7 your cost benefit analysis that the disruption of
8 a lawsuit versus the disruption that this
9 settlement has caused?

10 MR. GAGLIARDO: Well, we -- we think
11 and there is a legal piece and then an operational
12 piece. From the legal standpoint, we do believe
13 that if there would have been a lot of expense and
14 disruption, you know, the argument -- one of the
15 arguments has been, you know, what are the people
16 who are riding the Metra trains going to think?
17 They're thinking they're paying for this \$718,000
18 settlement agreement. Well, the flip of it could
19 be that at some point they're saying why is Metra
20 paying \$1 million or more than \$1 million to
21 defend this case and why am I having to pay for
22 that? So, you know, it's kind of like two sides
23 of the same coin you know.

24 And it's a situation as the

L.A. COURT REPORTERS, LLC. (312) 419-9292

52

♀
1 situation with all litigation. There is not
2 always just a good, easy outcome and sometimes
3 there is a tortured path to get there and frankly
4 even getting to this settlement that we're talking
5 about today it was a tortured path. We attempted
6 on our own to try to get it resolved and spent a
7 lot of time trying to do it and then we brought
8 in, you know, Judge O'Connell and, you know, like
9 I said in the end it was a recommendation that
10 neither side was happy with. Really neither side
11 was happy with, but he was willing to take it and
12 as a lawyer I was willing to recommend it to the
13 Metra board based on Judge O'Connell's

18 up going on in the organization of whether there
19 are then factions. It is -- I don't believe it
20 sets a precedent because the high level of the
21 position differentiates it from the normal kind of
22 case that Metra or another employer would face.

23 DIRECTOR TROIANI: It certainly --
24 it certainly encourages them.

L.A. COURT REPORTERS, LLC. (312) 419-9292

54

1 MR. GAGLIARDO: You know, it could
2 in some instances, but I believe that when you
3 defend cases that should be defended and aren't
4 going to create the kind of issues that this case
5 would have created, I think people then realize
6 that you're not just going to rollover and,
7 frankly, I don't think any of the public agencies
8 here that -- you know, that I'm involved with are
9 viewed as agencies that rollover at the threat or
10 filing of a lawsuit.

11 In fact, to the contrary. I
12 think that public agencies rightfully so
13 aggressively defend against claims for the very
14 reason you're raising, Director, because they
15 don't want to be viewed as an easy target.

16 CHAIRMAN GATES: Just to follow up
17 on that. Do any other employees or groups of
18 employees have contracts and, B, have contracts
19 with severance agreements that are, you know, as
20 considerable or considerable relative to their --
21 relative to their pay?

22 071013 RTA SPECIAL BOARD
MR. GAGLIARDO: No.
23 CHAIRMAN GATES: No other
24 employees -- no other groups of employees have

L.A. COURT REPORTERS, LLC. (312) 419-9292

55

1 severance agreements?

2 CHAIRMAN O'HALLORAN: No. Just
3 labor agreements with any of the unions, which we
4 have 11 unions.

5 CHAIRMAN GATES: Right.

6 CHAIRMAN O'HALLORAN: So labor
7 agreements, but no.

8 CHAIRMAN GATES: Director Anderson?

9 DIRECTOR ANDERSON: Has anybody --
10 the allegations that he has made in the agency's
11 wrongdoings has anybody within the organization
12 investigated any of those? So whether it's hiring
13 practices, whether it's -- whatever allegations
14 he's making, has anybody at the -- at Metra
15 investigated those allegations?

16 CHAIRMAN O'HALLORAN: Metra hired
17 Rodger Heaton, former US attorney to investigate
18 every single allegation that was made by
19 Mr. Clifford.

20 DIRECTOR ANDERSON: And can you
21 share the conclusions of that -- of those
22 investigations?

23 CHAIRMAN O'HALLORAN: To date,
24 nothing of any kind of substance has been brought

1 forward to me.

2 CHAIRMAN GATES: Director Buchanan?

3 DIRECTOR BUCHANAN: Yeah, I have --
4 Chairman Gates asked the one question that I was
5 going to ask about how many more employment
6 contracts there is. The second question I have is
7 is there -- was there any consideration given for
8 any stock gap type insurance Ullico provides for
9 discrimination cases or what have you, employment
10 contracts?

11 Was there any consideration
12 given to this particular matter that once the
13 legal fees would hit a certain amount that the
14 insurance would jump in and pay the rest to defend
15 yourself? Is that -- is there anything to that
16 substance.

17 CHAIRMAN O'HALLORAN: I asked this
18 question. As I understand it, we have a fund that
19 is accrued for litigation. It is not an insured
20 type of fund, but certainly, you know, hindsight
21 is 20/20, but we certainly would look at that, but
22 what has been explained to me is that we do have a
23 specific fund at Metra set aside for all type --
24 for any type of litigation and that's where these

1 payments will come from.

2 DIRECTOR BUCHANAN: So hopefully in
Page 49

071013 RTA SPECIAL BOARD

3 the future you may reconsider and take a look at
4 that option that is out there for businesses?

5 CHAIRMAN O'HALLORAN: Unless I get
6 hit by a bus on the way out.

7 UNIDENTIFIED SPEAKER: As long as
8 it's a bus.

9 DIRECTOR TROIANI: Mr. Chairman?

10 CHAIRMAN GATES: Director Troiani?

11 DIRECTOR TROIANI: So there was one
12 descending vote on this settlement agreement from
13 the Metra board. Can you -- and I know you can't
14 speak for other people, but can you elaborate at
15 all what the difference of opinion might have been
16 with that descending board member in terms of how
17 this should have been resolved?

18 CHAIRMAN O'HALLORAN: I really
19 can't. You'd have to ask that board member, his
20 own motivations and theories I guess, but I can
21 tell you that, you know, as Chairman Gates knows
22 boards of this nature and size are like herding
23 cats. There is a lot of different opinions,
24 different politics, different regions that are

L.A. COURT REPORTERS, LLC. (312) 419-9292

♀

58

1 involved and I think getting ten people pretty
2 much on the same page is an issue that is as
3 important and was as challenging as this says a
4 lot about the decision.

5 CHAIRMAN GATES: Director Frega.

6 DIRECTOR FREGA: Chairman?

071013 RTA SPECIAL BOARD

7 CHAIRMAN GATES: Director Frega and
8 then Director Melvin. Thank you.

9 DIRECTOR FREGA: Moving forward you
10 mentioned two things. One is with credit card
11 acceptance. So I was wondering were you aware of
12 the CTA as far as the program they started with
13 credit cards and, number two, you mentioned about
14 diversity and I was wondering if you could explain
15 to us what policies you're putting in place to
16 better the diversity programs within Metra?

17 CHAIRMAN O'HALLORAN: Sure. Thank
18 you. If I can with respect to the Ventra
19 situation or the working with our -- working more
20 cooperatively with our other agency, if I can just
21 defer to Alex Wiggins, our deputy director of
22 administration.

23 MR. WIGGINS: Certainly. We've
24 taken immediate steps to reach out to our partners

L.A. COURT REPORTERS, LLC. (312) 419-9292

59

1 at CTA and Pace and worked specifically with them
2 on the ventra program and so our planning staff is
3 closely engaged with our partners and we will hop
4 on board there, but the benefit that we may be
5 able to add as additional value is that on board
6 credit card acceptance and so we're also in
7 addition to accepting the Ventra card at our
8 terminals want to find a vendor that will allow us
9 to accept credit cards of all types on board our
10 trains.

071013 RTA SPECIAL BOARD

11 with regard to recruitment in
12 diversity as it speaks right now we are actually
13 recruiting a new chief of human resources officer
14 and one of our priorities as established by the
15 board and by executive staff is to continue to
16 broaden the diversity of the agency and so that's
17 a top priority for Metra and we'll continue along
18 that path.

19 CHAIRMAN GATES: Director Melvin?

20 DIRECTOR MELVIN: Just a couple of
21 questions, please. Chairman O'Halloran, I think
22 you mentioned there were two investigations going.
23 Just as a point of order. We're not
24 investigating, right? We have audit and

L.A. COURT REPORTERS, LLC. (312) 419-9292

60

1 oversight, but not investigations. So that's just
2 one point I'd like to make from the start.

3 The second thing is, you know,
4 it's a lot of money and it looks like it's racing
5 towards \$800,000 and I accept your -- your
6 professional opinion that a lawsuit would be more
7 expensive, but I think what, you know, bothers
8 everyone is it's just a lot of money and the other
9 side can't speak.

10 Is there any consideration of --
11 I think in the Tribune today Mr. Clifford is
12 asking for the right to respond to the criticisms.
13 Is there any thought on that because I think that
14 would just spell a lot of the confusion and

071013 RTA SPECIAL BOARD

15 suspicion.

16 MR. GAGLIARDO: Yes, sir. He has
17 the right to speak. There are -- you know, just
18 as we do and we're here speaking about it there
19 are certain restrictions in the agreement. His
20 position is a little different than ours from the
21 standpoint that obviously this is -- Metra is a
22 public body, public funds, owes a responsibility,
23 you know, to the public and I'm not saying that
24 Mr. Clifford doesn't owe any responsibility to

L.A. COURT REPORTERS, LLC. (312) 419-9292

61

♀
1 anybody, but in terms of his situation what
2 happened was he got into a dispute with his
3 employer that resulted in a settlement and what
4 the bulk of the questions have revolved around why
5 would an employer, whether it's Metra or somebody
6 else, have entered into a settlement like this,
7 and we're really here to explain it. He really
8 can't shed -- he can't shed light on that in terms
9 of, you know, what the issues are, what the claims
10 are.

11 You know, lawyers could spend
12 hours arguing back and forth obviously with no --
13 no outcome because until it would -- the case
14 would actually be decided by either a judge or a
15 jury. It would be a wild card. So the onus has
16 really fallen on Metra as to why would you go out
17 and spend this amount of public funds and I think
18 what has been creating a little bit of confusion

071013 RTA SPECIAL BOARD

19 is that, number one, it is being portrayed more as
20 a golden parachute.

21 This is a settlement agreement.
22 It -- you know, yes, it involves the termination
23 of his contract. Yes, he is resigning, but this
24 isn't a situation where somebody just said "Hey,

L.A. COURT REPORTERS, LLC. (312) 419-9292

62

1 you know, it's nice that you've been here. We're
2 going to give you this pot of money. Go walk
3 away." This is a settlement agreement. That is
4 number one and just in terms of the -- again, like
5 I said the accountability, you know, we're here,
6 we're prepared to discuss it. He just has less of
7 an opportunity to discuss these things because
8 these issues are issues that we have.

9 You know, we're the ones that
10 made the -- I'm the one that made the
11 recommendation, the board is the one that made the
12 decision that, yes, based on what Judge O'Connell
13 recommended this is a fair and equitable
14 resolution for everybody and we're -- you know,
15 we're going to go along with it. Frankly, going
16 back to the way that the conversation started the
17 question you asked he does have the right to speak
18 with certain limitations just as we have the right
19 to speak with certain limitations.

20 CHAIRMAN GATES: Director Melvin,
21 this is something we looked into quite
22 extensively. We certainly have the -- this is an

071013 RTA SPECIAL BOARD

23 audit, part of our oversight function. We have
24 the duty to audit Metra. We do not have the duty

L.A. COURT REPORTERS, LLC. (312) 419-9292

63

1 or the obligation or, frankly, the ability to
2 audit Mr. Clifford. If in the course during our
3 ongoing audit of Metra, it appears that
4 Mr. Clifford can shed additional light on the
5 ethicacy of this settlement so on and so forth
6 beyond this, then we will certainly ask him to
7 come in, but at this stage we have no ability to
8 do that. I understand Director Jourdan is on the
9 phone and would like to ask a question. Al, are
10 you there?

11 DIRECTOR JOURDAN: Yes, I am. I've
12 been here a long time. Good morning.

13 CHAIRMAN GATES: Go ahead.

14 DIRECTOR JOURDAN: We've heard a lot
15 from you today. If you had one minute to talk to
16 Metra riders, what would you say to make them
17 comfortable with Metra's spending so much money on
18 this settlement agreement and to give them
19 confidence in the Metra operation going forward?
20 Chairman O'Halloran?

21 CHAIRMAN O'HALLORAN: I would say
22 for one that I think we have a renewed figuration
23 of staff right now, that the two deputy executive
24 directors that you see next -- well, you don't see

L.A. COURT REPORTERS, LLC. (312) 419-9292

1 next to me, but who are next to me are moving very
2 quickly, have, you know, committed to a
3 collaborative team approach to operating this
4 agency. I think the agency has great employees
5 and I think we just need to refocus the agency
6 going forward.

7 I think that our customers have
8 to be number one. This agency always has to be
9 looking at on-time performance. Are we giving
10 them the best bang for their buck? Are they
11 getting the other things that other peer agencies
12 are giving them around the country and I think
13 that it's a time of challenge for Metra, but I
14 think it's an exciting time for the management of
15 Metra's board and the individuals who are out
16 there in the field. I think we've got to take a
17 different approach with all of our employees and
18 that's one of cooperation, one of making them feel
19 once again I'm proud to work for Metra. Metra is
20 a family. Metra is a team. Metra is something
21 that I want to be a part of.

22 And if -- I believe that the
23 gentleman to my right can absolutely do that.
24 We've got a great combination of experience.

L.A. COURT REPORTERS, LLC. (312) 419-9292

1 we've got a great combination of new ideas. I
2 think both make it a heck of a team and I think

3 you're going to see great things coming from Metra
4 very soon.

5 CHAIRMAN GATES: Could you give just
6 a follow-up on Director Jourdan's question? Could
7 you give a little bit of description on your --
8 the current leadership of Metra and then following
9 on what steps you're taking to recruit a new
10 executive director?

11 CHAIRMAN O'HALLORAN: Sure. I've
12 spent quite a bit of time over the last few months
13 spending time with Alex Wiggins, our deputy
14 director of administration, and Don Orseno, our
15 deputy director of operations. Don Orseno has
16 worked in every aspect of Metra. He has been with
17 Metra 39 years. I think that is accurate.

18 MR. ORSENO: Thirty-nine years in
19 the rail industry, 29 years with Metra.

20 CHAIRMAN O'HALLORAN: Twenty-nine
21 years with Metra, 39 years in rail. You know, is
22 truly a success story in working their way through
23 the entire system, knows everything about the
24 system itself and out in the field and has, you

L.A. COURT REPORTERS, LLC. (312) 419-9292

66

1 know, really assumed that mantle and then we've
2 got Alex Wiggins who came to us just within the
3 last, what, just over a year ago, comes with great
4 rail experience, great administrative experience
5 from budgeting, to HR, to everything else.

6 I think together we've just got

7 a team that makes in my opinion a better executive
8 director than anyone we could go out and find. I
9 believe that right now if -- it's in the best
10 interest of Metra as I've said before to take a
11 deep breath, to sit back, let things start to
12 progress, see how it goes with our team approach.

13 I don't think there is anything
14 wrong with that and I think we can move this
15 agency a lot better than creating what I would
16 call the single command and control approach that
17 we've had of the past. I think the worst thing we
18 could do now is take a knee jerk reaction, go out
19 and say we're going to do a national search and
20 we're going to find this -- this leader for this
21 organization.

22 We've got great people right
23 here and every month that this works, and I think
24 it can work for a long time, we're mitigating that

L.A. COURT REPORTERS, LLC. (312) 419-9292

67

♀
1 severance that we just handed to Mr. Clifford.
2 We're mitigating this package. Boy, I hope it
3 works for 14 months. So I think it would be the
4 absolute wrong decision. The board and I have
5 talked this through the board at the -- at the
6 last meeting, we put through an ordinance that
7 basically divided powers between the skill sets of
8 these two gentlemen. So I'm very happy with it.
9 We've made just unbelievable progress in two
10 weeks. So I guess give us a chance is all I can

071013 RTA SPECIAL BOARD

11 say.

12 DIRECTOR COULSON: Chairman?

13 CHAIRMAN GATES: You're on the line.

14 DIRECTOR COULSON: Hello?

15 CHAIRMAN GATES: I'm sorry.

16 Director Coulson, I understand you're on the line
17 with a question.

18 DIRECTOR COULSON: Bill Coulson
19 here. You mentioned the worst case under the
20 settlement agreement was \$718,000. This is really
21 for Joe. As I read the employment agreement, he
22 would be entitled to eight months of salary to
23 February of next year and then another six months,
24 which comes to about \$312,000. In any event

L.A. COURT REPORTERS, LLC. (312) 419-9292

68

1 absent firing for cause, which apparently is not
2 on the table here, is that roughly correct, he
3 would be entitled to that?

4 MR. GAGLIARDO: Director Coulson,
5 that essentially is right. What he would have
6 been entitled to under his contract for the six
7 months ends up being about \$195,000 and then the
8 severance to the end of his contract is roughly
9 just shy of \$38,000 and then the six months of
10 severance thereafter is about \$138,000. So you're
11 right at -- you're right in the ballpark there.

12 DIRECTOR COULSON: So the difference
13 between that and \$718,000, which is the worst
14 case, it's really the number we should be focusing

15 on here and what is the best case then? Assuming
16 he gets another job that pays at least as much, it
17 seems to me that the settlement is down to about
18 \$150,000, \$160,000? That would be the best case?

19 MR. GAGLIARDO: It could be a little
20 bit more than that, but, yes, roughly in the
21 ballpark of a couple hundred thousand in the best
22 case scenario.

23 DIRECTOR COULSON: Okay. Thank you.

24 MR. GAGLIARDO: Thank you.

L.A. COURT REPORTERS, LLC. (312) 419-9292

69

1 CHAIRMAN GATES: Director -- sorry.
2 Another question?

3 DIRECTOR MAGALIS: I just had a
4 comment. Obviously you went through an awful lot
5 to put together the separation agreement. Like I
6 mentioned, it's a 14-page document, very thorough
7 and you've supplemented information that we now
8 have in addition to what is in the document that
9 you hired a former US attorney to do
10 investigations and so forth. It would appear to
11 me that you had an awful lot of the information
12 you would have needed for trial.

13 I mean, you've -- you've had a
14 document that you've worked through, you
15 understand the numbers, you understood the
16 allegations, you hired an attorney already who did
17 his due diligence back to the board. You had a
18 cost estimate of \$75,000 from Clifford's attorney

19 for what he had done to that point. It almost
20 sounds like you were at a point of where it would
21 have been real easy to say, you know what, we've
22 already done our homework, we've already got 90
23 percent of what we need to go to trial with, play
24 that card, see how it worked and have a court make

L.A. COURT REPORTERS, LLC. (312) 419-9292

70

1 a final determination on it.

2 Was there some thought given to
3 how much effort you had already put into it, Joe?

4 MR. GAGLIARDO: There was -- I'm
5 sorry. Go ahead.

6 DIRECTOR MAGALIS: Sure.

7 MR. GAGLIARDO: There was and you're
8 absolutely right in the way you're explaining it
9 except that once the lawsuit gets filed you're at
10 ground zero. So whatever we had done as lawyers
11 for Metra or whatever Mr. Clifford's had done for
12 him you're now in a formal process where you go
13 into discovery and you send interrogatories and
14 like I said there easily would have been 30 or 40
15 depositions in this case, which would have
16 resulted in a very substantial cost. So it
17 wouldn't -- there was no way to get from just
18 point A to point B of saying "Hey, look. You
19 know, we think this is our case. You think this
20 is your case. Let's go argue this before
21 somebody."

22 In effect, we did although it

071013 RTA SPECIAL BOARD
23 wasn't before a decisionmaker. It was before a
24 mediator and that is what resulted in that

L.A. COURT REPORTERS, LLC. (312) 419-9292

71

1 agreement.

2 DIRECTOR MAGALIS: I guess the last
3 comment on the attorney fees we know that his
4 estimate was \$75,000. What the estimated cost
5 that the Metra board has had in your payment and
6 the other attorneys that were hired and in the
7 total review of this not considering the time that
8 staff and your board has put in -- what kind of
9 costs are we talking about?

10 MR. GAGLIARDO: You know, I don't
11 have those numbers handy, but what I want to also
12 make clear his fees were not \$75,000. They were
13 well over \$100,000.

14 DIRECTOR MAGALIS: But the fees that
15 are documented that he will be subject to
16 reimbursement for are \$75,000?

17 MR. GAGLIARDO: Right. That's what
18 we had agreed to pay him to the cap, but he had
19 incurred substantially more in attorney fees.

20 CHAIRMAN GATES: Okay. We talked a
21 great deal about the numbers. I'm a little vague
22 as to the timing. Could you walk us through the
23 timeline as you suggested earlier --

24 MR. GAGLIARDO: Yes.

L.A. COURT REPORTERS, LLC. (312) 419-9292

1 CHAIRMAN GATES: -- exactly when all
2 this started, who knew what when --

3 MR. GAGLIARDO: Okay.

4 CHAIRMAN GATES: -- and what was
5 reported to the various investigatory authorities,
6 the OEIG and so forth? It's a little muddled in
7 my mind.

8 MR. GAGLIARDO: All right. The
9 incident that Chairman O'Halloran referenced with
10 regard to the Latino caucus occurred sometime in
11 early March of 2012 and then the issue with the
12 Englewood Flyover that was taking place in the
13 beginning of May of 2012 with the agreement
14 ultimately being approved by the Metra board in
15 July of 2012. Okay. And then what happened was
16 there was this rollout about the performance
17 evaluation in March of 2013. March 7th of 2013.

18 CHAIRMAN GATES: That's when that
19 was started.

20 MR. GAGLIARDO: That's when the
21 board announced that it was going to initiate this
22 evaluation process of the executive director.
23 Now, now -- as of this time when the process is
24 announced nothing has -- nothing at least to our

L.A. COURT REPORTERS, LLC. (312) 419-9292

1 knowledge has been brought to Metra about any
2 claim or legal issue. Okay. So there is a March
3 7th rollout of the evaluation process. On or

071013 RTA SPECIAL BOARD

4 about March 9th, Mr. Clifford has a conversation
5 with a board member where the board member
6 suggests that maybe his contract will not be
7 renewed. In the conversation with that board
8 member on March 9th of '12, Mr. Clifford -- March
9 9th of '13. I'm sorry. Mr. Clifford makes a
10 general statement that he thinks that his contract
11 might not be renewed for political reasons. Okay.

12 so it's sort of a general
13 statement, but as soon as that -- that comment got
14 reported to Chairman O'Halloran and that
15 immediately got referred to the Office of the
16 Executive Inspector General and the meeting took
17 place regarding referring that claim on March 12th
18 of 2013. Okay.

19 And then on April 3rd of 2013
20 Mr. Clifford makes a more detailed statement of
21 what he thinks the legal issues are and at the
22 same time his lawyers sent a letter to Metra
23 saying "My client is going to be asserting -- you
24 know, I'm going to be asserting claims on behalf

L.A. COURT REPORTERS, LLC. (312) 419-9292

74

1 of -- on behalf of Mr. Clifford" and then that
2 was -- that second report by Mr. Clifford was also
3 promptly referred to the Office of the Executive
4 Inspector General.

5 So what you have is you have a
6 period of, you know, this -- this Hispanic caucus
7 circumstance takes place sometime in -- in March

8 of '12. The flyover is in May of '12. Nothing is
9 raised by Mr. Clifford until March of '12 after
10 it's announced that there is going to be an
11 evaluation process.

12 Okay. And then -- and then like
13 I said then he makes a little bit of a more
14 detailed claim and then his lawyer sends a letter.
15 That takes place on April 3rd of 2013. So there
16 was a gap between what he was complaining about
17 and, you know -- and when the claims were brought
18 to Metra's attention and as one of you had asked
19 earlier to our knowledge Metra was the only one
20 that reported the allegations to the Office of the
21 Executive Inspector General and promptly did so.

22 CHAIRMAN GATES: Were there ever any
23 allegations against board members from the point
24 of view of the audit? Were any of those board

L.A. COURT REPORTERS, LLC. (312) 419-9292

75

1 members ever involved in the settlement
2 negotiations or decisions other than voting on it
3 in the final analysis?

4 MR. GAGLIARDO: You know, it is --
5 in terms of the mediation process and the
6 negotiation process, none of the board members
7 were involved. None of the board members that
8 were -- you know, we had made -- taken an issue
9 with something that happened. None of -- no board
10 members were involved in either the mediation --
11 none of those board members were involved in the

071013 RTA SPECIAL BOARD

12 mediation or the negotiation of the agreement.

13 CHAIRMAN GATES: Do you think that
14 it was appropriate they voted on this or should
15 they have recuse themselves?

16 MR. GAGLIARDO: I think it was
17 appropriate they vote on it because they had not
18 been involved in a negotiation process and, again,
19 this was a settlement that was being recommended
20 by -- you know, by one of the preeminent mediators
21 and a former judge, head of the Circuit Court of
22 Cook County. So this wasn't -- this was more a
23 matter of if, in fact, it was going to be
24 approved. It was a fait accompli. No one was

L.A. COURT REPORTERS, LLC. (312) 419-9292

76

1 going to be tinkering with it. So at that point I
2 don't think there was any issue with every board
3 member voting on it.

4 CHAIRMAN GATES: What is the status
5 of the Inspector General's investigation? When
6 was this -- first of all, when was this
7 information first turned over to the Inspector
8 General and what is the status of that
9 investigation that may be germane to this?

10 MR. GAGLIARDO: Okay. The
11 information was first turned over to the Inspector
12 General on March 11th of 2013, which was the
13 general statement without any significant detail
14 and then when Mr. Clifford made a more detailed
15 claim and through his lawyer that took place on

071013 RTA SPECIAL BOARD

16 April 3rd and it was submitted to the Office of
17 the Executive Inspector General within a matter of
18 days and as far as we know the investigation is
19 ongoing. We haven't -- you know, we haven't heard
20 anything more.

21 CHAIRMAN GATES: Have you been
22 contacted or has Metra been contacted in any way
23 subsequent to April 2013 by the OEIG?

24 MR. GREENE: Mr. Chairman, Andy

L.A. COURT REPORTERS, LLC. (312) 419-9292

77

1 Green, counsel to the board of Metra. We do as
2 you are all probably familiar with we do receive
3 requests from the OEIG. They don't necessarily
4 identify what investigation the requests are
5 related to and then we respond to those. So while
6 we do receive requests from the OEIG, we just
7 don't know necessarily if it is in relation to
8 this investigation.

9 CHAIRMAN GATES: Are there issues
10 that they have raised that would be germane to
11 this audit?

12 MR. GREENE: Possibly. Obviously
13 there is -- some of the requests are wide ranging
14 and we don't necessarily know what they pertain
15 to.

16 CHAIRMAN GATES: Could you share
17 those with us?

18 MR. GREENE: I don't believe that
19 we're allowed to share those that the OEIG

071013 RTA SPECIAL BOARD

20 requests.

21 CHAIRMAN GATES: Okay. Good.

22 Moving onto where the board is taking Metra

23 ongoing. I strongly endorse a lot of the

24 initiatives that I think our board strongly agrees

L.A. COURT REPORTERS, LLC. (312) 419-9292

78

1 with a lot of the initiatives that you announced
2 today. There are a few that are still out there
3 that are pending that we also are concerned about.

4 One is for the second year in a
5 row Metra has been late getting its audits in and
6 has -- seems to be a little slow getting in its
7 budget materials in and most of this seems to be
8 attributed to the fact that it has a very
9 antiquated kind of accounting system. When do you
10 think the audit materials -- the audit will be
11 completed, which is now overdue, but, two, when do
12 you think modern, computerized accounting systems
13 will be in place at Metra?

14 We asked I think it was your
15 controller this question at our last board meeting
16 and he said it could be three, four, five years.
17 I've put in place a number of accounting systems.
18 I know it doesn't take this long and we would like
19 to see Metra's bookkeeping, accounting and
20 reporting really brought into the 21st century.

21 CHAIRMAN O'HALLORAN: I know that we
22 have the answer with respect to question one,
23 which is the when will that be complete because

071013 RTA SPECIAL BOARD

24 the KPMG audit that you're referring to was

L.A. COURT REPORTERS, LLC. (312) 419-9292

79

1 actually completed and we're waiting for that
2 final certification from KPMG and we'll be
3 submitting that to your organization very soon.
4 We have detailed information. We have our chief
5 auditor who is here who can answer more detailed
6 questions, but that audit was wrapped up and will
7 certainly be submitted to the RTA.

8 CHAIRMAN GATES: Roughly when
9 because we are actually late getting our
10 information?

11 CHAIRMAN O'HALLORAN: We're aiming
12 by the end of the week is what our goal is.

13 CHAIRMAN GATES: Everybody else is
14 done except we need this -- your audit to complete
15 our audit and then we can submit it to all the
16 people that we're required to submit this to.
17 Bondholders.

18 CHAIRMAN O'HALLORAN: So we should
19 have --

20 CHAIRMAN GATES: -- other public
21 governments agencies, et cetera.

22 CHAIRMAN O'HALLORAN: Understood.
23 So we should have something to you by the end of
24 the week. That's our goal.

L.A. COURT REPORTERS, LLC. (312) 419-9292

1 CHAIRMAN GATES: Good.

2 CHAIRMAN O'HALLORAN: As far as the
3 overall MIS system, though, it is a huge
4 challenge. It's a huge problem. It has to move
5 more quickly. Everything from the accounting side
6 to all of our, you know -- all of our cash side,
7 receiving side, revenue side, but also inventory
8 control. You know, right now we're using a system
9 that, frankly, is dark ages and we need to improve
10 that and we can't wait three years. It has got to
11 be accelerated. It has to be focused on. We've
12 got to take and prioritize it and put the dollars
13 towards it to get it done, but it has to be
14 integrated with everything we do.

15 CHAIRMAN GATES: Right. Well, we
16 certainly concur with that. The last two years
17 have been chaotic in terms of the accounting and
18 so forth and getting the reports back to us and
19 the budget process and so forth. I think you were
20 headed towards a solution there, but it is
21 something that we would encourage you to implement
22 as soon as you can. Good.

23 Conceal to carry as you know
24 came to law in Illinois yesterday and what is

L.A. COURT REPORTERS, LLC. (312) 419-9292

1 Metra doing from a safety standpoint to -- to deal
2 with that on its trains?

3 CHAIRMAN O'HALLORAN: Can I refer to

4 Alex Wiggins?

5 MR. WIGGINS: One of the first steps
6 we'll be taking is to partner with our transit
7 partners CTA and Pace and work with the RTA to
8 develop a joint strategy and a joint policy.
9 Obviously we want to do everything we can to keep
10 the transit network safe and so I think
11 collectively we'll come up with a policy and a
12 procedure and protocol to ensure that -- that we
13 keep our passengers and our employees safe.

14 CHAIRMAN GATES: Good. It's no
15 secret to anybody and you mentioned this in your
16 remarks and we certainly welcome them, but
17 sometimes the service boards do not act as one
18 big, happy family. The level of integration is
19 not optimal and we can do more to make the users
20 and the passengers and the prospective passenger's
21 life a lot easier in terms of our transit system.

22 Could you be a little bit more
23 specific as to some of the initiatives you think
24 Metra is going to be taking to coordinate,

L.A. COURT REPORTERS, LLC. (312) 419-9292

82

1 integrate with the other -- with the other transit
2 agencies particularly around the implementation of
3 the reverse commute, which we think is a huge
4 opportunity, and any joint purchasing initiatives
5 to achieve economies of scale?

6 CHAIRMAN O'HALLORAN: I'll refer to
7 Alex.

8 MR. WIGGINS: Certainly we have a
9 wonderful opportunity to engage our partners and I
10 think you hit a number of different topics. When
11 you look at transit infrastructure in Chicagoland,
12 you really have this wonderful integrated network
13 that I think is superior to most networks you find
14 across the country.

15 So there are always
16 opportunities to maximize connectivity, fare
17 integration, technology so passengers can actually
18 have a seamless transportation experience.
19 Whether they're riding Pace, CTA or Metra I think
20 collectively we agree that as long as they're
21 taking advantage of public transit it's a good
22 thing. So we should do everything we can to make
23 that process easier and so what you'll find with
24 Metra is really us coming to the table and working

L.A. COURT REPORTERS, LLC. (312) 419-9292

83

1 with our partners and increasing that level of
2 cooperation. With regard to reverse commute
3 addressing issues of the last mile, we have great
4 opportunities with Pace right now in particular to
5 look at shuttles.

6 If you look at how employment is
7 changing throughout the region, I mean, yes, you
8 know, downtown Chicago is a great employment core,
9 but we have a lot of employment moving out to the
10 suburbs. So getting those employees to the
11 stations that are closest and then getting them

071013 RTA SPECIAL BOARD

12 from the station to the employment center is a
13 wonderful opportunity to partner with Pace and so
14 our planning staff we have a wonderful director in
15 Lynette Ciavarella and she will be working with
16 our partners to take advantage of every
17 opportunity to increase the reliability and ease
18 of travel for public transit customers.

19 CHAIRMAN GATES: That is something
20 we strongly endorse because, you know, the vast
21 majority of jobs in our region are in the suburbs
22 and some of the biggest pockets of unemployment
23 are in the city. You run a lot of empty trains
24 from the city to the suburbs every morning and

L.A. COURT REPORTERS, LLC. (312) 419-9292

84

1 back again in the evening that could be used to
2 help some of those unemployed get to the jobs
3 where -- the empty jobs that are needed in the
4 suburbs and that is really a question of
5 coordinating with Pace in that last mile to get
6 people from your stations to where the jobs are.

7 The other question was joint
8 purchasing. where do you -- what initiatives do
9 you think you can take to take advantage of
10 economies of scale with the -- with the other
11 transit agencies CTA and Pace?

12 CHAIRMAN O'HALLORAN: I can answer
13 that question. We're going to be looking very
14 closely to work on joint purchasing to see if we
15 can find some additional efficiencies and things

16 like that possibly looking at fuel purchases and
17 things. we all know the larger the volume the
18 better the pricing you get and things like that.
19 So if we can increase the efficiencies, we'll
20 definitely look at that.

21 CHAIRMAN GATES: All the -- all the
22 fuel comes out of the same refineries. It's the
23 question of which tap they open and,
24 unfortunately, we have not been taking advantage

L.A. COURT REPORTERS, LLC. (312) 419-9292

85

1 of our scale. Our transit agencies collectively
2 are some of the biggest buyers in hydrocarbons, if
3 not the biggest buyer of hydrocarbons, in this
4 state. Probably the biggest buyer of electricity
5 in the state. One of the biggest buyers of
6 insurance in the state and we're not taking
7 advantage of that scale I think to drive price
8 down to where it should be.

9 CHAIRMAN O'HALLORAN: And that's
10 definitely one of the initiatives we'll start
11 looking at and see if we can't get that moving
12 forward very quickly.

13 CHAIRMAN GATES: Great.

14 UNIDENTIFIED SPEAKER: Thank you,
15 Mr. Chairman. I'll see if I can word this
16 correctly or at least that it makes sense. There
17 seems to have been a number of personal
18 differences with the board and Mr. Clifford over
19 several issues, but as to the direction Metra was

20 taking and the direction that you've outlined in
21 this visionary statement, what things was Clifford
22 not doing that are outlined here or that may have
23 impacted a performance report because he was not
24 on the same course that the board thought he

L.A. COURT REPORTERS, LLC. (312) 419-9292

86

1 should be and outside of the differences on the
2 couple of issues that you've outlined there may
3 have been others, I don't know, was he performing?
4 And these things are not new -- some of them may
5 have sat in limbo for a while, but they're a
6 direction that Metra should have been on for a
7 long time, was Mr. Clifford on that same track?

8 CHAIRMAN O'HALLORAN: I think many
9 of the things as you said were -- were, you know,
10 identified. I just don't think they were moving
11 and for whatever reason they didn't move as
12 quickly as they should move and I think that, you
13 know, going forward what we want to be able to do
14 is not just put -- you know, put things up on
15 really nice looking slides. That's great. But
16 what we've got to do is we've got to have the
17 metrics that back that up that say "This will be
18 accomplished by this date." what we want is we
19 want to be able to outline, you know, commitments
20 to our ridership that you will see this at this
21 point in time. I think we've also got to be
22 willing to and I'm hoping that -- you know, I can
23 only speak for myself.

24

071013 RTA SPECIAL BOARD
I'm hoping that at our next

L.A. COURT REPORTERS, LLC. (312) 419-9292

♀

87

1 board meeting we have to be able to say, you know
2 what, this particular initiative isn't working,
3 our customers don't like it, it's not doing what
4 we projected from a standpoint of numbers and,
5 therefore, we have to relook at it and do that
6 quickly. We can't hold ourselves to, geez, you
7 know, this was our idea and we put it forward and
8 we've got to stand by it.

9 we've got to adjust and I don't
10 know that that was happening the way some of the
11 board members and certainly the way I would have
12 liked it to happen. I think that the -- you know,
13 the 9-ride -- or the 10-ride is one of those
14 examples. We've got to, you know, say "Listen,
15 you know, we've heard you. This didn't work the
16 way we thought it was going to work and we're
17 going to respond and we're going to go back to --
18 we're going to go back to the past." Not back to
19 the future.

20 You know, I think that we've
21 got -- there is a breath of fresh air right now
22 and we've got to take advantage of it and move
23 things forward.

24 CHAIRMAN GATES: Outside of the

L.A. COURT REPORTERS, LLC. (312) 419-9292

♀

88

071013 RTA SPECIAL BOARD

1 disagreements on issues, then you're saying that
2 Mr. Clifford lacked an inertia for moving Metra
3 ahead or accomplishing some of these goals?

4 CHAIRMAN O'HALLORAN: I don't think
5 at this stage of the game it makes any sense for
6 me to, you know, go into what was wrong with
7 Mr. Clifford, what was this with Mr. Clifford.
8 For whatever reason certain things weren't moving,
9 certain things weren't working the right way and,
10 you know, I'd like to look forward versus what do
11 we do to fix the situation that is already a fait
12 accompli.

13 CHAIRMAN GATES: Was there a -- this
14 is more a policy that the board sets rather than
15 the executive director's actions. Was the board
16 on top of this situation up until the time that
17 catastrophe happened?

18 CHAIRMAN O'HALLORAN: I think you
19 have you to understand we have a number of new
20 members on this board. I think this board is
21 committed to more oversight. I think if there was
22 a disagreement with Mr. Clifford it was with
23 respect to oversight and the board trying to exert
24 oversight in a number of areas and when I say

L.A. COURT REPORTERS, LLC. (312) 419-9292

89

1 oversight it means the ability to know before
2 certain purchases are made. It's not just -- it's
3 not just an after the fact. This board should --
4 should have always in my opinion been looking at

071013 RTA SPECIAL BOARD

5 different purchases that were made by the agency
6 before the fact, not after the fact. I have never
7 seen -- I mean, I have been on the board in Orland
8 Park for 20 years. I've never seen anything like
9 that. We changed that.

10 Same thing. We've gotten some
11 criticisms with respect to this, quote, unquote,
12 hiring ordinance. The hiring ordinance that we
13 put in is for those noncontract employees over
14 \$75,000, which is only -- there is only 400 and
15 some noncontract employees to begin with. It's a
16 few people a month, but what we wanted to do was
17 be able to know what -- who is being hired, at
18 what level, and for what amounts and if there is
19 any special considerations like moving or this or
20 that or a special bonus to get this individual I
21 think the board should know that before the fact,
22 not after the fact. And so, to me, that's
23 oversight.

24 It's not any influence by the

L.A. COURT REPORTERS, LLC. (312) 419-9292

90

1 board or meddling by the board. It's oversight of
2 the board and every single one of the positions
3 that we have now it's all online. You can go look
4 at it the week of. There is -- you know, what is
5 the title? Is this a transfer? Is this a
6 promotion? Is this a new hire? How much? The
7 name of the individual. That, to me, is
8 transparency. So these are the things that --

071013 RTA SPECIAL BOARD

9 this is a more engaged board. You know, it has
10 not been in my opinion in the past. And it is now
11 and it is a good thing.

12 DIRECTOR FREGA: Mr. Chairman, I
13 have a question.

14 CHAIRMAN GATES: Director Frega?

15 DIRECTOR FREGA: Yeah, my last
16 question is this. Was there anything in the final
17 settlement agreement that was different from what
18 the mediator had recommended?

19 MR. GAGLIARDO: No. The final
20 settlement agreement obviously when you're -- you
21 know, when you're putting the language in place
22 there is little tweaks, but the agreement that was
23 approved was the agreement that the mediator
24 recommended.

L.A. COURT REPORTERS, LLC. (312) 419-9292

91

1 DIRECTOR FREGA: Thank you.

2 MR. GAGLIARDO: You're welcome.

3 CHAIRMAN GATES: Director Nabi?

4 DIRECTOR FAKRODDIN: What impact
5 would this settlement have on your budget
6 current -- current budget? Where is this money
7 coming from?

8 CHAIRMAN O'HALLORAN: It's coming
9 from a fund that we have for -- set aside that we
10 accrue on a monthly basis for litigation. So it's
11 basically in the budget. There will not be a
12 budget adjustment.

071013 RTA SPECIAL BOARD

13 DIRECTOR FAKRODDIN: Thank you.
14 CHAIRMAN GATES: Director Magalis?
15 DIRECTOR MAGALIS: Chairman Gates
16 brought up the question of -- I mean, I'm not
17 aware of all the allegations made by either party
18 in this matter, but based on what Chairman Gates
19 mentioned there was allegations obviously by
20 Clifford towards some of the board members that
21 wound up voting on the matter. I think -- was
22 this an eight vote requirement to approve the
23 contract? I read that in one of these documents
24 that -- I don't know if that's really true or not

L.A. COURT REPORTERS, LLC. (312) 419-9292

92

1 and if it is, if it required eight votes and if
2 you took --
3 CHAIRMAN O'HALLORAN: It required
4 six.
5 DIRECTOR MAGALIS: Six. You take
6 the -- okay. Somewhere in here it says eight, but
7 anyway. So if you take the one no vote and
8 however many allegations were directed to
9 individual board members and if they were to
10 recuse themselves, would it still have had the six
11 or eight votes needed to approve the agreement?
12 CHAIRMAN O'HALLORAN: Yes.
13 DIRECTOR MAGALIS: Thank you.
14 CHAIRMAN GATES: Good. Are there
15 any further questions? I think, Chairman
16 O'Halloran, do you have any final statement that

071013 RTA SPECIAL BOARD

17 you'd like to make?

18 CHAIRMAN O'HALLORAN: All I'd like
19 to say is thanks so much for bearing with us today
20 for what obviously was a long beginning with
21 respect to it. Thank you for your great questions
22 and, again, we're just very happy to have been
23 able to discuss this with you today to be able to
24 illuminate certain things and we're excited.

L.A. COURT REPORTERS, LLC. (312) 419-9292

93

1 we're really excited for the agency and we're
2 really excited for the cooperation that Chairman
3 Gates and I have been talking about. Thank you.

4 CHAIRMAN GATES: Great. Well, thank
5 you very much for coming and your staff as well.
6 We are -- we have sort of a bad news/good news
7 situation. The bad news is this whole Clifford
8 situation and the very large settlement that it
9 resulted in. We will be auditing that extensively
10 over the next several weeks and have results of
11 that hopefully by our August board meeting.

12 The good news is it does seem to
13 have provided impetus to Metra to really, really
14 do what its customers have been looking for for a
15 long time. So we're happy with that. With that,
16 do I have a motion to adjourn? Do we have a
17 motion to adjourn?

18 DIRECTOR TROIANI: So moved.

19 UNIDENTIFIED SPEAKER: Second.

20 CHAIRMAN GATES: All in favor?

071013 RTA SPECIAL BOARD

21 DIRECTOR ANDERSON: Aye.
22 DIRECTOR BUCHANAN: Aye.
23 DIRECTOR COULSON: Here. I'm on the
24 phone.

L.A. COURT REPORTERS, LLC. (312) 419-9292

94

1 DIRECTOR FAKRODDIN: Aye.
2 DIRECTOR FREGA: Aye.
3 DIRECTOR FUENTES: Aye.
4 DIRECTOR JOURDAN: Aye.
5 DIRECTOR MAGALIS: Aye.
6 DIRECTOR MELVIN: Aye.
7 DIRECTOR PANG: Aye.
8 DIRECTOR ROSS: Aye.
9 DIRECTOR TOTTEN: Aye.
10 DIRECTOR TROIANI: Aye.
11 CHAIRMAN GATES: Aye. We are
12 adjourned.

13
14
15
16
17
18
19
20
21
22
23
24

L.A. COURT REPORTERS, LLC. (312) 419-9292

1 STATE OF ILLINOIS)
 2) SS.
 3 COUNTY OF COOK)
 4

5 I, Steven Brickey, Certified Shorthand
 6 Reporter, do hereby certify that I reported in
 7 shorthand the audio statement aforesaid, and that
 8 the foregoing is a true, complete and correct
 9 transcript of the proceedings to the best of my
 10 ability as appears from my stenographic notes so
 11 taken and transcribed under my personal direction.

12 Witness my official signature in and for
 13 Cook County, Illinois, on this _____ day of
 14 _____, A.D., 2013.

15
 16
 17
 18
 19
 20
 21
 22
 23
 24

STEVEN BRICKEY, CSR
 8 West Monroe Street
 Suite 2007
 Chicago, Illinois 60603
 Phone: (312) 419-9292
 CSR No. 084-004675

L.A. COURT REPORTERS, LLC. (312) 419-9292

071713 RTA BOARD

♀

1 STATE OF ILLINOIS)
2 COUNTY OF C O O K) SS.

3

4 BEFORE THE REGIONAL TRANSPORTATION AUTHORITY

5

6 IN THE MATTER OF:)
7 A SPECIAL MEETING OF THE BOARD)
8 OF DIRECTORS OF THE REGIONAL)
9 TRANSPORTATION AUTHORITY)

9

10 REPORT OF PROCEEDINGS taken in the
11 above-entitled matter, taken before THE BOARD OF
12 DIRECTORS OF THE REGIONAL TRANSPORTATION AUTHORITY,
13 wherein the audio was transcribed by LORI ANN
14 ASASKAS, CSR, RPR, a notary public within and for
15 the County of Cook and State of Illinois, at 175
16 West Jackson Street, 16th Floor Board Room, Chicago,
17 Illinois, on the 17th day of July, A.D., 2013.

18

19

20

21

22

23

24

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

A P P E A R A N C E S :

- CHAIRMAN: MR. JOHN S. GATES, JR.
- DIRECTORS: MR. ANTHONY ANDERSON
- MR. JAMES BUCHANAN
- MR. WILLIAM R. COULSON
- MR. PATRICK DURANTE
- MR. NABI R. FAKRODDIN
- MR. JOHN V. FREGA
- MR. PHIL FUENTES
- MR. DWIGHT A. MAGALIS
- MR. CHRISTOPHER C. MELVIN, JR.
- MS. SARAH PANG
- MR. J.D. ROSS
- MR. DONALD TOTTEN
- MR. DOUGLAS TROIANI
- SECRETARY: MS. AUDREY MACLENNAN

071713 RTA BOARD

1 SECRETARY MACLENNAN: We will ask
2 this -- make this point once very clearly. We need
3 to -- we are being audio recorded. So anybody who
4 has something to speak from the Board to our guests,
5 please hit the button on your microphone when you
6 have something to say, and when you're finished
7 please hit the button again to turn it off.

8 That is the only way what you have
9 to say ends up on our record, and it is important
10 that, you know, we have a clear and accurate
11 recording of these proceedings. So with that, I
12 will turn it over to our chairman.

13 CHAIRMAN GATES: Good. Thank you,
14 Audry. I'd like to call to order this Meeting of
15 the Board of Directors of the Regional
16 Transportation Authority. Is Reverend Crider here?
17 He's not with us. Is Joe here?

18 SECRETARY MACLENNAN: Where is Joe?

19 CHAIRMAN GATES: All right. Normally,
20 we would have an invocation from a member of the
21 clergy, but in lieu of that, why don't we have --
22 just have a moment of silence and pray in our own
23 way.

24 Thank you. Would everyone please

L.A. COURT REPORTERS LLC - (312) 419-9292

4

1 rise for the pledge?

071713 RTA BOARD

2 MEETING PARTICIPANTS: I pledge
3 allegiance to the flag of the United States of
4 America, and to the republic for which it stands,
5 one nation under God, indivisible, with liberty
6 and justice for all.

7 CHAIRMAN GATES: Will the secretary
8 please call the roll?

9 SECRETARY MACLENNAN: Director
10 Anderson?

11 (No response.)

12 SECRETARY MACLENNAN: Director
13 Buchanan?

14 DIRECTOR BUCHANAN: Here.

15 SECRETARY MACLENNAN: Director Coulson?

16 DIRECTOR COULSON: Here.

17 SECRETARY MACLENNAN: Reverend Crider?

18 (No response.)

19 SECRETARY MACLENNAN: Director Durante?

20 DIRECTOR DURANTE: Here.

21 SECRETARY MACLENNAN: Director

22 Fakhroddin?

23 DIRECTOR FAKRODDIN: Here.

24 SECRETARY MACLENNAN: Director Frega?

L.A. COURT REPORTERS LLC - (312) 419-9292

5

1 DIRECTOR FREGA: Here.

2 SECRETARY MACLENNAN: Director Fuentes?
Page 4

071713 RTA BOARD

3 DIRECTOR FUENTES: Here.
4 SECRETARY MACLENNAN: Director Jordan?
5 (No response.)
6 SECRETARY MACLENNAN: Director Magalis?
7 DIRECTOR MAGALIS: Here.
8 SECRETARY MACLENNAN: Director Melvin?
9 DIRECTOR MELVIN: Here.
10 SECRETARY MACLENNAN: Director Pang?
11 (No response.)
12 SECRETARY MACLENNAN: Director Ross?
13 DIRECTOR ROSS: Here.
14 SECRETARY MACLENNAN: Director Totten?
15 DIRECTOR TOTTEN: Here.
16 SECRETARY MACLENNAN: Director Troiani?
17 DIRECTOR TROIANI: Here.
18 SECRETARY MACLENNAN: Chairman Gates?
19 CHAIRMAN GATES: Here.
20 SECRETARY MACLENNAN: We have a quorum
21 of 12 present with three currently absent.
22 CHAIRMAN GATES: I think several of
23 whom will be joining us on the phone shortly.
24 SECRETARY MACLENNAN: I'm sorry. Four

L.A. COURT REPORTERS LLC - (312) 419-9292

6

1 absent. That was my basic math again.

2 CHAIRMAN GATES: All right. As you may
3 recall this is part --

071713 RTA BOARD

4 SECRETARY MACLENNAN: Excuse me,
5 Chairman Gates, may I say one more thing? If we
6 could all turn off our cell phones or turn them to
7 vibrate so that we don't have that constant
8 interruption in our receptions? Thank you. Sorry.

9 CHAIRMAN GATES: I always do what
10 Audry tells me.

11 As to remind you, this is part
12 of -- our discussion today will take two -- our
13 agenda today will take two parts. One will be a
14 discussion of the severance payment and other
15 matters at Metra. That is part of an ongoing audit,
16 an audit which is not yet complete.

17 We have requested a number of
18 documents and so forth from Metra, and something
19 like 90 percent of those are still outstanding.
20 They are due to come in in the next week or so.
21 Those need to be reviewed. They will certainly have
22 a bearing on all of this. And that will be vital
23 information, I think, and will help us reach a
24 conclusion when it becomes available.

L.A. COURT REPORTERS LLC - (312) 419-9292

7

1 I'd like to thank Mr. Clifford for
2 joining us today and his advisers. We have a number
3 of questions, all of which I think you probably know
4 the answers to and should be relatively easy to

071713 RTA BOARD

5 answer. I'd like to start by getting right to the
6 heart of the matter.

7 You were here today addressing the
8 public including Metra's riders that you served for
9 over two years. And I guess the question that they
10 all are asking is, how do you justify to them that
11 your departure is a valid expenditure of potentially
12 \$718,000? How would you explain that to the Metra
13 riders?

14 MR. SHAKMAN: Mr. Chairman, Michael
15 Shakman. I represent Mr. Clifford, as does my
16 partner, Mr. Feldman, Edward Feldman. When I talked
17 to Ms. Lacombe, your general counsel, I indicated to
18 her that Mr. Clifford would have a short statement
19 to make, and she indicated that would be okay. And
20 in the process, he can begin to focus on the
21 question you raised and some of the limitations on
22 his ability to respond as fully --

23 CHAIRMAN GATES: That's --

24 MR. SHAKMAN: -- as he would like to --

L.A. COURT REPORTERS LLC - (312) 419-9292

8

1 CHAIRMAN GATES: That's --

2 MR. SHAKMAN: -- with your permission.

3 CHAIRMAN GATES: That's -- that's

4 absolutely fine. I was not aware he had a

5 statement, but we welcome it. Thank you.

071713 RTA BOARD

6 MR. SHAKMAN: And we'll -- we'll
7 distribute written copies of the statement to the
8 members of the RTA Board and to the public.

9 CHAIRMAN GATES: Go ahead, Alex.

10 MR. CLIFFORD: Chairman Gates, RTA
11 Board members, Executive Director, Mr. Costello, I'm
12 happy to be here today and happy to answer your
13 questions so far as I can under the limited consent
14 Metra has given me.

15 I want to be as helpful to the RTA
16 as I can. I also want to avoid having to litigate a
17 dispute with Metra over any claim Metra might make,
18 whether or not correct, I have violated the
19 separation agreement by answering your questions.

20 My lawyers and Metra lawyers have
21 differing views over what I can say under the
22 agreement. Because the RTA has oversight of Metra,
23 my lawyers believe that the separation agreement
24 permits me to answer any of your questions other

L.A. COURT REPORTERS LLC - (312) 419-9292

9

1 than those that would disclose the contents of
2 privileged communications with lawyers for Metra.

3 Metra takes a narrower view. On
4 Monday, Metra wrote that it had no objection if I
5 answered the RTA's questions at this hearing limited
6 to my April 3rd, 2013, memo to the Board. I'm

071713 RTA BOARD

7 prepared to do that.

8 I stand behind my April 3rd memo.
9 You have the memo, so I won't repeat what's there
10 now. If you ask me a question that I cannot answer
11 today because of the ground rules Metra has set, I
12 would be happy to answer if Metra consents. I have
13 nothing to hide.

14 Let me answer, to the extent that
15 I can, several questions that have been asked in the
16 last few weeks. There have been suggestions that I
17 did not reveal some of the events I described in the
18 April 3rd memo until shortly before I wrote the
19 memo. I can address that issue, because it is
20 addressed, in part, in the April 3rd memo.

21 The claim that I kept silent is
22 not accurate, and the memo explains why this is not
23 accurate. With regard to the requests of Speaker
24 Madigan and Representative Arroyo for action

L.A. COURT REPORTERS LLC - (312) 419-9292

10

1 relating to jobs at Metra, I reported those facts to
2 Board members shortly after they occurred in 2012
3 and asked for guidance. This is -- this is
4 confirmed, for example, in the first paragraph on
5 Page 3 of the April 3rd memo.

6 Board Member -- Metra Board
7 Member, Jack Schaffer, also confirmed this on the
Page 9

071713 RTA BOARD

8 Chicago Tonight program on Monday night.
9 Mr. Schaffer said, and I quote, Every allegation in
10 that memo Alex Clifford brought to the Board at the
11 time the incident happened, explained them, and then
12 in one meeting actually said, wait a minute. When
13 you guys hired me, have you changed your mind, and
14 we said we had not, end of quote.

15 So I did report to the Board.
16 Because most of the Board members supported my
17 position, nothing improper was going to occur.
18 There was nothing to report to anyone outside of the
19 Board. The events related to minority
20 subcontractors for the Englewood Flyover Project are
21 also discussed in the memo.

22 I made those matters known to the
23 Board at the time. See the last paragraph on Page 5
24 and the first paragraph on Page 6 of the April 3

L.A. COURT REPORTERS LLC - (312) 419-9292

11

1 memo.

2 Metra has deleted some of the
3 material in the last paragraph on Page 5 from the
4 copy it made public last Friday. If the RTA wants
5 further information on this subject, it could ask
6 Metra to provide the omitted materials. A portion
7 of the omitted materials were printed in the
8 newspaper article published yesterday.

9 Metra has made public statements
10 that I tried to avoid the process of evaluating my
11 performance earlier this year. It is also suggested
12 that Metra somehow couldn't let me serve out the
13 balance of my contract. Those statements are not
14 correct. I address them because the evaluation
15 process is covered in my April 3rd memo.

16 I didn't want to leave this job.
17 I loved this job. On Page 1 of my memo, I wrote,
18 and I quote, I am prepared to continue to work
19 diligently and in good faith for Metra pursuant to
20 my employment agreement and applicable law whether
21 or not -- whether or not the Board ultimately
22 decides to renew my employment agreement, end quote.

23 On Page 7, I explained that I
24 wanted a fair evaluation project, not one that was a

L.A. COURT REPORTERS LLC - (312) 419-9292

12

1 sham because Mr. O'Halloran and Mr. Huggins had
2 already decided to replace me with Mr. Wiggins.

3 So I asked for an evaluation to be
4 conducted by the Board members and that those two
5 Board members not participate in the vote of
6 renewal. I believed that a fare review process
7 would have resulted in my contract being renewed. I
8 was willing to let the chips fall where they may.

9 Mr. Schaffer stated his opinion on
Page 11

071713 RTA BOARD

10 whether my contract would be renewed on Monday night
11 on the Chicago Tonight program. He said, and I
12 quote, I will tell you there is no doubt in my mind
13 if Alex Clifford had acceded to these political
14 requests he would now have another three-year
15 contract and a nice pay raise, end quote.

16 Metra and others have made
17 negative public statements about my performance.
18 Unfortunately, I cannot respond to those statements
19 under the limited consent Metra has provided me,
20 although I would very much like to do so. But I can
21 provide you with copies of four recent letters about
22 my performance as CEO from four current Board
23 members. Those Board members gave me the letters to
24 use in my efforts to find a new job.

L.A. COURT REPORTERS LLC - (312) 419-9292

13

1 The letters are not subject to the
2 confidentiality arguments Metra has made. Those
3 letters from Board Members Darley, De Graff, Mulder
4 and Widmer are attached to this statement. They
5 make very positive statements about me, for which I
6 sincerely thank each of them. I also thank Jack
7 Schaffer for his supporting remarks.

8 I can also direct you to positive
9 statements by Metra Board members about my
10 performance as executive director set forth in the

11 public Metra Board minutes in 2011 and 2012. I have
12 attached copies to this statement.

13 Questions have been asked about
14 why to include confidentiality provisions in the
15 separation agreement. Without Metra's consent, I
16 will not be able to answer those questions or
17 provide documents that address that issue or other
18 communications exchanged during the settlement
19 process.

20 Questions have been asked about
21 whether the payments under the separation agreement
22 were intended to be in exchange for keeping silent.
23 Without Metra's consent, I will not be able to
24 answer that question or provide documents that

L.A. COURT REPORTERS LLC - (312) 419-9292

14

1 address that issue.

2 People have asked whether the
3 events described in the April 3rd memo are all the
4 possible improprieties during my time at Metra.
5 Again, without Metra's consent, I will not be able
6 to answer that question either.

7 Now, I will answer your questions
8 to the extent I can. I may ask to confer with my
9 lawyers, Michael Shakman and Edward Feldman, before
10 responding to specific questions if I feel that I
11 need their guidance in deciding whether I can answer

071713 RTA BOARD

12 the question without Metra's consent.

13 Mr. Chairman, that concludes my
14 remarks.

15 CHAIRMAN GATES: Good. Thank you very
16 much, Mr. Clifford. We have a few -- I have a few
17 questions and then we'll turn it over to the other
18 members of the Board who will, I'm sure, have a
19 number of other questions.

20 You stated that -- well, let me go
21 back actually to that -- the first question I asked
22 you. You're here today addressing the public
23 including the 500,000 people a day that you served
24 for over two years.

L.A. COURT REPORTERS LLC - (312) 419-9292

15

1 How do you justify to them that
2 your departure and severance are a value -- a valid
3 expenditure of over \$730,000 -- or 18,000 of public
4 money?

5 MR. CLIFFORD: Mr. Chairman, while I'd
6 very much like to answer that question, that
7 question is outside the scope of the April 3rd memo
8 and I will not be able to answer that unless Metra
9 were to give concurrence that I'm allowed to answer
10 that.

11 CHAIRMAN GATES: I think the
12 representatives of Metra are here. Would they be

13 able to release Mr. Clifford on this question and
14 others?

15 MR. GAGLIARDO: Mr. Chairman, Joseph
16 Gagliardo. Yes, Mr. Clifford may answer the
17 question.

18 MR. CLIFFORD: My attorneys certainly
19 will step in if I enter into grounds that I'm not
20 supposed to. This has been a long, difficult
21 process, and as I indicated very clearly in my
22 April 3rd memo, it was my goal and desire to stay
23 with Metra and continue to work here even if that
24 meant that I did not have a contract extension I

L.A. COURT REPORTERS LLC - (312) 419-9292

16

1 intended to stay through the end of my contract.

2 Unfortunately, the April 3rd memo,
3 for whatever reason, sparked a desire in one or more
4 Metra Board members to have me leave sooner rather
5 than later. So Metra initiated the discussion to
6 get into a settlement agreement, not Mr. Clifford.
7 Metra initiated that discussion.

8 And when those discussions
9 failed -- and Metra put the first offer across the
10 table. And when those discussions failed, then
11 we -- Metra suggested that we go to mediation. I
12 did not suggest that. Metra suggested that. I
13 wanted to stay working at -- at Metra.

071713 RTA BOARD

14 So that process -- and I'm not
15 sure how far I'm allowed to get into that process --
16 obviously, as within any situation where there is
17 potential of litigation, particularly involving
18 disparaging my good name and saying a number of
19 things that had been covered in the media that are
20 not only incorrect, but make it difficult for me to
21 be able to confidently presume that I will be able
22 to obtain another job and let alone -- particularly
23 at this level -- let alone to try to understand how
24 long it might take me to get another CEO level job

L.A. COURT REPORTERS LLC - (312) 419-9292

17

1 in this industry.

2 Good. Good point.

3 Yes. Mr. Shakman has reminded me
4 of two examples that occurred. While this process
5 was going on, I had applied for two positions, two
6 CEO transportation positions outside of the state of
7 Illinois, and these are -- these are both positions
8 in which I would think I would easily qualify for an
9 interview. I'm not saying I should have got their
10 job, but I should have qualified for an interview.

11 And during the -- while all of
12 this was going on, and this is after the initial
13 arguments had been published in which some
14 disparaging things had been said by a couple of

071713 RTA BOARD

15 Board members that had achieved headlines and the
16 media had speculated very heavily about what was
17 going on behind these closed session doors that were
18 occurring over and over by Metra to evaluate
19 so-called CEO's performance or -- the -- the -- when
20 I learned that I did not even qualify for the
21 interviews and went back to the recruiters and asked
22 them if they could provide me some information about
23 that, in both cases they were very clear that it had
24 to do 100 percent with the -- the -- the media

L.A. COURT REPORTERS LLC - (312) 419-9292

18

1 articles that had been generated to that point.

2 Now, that is prior to any sort of
3 settlement arrangement and my ultimate resignation.

4 CHAIRMAN GATES: So just to be clear,
5 what you're saying to the taxpayers and to Metra's
6 riders are that this \$700,000 settlement is to
7 compensate you for disparagement or potential
8 disparagement by Metra, not to compensate you for --
9 in other words, pay you for the confidentiality
10 agreement that is contained within that settlement,
11 which some of the media called hush money?

12 MR. SHAKMAN: We can answer that
13 question if Metra will consent to disclosures of
14 part of the settlement communications between
15 Mr. Clifford and Metra.

16 MR. GAGLIARDO: Chairman Gates, he may
17 answer the question.

18 MR. SHAKMAN: Since I did the
19 drafting, I'll give a partial answer.

20 The notion of a confidentiality
21 agreement that precluded the RTA or anybody with an
22 oversight responsibility over Metra from getting
23 access to Mr. Clifford's information, that concept
24 came from Metra, not from Mr. Clifford. The -- I

L.A. COURT REPORTERS LLC - (312) 419-9292

19

1 looked last night at the draft I sent Mr. Gagliardo
2 of an outline of settlement terms, and it contained
3 the usual confidentiality provisions that we
4 normally put into an agreement we draft, and it also
5 included an express exclusion for anybody having
6 oversight over Metra. That was not acceptable to
7 Metra and it insisted that the confidentiality
8 clause extend to everybody.

9 Do you want to add anything to
10 that?

11 CHAIRMAN GATES: That was not my --
12 really an answer to the question I asked, I don't
13 think. The question I asked was, this \$700,000
14 severance is due -- in your mind, is due to
15 compensating you for potential disparagement from
16 Metra that may have made it more difficult to get a

071713 RTA BOARD

17 job, or was also the confidentiality agreement --
18 was this partial compensation for the
19 confidentiality agreement?

20 MR. CLIFFORD: Mr. Chairman, certainly
21 I cannot speak for -- nor would it be appropriate
22 for me to speak for Metra and what their intentions
23 were on the answer to that question.

24 From my perspective, it is

L.A. COURT REPORTERS LLC - (312) 419-9292

20

1 100 percent about my ability to get a job and how I
2 had been damaged.

3 CHAIRMAN GATES: Thank you. Now, I
4 might go to a few sort of background issues. First
5 of all, has the RTA in any way attempted to limit
6 your discussions today -- your statements, your
7 testimony, anything?

8 MR. CLIFFORD: Did I hear the
9 question? You said the RTA?

10 CHAIRMAN GATES: Did the RTA -- right.
11 Have we attempted to limit or anyone from the RTA
12 attempted to limit any -- any -- any of your
13 discussions?

14 MR. CLIFFORD: Not that I'm aware of.

15 CHAIRMAN GATES: Good. Can you tell
16 me just generally the facts and circumstances that
17 brought you to draft the April 3rd memo? Is it --

18 you know, was it something you had been thinking
19 about for a long time or were there specific
20 instances? Did you hire an attorney to draft it or
21 did you do it on your -- by yourself? How did this
22 all come about?

23 MR. CLIFFORD: The -- the April 3rd
24 memo is sort of the culmination of a great many

L.A. COURT REPORTERS LLC - (312) 419-9292

21

1 concerns that had begun to pick up some speed since
2 November 5 of 2012, and increasingly over that
3 period of time it became clear to me that not only
4 was the chairman, O'Halloran, going to work very
5 hard to not get me a new contract, but also to not
6 allow me a fair performance evaluation.

7 That sort of point came to a head
8 along about February of 2013 this year when I met
9 with the chairman and when I inquired for a second
10 time about the potential of the Board discussing my
11 contract renewal in the very near future. His
12 response was, well, we're just dating. And then he
13 said, I need to get a meeting with Mr. Madigan, and
14 I need to find out what kind of damage you've caused
15 to our potential of future funding. Then not too
16 long after that --

17 CHAIRMAN GATES: This is in February?

18 MR. CLIFFORD: This is in February.

19 CHAIRMAN GATES: All right.

20 MR. CLIFFORD: Then not too long after
21 that I learned from a confidential source that I
22 need to watch out for Deputy Executive Director of
23 Administration, Alex Wiggins, who is allegedly by
24 this person's description, having conversations with

L.A. COURT REPORTERS LLC - (312) 419-9292

22

1 Mr. O'Halloran and Mr. Huggins about replacing me.
2 well, soon thereafter, I called a
3 meeting with Mr. Wiggins and I asked him. I said,
4 is any of this going on? He denied that. Well, at
5 that point I didn't know what to think, but then
6 much to my surprise, within another week I get a
7 call and in a follow-up e-mail from another
8 individual different than the first one, not even
9 associated with the first one, not even close to
10 being associated with the first one, giving me very
11 explicit descriptions of conversations taking place
12 in which Mr. Wiggins is pounding his chest, in
13 effect, about how he is going to be the next CEO.

14 So that begins to really raise my
15 eyebrows, along with a number of other pieces of
16 information that I'm being railroaded, and that is
17 when I made the choice to seek out legal counsel,
18 because also occurring at this time --

19 CHAIRMAN GATES: And now we're in
Page 21

071713 RTA BOARD

20 March kind of thing?

21 MR. CLIFFORD: I'm sorry?

22 CHAIRMAN GATES: We're in the month of
23 March or thereabouts?

24 MR. CLIFFORD: Well, the next -- yes,

L.A. COURT REPORTERS LLC - (312) 419-9292

23

1 correct, February/March.

2 Because also in March, March 7th,
3 there is a recommendation being made by Mr. Huggins
4 to the Employment Practices Committee of Metra in
5 which it becomes even more clear to me that there is
6 something going on between him and Mr. O'Halloran
7 to -- to -- to create a performance evaluation
8 process that's a sham.

9 And that was a recommendation by
10 Mr. Huggins in which -- you can read it in the
11 minutes. It's public information for the March 7th
12 meeting, in which he makes it clear that the one
13 thing he knows about performance reviews is that
14 they are not best done in groups.

15 Now, I don't understand where that
16 statement comes. We had a very good performance
17 review of me back in March of 2011 with the entire
18 Board in a closed session. So I'm a little confused
19 by that comment, but nonetheless, what he suggests
20 to the Board is that a subcommittee of the Board

071713 RTA BOARD

21 committee composed of Mr. Huggins, Mr. O'Halloran
22 and Mr. Partilow go off and do their own preliminary
23 evaluation of me.

24 So that -- am I allowed to

L.A. COURT REPORTERS LLC - (312) 419-9292

24

1 continue still? Okay. Under the permissions
2 granted? And then also --

3 CHAIRMAN GATES: I assume that since
4 counsel for Metra is here, if we don't hear a stop,
5 don't go any further, objection, that that means
6 Mr. Clifford is permitted to continue his
7 description.

8 MR. GAGLIARDO: Mr. Chairman, that is
9 correct.

10 CHAIRMAN GATES: Thank you.

11 MR. SHAKMAN: Thank you.

12 MR. CLIFFORD: So also in this same
13 timeframe in March -- now we're at about mid-March.
14 Remember, I didn't write my memo until -- and
15 deliver it to the Board until April 3rd.

16 I get a call from Mr. Richard Katz
17 from California. Mr. Richard Katz is a former
18 highly respected assemblyman from the state of
19 California. Mr. Richard Katz has also been a Metra
20 Board Member -- I'm sorry -- MTA, Los Angeles County
21 Metropolitan Transportation Authority Board Member

22 for many years and has also been respected since his
23 time in the assembly as being a highly respected
24 transportation expert.

L.A. COURT REPORTERS LLC - (312) 419-9292

25

1 So Mr. Richard Katz calls me and
2 he says, what is going on with this guy O'Halloran?
3 Now, keep in mind, I've not had any conversations
4 with Richard Katz in a while.

5 And I said, well, what do you
6 mean? He says, well, Mr. O'Halloran has contacted
7 somebody who is a Notre Dame graduate and an
8 attorney in California and that person contacted me
9 trying to get some information about you.

10 Well, Mr. Katz was proud to tell
11 me that he -- in his working relationship with me
12 over the years on both the MTA Board and the High
13 Speed Rail Commission had nothing but glowing things
14 to say to this individual. As a matter of fact, he
15 told the individual here, give -- give Mr.
16 O'Halloran my number and ask Mr. O'Halloran to
17 contact me, and I'll be happy to give him glowing
18 remarks.

19 Mr. O'Halloran never contacted
20 him. Now, one other thing occurs in this same
21 timeframe, and that is that Director Darley contacts
22 me, and he indicates that he doesn't think that I'm

071713 RTA BOARD

23 going to have the votes to get a new contract
24 renewal. And he says, maybe we can, you know, kind

L.A. COURT REPORTERS LLC - (312) 419-9292

26

1 of talk about this and figure out an amicable way to
2 have a financial departure.

3 I said, well, I'll tell you what.
4 Let me think about that and get back to you. Well,
5 at this point I'm really steaming, because, you
6 know, now I know the dirty deeds have been done
7 behind the scenes, and Mr. O'Halloran has
8 successfully obtained the three votes that he'll
9 need to stop me.

10 See -- see I need -- I need a
11 super majority vote -- eight votes in order to get a
12 new contract. So it doesn't take much damage done
13 behind the scenes in order to -- to keep me from
14 getting a new contract.

15 So the next day I e-mail Mr.
16 Darley and I say, you know, that's just not going to
17 work. I mean why -- why in the world would I start
18 or initiate discussions about settling, about trying
19 to depart Metra when I want to stay at Metra and the
20 Board has not even had the opportunity to address
21 the question of whether or not I should get a new
22 contract?

23 And further, it is in that memo,
Page 25

24 that e-mail, that I made the allegations that I

L.A. COURT REPORTERS LLC - (312) 419-9292

27

1 believed that one of the reasons why I would not be
2 getting a new contract is because I refused to
3 accede to the requests of certain very powerful
4 politicians in the state of Illinois.

5 And, of course, as you read in the
6 paper, that is the memo that ultimately was turned
7 over to the OEIG and they have -- they're doing
8 whatever they're doing with it at this particular
9 point.

10 So Mr. Chair, I think that
11 concludes my remarks at this particular point.

12 CHAIRMAN GATES: Good. Thank you.
13 You mentioned in the April 3rd memo that you had a
14 dialogue with the Latino caucus.

15 Could you tell us about the
16 March 2012 meeting with the Latino caucus? What was
17 the original purpose of that meeting?

18 MR. CLIFFORD: In March 2012, I made
19 another one of my journeys to Springfield, and these
20 are journeys that we will take to meet with as many
21 elected officials as we possibly can. They are --
22 I'm sure you know, Chair. I'm sure you've been
23 there. They're grueling trips. There is no rest
24 for the weary. You -- you run from one office to

L.A. COURT REPORTERS LLC - (312) 419-9292

28

1 the other meeting with folks, handing them
2 information about Metra, touting our virtues and, of
3 course, asking for them to think about us when it
4 comes time to fund.

5 And after all, as you know, Metra
6 has an expected \$7 billion shortfall in State of
7 Good Repair over the next decade and -- and we must
8 do everything we can to find more resources, both at
9 the state and federal level. So --

10 CHAIRMAN GATES: Maybe it's important
11 to interject at this point. How much funding does
12 Metra get that is appropriated by the legislature?
13 Not that flows through the RTA or from the federal
14 government or sales tax or -- but how -- in terms of
15 dollars, what are we talking about here that the
16 legislature can effect?

17 MR. CLIFFORD: Yeah, Mr. Chair, in the
18 overall scheme of things, it's not a huge number. I
19 don't have that number with me. Certainly, the rest
20 of it is dictated on how it flows to us. I think
21 from my perspective what we're looking for when we
22 take these journeys is capital dollars more so than
23 operating dollars.

24 Of course, we want our operating

1 dollars to be preserved, because every dollar they
2 were to take away from us, even from that small
3 amount that comes from the state, is a dollar we'll
4 have to get from somewhere or we'll have to trim
5 service or find other efficiencies to offset. So
6 capital is where that focus is, trying to figure out
7 a way to chip away at that \$7 billion expected
8 shortfall over the next decade.

9 So, Mr. Chair, turning back to
10 your question, as a -- in that March journey to
11 Springfield, March 2012, one of the meetings we had
12 was with the Latino caucus, and this is also an
13 annual event that occurs to meet with the Latino
14 caucus.

15 In the course of that meeting,
16 Representative Arroyo looked over to me and said, I
17 understand you have a deputy position available.
18 would you consider hiring somebody the caucus sends
19 you? To which I responded to Mr. Arroyo, we have a
20 process. Times are different today at Metra than
21 they were under my predecessor, and every
22 applicant -- every employee coming to Metra will
23 come in through the front door.

24 We have a website and those

1 applicants can go to that website and submit their
2 resume and see where they go.

3 Further, that if -- if individuals
4 hand me resumes, then those resumes simply go to HR.
5 I don't even take the time to look at them. They go
6 to HR and HR enters them into the process just as
7 though they had come through -- through the website.

8 That was followed up by a memo --
9 I'm sorry -- a letter -- and that was followed up by
10 a letter that -- that I sent back to the entire
11 caucus in April addressing that and a number of
12 other questions and things that had come up, and I,
13 once again, in that letter restated my position
14 about how applicants and employees come to Metra the
15 proper way. That letter should be a public
16 document. You're welcome to ask Metra for a copy of
17 it. It was sometime in April that I would have sent
18 that.

19 other discussions that took place
20 there, another very unfortunate discussion dealing
21 with Representative Hernandez, in which
22 Representative Hernandez had -- had apparently
23 briefed a number of her colleagues in advance of
24 this meeting to be supportive of her and her

1 contention that Metra, most specifically my head
2 person in charge of police and security, were
3 mistreating her husband.

4 Her husband works for Metra, by
5 the way. Was hired by Metra under the Phil Pagano
6 administration. He works in our safety and security
7 department.

8 I indicated to her that that was
9 inappropriate and that we don't discuss personnel
10 matters with the public, and then I followed up with
11 further information in my letter, April 2012, back
12 to the Latino caucus.

13 Ironically, the supervisor of
14 Ms. Representative Hernandez's husband is not the
15 person that she was alleging was not treating her
16 husband right, the head of my safety and security
17 department, but, in fact, the individual's direct
18 supervisor, ironically, is Representative Arroyo's
19 daughter.

20 CHAIRMAN GATES: who else was present
21 at that meeting?

22 MR. CLIFFORD: Present at that meeting
23 was Mr. Huggins and my head of governmental affairs,
24 Sam Smith. I will tell you that following that

1 meeting --

2 CHAIRMAN GATES: What -- what members
3 of the legislators or representatives of their
4 staffs. Do you remember?

5 MR. CLIFFORD: I wrote that down here.
6 Give me a second. All right.

7 So we had Latino Caucus Chairwoman
8 Representative Chapo Levia and Representatives
9 Arroyo, Acevedo, Soto, Barrios, Carly, Crespo and
10 Hernandez are the members that I had documented were
11 present at that particular meeting.

12 Now, following that meeting --
13 immediately following that meeting, Mr. Huggins and
14 I had a conversation about what occurred, and he
15 indicated that he really didn't have any problem
16 with -- with Representative Arroyo's request. And
17 then either in the March closed session or the April
18 closed session, there was a discussion also about
19 this issue that I raised, and a number of Board
20 members present indicated support for my resistance
21 to cave into those kind of requests.

22 At the conclusion of that
23 discussion, Mr. Huggins leaned back in his chair and
24 said, I really don't see an issue with what

1 Mr. Arroyo is asking.

2 CHAIRMAN GATES: Did they ask you to
3 hire someone specific or just consider somebody that
4 they may recommend in the future?

5 MR. CLIFFORD: What I indicated is
6 what they said.

7 CHAIRMAN GATES: Okay. So it was more
8 to consider, not a --

9 MR. CLIFFORD: Would I consider
10 someone that the Latino caucus would send me?

11 CHAIRMAN GATES: Right. Did you ever
12 have any subsequent one-on-one meetings,
13 conversations, telephone calls, et cetera, from the
14 Latino caucus on -- on this topic of personnel
15 matters? Did they ever send you any resumes or
16 anything else?

17 MR. CLIFFORD: No. No further
18 discussion that I recall.

19 CHAIRMAN GATES: Okay. As a result of
20 that, did you ever or did Metra ever feel pressured
21 or threatened in any way that certain legislative
22 initiatives that you may want were in -- all of the
23 sudden in jeopardy?

24 MR. CLIFFORD: No. I -- I -- I did

1 not. I watched very carefully for that. I did not
2 see any evidence of that or threats of loss of
3 dollars, any kind of reprisals as a result of not
4 responding.

5 CHAIRMAN GATES: All right. Did you
6 feel that that discussion or the subsequent
7 discussion with Mr. Huggins were in any way
8 inappropriate or unethical?

9 MR. CLIFFORD: I -- I certainly felt,
10 just as I felt in the case of Representative Arroyo
11 and Speaker Madigan that this was certainly an
12 ethical and moral character flaw.

13 CHAIRMAN GATES: And do you still feel
14 that way?

15 MR. CLIFFORD: Absolutely.

16 CHAIRMAN GATES: In your April 3rd
17 memo you also discuss requests by Speaker Madigan.

18 How did you first learn of the
19 alleged request from the speaker for a pay raise for
20 a Metra employee?

21 MR. CLIFFORD: So following the March
22 visit to Springfield in which --

23 CHAIRMAN GATES: We're still in 2012?

24 MR. CLIFFORD: Still -- I'm sorry.

071713 RTA BOARD

1 Thank you for that.

2 CHAIRMAN GATES: All right.

3 MR. CLIFFORD: Yes, in 2012.

4 Sam Smith, my head of governmental
5 affairs, comes to see me and indicates that he had
6 been contacted by Tom Kolin, one of our lobbyists --
7 state lobbyists in Springfield and that Tom Kolin
8 had indicated to Sam that Mr. Madigan would like
9 Patrick Ward to get a pay raise and another
10 individual to get some particular union job.

11 Now, not that it would have made a
12 difference. Keep in mind, he didn't even submit any
13 information along with that to say why this person
14 deserved a raise. What is it that he was doing
15 so -- so great and so different than other employees
16 at Metra who had gone three years without a pay
17 raise that would make this person special in needing
18 and deservant of a pay raise? Nothing.

19 Again, not that it would make any
20 difference, but he didn't -- he didn't even do that.
21 It was just that he wanted Patrick Ward to get a pay
22 raise. So I didn't do anything with that. This is
23 my first -- now, I'm here a little over a year --
24 experience with things that I have heard about

L.A. COURT REPORTERS LLC - (312) 419-9292

36

1 Illinois politics, but not yet experienced.

2 And so after I thought about that
3 a bit, I later on March 28th in an e-mail to Sam
4 Smith -- you can FOIA that. You can ask Metra to
5 provide that. It exists. They have it. They
6 required me as a part of this agreement to turnover
7 all my documents. So you'll have to get it from
8 them, but that e-mail will confirm that I reported
9 to Sam that he should do nothing.

10 Don't respond any further to Tom
11 Kolin. Don't respond any further to Mr. Madigan.
12 As far as I was concerned, that as long as I did not
13 sort of complete the circle; that is, as long as I
14 did not accede to his request, then the -- there
15 would be no illegal activity, if you will.

16 So that's the instructions I gave
17 him, and I heard no more from that matter. I had no
18 reason to suspect that -- that there was any
19 reprisals against us until now September 7th of
20 2012, Mr. Huggins hastily requests a meeting with
21 me. He comes to my office. We meet in my office,
22 close the door, and he puts me under enormous
23 pressure.

24 We had an argument about his --

1 his -- he said he had been contacted by Mr. Madigan,
2 and Mr. Madigan wanted Patrick Ward to get a pay

3 increase. He felt he was underpaid. And then he
4 also indicated that a second individual, an
5 individual by the name of James Hynes -- don't ask
6 me how to spell the last name. I just wrote it down
7 sort of phonetically.

8 Mr. Madigan wanted James Hynes
9 promoted from a customer service supervisor to a
10 conductor. Again, I told Mr. Huggins I would not do
11 that. If I did that, I felt it would be illegal.
12 Mr. Huggins argued with me over and over that it was
13 not illegal, and after a half hour of pretty intense
14 argument, if you will, he left my office quite
15 upset.

16 CHAIRMAN GATES: Did you tell anyone
17 else about the Speaker's request?

18 MR. CLIFFORD: Yes. Certainly, there
19 are several Board members that I know in individual
20 conversations I discussed that with. One in
21 particular was -- well, was Director Darley. We
22 talked about that, and in a meeting with Director
23 Darley and County Chairman Cronin on September 11th,
24 we were there to discuss various Metra matters that

L.A. COURT REPORTERS LLC - (312) 419-9292

38

1 Mr. Cronin had an interest in. Mr. Darley went out
2 of his way, I thought -- I took a lot of pride in
3 this -- to open the meeting by talking about a

4 number of virtues about what he thought I was doing
5 well at Metra.

6 And in that conversation, he told
7 Mr. Cronin the story about the kinds of patronage
8 pressures that I had been under from both Madigan
9 and Arroyo and how proud he was that I had resisted
10 those kinds of pressures.

11 CHAIRMAN GATES: Have you ever --

12 MR. SHAKMAN: Excuse me.

13 CHAIRMAN GATES: Oh, sorry.

14 MR. CLIFFORD: Mr. Shakman has
15 reminded me that following -- as a matter of fact,
16 immediately following the September 7th meeting with
17 Mr. Huggins, I did make contact with Metra general
18 counsel about that matter.

19 CHAIRMAN GATES: I was going to ask
20 you about that. And what was the response, if any?

21 MR. CLIFFORD: Do you want to answer
22 that?

23 MR. GAGLIARDO: Mr. Chairman, having
24 heard -- just having heard about this for the first

L.A. COURT REPORTERS LLC - (312) 419-9292

1 time, it appears that it would be a privileged
2 conversation. What we do know is when the matter
3 came to the attention to the Board both in the March
4 e-mail that Mr. Clifford has talked about and the

5 April 3rd memo, they were both reported immediately
6 to the OEIG.

7 CHAIRMAN GATES: Okay. Thank you. So
8 does he have leave to respond to the question?

9 MR. GAGLIARDO: I believe to the
10 extent that there would be legal advice -- legal
11 advice involved that would involve an issue, that
12 would be covered by the attorney/client privilege,
13 but I would note that -- you know, again I would
14 note that --

15 CHAIRMAN GATES: It's a simple yes or
16 no.

17 MR. GAGLIARDO: -- as soon as the
18 allegations did come forward, they were reported
19 by -- by Director O'Halloran.

20 CHAIRMAN GATES: Right. So can he
21 respond to the question?

22 MR. GAGLIARDO: Not -- not about this
23 particular conversation, because it would be covered
24 by the attorney/client privilege.

L.A. COURT REPORTERS LLC - (312) 419-9292

40

1 CHAIRMAN GATES: Okay. Have you ever
2 met directly with the Speaker?

3 MR. CLIFFORD: I have met directly
4 with the Speaker, I believe, on two occasions.

5 CHAIRMAN GATES: Great. And can you

6 tell us the purpose of those meetings?

7 MR. CLIFFORD: Those meetings were the
8 same as they would be for any of the other
9 individuals we were meeting with in Springfield to,
10 again, talk about Metra and to express the need for
11 us to have capital funding.

12 CHAIRMAN GATES: And were you ever
13 asked during those meetings -- either during the
14 meetings or by the Speaker at any other time about
15 anything personnel related or procurement related?

16 MR. CLIFFORD: No.

17 CHAIRMAN GATES: Do you believe that
18 the Speaker's requests through, I guess, Sam was
19 unethical or inappropriate?

20 MR. CLIFFORD: Again, as I indicated
21 before, I -- I think it is a moral and ethical
22 flaw -- character flaw, personality flaw. And
23 again, it was my belief that as long as I did not
24 close that loop by engaging in that activity that

L.A. COURT REPORTERS LLC - (312) 419-9292

41

1 the illegal activity would not take place. And, you
2 know, I felt confident following either March or
3 April discussions with the Board that I had the
4 Board on my side. I was doing the right thing.

5 CHAIRMAN GATES: Did you feel -- or
6 Metra feel threatened by this -- by not closing the

7 Loop on this request -- by not acceding to this
8 request?

9 MR. CLIFFORD: You know, I can't
10 speculate on what Metra feels, but I did tell --

11 CHAIRMAN GATES: I mean, you --

12 MR. CLIFFORD: -- I did --

13 CHAIRMAN GATES: -- you or Metra at
14 the time?

15 MR. CLIFFORD: I did tell you what
16 Mr. O'Halloran said to me in February of 2013, which
17 gives you some indication about how he might feel
18 about it.

19 CHAIRMAN GATES: Right. But did you
20 feel threatened at that time? And this is back this
21 2012.

22 MR. CLIFFORD: I did not. I declined
23 to look into it any further and moved on with life.

24 CHAIRMAN GATES: On that September --

L.A. COURT REPORTERS LLC - (312) 419-9292

42

1 now, let's turn to September 7th of 2012. In the
2 April 3rd memo you state that Mr. Huggins informed
3 you that he had heard from the Speaker about the pay
4 increase.

5 Did Mr. Huggins tell you how he
6 became aware of this?

7 MR. CLIFFORD: No, he did not.

071713 RTA BOARD
CHAIRMAN GATES: I think we have

8
9 pretty much -- given that discussion.

10 To your knowledge, did Mr. Huggins
11 or Mr. O'Halloran ever follow-up with the Speaker
12 regarding this issue or any other personnel issue
13 that arose from the Speaker's office?

14 MR. CLIFFORD: I'm not aware. I had
15 no further communication with Mr. Huggins on that
16 matter.

17 CHAIRMAN GATES: When you approached
18 Mr. O'Halloran about the renewal of your contract,
19 was -- where did that occur, when did it occur and
20 was this matter brought into that conversation?

21 MR. CLIFFORD: As I indicated, this
22 particular matter came up in the February meeting
23 with Mr. O'Halloran. Mr. O'Halloran and I met on
24 several occasions following his appointment to the

L.A. COURT REPORTERS LLC - (312) 419-9292

43

1 chairmanship on November 5 of 2012, and as a matter
2 of fact, as soon as December of 2012 when Mr.
3 O'Halloran and I were meeting -- December 17th of
4 2012, to be exact, we had a meeting.

5 In advance of both he and I making
6 the rounds throughout the 547 building to meet with
7 various departments who were having holiday
8 lunches -- we were going to go spread good cheer,

9 meet with the employees and wish them well. Prior
10 to the -- us doing that, we met in my office, and I,
11 again, raised that issue to make him aware, and I
12 had a more extended conversation at that time with
13 him to help him understand why this was important to
14 me that -- that Metra had given me -- and I had
15 accepted -- I take responsibility for that -- a
16 relatively short contract, a three-year contract.

17 But now that we were getting close
18 to entering into the final year of that contract, I
19 wanted to make clear to Mr. O'Halloran that CEOs in
20 this industry don't just transfer to another CEO job
21 when your job is done. In other words, come
22 February 14 -- February of 2014, it's -- I can't
23 just assume I'm going to walk out of this if my job
24 is not renewed and walk into another CEO job.

L.A. COURT REPORTERS LLC - (312) 419-9292

44

1 You have to plan for these things.
2 You have to watch. CEO jobs come and go throughout
3 the nation, throughout the year, and -- and my point
4 was if -- I just need the Board to take some time
5 and evaluate that question, and if they're -- if
6 they're not interested in renewing my contract,
7 fine. I just want to know so that I can start
8 watching. So I can have the recruiters start
9 looking, and who knows how long that might take. I

10 might not get another job before my contract expires
11 or something might come up sooner and I might leave
12 Metra sooner. That was my request.

13 His response was, and I quote,
14 well, the Board wants to stutter step on this
15 question. Stutter step? Very odd. Very odd
16 question, especially since in conversations with
17 Board members following that conversation, it seems
18 that none could confirm that they had any
19 conversation, whatsoever, with Mr. O'Halloran as a
20 Board as a whole about the question about whether
21 the Board wanted to stutter step, as he called it,
22 or actually take up the question.

23 As a matter of fact, Vice-Chairman
24 Partilo -- Director Partilo for over a year -- now,

L.A. COURT REPORTERS LLC - (312) 419-9292

45

1 this is interesting -- for over a year up to that
2 point had been pulling me aside and saying, look, we
3 have got to start talking about extending your
4 contract. This is too short of a contract. You're
5 going to be in high demand. Somebody is going to
6 steal you away from us. We need to get this
7 question to the Board.

8 And he -- and every couple of
9 months he would pull me aside and remind me he
10 wanted to do that for me. But he was having some

11 difficulty in getting Mr. Huggins -- Acting Chairman
12 Huggins to put that on the agenda. Of course, I
13 think I now know why that's the case.

14 And all the way -- all the way up
15 to either September or October of 2012 when
16 Mr. Partilo and I had a conversation about this
17 matter, he was enthusiastic about having my contract
18 renewed and anxious to bring it up.

19 So what happened when come
20 December, January, February, somewhere in that
21 timeframe of 2013, Mr. Partilo is not only not
22 interested in renewing my contract, but expresses to
23 me that, you know, he had some reservations about
24 the politics that -- parts -- this issue of this

L.A. COURT REPORTERS LLC - (312) 419-9292

46

1 patronage in the politics.

2 CHAIRMAN GATES: And is it at that
3 point that Mr. O'Halloran said to you, that he -- as
4 you quote in your memo, that he had to arrange a
5 meeting with the Speaker to assess what damage
6 you've done?

7 And please tell us specifically
8 what he said and what you said in response.

9 MR. CLIFFORD: Well, that --

10 CHAIRMAN GATES: Was it at that --

11 MR. CLIFFORD: I was very clear that

12 it was the February meeting in which he -- he -- he
13 changed his comment from the Board wanting to
14 stutter step to, now we are just dating and then
15 he -- then that is when he said what I indicated to
16 you earlier.

17 CHAIRMAN GATES: Right. And what was
18 your response?

19 MR. CLIFFORD: I don't know that I had
20 much of a response. I was pretty taken aback by
21 that.

22 CHAIRMAN GATES: At any time was there
23 any threat, explicit or implied, that any Metra
24 funding was at stake or threatened here?

L.A. COURT REPORTERS LLC - (312) 419-9292

47

1 MR. CLIFFORD: Never by Mr. Arroyo or
2 Mr. Madigan.

3 CHAIRMAN GATES: Okay. Or anyone --
4 any other elected official?

5 MR. CLIFFORD: Well, as I indicated to
6 you, both Mr. Huggins and Mr. O'Halloran seemed to
7 feel that my unwillingness to accede to those
8 requests could potentially damage funds or the
9 ability for Metra to get funds in the future. So
10 obviously they had a concern.

11 CHAIRMAN GATES: You mentioned that
12 the speaker requested that another individual --

13 that he had another individual who wanted a job and
14 so forth?

15 MR. CLIFFORD: Yes.

16 CHAIRMAN GATES: Was there just that
17 one request or was this just sort of a pattern of
18 requests that you received from the Speaker's office
19 and other legislative leaders or legislative period?

20 MR. CLIFFORD: Well, there is no --
21 there is no pattern, Mr. Gates. The -- the -- there
22 is the -- the request that I indicated Mr. Arroyo
23 made, there is the March request that comes through
24 Tom Kolin to Sam Smith to me in which it's -- it's

L.A. COURT REPORTERS LLC - (312) 419-9292

48

1 very specific about Patrick Ward, and unfortunately,
2 I did not write the name down at that time about the
3 second individual, and then there is the second
4 incident in which Madigan -- Mr. Huggins approaches
5 me saying that Madigan has approached him and
6 references very specifically these two individuals
7 at which time when Mr. Huggins met with me I did
8 write them down, and that's -- that's on a document
9 that's been turned over to Metra again.

10 CHAIRMAN GATES: I guess -- I guess --

11 MR. CLIFFORD: -- Metra demanded all
12 my documents. So I don't have those, but Metra has
13 it.

14 CHAIRMAN GATES: I guess where I'm
15 headed with this. Were there any other elected
16 officials to make any specific personnel or
17 procurement requests, whether they were legislators,
18 committeemen, aldermen, county Board members, et
19 cetera?

20 MR. CLIFFORD: Other than
21 Representative Hernandez's inappropriate questions
22 in the Latino caucus there -- there were none made
23 to me directly.

24 CHAIRMAN GATES: Or indirectly?

L.A. COURT REPORTERS LLC - (312) 419-9292

49

1 MR. CLIFFORD: No.

2 CHAIRMAN GATES: Okay. Good. So
3 basically all the requests that were made of you,
4 directly or indirectly, regarding personnel
5 procurement were included in your April 3rd memo?

6 MR. CLIFFORD: With -- with the
7 exception of the Hernandez --

8 CHAIRMAN GATES: Hernandez thing,
9 right. I just wanted to get that out there, because
10 that's been a topic of speculation, let me put it
11 that way.

12 MR. CLIFFORD: Now, that's -- that's
13 dealing with just the question of patronage.

14 CHAIRMAN GATES: Can you elaborate?

15 MR. CLIFFORD: There are -- no. No.
16 That's all I can say right now.

17 CHAIRMAN GATES: I'm sure you've
18 received other requests from non-public officials
19 and so forth about various individuals and so forth?

20 MR. CLIFFORD: None -- none other,
21 patronage or otherwise, from elected officials. I
22 will not leave you with an inappropriate question
23 mark there.

24 CHAIRMAN GATES: Were there other

L.A. COURT REPORTERS LLC - (312) 419-9292

50

1 requests, I guess, for any other personnel related
2 matters, whether it's raises or promotions or
3 whatever or procurement matters using this
4 particular firm or that particular firm or
5 whatever?

6 UNIDENTIFIED SPEAKER: Can I just ask
7 for clarification? Metra has a substantial union
8 issue. And are you -- it was obviously within the
9 scope of Mr. Clifford's responsibility as the CEO,
10 are you intending to go into that topic? Is that
11 something you want to --

12 CHAIRMAN GATES: Later, but not in
13 this -- not on these issues. Not when -- when we're
14 talking about contractual personnel matters. I
15 think that's a separate topic.

071713 RTA BOARD
Regarding the Board, did --

16
17 would -- when did you report any of these
18 political -- what you feel are politically motivated
19 matters to the Board prior to your April 3rd memo?
20 I mean, to the full Board. When I say not to the --

21 MR. CLIFFORD: Yeah, Mr. Chairman, I --
22 I think with all due respect, I think that's been
23 asked and answered.

24 CHAIRMAN GATES: Okay. You mentioned

L.A. COURT REPORTERS LLC - (312) 419-9292

51

1 on January 11 that Mr. O'Halloran asked you to fire
2 two employees. Was -- could you elaborate on that?
3 Was anyone else present? How did he make this
4 request? Why did he make that request and so forth?

5 MR. SHAKMAN: There have been press
6 reports -- excuse me -- press reports identifying
7 the two employees.

8 Obviously, how Mr. Clifford
9 responds to your question would depend upon whether
10 Metra wishes to assert that the identify of those
11 two employees is to remain confidential since the
12 names were redacted from the April 3rd memo or
13 whether Metra would permit Mr. Clifford to respond
14 by including in his response the identification of
15 the individuals. So we have to request some
16 clarification from the chair and from Metra on that.

17 MR. GAGLIARDO: Mr. Chairman, those
18 names were redacted. We have no idea how the names
19 got out there. I think Mr. Clifford could certainly
20 testify about the positions that he -- he is
21 claiming Mr. O'Halloran spoke with him about.

22 CHAIRMAN GATES: I think the names are
23 public knowledge. They are not terribly relevant.
24 I'm more concerned about the circumstances.

L.A. COURT REPORTERS LLC - (312) 419-9292

52

1 MR. CLIFFORD: Let me approach it
2 without the names.

3 CHAIRMAN GATES: What?

4 MR. CLIFFORD: Let's approach it
5 without the names.

6 CHAIRMAN GATES: Okay.

7 MR. CLIFFORD: How about we do that.
8 Yes. In that meeting, which was
9 January 11, '13, Mr. O'Halloran indicated to me that
10 he felt these two individuals were incompetent and
11 just to correct you, Mr. Chairman, he didn't
12 suggested that they both be fired. He wanted --
13 let's call it individual B fired and individual A,
14 he didn't -- he didn't have a feeling whether that
15 person should be fired or not, but what he wanted
16 was somebody else to be hired to be above that
17 person, to be the new leader of that department

18 relegating the individual who is now the leader of
19 that department to some other deputy or otherwise
20 position.

21 So that's -- that's what he was
22 telling me to do, and to which I responded that
23 first and foremost, the RTA Act puts that authority
24 in me as the CEO. I hire and fire the individuals

L.A. COURT REPORTERS LLC - (312) 419-9292

53

1 in the organization, not the Board, with the
2 exception of the board's secretary and the chief
3 auditor. Those are the positions that the Board
4 hires and fires. All other ones, under the RTA Act,
5 fall under me as the CEO, and further, that in the
6 case of individual A, I had an enormous amount of
7 confidence in that individual doing a fabulous job.

8 I did not understand where that
9 criticism came from, and in the case of individual
10 B, that while there had been some problems and -- in
11 that particular department, that over the course of
12 my first year here, I had invested an enormous
13 amount of time and training in that individual in
14 that department to bring them up to speed and they
15 were doing well.

16 were they perfect? Absolutely
17 not, but they were progressing in the right
18 direction. You see, I just don't throw babies out

19 with the bath water. I invest in people, and if I
20 see that my team members are growing, that the kind
21 of training and counseling and mentoring that I'm
22 giving to them is going in a positive direction,
23 then I hang in there with them. I continue to try
24 to grow them to be the leaders they are. I don't

L.A. COURT REPORTERS LLC - (312) 419-9292

54

1 just throw them out.

2 CHAIRMAN GATES: Why do you think that
3 Mr. O'Halloran and any other member of the Board
4 wanted them fired? The stated excuse it sounds like
5 was incompetence, but do you believe there was --
6 there were other reasons?

7 MR. CLIFFORD: As with a number of
8 issues that occurred between November 5 and June 21,
9 I'm not aware of the members -- to use your words,
10 sir -- the members of the Board being aware of any
11 of this, let alone being interested in terminating
12 employees.

13 CHAIRMAN GATES: So this is strictly
14 between you and Chairman O'Halloran?

15 MR. CLIFFORD: That's the only person
16 I heard it from, sir.

17 CHAIRMAN GATES: Right. Were these
18 employees ever fired, just for the record?

19 MR. CLIFFORD: Well, absolutely not.

071713 RTA BOARD
20 CHAIRMAN GATES: All right. Okay. I
21 just wanted to make sure that we got that on the
22 record.

23 MR. CLIFFORD: Oh, I -- sorry. Thank
24 you, Eddy. I should point out to afford that the

L.A. COURT REPORTERS LLC - (312) 419-9292

55

1 record is accurate that one of the employees did --
2 did retire.

3 CHAIRMAN GATES: Okay. At his own
4 volition -- his or her own volition?

5 MR. CLIFFORD: Correct.

6 CHAIRMAN GATES: Got it. Did you have
7 any other discussions with members of the Board
8 regarding personnel matters, promotions, raises,
9 hiring, firing, and/or any specific procurement
10 matters?

11 MR. CLIFFORD: Sir, I guess I don't
12 understand that question. Obviously, as the CEO,
13 there are any number of items in those relatively
14 broad categories that I have to deal --

15 CHAIRMAN GATES: Let's start with
16 personnel.

17 MR. CLIFFORD: -- with my policy body,
18 which is the Board.

19 CHAIRMAN GATES: Right. Let's start
20 with personnel. Did you -- did you feel that you

21 were unduly pressured by the various Board -- any
22 Board members regarding a specific personnel matter?

23 MR. CLIFFORD: Only one.

24 CHAIRMAN GATES: Only that one. How

L.A. COURT REPORTERS LLC - (312) 419-9292

56

1 about on the procurement side, did your Board get
2 involved in -- you know, did you feel in an
3 inappropriate way in, you know, any of the millions
4 of dollars -- billions of dollars of procurements
5 that Metra does?

6 MR. CLIFFORD: There is an issue here
7 that is outside the scope of the April 3rd memo. We
8 need permission to -- right, right.

9 Okay. Two issues. One of them I
10 needed to confer with the attorneys, because I was
11 not sure if that was within the scope of the
12 concurrence that Mr. Gagliardo has given, and
13 certainly I'm sure once I start to speak about that
14 if he believes it's outside the scope of his
15 permission, he will step in and stop me.

16 So, yes, two issues; one,
17 certainly we have had a long drawn out struggle
18 trying to get a banking services contract awarded.
19 It's been difficult. It's a very complicated
20 contract and it's -- it was derailed.

21 Mr. O'Halloran has taken a great

22 interest in that and at the point that we were ready
23 to go back out to bid on this, because the Board
24 said we don't like how that first process went for a

L.A. COURT REPORTERS LLC - (312) 419-9292

57

1 number of reasons, it was flawed, and so we wanted
2 to go out for rebid.

3 Prior to allowing me to put that
4 out on the street -- which is a little bit unusual
5 in itself, but prior to allowing me to put it out on
6 the street, Mr. O'Halloran wanted to review the list
7 of -- of potential respondents.

8 whenever we put a bid out on the
9 street, we try to identify as many potential
10 respondents as we can so we make sure that nobody
11 who is likely to be a respondent will miss this.
12 After looking at that list, he told me, that's fine,
13 proceed, but you need to add Wintrust to the list.

14 well, shortly thereafter, after I
15 communicated that -- I had not connected the dots,
16 but shortly after that, after I communicated that to
17 Mr. Consilias, my head of procurement, he came back
18 and said, wait a minute. There may be a conflict of
19 interest here in Mr. O'Halloran making this
20 recommendation, because he sits on the Board of the
21 Old Plank Bank or something like that. And --
22 and -- and Old Plank Bank is a subsidiary of

23 Wintrust. 071713 RTA BOARD

24 So I then directed Mr. Consilias

L.A. COURT REPORTERS LLC - (312) 419-9292

58

1 to provide that information to our ethics officer
2 and let them look into it and sort it out.

3 So in addition to that, as I
4 covered in the memo, there is the Englewood Flyover.
5 Highly controversial. As you know, back in May
6 of 2012, when we were ready to award that to the
7 apparent low bidder, IHC Construction Company, there
8 was a great deal of protest.

9 A number of folks from the
10 community and elected officials came to the meeting
11 indicating that it was just unacceptable that this
12 bid be awarded, because it had something like less
13 than one percent of the subcontractors in the bid
14 that were African-American subcontractors and,
15 therefore, this was not a bid that was
16 representative of the community.

17 So I had -- I had indicated to
18 Mr. Huggins and the Board in a number of respects,
19 both verbally and in various communications, which
20 again, Mr. Gagliardo has -- they've taken everything
21 back from me -- making it very clear that we have
22 followed the law. The law is very clear that you
23 cannot -- when you are using federal funding, you

24 cannot be ethnic specific in your award of a

L.A. COURT REPORTERS LLC - (312) 419-9292

59

1 contract in -- relative to your disadvantaged
2 business enterprise, what I call DBE.

3 That, in fact, IHC had met the
4 intent of the law. They provided a bid. It was
5 the -- a low bid, and it did slightly exceed our
6 25 percent DBE target that we set. Now, keep in
7 mind, as I've reminded the Board over and over again
8 and others, have that disadvantaged business
9 enterprise is not any particular ethnicity.

10 It is a number of ethnicities that
11 qualify under the guideline, for example, don't make
12 more than a certain amount of money and women-owned
13 businesses. So to be compliant with the federal
14 guidelines, when you're using federal money, you can
15 achieve the 25 percent or the goal set by the
16 agency, whatever the goal is, in our case
17 25 percent, with any mixture of women-owned
18 businesses and any composition of other -- of
19 ethnic-owned subcontracting businesses. Not any
20 specific one.

21 As a matter of fact, you're not
22 allowed to do that. Now, reference has been made --
23 I read it in the paper -- from Mr. O'Halloran that
24 the city does it all the time. Well, you know, in

1 fact, the city does do some of that, but they don't
2 do it when they have federal funding, because they
3 can't. Now, you can -- you can set other rules up
4 as a city or another governmental agency when you
5 are using taxpayer dollars -- and local taxpayer
6 dollars and other -- other monies that are not
7 federal money, but when you are using federal money,
8 you must follow the federal criteria, period.

9 And you are not allowed to
10 interfere in the process. You're not allowed to go
11 back and try to strong arm the bidders into changing
12 the composition of their subcontractors that they've
13 submitted to you.

14 Now, keep in mind, in advance of
15 this bid going on the street, Mr. Huggins attended
16 the pre-bid conference in a very highly unusual
17 step. Didn't ask my permission. A highly unusual
18 step. He attended the pre-bid conference and made a
19 speech to everybody in attendance about how
20 important it was for the respondents to this bid to
21 be sensitive to the community.

22 I think that's fine. I -- I --
23 that's great. Put them on notice, let them know it
24 would be nice if you really pay attention that we

1 need to have jobs come from the community. So the
2 bids came in. The apparent low bidder met the
3 criteria.

4 Mr. Huggins was not pleased about
5 this, and over the course of the next several
6 months, he was looking for every way he possibly
7 could to invalidate that bid. And we looked at
8 everything that he could throw at us and everything
9 that general counsel -- I'm sorry, not general
10 counsel -- Board counsel could throw at us and there
11 were -- there were just no reasons, whatsoever, to
12 invalidate this.

13 So in June I asked, can we put it
14 back on the agenda? He said no. We're not going to
15 put it on the agenda and we're not going to put it
16 on agenda until this low bidder brings his
17 African-American subcontracting content up to \$10
18 million. That was his goal. That was his demand.
19 \$10 million. Not going to let it happen.

20 Now, during this course of time
21 between May and July 16 when this was ultimately
22 awarded, Mr. Huggins and I took a trip to
23 Washington, D.C. to meet with some of the major
24 elected officials who had showed up to the May --

1 May meeting; Congressman Danny Davis, Congressman
2 Rush, Congressman Jackson, but in advance of the
3 Congressman Rush discussion, in particular, I pulled
4 Mr. Huggins aside and I said, look, I need you to
5 understand something.

6 What I keep hearing from Mr. Rush
7 is that this is about jobs for the community of
8 Englewood -- jobs for the community of Englewood. I
9 said, look, when you put all your focus on DBEs,
10 disadvantaged business subcontractors, that doesn't
11 give you any guarantee, whatsoever, that those jobs
12 will come from the community, because see, if
13 somebody satisfies you with a subcontractor who is
14 an African-American-owned subcontractor, that
15 subcontractor could have his or her business
16 anywhere in this nation.

17 Hey, as long as -- as long as the
18 contractor said I want you a part of my bid and
19 having you a part of my bid is going to help me
20 prevail, that's a decision the contractor makes, not
21 us. They -- so that money has no guarantee that
22 it's going to go to the Englewood community, because
23 it will go anywhere in the state, anywhere in the
24 nation. There is no guarantee.

1 And as a matter of fact, I also
2 informed him that our head of DBE, disadvantaged
3 business enterprises, Janice Thomas, had -- had
4 researched our certified DBEs; that is, DBEs that
5 are certified today that could potentially do
6 Englewood Flyover work, subcontracting work, and she
7 had confirmed to me that there -- there wasn't any
8 DBEs in the Englewood community proper that could
9 satisfy any of the needs of the Englewood Flyover.

10 I passed that on to Mr. Huggins.
11 So what I asked Mr. Huggins to do -- excuse me -- is
12 to please focus on jobs for the community. That's
13 what I keep hearing. Jobs for the community. And I
14 said, look, IDOT has given us this great
15 opportunity. They have an apprentice program.

16 They are going to pay for it, and
17 we put that into the contract and even though --
18 even in their apprentice program, you cannot
19 target -- you cannot say, these apprentices will
20 only come from the Englewood Flyover, IDOT did
21 confirm that they -- they would make extra effort to
22 outreach to the community, to try to get people to
23 come into the apprentice program from the Englewood
24 community and then ultimately be apprentices on

1 this -- this project.

2 It seemed to me like that would
3 satisfy Congressman Rush's concern about jobs for
4 the community. DBE doesn't do that. The DBE
5 argument is all about whether it's acceptable to
6 have women-owned businesses or
7 African-American-owned businesses or Hispanic-owned
8 businesses, but no guarantee it comes from the
9 Englewood community.

10 Focusing on the apprentice program
11 gives you some hope that, in fact, that that could
12 happen. Much to my dismay in the meeting with
13 Congressman Rush, Mr. Huggins went back to -- well,
14 didn't go back. He never changed -- stayed with his
15 philosophy in front of Mr. Rush, Congressman Rush,
16 that he was holding out for \$10 million in
17 subcontracting jobs.

18 You just can't do that. And then
19 as we started getting into -- approaching July, our
20 bid was going to expire in either late July or early
21 August, and again, they didn't get their \$10 million
22 or whatever they were looking for when our regular
23 Board meeting came up in July.

24 And Mr. Huggins was clear to me

1 that -- that as a part of this process under threat
2 of the bids expiring, he was going to hold this
3 contractor's feet to the fire, which apparently
4 inevitably happened, because all of a sudden
5 following the regular Board meeting there was a
6 hastily organized July 16 Board meeting to go ahead
7 and make this award.

8 And all I know, because we're not
9 a party to this so called MOU that was negotiated
10 between IHC and the community is that apparently
11 they achieved consensus on what the contractor would
12 do in respect to the community demands. Mr. Huggins
13 then got his green light and hastily put together a
14 special Board meeting on July 16 to make the award.

15 CHAIRMAN GATES: Can you describe what
16 this MOU was? Did you have a copy of it? Is it
17 public information? What -- you know, what's in it?
18 What caused it? What preceded it? Are there --

19 MR. CLIFFORD: We -- we were clear
20 about --

21 CHAIRMAN GATES: -- specific
22 contractors names?

23 MR. CLIFFORD: We were clear about
24 what the federal law is in respect to awarding

1 federal contracts with federal funding, and we were
2 clear that we could not be a party to that. And we
3 were clear to Mr. Huggins that he should not be a
4 party to any of those. As a representative of the
5 Metra Board, he should not be a representative -- he
6 should not be participating in those discussions.

7 Therefore, we don't have a copy.
8 We didn't participate in that. We only know what we
9 hear.

10 CHAIRMAN GATES: Do you know who
11 the -- who the parties were to that memo in any way?
12 I'm assuming that IHC and who else?

13 MR. CLIFFORD: I don't know who -- who
14 the community representatives are. I do not.

15 DIRECTOR FAKRODDIN: Mr. Chairman,
16 could I ask a question following -- following up on
17 the same subject?

18 CHAIRMAN GATES: Okay. Let's stick to
19 the same subject.

20 DIRECTOR FAKRODDIN: If you don't
21 mind.

22 CHAIRMAN GATES: Okay.

23 DIRECTOR FAKRODDIN: This DBE portion
24 that you were talking about, IHC had a contract of

1 \$93 million, and the DBE was, what, 25 percent?

2 MR. CLIFFORD: The DBE goal was set at
3 25 percent, and as I recall, they slightly exceeded
4 that.

5 DIRECTOR FAKRODDIN: What -- was the
6 contractor -- had the contractor included the names
7 of the firms that were going to work on this DBE
8 portion?

9 MR. CLIFFORD: Yes.

10 DIRECTOR FAKRODDIN: The DBE firms
11 were --

12 MR. CLIFFORD: Well, yes. Absolutely.
13 Because we -- we have a responsibility after the
14 award to audit that and make sure that -- that, in
15 fact, the work goes to the DBEs that were
16 represented in the award.

17 DIRECTOR FAKRODDIN: And no DBE firm
18 was from the Englewood area that was pre-qualified
19 to do the job?

20 MR. CLIFFORD: Not that I'm aware of.
21 I -- I --- and I hedge a little, because I don't know
22 if the -- the only African-American owned firm,
23 which I believe was a security firm, I think they
24 got a contract for something over \$100,000.

1 I don't know if they are from the
2 Englewood community or not. I don't know that

071713 RTA BOARD

3 answer.

4 DIRECTOR FAKRODDIN: Thank you.

5 CHAIRMAN GATES: Were you aware of a
6 letter from Congressmans Rush and Davis regarding
7 this issue to you?

8 MR. CLIFFORD: I think there were
9 several letters communicated during this period of
10 time, yes.

11 CHAIRMAN GATES: And did you feel any
12 inappropriate pressure from those letters or any
13 other communication from the Congressmen?

14 MR. CLIFFORD: No. I did not, no.
15 I -- I stayed with my contention to the Board again
16 in -- in at least two formats, and I don't have the
17 written ones, because they're back with Metra
18 counsel as a result of this settlement. But I was
19 clear that we needed to follow the law and that this
20 apparent low bidder had -- had done everything that
21 they are supposed to do to be compliant with this
22 bid.

23 CHAIRMAN GATES: Do you remember that
24 you state that Mr. Huggins asked you to -- to

L.A. COURT REPORTERS LLC - (312) 419-9292

69

1 terminate the contract with the lowest bidder. I
2 assume this was -- this is confusing to me -- after
3 the contract was awarded?

071713 RTA BOARD

4 MR. CLIFFORD: No. He wanted us to
5 find ways to invalidate the bid.

6 CHAIRMAN GATES: Oh, invalidate the
7 bid, not the contract? Okay.

8 MR. CLIFFORD: So it would -- so it
9 would not be awarded.

10 CHAIRMAN GATES: Okay. I was -- I was
11 confused by that.

12 How was -- what does the -- a
13 major, major contract like this at Metra, can you
14 give us a brief explanation of the procurement
15 process? How do you go about evaluating the bidders
16 and making the decision on who to select?

17 MR. CLIFFORD: Well, that's why I have
18 a procurement head. Obviously, the project is
19 properly scoped. This certainly is a partnership
20 between IDOT -- because technically the money flows
21 through IDOT -- the federal money flows through IDOT
22 for this project and the CREATE project, most
23 specifically Norfolk Southern, and this is a project
24 in which takes the Metra Rock Island up and over the

L.A. COURT REPORTERS LLC - (312) 419-9292

70

1 Norfolk Southern in a -- in a full rail to rail
2 grade separation.

3 So the project is scoped and then
4 after that is done and IDOT confirms that -- that we

071713 RTA BOARD

5 can put it out on the street, it's put out on the
6 street for a period of time. Certainly there is a
7 pre-bid conference, as I indicated earlier. Then
8 there are the submittals of the bids and then the
9 evaluation of the bids and ultimately the award of
10 the -- of the apparent low bidder.

11 CHAIRMAN GATES: You had in your memo
12 that Mr. Huggins regarded you as an obstructionist.
13 Was this the reason he regarded you or were there
14 other reasons?

15 MR. CLIFFORD: Well, this and others.
16 Certainly, we've talked about the Madigan situation.
17 We've now talked about that part of the Englewood
18 situation.

19 So the second part of it is
20 following the award on July 16, and during a
21 period -- during a period of time in which I think
22 he particularly took advantage of -- of -- of my
23 situation -- and let me describe what my situation
24 was.

L.A. COURT REPORTERS LLC - (312) 419-9292

71

1 I haven't been public about this
2 to this date, but I will put it on the table today.
3 I was diagnosed with thyroid cancer, and I needed
4 to -- to have both an operation and I needed to be
5 treated for cancer, and I was delaying that because

6 I didn't -- because I wanted to get through the
7 Englewood Flyover award.

8 And so following that award, I
9 scheduled my surgery and my treatment, and so I was
10 obviously in and out of Metra there for a period of
11 time while I was undergoing that personal crisis.
12 And what I believe was Mr. Huggins took advantage of
13 my not being at Metra every day, and he negotiated
14 with -- or not negotiated -- he committed Metra to
15 spend \$50,000 for something that took months to try
16 to develop what in the world we were going to hand
17 over \$50,000 for.

18 And I talk about this in the
19 April 3rd memo. And so as I was sort of
20 reintegrating myself back into Metra and talking to
21 him about this, I was trying to understand what is
22 it that he committed us to. He couldn't -- couldn't
23 seem to put it down into words what he committed us
24 to, let alone who we were writing a check to. He

L.A. COURT REPORTERS LLC - (312) 419-9292

72

1 just wanted me to call Congressman Rush's office and
2 find out who I was supposed to write this \$50,000
3 check to.

4 And I said, well, I can't do that.
5 And -- and so as we talked and talked and I tried to
6 understand this over the next couple of months, it

7 then began to become somewhat clear -- and I
8 emphasize somewhat -- that he wanted it to be for
9 some kind of community outreach related to the
10 Englewood Flyover, some kind of monitoring of the
11 contractor's commitment to the community under the
12 MOU.

13 well, we can't do that. We're not
14 a party to the MOU. We're not going to monitor the
15 MOU. So this was a very difficult process, and then
16 I -- what I told him is I said, look, even though my
17 CEO authority allows me to sign a \$50,000 contract
18 without Board approval, I said, I'm not going to do
19 that.

20 I -- I don't understand what we're
21 paying for. I don't know what the scope of work is.
22 I don't know who we're writing the check to. I
23 don't know what they're supposed to do for us, and I
24 don't know how we're going to hold them accountable

L.A. COURT REPORTERS LLC - (312) 419-9292

73

1 to whatever it is that they're going to do for us.
2 So I just -- I can't recommend that.

3 well, he was -- he was very upset
4 about this and he kept insisting that I do this. He
5 kept checking in with me and insisting that I do
6 this. And then later on as we get closer to
7 October, I finally -- I said, look, I'm going to
Page 70

071713 RTA BOARD

8 write a Board report in standard format. Standard
9 format always has me as the CEO at the top of the
10 Board report. But in that Board report, I'm -- I'm
11 going to say that you want to make this
12 recommendation.

13 And I said, look, if you can get
14 your colleagues or the majority of your colleagues
15 to agree to whatever it is that we're doing and
16 whoever we're handing \$50,000 over to, then --
17 then -- they're the policy body. I'll do what they
18 say.

19 And I said who -- who are we
20 writing this check to? And he said, I'll get back
21 to you. I've got to call Congressman Rush. And --
22 and then a short time later, we get a communication.
23 Again, Metra has this communication. They've taken
24 all of those documents away from me.

L.A. COURT REPORTERS LLC - (312) 419-9292

74

1 But a short time later we get a
2 communication from Congressman Rush's office
3 indicating that the entity that will -- the check is
4 payable to is the National Black Chambers of
5 Commerce in Washington, D.C. I don't understand it.
6 So we wrote -- we wrote a Board report. We -- I
7 assigned Janice Thomas to do so. She was not happy
8 about this, but I assigned her to do so, and -- and

071713 RTA BOARD

9 she worked with Congressman Rush's office to try to
10 get more information. She did the best she could do
11 to put together a Board report.

12 I had the -- I had the board's
13 secretary send that Board report -- that draft Board
14 report to Mr. Huggins in October. He was still the
15 chair at that time. And asked for his approval,
16 because the chair has to approve the agenda and the
17 items that go on the agenda, and he refused to
18 approve it. He wanted his name taken off it and he
19 wanted staff -- it to be a staff recommendation. I
20 said, I won't do that.

21 And then shortly thereafter
22 following Chairman O'Halloran's appointment by the
23 Board to the position of chairman, on December 17th
24 I had a meeting with Mr. O'Halloran. He brings up

L.A. COURT REPORTERS LLC - (312) 419-9292

75

1 the subject matter of the \$50,000 and he says, Mr.
2 Huggins is very upset about this, and he wants you
3 to rewrite the Board report to be a staff
4 recommendation and take his name out of it, to which
5 I told Mr. O'Halloran, I cannot and will not do
6 that. It's not a staff recommendation.

7 I have no confidence in what the
8 heck we're paying for for \$50,000 and Mr. O'Halloran
9 said that he would take care of it, and I never

071713 RTA BOARD

10 heard another thing about it from there.
11 CHAIRMAN GATES: And did you submit
12 the report as a -- with Mr. Huggins' name on it or
13 any -- at all?
14 MR. CLIFFORD: Well, no. I -- I can't
15 do that without the chair's approval. And he --
16 CHAIRMAN GATES: Oh, so you never --
17 MR. CLIFFORD: -- he would not let
18 me --
19 CHAIRMAN GATES: The report never went
20 to the Board?
21 MR. CLIFFORD: He would not let me put
22 it on the full Board.
23 CHAIRMAN GATES: All right. Did the
24 contract ever get executed?

L.A. COURT REPORTERS LLC - (312) 419-9292

76

1 MR. CLIFFORD: The \$50,000?
2 CHAIRMAN GATES: Yeah.
3 MR. CLIFFORD: The matter went away.
4 CHAIRMAN GATES: Went away.
5 Do you believe that Mr. Huggins'
6 involvement in all of this was unethical or
7 inappropriate?
8 MR. CLIFFORD: Oh, absolutely.
9 Absolutely. Both.
10 CHAIRMAN GATES: Do you believe that
Page 73

11 Congressman Rush's involvement in all of this was
12 unethical or inappropriate?

13 MR. CLIFFORD: I cannot speak to that,
14 because I don't have any direct knowledge about this
15 question -- and you heard me hedge on it a lot
16 through my conversation about Congressman Rush or
17 his staff. I -- I don't -- I don't have any
18 firsthand knowledge of that.

19 CHAIRMAN GATES: You don't know what
20 they know?

21 MR. CLIFFORD: Or who said what, who
22 was the direct contact. I don't have that firsthand
23 knowledge.

24 CHAIRMAN GATES: Did you ever report

L.A. COURT REPORTERS LLC - (312) 419-9292

77

1 this or any of the other incidents that you believe
2 were unethical to your ethics officer? You
3 mentioned one, but how about all the rest of these,
4 to the Metra ethics officer?

5 MR. CLIFFORD: Not -- not to the
6 ethics officer, but clearly, clearly to both
7 counsel, Board counsel and general counsel.

8 CHAIRMAN GATES: Okay. But was there
9 any activity that you can think of or speak to by
10 them to follow-up on these -- these reports that you
11 made?

071713 RTA BOARD

12 MR. CLIFFORD: No.
13 CHAIRMAN GATES: Did you ever talk to
14 the legislative inspector general about any of this?
15 MR. CLIFFORD: No.
16 CHAIRMAN GATES: U.S. Attorney's
17 Office?
18 MR. CLIFFORD: No.
19 MR. GAGLIARDO: Well, I -- I need to
20 interject. There has been a communication to me
21 from the legislative inspector general, but not to
22 Mr. Clifford.
23 MR. CLIFFORD: The -- and the only
24 one -- stop me if I --

L.A. COURT REPORTERS LLC - (312) 419-9292

78

1 CHAIRMAN GATES: Can you discuss that?
2 MR. GAGLIARDO: I believe the
3 legislative inspector general is here, and if he
4 wishes to comment, he could do so, but I just don't
5 want the record to reflect an omission by
6 Mr. Clifford since he knows about that
7 communication, but is not a party to it.
8 MR. CLIFFORD: And Mr. Gates, just to
9 cut your list short, the only one is -- is the state
10 OEIG, and I can't give you anymore information other
11 than I've turned over volumes of information to
12 them.

071713 RTA BOARD

13 CHAIRMAN GATES: There is the -- is
14 the legislative inspector general here?

15 Could you come forward? We can't
16 hear you and we would like to certainly get this on
17 the record.

18 MR. HOMER: My name is Tom Homer,
19 H-O-M-E-R. I serve as the legislative inspector
20 general --

21 SECRETARY MACLENNAN: Could you please
22 take the microphone from Mr. Gagliardo so it's on
23 the record?

24 MR. HOMER: Is this -- my name is

L.A. COURT REPORTERS LLC - (312) 419-9292

79

1 Homer, H-O-M-E-R. I serve as the legislative
2 inspector general. My jurisdiction is -- are
3 ethical concerns involving members of the Illinois
4 General Assembly and their employees.

5 Earlier this week, following my
6 review of the publicity given to this matter as it
7 may involve members of the Illinois General
8 Assembly, I called Mr. Shakman to ask if I would be
9 allowed to speak and interview Mr. Clifford.

10 He indicated that he had no
11 problem with that, however, in order to not conflict
12 with any confidentiality agreements with Metra, he
13 indicated that I would need a subpoena in order to

14 do that. And that -- I did not speak with
15 Mr. Clifford other than today. I introduced myself
16 to him and handed him my business card. And that's
17 the only contact I have had with him.

18 CHAIRMAN GATES: Thank you. And that
19 is the only -- you had no further discussions
20 with -- the OEIG you've talked to extensively or
21 provided a number of documents to.

22 Did that occur during -- as these
23 incidents were occurring or has that begun more
24 recently since you've been -- since you've left the

L.A. COURT REPORTERS LLC - (312) 419-9292

80

1 agency?

2 MR. CLIFFORD: Okay. That occurred
3 while still employed with Metra.

4 CHAIRMAN GATES: So as these incidents
5 were occurring, you were turning -- you were
6 notifying the OEIG, the Office of Inspector General,
7 that these things were occurring and they were
8 following up with --

9 MR. CLIFFORD: That is not correct.

10 CHAIRMAN GATES: Oh, what is correct?
11 Can you explain a little bit about that interaction
12 to the extent that you can?

13 MR. CLIFFORD: Well, I'll go as far as
14 I can go without violating the OEIG's wishes for

15 confidentiality.

16 As I indicated to you earlier, the
17 e-mail exchange that I had with Director Darley was
18 forwarded to the OIG by the Metra Board or by Metra.
19 And so that in very short order stimulated a call
20 from the OIG for me to come on in and chat with
21 them. So I'm not going any further than that with
22 them --

23 CHAIRMAN GATES: Roughly, when was
24 that?

L.A. COURT REPORTERS LLC - (312) 419-9292

81

1 MR. CLIFFORD: Again, that's -- that's
2 going to be soon after the -- the Darley call. I
3 think that's in March. I believe that's in March.

4 CHAIRMAN GATES: Of '13?

5 MR. CLIFFORD: Of '13, correct.

6 CHAIRMAN GATES: All right.

7 MR. CLIFFORD: And one of the -- one
8 of the things that I have been clear about is
9 that -- that sort of submittal to the OEIG sort of
10 preempted where I was going. I was -- at this
11 point, I'm headed down a two-pronged path, because
12 as I told you earlier, by this point, it's clear to
13 me that there's a real sham going on here.

14 And so at -- I engaged an
15 attorney, and as soon as I pulled together all of my
Page 78

071713 RTA BOARD

16 notes and my allegations, my intent was to go to the
17 OIG, but again, the process got -- started a little
18 bit earlier than I had intended.

19 CHAIRMAN GATES: And that's when you
20 wrote your memo, et cetera.

21 what was the initial response to
22 your April 3rd memo while all of this was going on?
23 There is a lot -- a lot of cross currents, it seems.

24 MR. CLIFFORD: The initial response

L.A. COURT REPORTERS LLC - (312) 419-9292

82

1 from Metra counsel was -- Board counsel -- was that
2 they interpreted all of this as a threat of
3 litigation, and they wanted to put me under what
4 they called a screening document, which dictates
5 what I can and cannot do as the CEO of this
6 organization during this time of potential
7 controversy.

8 And we had some back and forth
9 between my attorneys and -- and the Board -- Board
10 counsel. As a matter of fact, Board counsel was
11 very upset that I even had attorneys involved in
12 that, which surprised me, but nonetheless, we
13 finally settled on a screening document that would
14 be acceptable.

15 CHAIRMAN GATES: And that's the point
16 that you -- you initiated -- you retained attorneys

071713 RTA BOARD

17 and began these negotiations?

18 MR. CLIFFORD: No. I had my attorney
19 retained in April. The screening document came
20 thereafter.

21 CHAIRMAN GATES: Okay.

22 MR. CLIFFORD: And I want to make
23 clear a particular point. You -- various -- well,
24 one particular Metra official has been -- has

L.A. COURT REPORTERS LLC - (312) 419-9292

83

1 said in the paper -- has been quoted in the paper as
2 saying basically that during this time, apparently
3 following the April 3rd memo, business came to a
4 halt.

5 Business didn't come to a halt. I
6 did everything I possibly could, with the exceptions
7 of those things that I was not allowed to do per the
8 screening memo, to keep this business running well
9 and progressing forward. That is just a fallacy
10 that has been represented in the media about
11 business coming to a halt. It's just not true.

12 And -- and this screening memo
13 tied my hands. So if anybody's hands were tied, I
14 didn't tie the hands of the agency. The screening
15 memo generated by the Board or representatives of
16 the Board, I should say, tied my hands. I -- I
17 could not move forward on some key positions that

071713 RTA BOARD

18 needed to be filled in this organization.

19 I pleaded in an e-mail with the
20 Board and Board counsel to allow me to move forward
21 on the filling of the position for the chief
22 engineering officer. Joe Lorenzini had given me
23 notice earlier in the year to retire.

24 I had started an expedited process

L.A. COURT REPORTERS LLC - (312) 419-9292

84

1 to bring aboard the replacement for the chief
2 engineering officer. I had application -- good
3 applications in hand. Probably quality individuals,
4 one of which probably could have been hired, maybe
5 both could have been hired they were so good. And I
6 needed that person to come aboard before Joe left
7 the organization so that we could have some -- some
8 cross-pollination, some succession planning, however
9 limited it could be.

10 They would not let me move
11 forward. They would not let me move forward on the
12 interviews for that position. And that's a key
13 position. That's one of the most important
14 positions in a railroad organization. You do not
15 operate a railroad without a chief engineering
16 officer.

17 And I've made it clear in my memo
18 to the Board and to counsel that -- that not only is

071713 RTA BOARD

19 this an operational issue, but it's a safety issue.
20 If you want to have a safe environment, safety
21 starts at the top, and you've got to have that chief
22 enforcer, that chief engineering officer on Board.
23 So I just give you a little taste
24 of how inaccurate those comments were in the media.

L.A. COURT REPORTERS LLC - (312) 419-9292

85

1 I did not stifle or stall what was going on at
2 Metra, but the Board or certain Board members'
3 interpretation and enforcement of a screening
4 document are what bound my hands in the closing days
5 between April 3rd and June 21.

6 CHAIRMAN GATES: So is it your opinion
7 that the board's response to your April 3rd memo was
8 this screening document, and could you describe in a
9 little bit more detail what this meant, how it
10 constrained your prior activities, the prior scope
11 of your activities and made it -- forced you to
12 operate in a different way than you had -- than you
13 had before?

14 MR. CLIFFORD: Well, I -- I think I
15 gave you enough to -- to clearly indicate that I did
16 the best I could do within the limitations of the
17 screening document --

18 CHAIRMAN GATES: What did that
19 screening document say exactly?

071713 RTA BOARD

20 MR. CLIFFORD: -- operate the agency.
21 I think you should -- with all due
22 respect, sir, I think you should request Metra to
23 provide you a copy of it.
24 CHAIRMAN GATES: Well, we don't have a

L.A. COURT REPORTERS LLC - (312) 419-9292

86

1 copy of it now. I'm sure they don't -- didn't bring
2 it with them. Could you give us your
3 characterization of it?
4 MR. CLIFFORD: Well, I just gave you
5 some examples. I -- I couldn't hire and fill major
6 positions.
7 Do you have any other thoughts
8 about what's in this?
9 Yeah. You know, during -- during
10 this process, I was under constant threat of
11 administration -- administrative leave, which just
12 baffled my mind. I'm not -- I'm not doing anything
13 wrong and I'm -- I'm under threat by Board counsel
14 and certain representatives, I presume of the Board,
15 to -- that -- that at any day they could put me on
16 paid administrative leave.
17 why in the world would they do
18 that? I had done nothing wrong and yet they were
19 threatening to put me on -- all the way through this
20 process, almost since day one -- threatening to put

071713 RTA BOARD

21 me on paid administrative leave?
22 what does paid administrative
23 leave mean to the outside public when you see that?
24 It means that somebody must have done something

L.A. COURT REPORTERS LLC - (312) 419-9292

87

1 wrong. Generally, that's when you use paid
2 administrative leave. You put somebody out on paid
3 administrative leave pending a hearing -- an
4 investigation and a hearing and then ultimately many
5 times over, there is a lot of examples nationwide.
6 There was another one just recently in California.
7 The person either resigns or they -- or they're
8 fired.

9 So it -- it sends the wrong
10 message. It tells the public if you put me on paid
11 administrative leave that some -- that I did
12 something wrong potentially. It leads to all kind
13 of speculation, but these are the kinds of threats
14 that I had to deal with during this time following
15 the April 3rd memo.

16 UNIDENTIFIED SPEAKER: Mr. Chairman,
17 can I --

18 CHAIRMAN GATES: Sure.

19 UNIDENTIFIED SPEAKER: Just for
20 clarification on some previous questions I'm not
21 clear on, as far as the allegations that you had

22 made in your April 3rd memo, I'm not clear on when
23 you reported those to the inspector general or if
24 they report -- were they reported at the time the

L.A. COURT REPORTERS LLC - (312) 419-9292

88

1 incident occurred or were they reported much later?.

2 MR. CLIFFORD: Look, look, I think
3 I've been very clear on this subject.

4 UNIDENTIFIED SPEAKER: Well, I was --
5 I just didn't understand your response. So --

6 MR. CLIFFORD: You can choose to be
7 distracted by the notion that's been put out there
8 that Mr. Madigan --

9 UNIDENTIFIED SPEAKER: I'm not
10 distracted by anything. I just wanted to know when
11 you reported it.

12 MR. CLIFFORD: Okay. I'm giving you
13 my answer.

14 UNIDENTIFIED SPEAKER: Okay.

15 MR. CLIFFORD: You can choose to be
16 distracted by the notion that's been put out there
17 that you can -- that causes you to be distracted by
18 why didn't Clifford go to the OEIG when Mr. Arroyo
19 did what he did? why didn't Clifford go to the OEIG
20 when Mr. Madigan did his March thing and then again
21 his September thing?

22 I -- I gave you the answer and the
Page 85

23 answer is in my memo. It's because I didn't believe
24 that there was a waste, fraud or abuse issue here.

L.A. COURT REPORTERS LLC - (312) 419-9292

89

1 I did not believe the law was broken, because I did
2 not complete the cycle of actually doing what was
3 being requested.

4 I had my -- I informed my Board.
5 I had my board's support that I was doing the right
6 thing, and most importantly, and I really would like
7 you all to focus on this so that you get off this
8 notion that various PR people have been putting out
9 there to keep you distracted in thinking about
10 things like that, this did not become an issue until
11 such time that those actions or my -- my refusal to
12 accede to those actions were now going to impact my
13 ability to only have a fair process for review but
14 to get a new contract.

15 That did not happen until that
16 timeframe starting on November 5 of 2012 through to
17 my April memo. That's when it all became important
18 and salient, because somebody -- two individuals in
19 particular were proposing to use that kind of
20 information and my refusal to give into that kind of
21 political pressure, to cause me to get a bad review
22 and to cause me to not have my contract renewed.

23 That is when I started pulling
Page 86

24 together my information through the January/February

L.A. COURT REPORTERS LLC - (312) 419-9292

90

1 process, pulling together mounds of information,
2 reviewing hundreds of e-mails and copies of those to
3 begin to make my case both to the Board, as I did on
4 April 3rd with the help of my attorneys and
5 ultimately to the OEIG about what was going on, that
6 my refusal to accede -- to accede to certain things
7 in the preceding year were causing me now in the
8 time present, February/March/April timeframe, to not
9 have a fair review and not have my contract
10 considered properly as it should have been.

11 That's what you need to focus on.
12 Not why didn't he go to the OIG in March? why
13 didn't he go to the OIG in September? That's not
14 the issue. Because -- now, the OIG may override me.
15 It may say, yeah, those were illegal. I'm not an
16 attorney. But I'm telling you that by my
17 interpretation it was not an illegal act unless I
18 actually did what they were asking me to do.

19 So I just let it roll off. I
20 didn't do it. I didn't feel that I was getting any
21 pressure from those elected officials. I didn't
22 feel that I was getting any reprisals from those
23 elected officials. Had I felt that, I would have
24 gone to the OIG. I guarantee you that.

L.A. COURT REPORTERS LLC - (312) 419-9292

91

1 It did not become a problem until
2 two of my Board members decided to start using that
3 information to cause an unfair process, a sham of a
4 review process to occur and to do all of this nasty
5 work behind the scenes that they did to turn Board
6 members -- certain Board members against me so that
7 I could not get the eight votes that I needed.

8 UNIDENTIFIED SPEAKER: Thank you.

9 CHAIRMAN GATES: Let me just continue
10 down this line.

11 UNIDENTIFIED SPEAKER: Could I ask a
12 question?

13 CHAIRMAN GATES: In a minute. This --
14 if we could run through the rest of the questions,
15 and then everybody can ask whatever they want.

16 UNIDENTIFIED SPEAKER: It's a focused
17 question on what he just said.

18 CHAIRMAN GATES: Can we come back to
19 that in just a second? Just give me a couple more
20 minutes.

21 You mentioned in your memo that
22 this failure to accede to political requests was the
23 principal reason you thought those Board members
24 wanted you to go, and I assume by that, you mean

1 Mr. Huggins and Mr. O'Halloran. But it was not the
2 sole reason.

3 what other reasons might they have
4 had for recommending that your contract not be
5 renewed?

6 MR. CLIFFORD: Well, I -- I've laid
7 out -- please review the record carefully. I've
8 laid out a whole trail of what occurred in 2012
9 about why Mr. Huggins would be absolutely
10 disagreeable to me having a fair process. I -- I
11 made him mad time and time again; Englewood Flyover,
12 \$50,000 issue --

13 CHAIRMAN GATES: Right. Did the --

14 MR. CLIFFORD: -- the Madigan request.

15 CHAIRMAN GATES: Did you hire an
16 outside consultant to provide a personal review of
17 you, as has been alleged in the press?

18 MR. CLIFFORD: Can I go down that
19 road?

20 MR. SHAKMAN: Yeah. You -- unless we
21 hear contrary from Mr. Gagliardo, who I know to be a
22 careful and aggressive lawyer, you can keep talking.

23 MR. CLIFFORD: So this is another
24 story that has been just absolutely misrepresented

1 by the spin doctors at the other end of this
2 controversy.

3 In 2012, as a part of my team
4 building process, I hired a company to come in --
5 not come in -- actually, we did this on a -- on a
6 web based program, a 360 review. And if you know
7 the 360 review, you generally send these questions
8 out to various folks you touch within sort of a
9 360-degree radius.

10 And I wanted that to be an
11 important tool to use since now at this point almost
12 all of my high level executive positions had been
13 filled. If you recall, when I came aboard in early
14 2011, I had a number of high level executive
15 positions that were vacant, a very difficult
16 position for a CEO to arrive in, and I had to spend
17 a lot of time through 2011 and 2012 recruiting those
18 individuals.

19 So now I had a good part of my
20 team together, and I wanted to try to develop ways
21 to help them understand how better to work together.
22 And a 360 tool is one way you can start doing that.
23 There is several other sort of management leadership
24 training things that I was doing in tandem with

1 this, but this is just one tool.

2 So we did that. We got the
3 results kind of late, because it was slow and
4 everybody was kind of having difficulty, struggling
5 through why they were doing it and what would be the
6 ramifications of doing these things and is there
7 going to be discipline?

8 And I always assure people, look,
9 360s are not a discipline tool. If somebody is
10 using a 360 for -- for discipline or performance
11 rating of their individual employees, they don't
12 understand how that tool works. There is other
13 tools you use in management and leadership to gauge
14 your employees to know whether you have a problem
15 and what you should do about it.

16 360s are ways for you to interact
17 with the people that surround you and receive
18 information in broad categories about where those
19 people perceive that your strengths are and where
20 those people perceive that your weaknesses are.

21 Again, not the kind of stuff you
22 discipline people over. Not the kind of things you
23 use for performance reviews. And so that tool was
24 used and I thought it was used very effectively.

1 CHAIRMAN GATES: It wasn't just for
2 you. It was for your entire senior management?

3 MR. CLIFFORD: Correct.

4 CHAIRMAN GATES: And how do you --

5 MR. CLIFFORD: And I participated in
6 it.

7 CHAIRMAN GATES: And how deep did this
8 go?

9 MR. CLIFFORD: Well, it -- you -- when
10 you -- when you do 360s, when they're done in a
11 traditional way, emphasis on traditional way, you --
12 you receive your review, and you choose several
13 people that fall into these different categories
14 that will respond to it, and you're encouraged not
15 to pick and choose people that would just respond
16 well to it.

17 Obviously, if your heart is in the
18 right place and you understand truly what the tool
19 is used for, you want it as a development tool.
20 That's what it is. It's what I've said over and
21 over. That's what I told Mr. O'Halloran. It's a
22 self-development tool.

23 Just like when I participate, when
24 I get some negative stuff from a 360, and I've done

1 these all through my leadership career, you know,
2 sometimes you get some things that sting a little,
3 but you know what, sometimes you need to hear those
4 things.

5 CHAIRMAN GATES: You're getting a very
6 comprehensive 360 review right now --

7 MR. CLIFFORD: Okay.

8 CHAIRMAN GATES: -- from possibly --

9 MR. CLIFFORD: Yes.

10 CHAIRMAN GATES: -- nine million
11 people.

12 MR. CLIFFORD: I understand that.

13 So anyway, to cut that short,
14 that's the tool I use. It's been very effective.
15 So then fast forward to the controversy created by
16 some Board members, emphasis on some Board members,
17 about my doing a 360 tool.

18 So in -- in, I believe it was the
19 December timeframe -- don't hold me to that --
20 Mr. O'Halloran starts inquiring about 360s, and
21 he -- he starts talking about a performance review
22 and I said, well, he had -- he had two ideas. He
23 had an idea that he could do a 360 and he had an
24 idea that he could do some other tool that, like, he

1 used in his -- I believe in his -- his village in
2 which you develop kind of a questionnaire for Board
3 members and others to answer.

4 And so I gave him my opinion, yes,
5 for my opinion -- I gave him my opinion, which was
6 that I don't think a 360 tool is the right tool. My
7 counsel would be, don't review me on a 360 tool. I
8 think your other suggestion is better. Send
9 something out to Board members and others and have
10 them --

11 CHAIRMAN GATES: Let me just -- I
12 guess the question is, did you hire someone to give
13 you personally --

14 MR. CLIFFORD: Well, I'm getting
15 there.

16 CHAIRMAN GATES: Okay.

17 MR. CLIFFORD: I'm getting there.
18 There is -- things are not always as simple as
19 people would like them to be.

20 CHAIRMAN GATES: Right.

21 MR. CLIFFORD: And that's how this
22 entire controversy is and I would remind you of
23 that. There are many facets to it, and they are all
24 interrelated.

1 So anyway, I gave him my counsel
2 and -- and he chose not to agree with my counsel and
3 wanted to go in a different direction of doing a
4 360. And again, I just made the point one more
5 time, you know, please don't use 360s as a
6 performance review. It's not the right tool. I
7 think any management consultant will tell you that.

8 So in the same timeframe, it was
9 time for me, I felt, to do another 360, because now
10 one of the more major players of my team, my other
11 second in charge, Alex Wiggins was aboard. He was
12 not a party to the previous 360. And so now,
13 organizationally what happened is prior -- in the
14 prior year, in 2012, early 2012, when I did my 360
15 with the team basically everybody reported to me.

16 But following that in April when I
17 hired Alex Wiggins as deputy, following that, I then
18 reorganized the organization the way it's supposed
19 to be, putting the administrative duties underneath
20 Alex Wiggins and all of the operational duties under
21 deputy -- at that time I think it was still George
22 Hardwidge. Now Don Orseno.

23 And so this is a major
24 restructuring, a major realignment of departments to

1 an individual that nobody knows, because he came

2 here from California, and now they have had enough
3 time, I felt, in working together that -- and I was
4 hearing a lot of things about problems interfacing
5 with Mr. Wiggins, interpersonal communication skills
6 and those kind of things.

7 So I felt that it was important to
8 go ahead and do another 360 so that now that -- that
9 people had a chance to -- who have worked directly
10 for him for at least six months or so, they could
11 provide him some useful feedback that would help
12 himself develop into a better leader. And so I
13 initiated my 360 review.

14 And I would add prior to any
15 suggestion from Mr. O'Halloran that there should be
16 a 360 review done by the Board. Well, and, of
17 course, when Mr. O'Halloran had heard about this 360
18 review, he became very upset and started -- he and
19 one other Board member started alleging very
20 publicly their belief that I was doing something on
21 purpose to interfere with their performance review
22 of the CEO, to which I said over and over to him and
23 other Board members, absolutely not. They're
24 independent processes. You're doing whatever you're

L.A. COURT REPORTERS LLC - (312) 419-9292

100

1 doing. I'm doing mine. It's just completely
2 separate. Here's what mine's about, which is what I

3 just explained to you.

4 He refused to accept that and he
5 has charged over and over and over and even recently
6 over that -- that I have tried to interfere with the
7 board's process to review.

8 So I guess I gave you a really
9 long answer to your question. The basic -- the
10 basic -- the basic answer is, no, I did not hire
11 somebody to review me.

12 CHAIRMAN GATES: Okay. That's -- but
13 this is where that allegation probably stemmed from,
14 is that --

15 MR. CLIFFORD: It absolutely is where
16 that --

17 CHAIRMAN GATES: Okay.

18 MR. CLIFFORD: -- allegation stems
19 from.

20 CHAIRMAN GATES: Now, I'm going to
21 finish up very quickly, but we have a -- this is a
22 rare opportunity to have a very candid ex-CEO --
23 recent ex-CEO of Metra before us.

24 So I wanted to asked you a few

L.A. COURT REPORTERS LLC - (312) 419-9292

101

1 operational questions that I'm hoping you can
2 respond to that are not covered necessarily by
3 your -- by the April 3rd memo.

4 One is BNSF for liability in
5 particular and some of the other freights in
6 general, their reliability has declined
7 significantly in the last several years. What
8 caused these problems and what -- how do you respond
9 to that? What can we do to -- to make reliability
10 better?

11 MR. CLIFFORD: Right. And -- and if
12 you go back and you read the articles of the
13 information coming out from Metra, you -- you get
14 the impression that somehow this has been some --
15 some issue that's directly related to me and can be
16 resolved just by me going away, I guess, would be
17 about the most blunt way I would put it.

18 Look, we've had incredible
19 systemwide reliability, in excess of 95 percent
20 consistently. Sure, occasionally, you have a month
21 where you slightly dip below the 95, but that's very
22 rare. And I will tell you that to show transparency
23 and honesty to our riders, you may have read that
24 over a year ago I learned that we had sort of what I

L.A. COURT REPORTERS LLC - (312) 419-9292

102

1 call the cheater factor in our on-time performance
2 reporting.

3 We had this little construction
4 thing that we put in there and we just spread it

5 across the Board. And so what that did is that gave
6 you the impression that we were on time when we were
7 not. And my philosophy has always been on-time
8 should be reported from what the customer feels
9 basically on the seat of their pants when they're
10 riding our service.

11 whatever you feel is what we
12 should record. We should never have a situation
13 where somebody says why did they say they were
14 on-time when -- when I was there and they weren't?
15 And that's what was going on.

16 So after realizing that this
17 cheater factor was in there, I directed that it be
18 pulled out. When it was pulled out, our on-time
19 performance dropped. I pulled our team together and
20 I said, look, we've got to look high. We've got to
21 look low. We've got to find out what we can and fix
22 it to get this back up, and within -- after one
23 month of bad, I think it was by the second month, we
24 were back up to 95 percent and consistently after

L.A. COURT REPORTERS LLC - (312) 419-9292

103

1 that working extra hard, putting extra emphasis in
2 all of our morning 8:00 a.m. meetings with all of
3 both Metra leadership out there on the Metra owned
4 lines and the BNSF and the UP service leadership.

5 Those occur every morning, and

6 those were successful. We ratcheted up -- ratcheted
7 up our interface with all of the major -- with the
8 major freights, BN and UP. I started having
9 quarterly meetings with both, and my quarterly
10 meetings at the UP in particular with a very high
11 individual, Lance Fritz, who is a very high level VP
12 in that organization, quarterly meetings in which we
13 talked about what's going on at Metra, how do we get
14 it better? what do we -- what can we do to fix the
15 things that we have to fix?

16 Those have been highly successful
17 in keeping that service up. So fast forward to your
18 question about the BNSF. In the short run, in the
19 very short run here, we have had some recurring
20 problems on that -- that line in particular that
21 have caused the service to degrade and the on-time
22 performance to degrade below the 95 percent.

23 Predating me leaving, nobody is
24 doing anything spectacular after I leave because

L.A. COURT REPORTERS LLC - (312) 419-9292

104

1 there are -- there are certain issues at play here
2 that -- that you have to work through, and we've sat
3 down with the BN before I left -- I'm sure they're
4 still doing it now -- to try to understand what are
5 the problems? what's going on with these switch
6 types of delays that we're having?

071713 RTA BOARD

7 AS you know, when we have weather
8 situations, some of our lines get impacted more than
9 the other lines do. The BN in particular has a --
10 has a very strong policy -- operational policy --
11 that when winds are going to achieve a certain
12 amount -- a certain rate in the nearby area, they
13 shut down that train, and so we have been trying to
14 work through that with the BN and UP so that they'll
15 do our policy of at least having that train move at
16 what we call crawling speed when those occur so you
17 can kind of keep moving a little bit.

18 But weather impacts it and
19 unfortunately in sort of the north and the northwest
20 regions of our service, we have been heavily
21 impacted by some storm cells.

22 Now, if you live down here as I do
23 , you might say, well, I didn't see any rain. I
24 didn't see any big storms. Well, as you know, if

L.A. COURT REPORTERS LLC - (312) 419-9292

105

1 you followed the weather through this period of
2 time, we had some incredible storm cells moving
3 through the north and northwest parts of -- of the
4 region that were impacting those lines along that
5 region, not just the BNSF.

6 Certainly our ability to invest as
7 a partner with the BN in infrastructure is at play

8 here. Now, and again, State of Good Repair,
9 Mr. Chairman, I know you're a champion for it, as I
10 always have been. We -- if we can get more
11 resources coming in, then we can plow more of those
12 resources where they are needed into places like the
13 BN.

14 The BN is willing to partner on
15 various improvements, but we have to be able to come
16 up with our share, and that's just another factor.
17 Again, I encourage you over and over again, please
18 don't simplify any of these matters that I talk
19 about or raise because they are all complex and they
20 are all interrelated, and there is no simple one
21 thing fix.

22 You can't just go to the public
23 and pronounce we're going to fix the BN and we're
24 going to make it all well. There is no one thing

L.A. COURT REPORTERS LLC - (312) 419-9292

106

1 you can do. You have to work hard at it. You have
2 to work with them to try to get control of the
3 things that you can and this is one of them. If we
4 can get more funding, more state and federal
5 funding, we can plow more dollars into the areas we
6 need to do that.

7 The other factor that's at play
8 that has heavily impacted the BN and is impacting,

9 quite frankly, all of our lines in varying degrees
10 is another State of Good Repair issue and that's
11 locomotives. We are having locomotives break down
12 way too often.

13 why is that occurring? It's
14 occurring for a number of reasons. Again, it's
15 another complex issue, but I'll tell you what, when
16 it comes to your rehabs of locomotives, we're not
17 rehabbing locomotives on the cycle you're supposed
18 to cycle them on.

19 when you don't have the money to
20 do it on the cycle that you're supposed to, you
21 stretch it out, stretch it out and during that
22 period of time that you're waiting to get the money
23 together to do your mid-life on the locomotive,
24 you're going to have more failures of locomotives

L.A. COURT REPORTERS LLC - (312) 419-9292

107

1 and more impact on your on-time performance.

2 In addition to needing money to do
3 more on-time mid-lives of locomotives, we have an
4 aging fleet and we need to replace a number of our
5 locomotives. That's a high cost proposition to the
6 tune of 5 million to \$6 million per locomotive. We
7 need to find money, resources, to replace
8 locomotives.

9 This is -- this is -- this is why

10 virtually on day one with this agency you heard me
11 take the focus to State of Good Repair, and I have
12 been a broken record, and I'm sorry for doing that
13 to you again today, but I will always be a broken
14 record on this subject.

15 We must be focused on one thing
16 and one thing only and that's State of Good Repair.
17 We have to be. We have to find those dollars from
18 state, from the federal resources, and state
19 matching resources so that we can tap those federal
20 resources in order to start addressing this backlog
21 of issues.

22 We must place an order for
23 locomotives and we must place an order to rehab our
24 aging fleet. We've got to get that done. What did

L.A. COURT REPORTERS LLC - (312) 419-9292

108

1 I do to put my sort of money where my mouth is, if
2 you will? You know. My very first budget cycle I
3 said, this stuff you've been doing in the past,
4 spending \$60 million now a year in capital eligible
5 money in the operating enterprise fund so that you
6 don't have to have fare increases? Ridiculous.

7 Your capital money -- when you
8 have these extraordinary needs, your capital money
9 has to stay in the capital program. And with the
10 board's help, what did we do? With the boards

11 concurrence, in my very first budget, we were able
12 to pass a budget that had not one penny of capital
13 eligible money used in the operating enterprise
14 fund.

15 It was painful. It was
16 controversial because we had to have a 25 percent
17 fare increase, but we were making up for all of
18 those years in which there should have been two or
19 three percent incremental fare increases so that the
20 customers would not have to have this kind of pain.
21 We had to make it up, and we had to understand the
22 urgency. We had to get a sense of urgency that
23 every capital dollar we have is precious, and we've
24 got to keep it in the capital program and we did

L.A. COURT REPORTERS LLC - (312) 419-9292

109

1 that.

2 And as you know, and I know,
3 Mr. Chairman, you've championed that not just for
4 us, but for others that -- that we have to focus on
5 capital and we have to keep capital eligible money
6 in the capital program. We did it. We've done it.
7 And that's helping, but it's going to take some time
8 because we've got a backlog. We're way behind.

9 CHAIRMAN GATES: We're all very well
10 aware of that, but Metra has a billion dollars of
11 bonding authority that they've never used that could

12 dedicate to these issues at a time when rates are
13 the lowest they have been and probably will ever be
14 in our lifetime.

15 when the cost of utilizing that
16 billion dollars of capital available to you is
17 minimal and the benefits both in terms of service to
18 the riders and maintenance savings are huge and
19 would probably pay the interest costs, why hasn't
20 Metra used it?

21 MR. CLIFFORD: Mr. Chairman, you and
22 I, over the last year or so, have had good debates
23 about this one and -- and you know that I've -- from
24 my perspective as CEO, I've not said no to what --

L.A. COURT REPORTERS LLC - (312) 419-9292

110

1 what you've been talking about, both what our
2 bonding capacity is and the proposal you were
3 putting out there for some time about maybe RTA
4 doing some bonding. Not said no.

5 what my position has been is we
6 just need to take a little time to do the financial
7 analysis on it. I think data should drive decisions
8 and -- and the issue for me was if we tap that
9 billion dollars, then we've got to pay the debt
10 service on that billion dollars. And that billion
11 dollars isn't going to fix the problem. It might be
12 an easier solution if we could just get a billion

13 dollars and fix the problem and catch up with State
14 of Good Repair, but it won't do that. It only --
15 it's only one billion of \$7 billion shortfall.

16 And so the -- the part that has to
17 be analyzed and we were in the process of doing
18 that, because we were going to come to our Board in
19 short order with a recommendation on your proposal,
20 on our billion dollars and try to make a case one
21 way or the other.

22 The -- the difficulty is that when
23 you tap that billion dollars , you've got the debt
24 service. The debt service is going to be either

L.A. COURT REPORTERS LLC - (312) 419-9292

111

1 operational money or capital money. It's got to
2 come from somewhere. So that means likely -- likely
3 it's going to be capital money, quite frankly. So
4 that means that whatever that debt service is, \$10
5 million, \$15 million a year, is going to be less
6 money than -- that I can use in the overall capital
7 program.

8 And remember, as we're catching up
9 to State of Good Repair, other stuff next year is
10 getting older and adding itself in. So it -- it's
11 trying to figure out through a quality financial
12 analysis what is the right way to go? Is that the
13 right way to go or is it stay the course, keep

14 investing every penny we can and go out and focus
15 on state and federal resources for additional
16 monies?

17 CHAIRMAN GATES: Well, I think we
18 provided that financial analysis. These are
19 long-term capital assets. Typically, you know,
20 Finance 101 would tell you you're financing with
21 long-term capital. That's what this is. But at any
22 rate. That's asked and answered.

23 MR. CLIFFORD: Well, let me --

24 CHAIRMAN GATES: Let's not -- I don't

L.A. COURT REPORTERS LLC - (312) 419-9292

112

1 want to have this debate.

2 MR. CLIFFORD: All right. All right.

3 CHAIRMAN GATES: My Board members
4 would like to ask a bunch of questions.

5 MR. CLIFFORD: I could give you
6 another alternative thing to think about, but that's
7 fine.

8 CHAIRMAN GATES: Okay. Secondly, Open
9 Fare. A year ago your staff provided RTA a, you
10 know, timeline on Open Fare implementation. That
11 was in August 2012 you were going to identify the
12 future state of fare collection; December 2012, a
13 demonstration process and an RFI RFP was to be
14 issued. June of 2013, we were supposed to go into

15 the initial stages of implementation and testing.

16 There has been to this board's
17 knowledge almost no progress to date. What's --
18 what, in your opinion, is going on there, and how
19 long is it going to take us to get Metra on Board
20 with an Open Fare the way CTA and PACE are?

21 MR. CLIFFORD: Yeah. Well, I -- I
22 will tell you that that is a subject matter that I
23 have been very engaged in, which is to make sure
24 that we are compliant with the state mandate that --

L.A. COURT REPORTERS LLC - (312) 419-9292

113

1 I think it's January 2015 that Metra be compliant
2 with the regional fare mechanism.

3 As you also know, as a part of
4 this process, what we wanted to do was to fix some
5 other problems. We're 100-year plus philosophy, if
6 you will, in how we collect fare. The conductor
7 comes through, looks at your fare, punches it.

8 Look, we need to try to figure out
9 a way to come into today's technology. And on top
10 of that, we don't accept credit cards on Board
11 trains. We need to figure out how to do that and we
12 need to decide are ticket vending machines in our
13 future?

14 Ticket vending machines are very
15 costly. And when you are a system as large as ours

16 with 241 stations and each station has to have at
17 least one, and in many cases a second one and in
18 some cases a third one, that's a healthy investment
19 in infrastructure that's not just a one-time fee,
20 because you've got to maintain it after you buy it.

21 And so the question has to be
22 answered is TVMs, ticket vending machines, the right
23 way to go and we don't know that answer. The
24 question also has to be answered about what is that

L.A. COURT REPORTERS LLC - (312) 419-9292

114

1 tool -- what does that fare media tool look like
2 that someone who has a Metra monthly pass can use
3 and then hop onto a PACE bus or a CTA e1 and
4 continue their journey with one -- one tool in
5 their -- in their wallet.

6 Now, along this journey, the CTA
7 has introduced the Ventra card, and we believe that
8 that offers great opportunity to satisfy that one
9 portion of the question, which is the state mandate
10 that we have a regional tool by early 2015. We
11 think that's -- that's highly likely that that could
12 work out and that's -- that's the journey that we've
13 been on.

14 So fast forward, we've set --
15 we've set an agenda, an aggressive agenda, to be
16 compliant by early 2015, and up until about a month

17 before June 21, we were on schedule for that and
18 that involved us putting together an RFP to have an
19 entity come in that would help us through -- through
20 a pilot project, help us evaluate -- one or more
21 pilot projects, I should -- I should say, on -- on
22 one or more of our lines and that entity would help
23 us to evaluate those pilot projects, and then we
24 would -- we would have a process a little bit later

L.A. COURT REPORTERS LLC - (312) 419-9292

115

1 in the year or early next year that would determine
2 what is going to be the solution for Metra to not
3 only be compliant with the 2015 mandate, but to also
4 fix these other problems; credit card, smart phone,
5 all that stuff that we've been looking at by 2015.

6 we laid out an agenda. It's an
7 aggressive agenda and -- and under my leadership, we
8 were working as hard as we possibly could to keep
9 that on agenda. Unfortunately, I think as a result
10 of the chairman's actions just prior to me leaving,
11 I believe that agenda has now been disrupted and I'm
12 not sure -- I'm not sure they can meet it now.

13 CHAIRMAN GATES: Well, I don't
14 think -- but we got a report on the future state of
15 fare collection in August 2012. In December, we
16 certainly did not get a demonstration project,
17 December of 2012. Those predated, frankly, any --

18 to my knowledge, any of these discussions regarding
19 your separation and the new chairman, et cetera. It
20 predated the new chairman. I think --

21 MR. CLIFFORD: Well, those
22 schedules --

23 CHAIRMAN GATES: -- Metra really --

24 MR. CLIFFORD: -- though schedules

L.A. COURT REPORTERS LLC - (312) 419-9292

116

1 were re- -- revised. We've presented those to the
2 Board.

3 CHAIRMAN GATES: Right. But this is
4 what you -- you originally set -- the agenda you
5 originally set out and now we're close to it. And
6 it is something that's concerning us, concerning the
7 hundreds of thousands of riders that Metra has, but
8 also the nine million people who would like to use
9 the system with the fewest number of impediments.
10 And I think it's something that we are -- we are
11 very concerned about the very little progress to
12 date.

13 MR. CLIFFORD: I -- I can tell you
14 that the schedules that you're quoting were revised.
15 Those updates have been given to the Board on a
16 monthly basis. You can go back and you can look
17 through -- monthly or every other month in some
18 cases. You can go back and look through public

19 records. It's on the website.

20 CHAIRMAN GATES: The point is it's not
21 so much --

22 MR. CLIFFORD: All of those were
23 updated.

24 CHAIRMAN GATES: The revisions were

L.A. COURT REPORTERS LLC - (312) 419-9292

117

1 delayed.

2 MR. CLIFFORD: We were still -- I want
3 to make a point. We were still on track up until a
4 month before my departure to hit the 2015 deadline.

5 CHAIRMAN GATES: But not the 2013
6 deadline, which is what you originally proposed.

7 For the second year in a row,
8 Metra has been late with its audit beyond the
9 statutory date that is supposed to be submitted to
10 this agency. Each year, it's blamed on the
11 accounting system, which this problem never occurred
12 before. If anything, the accounting system, as I
13 understand it, was more antiquated.

14 How do you explain that and to
15 what extent do you believe this accounting system
16 can be improved quickly?

17 MR. CLIFFORD: All right. So to --

18 CHAIRMAN GATES: The accounting system
19 seems to be a pen and ink -- you know, dipping a

20 quill pen and -- kind of operation that not only is
21 very slow, but, you know, sometimes it takes five,
22 six months to get monthly reports. This is not
23 right. What can we do about that?

24 MR. CLIFFORD: In -- and I think if

L.A. COURT REPORTERS LLC - (312) 419-9292

118

1 you go back and you read my presentations to the
2 Board, as early as the first month on the job back
3 in early 2011, you will be quickly educated on my
4 philosophy about that, which was we have exactly
5 what you said, a very antiquated system.

6 I think some departments are still
7 working with -- I think they call it the quill pen
8 and -- and we have to do something about that, and I
9 made a commitment to the Board and the Board
10 concurred that we would aggressively work towards a
11 new enterprise resource system, a new ERP system,
12 and we did that.

13 We allocated in my very first
14 budget the first tranche of dollars to do that. We
15 have been going through that process. I -- we've
16 had some fits and starts with that one, too, as far
17 as respondents to the bid and I think they were
18 going to go back out for rebid when I last checked
19 that recently, but we are still progressing forward
20 and allocating the dollars to do it.

071713 RTA BOARD

21 But quite frankly, you can't just
22 bring an RFP in overnight and fire it up. This is
23 not a desktop computer. And -- and it will take
24 what we estimated is about three years or a little

L.A. COURT REPORTERS LLC - (312) 419-9292

119

1 more than three years to do that. So as a result of
2 that during that period --

3 CHAIRMAN GATES: Three years from the
4 time you started two years ago or three years from
5 today?

6 MR. CLIFFORD: Three years from when
7 we started two years ago. And that's been
8 unfortunately revised, too.

9 Again, as I indicated to you, we
10 put a bid out on the street for a project management
11 company to come in and help us with this and we
12 didn't get good responses and they were going to go
13 back out and -- and rebid that. And those
14 unfortunately caused delays in the process.

15 And -- and unfortunately the
16 longer this is delayed, the more encounters we're
17 going to have with exactly what you described, and
18 yes, it -- it -- not having a current system, and
19 operating our financial systems off of the main
20 frame is causing Metra to be slow in respect to
21 being able to close its books on time and satisfy

22 the auditors.

23 But let me just leave you with
24 this thought on that point. Now, remember, during

L.A. COURT REPORTERS LLC - (312) 419-9292

120

1 the Pagano era, there was a different auditor
2 auditing Metra. Now, I'm not going to be -- I'm not
3 going to be critical about that, but you saw what
4 happened during that era and it was different.

5 And anybody who was here at that
6 time -- I was not -- in the finance department will
7 tell you that they handled their audits in a
8 different way -- and that's as much detail as I'll
9 go into -- in a different way than the current
10 auditor did. So I have had the current auditor
11 during our last two years and they have been very
12 good at digging deep and getting into the details,
13 maybe in part because they knew coming in that the
14 Pagano crisis existed and they needed to be extra
15 cautious or maybe it's just their business
16 philosophy. Maybe it's both.

17 But they -- they have -- they have
18 really dug deeper than this agency has ever
19 experienced from what I'm being told, and I think
20 that's great. I think that's a great job. But that
21 combined with our antiquated system and main frame
22 is causing those audits to not get done on the

23 timeline set by the RTA and -- and I will tell you
24 that we only missed those timelines by, you know, a

L.A. COURT REPORTERS LLC - (312) 419-9292

121

1 reasonable, short amount and last year we had an
2 extenuating situation that had to be further
3 investigated by the auditor that caused that to be
4 delayed.

5 So in both cases, I would remind
6 you, Mr. Chair, that Metra, under my direction, kept
7 RTA very informed on a regular basis what was going
8 on and letting you know what our challenges were and
9 why we were late.

10 CHAIRMAN GATES: Nonetheless,
11 sometimes these monthly reports are up to five
12 months late, whereas CTA and PACE kept them in --
13 within 30 days.

14 MR. CLIFFORD: I don't think I've ever
15 heard the five-month issue.

16 CHAIRMAN GATES: Apparently it
17 occurred last November. So that's -- I've -- this
18 has been a problem, as well as the annual audit
19 always -- at least in the last two years always
20 being late.

21 I know Director Durante who is
22 head of our audit committee, one of the reasons that
23 you have this new auditor is the parameters that

24 they set down for those audits are very different

L.A. COURT REPORTERS LLC - (312) 419-9292

122

1 than what was there for -- during the -- Mr.
2 Pagano's tenure and we can go into that at a
3 separate time. I don't think that's --

4 MR. CLIFFORD: Mr. Chair, let me --

5 CHAIRMAN GATES: -- the way it is.

6 MR. CLIFFORD: -- let me give you one
7 point on that. I'm not going to take responsibility
8 for all of the things that occurred over
9 Mr. Pagano's 20 plus years. Not moving on fare
10 increase things, being hesitant to -- not fare
11 increase, but fare -- fare media updates, being
12 resistant and requiring state law to force Metra to
13 accept credit cards at its ticket vending machines,
14 not even initiating the enterprise resource system.

15 I'm not going to take
16 responsibility for those kinds of things that
17 occurred on his tenure that should have occurred and
18 should have been integrated into this organization
19 over the years preceding me.

20 what I will take credit for is
21 recognizing on day one -- on day one that we had all
22 of these problems, including the ERP and the fare
23 media system, and on day one putting together a plan
24 to try to rectify this as fast as humanly possible.

1 Yeah, you're right, Mr. Chair. You can find a
2 document that says I originally set out an
3 aggressive agenda to get these things implemented
4 and it didn't get done on that original agenda.

5 Okay. I'll take that hit, but I
6 got it started and it's well underway and it's going
7 to get done and it's going to get done in a much
8 shorter period of time under what would have been my
9 administration had things gone right with certain
10 people in this organization, as opposed to
11 20 years -- plus years of the prior administration
12 that sat on their hands.

13 CHAIRMAN GATES: Well, this is not --
14 we're not talking about, you know, large programs
15 like State of Good Repair or Open Fare, but staff is
16 very clear here we have not received final financial
17 statements from Metra since November. November --
18 it is clear that November -- that the statements for
19 the annual audit have not been submitted prior to
20 the state legislated January -- July 1st deadline.

21 MR. CLIFFORD: And it's true --

22 CHAIRMAN GATES: A lot of this was
23 blamed on an inventory audit that frankly you've
24 known about since last November. There is something

1 not right here.

2 MR. CLIFFORD: Wait a minute.

3 Mr. Chair, that is not fair, and I'm going to call
4 you out on that.

5 Now, we've kept you -- through my
6 finance department, have kept you informed -- now, I
7 can't take credit for what your staff is telling
8 you, but we have kept RTA absolutely informed on
9 everything that is going on relative to that audit,
10 and yes, this year, in stark contrast to last year,
11 this year's audit is delayed by an issue called
12 inventory.

13 Now, you brought it up and I'm
14 going to -- I'm going to take a moment of your time
15 to tell you about that so that you're better
16 educated on that before you make allegations against
17 me. That is an issue in which for forever, this
18 agency and its predecessor agencies have operated in
19 a certain way as it relates to inventory.

20 If there is leftover stuff after a
21 construction project, they set it down in a yard
22 somewhere. If they pull too much out of inventory,
23 they -- they did not do a good job of reinstituting
24 it into the inventory. They set it in a yard

1 somewhere. They did not have a good accountability
2 of that.

3 It is a process that has been done
4 for many, many decades in this organization. I was
5 not aware it was being done until it was brought to
6 my attention in, as you said, November of last year.
7 And immediately upon learning about that, we did
8 everything we could to start initiating a change to
9 that.

10 But again, I encourage you in
11 anything you do in this railroad, do not take a
12 simplistic approach as you are doing right now.
13 This is not something you can do where you say the
14 auditor said you've got some inventory out there,
15 just go fix it. This is very complex. It took a
16 lot of time for our staff to just address two of our
17 yards and get those back into compliance with where
18 the auditor felt they should be over the last many,
19 many months.

20 And we felt that the auditors were
21 going to use that as an example of doing it right
22 and extrapolate that to the remaining yards. Now, I
23 don't know if that's what happened after I left or
24 not, but we've kept you informed on that and we're

1 fixing 100 years worth of what I would call "bad
2 practice" in virtually six or seven or eight months.

3 That's an incredible feat and you
4 need to know that before you make statements
5 implying that somehow we did something wrong in the
6 way we managed our yards. It's going to change.
7 It's going to be different. The policies and
8 procedures are being set up so it doesn't ever
9 happen again, and I'm going to give you one other
10 reminder about how these folks in the railroad
11 business work.

12 Folks in the railroad business,
13 they like to keep the -- the operation running.
14 They want to keep the trains running, and when there
15 is a problem, they want to go out and fix that
16 problem real quick. And -- and last year when we
17 had that major CN development -- derailment up
18 north, it is because these incredibly expert
19 engineering department folks, guess what, they knew
20 where the stuff was and in less than 24 hours, they
21 had our service running.

22 They went in there, they pulled
23 out the -- the -- the interlocker. They put in
24 straight track. They brought in panels from the

1 yards that they were able to go grab because they
2 knew where it was and they got the system up and
3 running.

4 CHAIRMAN GATES: Mr. Clifford, Mr.
5 Clifford, we're -- we don't have time for -- I hate
6 to say it -- a discussion of maintenance. We can
7 certainly discuss that during a regular RTA Board
8 meetings and so forth.

9 We are just making the point as
10 part of this audit we're doing of Metra right now
11 that the normal flow of financial information is now
12 systemically dilatory, both on an annual basis and
13 on a monthly basis, and that is something that we
14 need to get resolved and you've addressed it as far
15 as you can -- as far as you can, and we thank you
16 very much for that.

17 Now, I have a number of Board
18 members who are chomping at the bit to ask
19 questions. So we'll start with Doctor -- Director
20 Troiani.

21 DIRECTOR TROIANI: Only because my
22 time is limited and I don't have a lot, but you had
23 said something and I'm just trying to get your
24 perception on roles and responsibilities, but you

1 had said something earlier that I just wanted to get
2 clarification on, and I'm not distracted on this
3 question, I don't think.

4 But you said something about that
5 Mr. Higgins (sic) did not receive your permission to
6 attend the pre-Board or pre-bid meeting. Is it your
7 interpretation that you, as CEO, have to give Board
8 members permission to attend the various meetings
9 that they want to attend?

10 MR. CLIFFORD: Let me make sure that
11 the record reflects correctly. First of all, it's
12 Mr. Huggins and opposed to Higgins.

13 DIRECTOR TROIANI: I'm sorry. You're
14 correct.

15 MR. CLIFFORD: And -- and -- and I
16 don't believe, and if I did, I would -- I would
17 retract. I don't believe I said he needed
18 permission. I don't believe I said that.

19 UNIDENTIFIED SPEAKER: You said he did
20 not receive.

21 DIRECTOR TROIANI: You said he did not
22 receive your permission to attend a meeting.

23 MR. CLIFFORD: I don't know if I said
24 that, but --

071713 RTA BOARD

1 DIRECTOR TROIANI: You did.
2 MR. CLIFFORD: -- if I did --
3 DIRECTOR TROIANI: You did.
4 MR. CLIFFORD: -- then I take that --
5 it's -- what I -- the point I'm trying to make is
6 it's an unusual step for a Board member to go to a
7 pre-bid conference.
8 DIRECTOR TROIANI: Okay.
9 MR. CLIFFORD: An unusual step.
10 DIRECTOR TROIANI: But not that he
11 needed your permission.
12 MR. CLIFFORD: I was not -- I was not
13 informed of that or a discussion made. He just --
14 DIRECTOR TROIANI: Okay.
15 MR. CLIFFORD: -- showed up and did
16 it.
17 DIRECTOR TROIANI: So you do not
18 believe that a Board member needs your permission?
19 MR. CLIFFORD: He didn't need my
20 permission to do that.
21 DIRECTOR TROIANI: Okay. Thank you.
22 MR. CLIFFORD: So if I said that, I
23 apologize and retract that part of it.
24 UNIDENTIFIED SPEAKER: Go ahead.

L.A. COURT REPORTERS LLC - (312) 419-9292

130

1 CHAIRMAN GATES: Any other questions?
Page 125

2 Director Coulson, I know you've got some questions.

3 DIRECTOR COULSON: Yeah. Mr.
4 Clifford, relating to the Englewood Flyover issues,
5 you reported those issues to Metra general counsel,
6 did you not, at the time?

7 MR. CLIFFORD: That's correct.

8 DIRECTOR COULSON: And you received a
9 --

10 MR. CLIFFORD: I'm sorry. I'm sorry.
11 General counsel and Board counsel.

12 DIRECTOR COULSON: And you received on
13 May 23 -- May 22, 2012, you received an opinion from
14 counsel that it was clear that Metra could not
15 lawfully pressure the low bidder to alter its
16 allocation of DBE subcontracts to favor one
17 disadvantaged group; is that correct?

18 MR. SHAKMAN: Hang on. Mr. Clifford
19 is prepared to answer that, but by your description
20 of it, it involves an attorney/client communication
21 within Metra. So we're going to have to ask Metra's
22 counsel to confirm that the privilege is waived for
23 purposes of that.

24 MR. CLIFFORD: I assume Metra will be

1 happy to waive that.

2 MR. GAGLIARDO: Director Coulson, I do
Page 126

3 believe that was a privileged conversation and, in
4 fact, was part of what was redacted from the memo
5 and what's causing us concern is that somehow an
6 unredacted version of the memo has gotten out there,
7 which compromises potential attorney/client
8 communications as well as other information that
9 should not have been disclosed.

10 DIRECTOR COULSON: But Mr. Clifford is
11 the client and he wants to relate what the attorneys
12 told him and it's directly relevant to our inquiry.

13 MR. GAGLIARDO: Director --

14 DIRECTOR COULSON: Is Metra going to
15 waive it if there is a privilege, and I don't think
16 there is, but isn't Metra going to waive that?

17 MR. GAGLIARDO: Director Coulson,
18 the -- the client is always Metra. Mr. Clifford is
19 not the client of the general counsel of Metra. The
20 entity is the client. Mr. Clifford was its
21 executive director and had a fiduciary obligation
22 within that organization.

23 When he goes to the general
24 counsel, he's not speaking on his own behalf

1 personally, which he could have done by going to the
2 OEIG or going to the U.S. Attorney or other places.
3 He's going to seek legal advice and that was a

4 privileged communication.

5 DIRECTOR COULSON: So you're not going
6 to produce the report by your general counsel
7 either?

8 MR. GAGLIARDO: Correct. It's a
9 priv- --

10 DIRECTOR COULSON: Even though he
11 relied on it in the actions that he took?

12 MR. GAGLIARDO: Director, it's -- it's
13 a privileged conversation. I think --

14 DIRECTOR COULSON: I know. You can
15 waive the privilege. I don't agree that it's
16 privileged, but you can waive a privilege in the
17 interest of -- in the public interest, you should
18 waive it right now.

19 MR. GAGLIARDO: Let's -- let's assume
20 for -- why isn't it sufficient -- for purposes of
21 the discussion, let's assume that the end result is
22 what you've described. The question is --

23 DIRECTOR COULSON: He got a favorable
24 opinion from general counsel that said, you're right

L.A. COURT REPORTERS LLC - (312) 419-9292

133

1 on the Englewood Flyover. That's what I'm trying to
2 get at.

3 MR. GAGLIARDO: Well, at what point?

4 The question is -- and I don't mean to argue with

5 you --

6 DIRECTOR COULSON: May 22, 2012.

7 MR. GAGLIARDO: Right. But -- but the
8 question is at what -- in the end, Mr. Clifford
9 wasn't claiming at the time that what happened was
10 unlawful and -- and the fact is that the end result
11 was achieved through the work with counsel and the
12 RTA's auditors actually have that memorandum.

13 DIRECTOR COULSON: Well, I'm making a
14 formal request for that opinion of counsel. I think
15 it's directly relevant to what we're discussing here
16 and I don't know -- for the life of me, I don't know
17 why Metra would want to hide things here, because
18 nobody hides a document that's favorable to them.
19 So I have to presume that that document is
20 unfavorable to the position Metra has taken in this
21 controversy.

22 MR. GAGLIARDO: Director, it's -- it
23 just -- from a point of fairness, because a
24 privilege is asserted doesn't mean that -- that

L.A. COURT REPORTERS LLC - (312) 419-9292

134

1 something is being hidden.

2 If you make the assumption that
3 the advice is what you've said, it -- it seems to me
4 that you have a sufficient basis to ask questions.

5 DIRECTOR COULSON: Okay. What -- the
Page 129

6 opinion was -- what was the opinion? Let me ask you
7 that way. What was the opinion -- what was the
8 advice you got from your general counsel on the
9 Englewood Flyover contracting process?

10 MR. SHAKMAN: Mr. Clifford would be
11 happy to answer that question if Metra will waive
12 the attorney/client privilege.

13 DIRECTOR COULSON: Okay. And I assume
14 Metra's not. I'm just trying to make a record here.

15 MR. GAGLIARDO: Well, Director --

16 DIRECTOR COULSON: I'm just trying to
17 make a record.

18 MR. GAGLIARDO: All right. Director
19 Coulson, the -- the RTA auditors already have the
20 memorandum. If Mr. Clifford wants to describe the
21 end result without getting in -- involved in the
22 details of the privilege, we will waive it to that
23 extent.

24 This is not a general waiver of

L.A. COURT REPORTERS LLC - (312) 419-9292

135

1 the privilege that Metra has over attorney/client
2 communications.

3 MR. SHAKMAN: I have no idea what that
4 means.

5 DIRECTOR COULSON: I don't either.

6 MR. SHAKMAN: And so I would caution
Page 130

7 Mr. Clifford to keep his mouth shut until there is a
8 clear waiver of the privilege.

9 DIRECTOR COULSON: All right. I'll
10 move on. I urge Metra to waive its privilege and
11 produce that document.

12 This general counsel who gave this
13 opinion, which we can't talk about, was the same
14 general counsel that you've testified Mr. O'Halloran
15 wanted to fire for incompetence; is that right?

16 MR. CLIFFORD: I think in my example I
17 use the A and B employees, but I recall, too, there
18 was -- there was one example I gave in which he
19 didn't say he wanted fired. He felt was incompetent
20 and wanted me to hire somebody to become the new
21 general counsel.

22 DIRECTOR COULSON: Okay. And it's
23 your testimony that Mr. O'Halloran characterized the
24 general counsel who just gave this opinion as

L.A. COURT REPORTERS LLC - (312) 419-9292

136

1 incompetent and wanted to demote -- demote her, in
2 fact, right?

3 MR. SHAKMAN: Hang on there. Let's
4 see if Mr. Gagliardo has an objection to that being
5 answered.

6 MR. GAGLIARDO: You can go ahead and
7 answer.

8 MR. SHAKMAN: Thank you.

9 MR. CLIFFORD: The question again,
10 please?

11 DIRECTOR COULSON: The general counsel
12 who gave you this opinion that we can't talk about
13 is the same general counsel whom you testified
14 Mr. O'Halloran characterized as incompetent; is that
15 right?

16 MR. CLIFFORD: That's correct.

17 DIRECTOR COULSON: And she had
18 31 years of experience at the bar at that time,
19 didn't she?

20 MR. CLIFFORD: I believe that is the
21 case. I don't know that for a fact. She is an
22 incredible, competent general counsel.

23 DIRECTOR COULSON: And the other
24 person -- we don't want to get into their names, but

L.A. COURT REPORTERS LLC - (312) 419-9292

137

1 it was the chief procurement officer, right?

2 MR. SHAKMAN: Let the record reflect
3 that Mr. Gagliardo nodded his approval.

4 MR. CLIFFORD: That is correct.

5 DIRECTOR COULSON: And he was also one
6 of the principals, I take it, involved in the
7 Englewood Flyover Project?

8 MR. CLIFFORD: Yes.

9 DIRECTOR COULSON: I'm trying to
10 understand the value of what was paid to you, what
11 consideration flowed to -- to Metra. And I think
12 the releases -- you released some claims and
13 obviously releases have monetary value.

14 Maybe either you or Mr. Shakman
15 could help me out and tell me what kinds of causes
16 of action that you think you may have had were you
17 releasing? Maybe it's a question for a lawyer. I
18 just want to get -- just ballpark. You don't need
19 to be specific.

20 MR. SHAKMAN: well, let me see if
21 Metra has an objection to me responding.

22 MR. GAGLIARDO: No objection.

23 MR. SHAKMAN: what I'll do is send you
24 a letter I sent to Metra that also went on April 3rd

L.A. COURT REPORTERS LLC - (312) 419-9292

138

1 to their lawyers outlining causes of action. They
2 were what are generally referred to as whistleblower
3 claims.

4 DIRECTOR COULSON: Okay. That would
5 be helpful to have that letter. Thank you.

6 And lastly, Mr. Clifford, going
7 forward, what kinds of rules, if any, are needed to
8 prevent this from ever happening again? What should
9 a Metra employee or a Metra Board member or any of

10 us do if we get a request from a public official
11 regarding not general policy, but a specific
12 contract or a specific employee or a specific salary
13 or a specific opening?

14 Isn't there some way that these
15 ought to be made -- at least made public? would
16 that help or hurt? Do you have any ideas going
17 forward of how we could cure this issue so we're not
18 back here a year from now?

19 MR. CLIFFORD: You know, I -- I --
20 Director, I think I can only speak from my personal
21 philosophy and that is to -- I would encourage
22 people across this state to -- to say no and if
23 they -- if they do fear reprisals or in the case of
24 myself, my employers using that as -- as a reprisal

L.A. COURT REPORTERS LLC - (312) 419-9292

139

1 against me, that they tell somebody, as I did.

2 But again, as I described to you,
3 simply having a request, but not completing the
4 circle, not completing that, not fulfilling the
5 request, in my mind, was not illegal. It -- it was
6 a character flaw both ethically, morally, integrity,
7 but I did not complete the circle, therefore, I did
8 not feel there was a law broken.

9 I had the support of my Board. I
10 talked to my bosses. Had their support that I was
Page 134

11 doing the right thing. I really thought I did the
12 right thing.

13 DIRECTOR COULSON: All right. Thank
14 you. That's all.

15 MR. SHAKMAN: Chairman?

16 CHAIRMAN GATES: Yes, Director
17 Durante?

18 DIRECTOR DURANTE: You know, do you
19 have to complete the circle to understand that maybe
20 a crime was committed or not? If someone were to
21 come up to you and say, I'm going to blow up that
22 plane, they would be arrested for committing a crime
23 without having the bomb to go off.

24 So my question is, if not to you,

L.A. COURT REPORTERS LLC - (312) 419-9292

140

1 but to your attorneys, didn't you feel it necessary
2 to take this to some kind of a criminal -- some --
3 to request some kind of a criminal investigation of
4 sorts; i.e., state's attorney, i.e., attorney
5 general and since Metra does take federal dollars --
6 lots of federal dollars, what about the U.S.
7 Attorney in that regard?

8 MR. CLIFFORD: First, sir, I would
9 encourage you not to use those kinds of analogies
10 when looking at this. I would never try to
11 extrapolate what I have described to you in any

12 other kind of analogy, airplane or otherwise. I
13 just think that's absolutely wrong.

14 I -- I would only stay focused on
15 what I said and I -- I think I've given you the
16 answer to that very clearly on how I felt about
17 that. I'm not an attorney and if -- if -- at the
18 end of the day the OIG, State's Attorney's Office,
19 whoever is going to investigate and is comes up with
20 a different conclusion, that's great. That's great.
21 We'll all learn something from it.

22 But I did not complete the illegal
23 act. I did not have any fear of reprisals, nor did
24 I see any reprisals until earlier this year and that

L.A. COURT REPORTERS LLC - (312) 419-9292

141

1 is the time that I ratcheted up my reporting when
2 that part of it happened.

3 DIRECTOR DURANTE: I have a question
4 on the audit response that you gave. Metra was late
5 last year when you had just taken over and they were
6 late again this year and you give a very long
7 dissertation as to why they were late this year,
8 doing an inventory, accounting axles, what they were
9 doing in the yard.

10 MR. CLIFFORD: Uh-huh.

11 DIRECTOR DURANTE: The fact of the
12 matter is you knew last year and this year that it

071713 RTA BOARD

13 is state law that you must comply with -- to meet a
14 deadline date. You're aware of that, that is state
15 law. So where -- where is that in regard to your
16 response, that literally state law was broken by not
17 complying?

18 MR. CLIFFORD: Yeah. I can't speak to
19 that part of it. Certainly we -- I'm aware that we
20 have a state mandate deadline which RTA enforces
21 upon us. And I will tell you that the circumstances
22 of last year versus this year are two very different
23 circumstances.

24 Last year we had a new auditor

L.A. COURT REPORTERS LLC - (312) 419-9292

142

1 that came in and that new auditor had a large list
2 of things that they wanted us to produce for them
3 that in all previous audits, this agency, Metra, had
4 never had experience in, had not been required in
5 previous audits. It was all knew, voluminous
6 information.

7 In responding to that auditor's
8 first-year request, it took some time, and that time
9 ultimately resulted in contributing to the delay.
10 In addition to at that, along that journey, we had
11 an allegation made that we had an employee who had
12 falsified their response to the auditor. These are
13 all unusual things. This is not a systemic problem.

071713 RTA BOARD

14 These are things that popped up last year that we
15 had to deal with.

16 Now, once that occurred and once
17 the auditor became aware of that, we had to stop and
18 go through another process in which the auditor had
19 to go through and try to verify whether or not the
20 allegation was true. Ultimately, at the end of the
21 day, the auditor verified -- could not verify the
22 allegation was true and then proceeded with the
23 audit.

24 Those caused that delay last year

L.A. COURT REPORTERS LLC - (312) 419-9292

143

1 and I will tell you again, we kept the RTA very
2 informed about what was going on. We got you the
3 audit. I believe we got you the audit a month late.
4 We did not see anything come back from the state
5 threatening us or telling us that we were in
6 violation of the law and threatening us with
7 penalties and we made a commitment -- a strong
8 commitment to try to do our best to hit the target.

9 Last year did not involve the
10 observation that was made this year. Now, this was
11 an unusual situation this year, because the
12 observation made about our yards and the inventory
13 was not actually generated initially by our outside
14 auditor. It was generated in November by our

071713 RTA BOARD

15 internal auditor, and our internal auditor went to
16 great lengths to make sure the outside auditor was
17 aware of his concern about these yards.

18 And so once becoming aware of that
19 and now having done already one year's worth of
20 audit in which they did not catch this, the outside
21 auditor felt that they needed to go up and beyond to
22 make sure that they got it right. Hence, the
23 contribution -- actually the reason why our audit is
24 late this year.

L.A. COURT REPORTERS LLC - (312) 419-9292

144

1 So this year, I asserted to my
2 staff that we're not going to have the same problem
3 as we had last year. We know the documents that the
4 auditors want when they walk in on day one and
5 you're going to have them ready for them and my
6 staff did an outstanding job, in fact, doing that.

7 So we thought, all right, we're
8 going to make it. And then this other problem with
9 the yards came up and that's what caused us to be
10 late.

11 DIRECTOR DURANTE: Mr. Chairman.

12 CHAIRMAN GATES: Director Troiani?

13 DIRECTOR TROIANI: I believe the
14 letter is dated September 20, 2011. You received a
15 letter from Senators Durbin and Kirk questioning the
Page 139

16 expenditure of \$225,000 to a consultant, George
17 Avery Grimes.

18 Was that approval required -- did
19 that require Board approval, number one, and number
20 two, what was your response to the senators who sent
21 you this letter?

22 MR. CLIFFORD: Yeah, first and
23 foremost, I find it somewhat humorous that in recent
24 comments to the media the chairman has brought that

L.A. COURT REPORTERS LLC - (312) 419-9292

145

1 up as somehow some sort of problem. It -- it -- I
2 will point out to you that in 2011, the chairman --
3 the current chairman was not on the Board. Right
4 after -- soon after I arrived on the property, I
5 took a recommendation to the Board that I hire an
6 outside individual to come in and assist me in -- in
7 getting this organization on stable footing and in
8 helping me to fill the great many vacancies that I
9 had.

10 I made a business decision that
11 that was the right thing to do. The Board
12 concurred. It was an action taken to the Board.
13 The Board concurred and approved that.

14 So fast forward to 2012 in which
15 it's now time for me to recommend that we extend
16 that. I believe at that time the current chair was

071713 RTA BOARD

17 on the Board. I took a recommendation to the Board
18 that we extend it. I felt I needed Mr. Avery Grimes
19 to continue to stay aboard and help support me in
20 initiatives that were ongoing, and I was getting
21 close to having all of those positions filled, at
22 which time I would no longer need his services,
23 because that included hiring my deputy executive of
24 administration.

L.A. COURT REPORTERS LLC - (312) 419-9292

146

1 And so again, I wrote a Board
2 report. That Board report got a great deal of
3 press, and that caused the Board to waffle or to use
4 somebody else's words, stutter step, if you will,
5 and that -- the Board was concerned about that. So
6 I went personally and met with Durbin's staff,
7 Kirk's staff, to understand what their concerns
8 would be about that.

9 I explained what Mr. Grimes does
10 for us, what his services are, and that his cost is
11 somewhat -- not entirely, but somewhat offset by the
12 salary that I would have had attributed to a deputy
13 executive of administration had that person been
14 aboard.

15 while they understood what I was
16 using this individual for, the business purpose,
17 they felt that another six-month extension was too

071713 RTA BOARD

18 much money, and I ultimately said I will then
19 downgrade that to -- I believe it was three or
20 four months. I don't recall exactly at this point.

21 They indicated they had no more
22 concerns about it. I then subsequently took another
23 Board report, modified. In addition to that, Mr.
24 Grimes reduced his hourly rate, by the way, and I

L.A. COURT REPORTERS LLC - (312) 419-9292

147

1 took that Board report to the full Board, and the
2 full Board approved it. Again, a Board action. So
3 I'm -- I'm a little intrigued by why that has
4 suddenly become a problem when the Board approved
5 that.

6 DIRECTOR TROIANI: Well, I was
7 questioning what your response to the -- to as --
8 why it was so important to -- it was obviously
9 important to our two U.S. Senators and I was
10 questioning what your response to them was.

11 MR. CLIFFORD: And I apologize. My
12 intrigue is not about your question. It's about
13 what I read in the media that the chairman was
14 saying.

15 DIRECTOR TROIANI: Oh, I didn't read
16 that. So, okay.

17 CHAIRMAN GATES: Director Totten.

18 DIRECTOR TOTTEN: Thank you,
Page 142

071713 RTA BOARD

19 Mr. Chairman.

20 Mr. Clifford, thank you very much
21 for being here today. You didn't have to do this, I
22 don't think. We appreciate your input. I have a
23 couple of questions.

24 One, when you were hired, I

L.A. COURT REPORTERS LLC - (312) 419-9292

148

1 believe part of the condition was let's do some
2 cleanup here. No ghost payrolling, no patronage,
3 contracts are legitimate and everything like that.

4 At the time of that do you -- was
5 any other Board members present when those
6 conditions were put together, and specifically Mr.
7 Huggins?

8 MR. CLIFFORD: Yes. Now, as you know,
9 the time between when I was hired in February 2011
10 and today, the Board has had some transition, but
11 there are still some existing Board members that are
12 here today that were there when I was hired in 2011.
13 Mr. Huggins is one of those Board members, yes.

14 DIRECTOR TOTTEN: Okay. So he knew of
15 those conditions or that discussion?

16 MR. CLIFFORD: Well, through the
17 interview process, Mr. Huggins was obviously there.
18 This was the full Board interview process and the
19 chairman at that time, Carole Doris, was very clear

071713 RTA BOARD

20 about the importance of having somebody who was
21 squeaky clean, if you will. wanted to follow the
22 rules. They wanted to distance themselves from the
23 Pagano crisis.

24 As a matter of fact, she even went

L.A. COURT REPORTERS LLC - (312) 419-9292

149

1 so far as to say that is why they searched high and
2 low for somebody outside the state so they could get
3 somebody to come in that would be what -- sort of
4 the squeaky clean notion. Not tainted by, if you
5 will, Illinois politics, whatever that means.

6 DIRECTOR TOTTEN: I'm assuming no one
7 dared disagree with those conditions?

8 MR. CLIFFORD: At that time of my
9 hiring, that's correct.

10 DIRECTOR TOTTEN: Okay. Let me go to
11 another question then.

12 When Chairman Gates was asking
13 questions regarding patronage pressure and who all
14 may have been coming before you or asking for favors
15 or however you want to put it, has there ever been,
16 to your knowledge, any pressure -- you might want to
17 go back a bit.

18 Metra hires a number of lawyers or
19 law firms, I'm assuming for special litigation and
20 stuff like that. Was there any -- is there any

21 contact from any law firms or individual lawyers to
22 receive a contract?

23 MR. CLIFFORD: Well, let me -- let me
24 try to answer that and I'm not trying to dodge the

L.A. COURT REPORTERS LLC - (312) 419-9292

150

1 question. We do have a procurement right now for
2 attorney firms, and you will have attorney firms
3 making inquiries at Metra about when is the
4 procurement going to start? Once we start the
5 process, they can't make those inquiries, but
6 leading up to it wanting to know how they can get
7 into the process.

8 And we get those kinds of
9 questions on virtually on any kind of procurement.
10 If they come to me, I refer them to Paul Casillias
11 and he answers the questions. He says, look, here's
12 what you do. You go to the website. You click on
13 the box. You register for whatever procurements
14 you're interested in and whenever that procurement
15 comes up, you will get an e-mail telling you that
16 this procurement is active. So that's how we handle
17 those types of inquiries. Very, very sort of
18 generically and -- and cleanly.

19 DIRECTOR TOTTEN: No particular
20 pressure to hire a particular firm or lawyers?

21 MR. CLIFFORD: Not that I recall, no,
Page 145

22 no.

23 DIRECTOR TOTTEN: Okay. Another
24 question. Board Member Shaffer accused Chairman

L.A. COURT REPORTERS LLC - (312) 419-9292

151

1 O'Halloran of a patronage hiring scheme regarding
2 salaries \$75,000 and under.

3 what's your view of this and --
4 this scheme or whatever you want to call it that was
5 put before -- that was brought up?

6 MR. SHAKMAN: Okay. No objection from
7 Mr. Gagliardo. Go ahead.

8 MR. CLIFFORD: I think I'm becoming
9 notorious for very long answers, but I just -- it's
10 just the way I operate and I'm -- I'm sorry, but
11 I -- I just don't want to oversimplify things. So
12 if you will indulge me, I'll give you a bit of an
13 answer on that.

14 CHAIRMAN GATES: Somebody is going to
15 bring lunch in.

16 MR. CLIFFORD: Okay. So going back to
17 sometime in early 2012, the internal auditor raised
18 a question about -- to the Board about whether or
19 not he thought I had the authority to bring
20 individuals in and in the process of negotiating for
21 them to work for us, front end load vacation. In
22 other words, you don't have to wait. You come in

23 and we'll give you some vacation on day one and in
24 the case of one of those executives, offer that

L.A. COURT REPORTERS LLC - (312) 419-9292

152

1 executive a relocation allowance. So he had some
2 questions about that.

3 General counsel, who I get my
4 advice from. I don't get my advice from -- from the
5 auditor had always given me the advice, because any
6 time I do anything, I go to general counsel and I
7 say, can I do this? Am I doing it the right way?
8 I'm very cautious that way. And general counsel has
9 always given me the advice that -- that what I was
10 doing in those respects were within my authority as
11 granted under the RTA Act.

12 But so the Board had a discussion
13 about that and the Board felt, well, okay. It's a
14 little bit unclear, but they decided that maybe they
15 ought to have an ordinance in place that helps guide
16 how they feel that should happen. Makes sense. So
17 they -- they set up a committee, an ad hoc committee
18 to look at what we call -- and I'll refer to as CEO
19 authority to -- to -- to try to look at that
20 question and try to decide, what would an ordinance
21 look like?

22 And that group worked for months.
23 At my request they invited me in. My -- my argument

24 was simply, you're talking about my authority. I

L.A. COURT REPORTERS LLC - (312) 419-9292

153

1 think you should welcome my opinion. You don't have
2 to use my opinion, but you should welcome it. They
3 agreed and that ad hoc committee brought me in
4 and -- and involved me all the way through the
5 process of discussions and it was intense and it
6 took months.

7 It went from something like May of
8 last year to -- to -- I'm going to use the reference
9 again of November 5 of 2012. And they -- as we
10 approached November 5, that committee had a
11 recommendation, and it was a very good
12 recommendation on how to address the proper
13 notification of a Board when you have these things
14 going on, preloading vacation and relocation and
15 whatnot. A really good proposed ordinance that they
16 wanted to take to the Board.

17 That ordinance did not include
18 anything about the Board approving individuals at
19 any pay rate. It didn't include anything like that.
20 So fast forward past the date of November 5, which
21 we all know is the date that the current chairman
22 became chairman. The current chairman
23 immediately -- immediately terminated their
24 request -- their recommendation. Would not let that

L.A. COURT REPORTERS LLC - (312) 419-9292

154

1 go to the Board and in a very secretive fashion put
2 together an ordinance over the next 30 days with the
3 chief auditor, Rick Capra, and Board counsel, Iain
4 Johnston, at that time, very secretively put
5 together an ordinance which he dropped on the Board,
6 I believe it was in January, much to their surprise
7 and dismay, and there was a lot of controversy about
8 this.

9 At that point his ord- -- his
10 version of the ordinance would have every position
11 -- every position going before the Board before I
12 could -- I could move forward and hire somebody.
13 And I -- and I had several Board members call me and
14 say, you know, what's -- what's going on with this?
15 Do you approve this? And I said, well, if you're
16 asking me for my recommendation, I -- I don't think
17 it's a good business practice. It's going to cause
18 the business to come to a stop.

19 So they were -- they were very
20 upset that they were being surprised with this
21 ordinance from the chair as one of his first duties
22 and responsibilities, I guess, and that it had this
23 kind of far reaching extent.

24 So when the chairman brought that

1 to the Board, it met with great controversy. He
2 ultimately met with me to try to get me to agree to
3 something. I tried to convince him that if you're
4 going to have it, here's an example and I showed him
5 the L.A. MTA from Los Angeles.

6 I showed him an example of an
7 ordinance that's similar to that, but they focused
8 on the right thing, which is your higher level pay
9 ranges and their ordinance is drafted so that
10 something like \$150,000 and above comes to the Board
11 so that the Board is aware of who you're giving
12 \$150,000 to. And I tried to convince him to go that
13 way. He refused to do that.

14 So my back was up against the wall
15 because he told me. He said, look, I'm taking this
16 to the Board and I have the votes. His words. I'm
17 taking this to the Board and I have the votes.
18 And -- but I want to try to get your support. And
19 so I didn't know if he had the votes or not and he
20 said, I'll move it from zero to \$75,000 and I said
21 fine, \$75,000 is better than zero. And he took that
22 to the Board and after a lot of challenges, that
23 didn't get approved and the Board sent it back to
24 committee to talk about again.

1 ultimately, the committee didn't
2 recommend the \$75,000, but he wanted it in. He
3 argued for it at the next Board meeting and
4 successfully on a split vote got the \$75,000 back
5 in. So that's the whole sordid tale about how that
6 came about.

7 He has accused me of working
8 behind the scenes to -- to implode his ordinance.
9 That is completely incorrect. When Board members
10 call me and ask me for my opinion, I will give them
11 my opinion. That's what I did. I did not
12 proactively call any Board members and try to work
13 against him on this matter.

14 Do I think the \$75,000 is right?
15 No, I don't. Did I agree to it in lieu of it being
16 zero? Absolutely. And has it disrupted the
17 business? Absolutely. It has disrupted the
18 business, because you see, what happens is we run a
19 very efficient railroad and every position we have
20 is carefully thought out and is a valuable position
21 that we need some expert sitting in and fulfilling
22 the duties of the agency and -- and when I have gone
23 through the process of trying to hire somebody or my
24 departments have, and that process occurs the day

1 after the Board meeting, I now have to wait 30 days
2 in order to get that position approved.

3 Now, the chair will tell you,
4 well, the ordinance gives you some exclusion. You
5 can go to the chair. You can ask for special
6 consideration and maybe they'll approve it and maybe
7 they won't. That's no way to run a railroad. We
8 need those positions filled.

9 In many cases, they're safety
10 sensitive positions. They simply have to be filled
11 as quickly as we possibly can and delaying the
12 process for 30 days is just not -- not a smart
13 approach. If the problem is that you're worried
14 about a certain level of salary, again, like the
15 L.A. CMTA, then set the target at the right place.
16 It's pretty difficult to argue that \$75,000 is the
17 right target for overpaying -- if you will, if
18 that's the allegation -- a particular employee.

19 DIRECTOR TOTTEN: Thank you. Thank
20 you, Mr. Chairman.

21 CHAIRMAN GATES: Unfortunately
22 Director Troiani has to leave.

23 Are there any other questions from
24 the Board? Director Ross?

1 DIRECTOR ROSS: Mr. Clifford, last
2 week during Metra's presentation here to our Board
3 in a special meeting, I think there was some
4 inference that in essence you were a poor performing
5 employee and that the settlement agreement reached
6 with you was in some way cutting the losses rather
7 than moving forward with litigation.

8 At any time were you given a
9 formal review by the Board, and if so, were there
10 any findings in that formal review that would have
11 suggested that you were a candidate for termination?

12 MR. CLIFFORD: All right. I'm going
13 to give you another long answer. And Mike or Joe
14 will stop me if I tread into territory I shouldn't
15 be.

16 The short answer is, yes, in
17 relationship to 2011 performance. I had a review in
18 March of 2012 in which the Board gave me a glowing
19 review. I asked the Board, is there anything you'd
20 like me to do different? They said, stay the
21 course. The only thing we'd like you to do is
22 continue to reach out and build partnerships across
23 the region. I took that to heart.

24 The Board rewarded me at that time

1 with my full maximum three percent performance
2 increase. Because we were going through a class and
3 comp study -- I'm sorry -- because we were going
4 through a class and comp study, class and
5 compensation study, and our employees had not had a
6 pay raise for three years, I felt a little bit
7 uncomfortable and I requested of the Board that they
8 hold that three percent in abeyance until I complete
9 the class and comp study and we sort out the pay
10 structure for our organization. And also I wanted
11 to try to make sure that in the following year I
12 could get a pay increase -- a general pay increase
13 for all the employees in the -- after going three
14 years without pay increases, that they deserved it.

15 So that was the answer to 2011.
16 2012 should have occurred on my anniversary date in
17 February or March. Now, keep in mind, back in
18 2012 -- March of 2012, when I was reviewed, the
19 Board didn't give me this list of things that they
20 said that I should accomplish in the next years that
21 through normal management review and oversight, you
22 would a year later look at and measure somebody
23 against.

24 They said you're doing a great

1 job, stay the course, go out and build some regional
2 relationships. So as we're entering into -- getting
3 close to my anniversary date, again, I asked the
4 current chairman, can we schedule that in February?
5 I'm ready to go. I got my list of accomplishments
6 done and would like to talk to the Board, to which
7 he said, no, we're not going to do that in February.
8 We're -- I think we're going to do it in March and
9 then this whole convoluted, incredible -- I think
10 embarrassing process that they were trying to
11 develop that they want to blame on me as interfering
12 with, which is just completely wrong, they couldn't
13 decide what they wanted to do, how they wanted to do
14 it.

15 It was beginning to look like it
16 was going to keep pushing it farther and farther
17 past my anniversary date, and even when I left, they
18 didn't have it resolved. They'll tell you that they
19 stopped because -- because of the threat of
20 litigation, but the record shows they keep -- look
21 at the minutes. They keep trying to play with what
22 is this role going to be? They go in -- they go in
23 March with Mr. Huggins saying that they're going to
24 do this subset of group, you know, this sham

071713 RTA BOARD

1 performance review that I told you about, but then
2 following their March meeting in which they were
3 going to do that came my April 3rd letter.

4 So then if you go and read the
5 minutes of their April employment practices
6 committee, they miraculously changed it around.
7 Now, it's no longer the three because of the
8 allegations that I made in my memo.

9 So it never happened. The 2012
10 never happened and there is -- there is no evidence
11 presented to me by anyone up to those points in time
12 suggesting that I had done anything wrong, I had
13 been inferior in any capacity, nothing, whatsoever,
14 told to me.

15 As a matter of fact, what we've
16 presented in response to those kinds of allegations
17 is a boat load of information showing that I had
18 lots of support from the Board. You have some of
19 that. There is a lot more in e-mails that we don't
20 have any longer because I had to turn them over to
21 the Board as a part of this settlement where --
22 where I'm getting accolades after accolades for the
23 performance I'm doing.

24 In 2012, Progressive Railroad did

L.A. COURT REPORTERS LLC - (312) 419-9292

162

1 a cover story on me and what I was accomplishing at

2 Metra. So there was no indication that anything was
3 going wrong, and I was quite surprised to see this
4 handful of things that have been published in the
5 press here in the last couple of weeks from the
6 chairman about things that he believes were not
7 going right.

8 well, if I'm allowed to talk about
9 those, I'll tell you about those and -- and there is
10 another side to that story and things are actually
11 going pretty well. So, yeah, I was blind-sided and
12 then on top of that, he was trying to -- he and
13 Mr. Huggins were trying to develop a review process
14 in which now they're going to decide all these kinds
15 of things that I should be reviewed upon that I
16 wasn't told about a year ago.

17 Now, I don't know if you have
18 employees. Maybe you do. I've been in the business
19 of leadership for a long time, but the one thing
20 that I've learned as a leader is you tell people
21 what you're going to review them on at the beginning
22 of the year so that they know what they're going to
23 be measured against throughout the year, and then a
24 year later when you come back and you look at those

L.A. COURT REPORTERS LLC - (312) 419-9292

163

1 bundle of things that you are going to review them
2 on then they knew what they should aspire to achieve

071713 RTA BOARD

3 and complete.

4 I was given no such list. It made
5 complete sense to me that if you wanted to start now
6 putting together a list so that in 2014 when you
7 review my 2013 performance you are reviewing me
8 against that list. That makes no sense that you
9 create the list today to review me for -- for last
10 year.

11 DIRECTOR ROSS: I do have one more
12 question.

13 Can you assure us that the
14 allegations in your April 3rd memo are the extent of
15 allegations against Metra Board members or others
16 that had been shared with the Metra Board, that
17 you've today shared all of that information with us
18 now?

19 MR. CLIFFORD: I cannot.

20 DIRECTOR ROSS: And why can't you?

21 MR. CLIFFORD: There -- there are
22 other none patronage related issues that I'm not at
23 liberty to discuss.

24 DIRECTOR ROSS: And why not?

L.A. COURT REPORTERS LLC - (312) 419-9292

164

1 MR. SHAKMAN: They fall outside the
2 scope of the April 3rd memo and the scope of the
3 formal consent for Metra apart from Mr. Gagliardo's

4 occasional comments today, which we have treated as
5 expanding Metra's consent, is limited to the
6 April 3rd memo.

7 DIRECTOR ROSS: Then I would like to
8 ask for our chairman to ask Metra officials again to
9 allow those responses to be made.

10 CHAIRMAN GATES: Yes. I thought that
11 question -- I thought that question was already
12 asked, and that Metra had given their permission to
13 discuss those issues. I -- I don't know why that
14 would change now.

15 MR. GAGLIARDO: Well, Mr. Chairman,
16 part -- part of the problem we're having is that
17 there have been three items discussed already this
18 morning that were never -- either two of them were
19 never identified in the April 3rd memo, and one of
20 them had no -- had no details in the April 3rd memo
21 or thereafter.

22 So what becomes difficult for us
23 is if Mr. Clifford had issues where he was claiming
24 that something inappropriate was going on, he should

L.A. COURT REPORTERS LLC - (312) 419-9292

165

1 have brought it to the Board. He should have
2 brought it to the OEIG. He should have had it in
3 the April 3rd memo.

4 The fact that now we're hearing

5 for the first time about incidents that have never
6 been discussed before, not only in the memo, not in
7 the many discussions relating to that memo and not
8 in the 12-hour mediation that took place, it's very
9 problematic at this point.

10 We have no idea what Mr. Clifford
11 is talking about or why all of the sudden these have
12 become problems when they've never been reported to
13 anybody before.

14 CHAIRMAN GATES: I guess my response
15 to that is twofold. One, as Director Coulson said,
16 by not permitting Mr. Clifford to respond to
17 Director Ross's question, it makes it look like you
18 are trying to hide something that could be
19 derogatory towards Metra.

20 Two, in a few minutes, you will be
21 given an open opportunity to say whatever you want
22 about whatever he says. You're going to have the
23 ability to rebut that in any fashion you wish. So
24 this can be, you know, fully ventilated at that

L.A. COURT REPORTERS LLC - (312) 419-9292

166

1 time. So if he has something else he wants to say,
2 why not say it?

3 DIRECTOR ROSS: Let me -- let me
4 rephrase my question, because it was --

5 MR. GAGLIARDO: Go ahead, Director.

6 Rephrase your question.

7 DIRECTOR ROSS: Because I am limiting
8 my question to, is there anything that Mr. Clifford
9 has shared with the Metra Board that hasn't been
10 shared with us today? So I am taking a narrow
11 focus. The chairman may want a broader focus and I
12 support that, but my question is a narrow focus.

13 I want to know if there is
14 anything else that you've shared with the Metra
15 Board in the form of an allegation that hasn't been
16 discussed or shared with us in this meeting, and
17 again, my reason for this is simply to try to
18 understand better why you were given what most
19 people perceive to be such a generous severance
20 agreement.

21 MR. SHAKMAN: The issue that has not
22 been discussed this morning is one that was shared
23 with the internal auditor and Board counsel. Now,
24 whether you would treat that as shared with the

L.A. COURT REPORTERS LLC - (312) 419-9292

167

1 Board because it was shared with Board counsel, I
2 would have to ask you to clarify that.

3 DIRECTOR ROSS: And I would say yes.
4 If it means they potentially had access to the
5 information, absolutely, yes.

6 MR. SHAKMAN: well, in that case,

7 we're back to whether Metra consents.

8 MR. GAGLIARDO: Well, regarding that
9 particular issue, we would consent.

10 CHAIRMAN GATES: Thank you. Go ahead,
11 Mr. Clifford.

12 MR. CLIFFORD: So the one -- the one
13 other issue is one that I've, again, turned over to
14 the OIG in great detail. So I won't discuss what
15 I've talked to them about, but I'll discuss the
16 issue.

17 So the issue has to do with a
18 company called Target Group owned by a gentleman
19 named Joe Williams, and predating me and prior to
20 Mr. Pagano committing suicide, Mr. Huggins and
21 Executive Director Pagano took a trip to Washington,
22 D.C. to meet with Congressman Rush and Secretary Ray
23 LeHood and in that meeting, I am told that they
24 discussed how important it was to have jobs for the

L.A. COURT REPORTERS LLC - (312) 419-9292

168

1 community. That's a great aspiration and goal
2 especially early on. This is 2010.

3 And -- and so the name Target
4 Group came up in that meeting. Don't know who put
5 it on. I'm just -- all I have is some notes from an
6 individual who participated in that meeting. Low
7 and behold, within very short order after they

8 returned from the Washington, D.C. trip, the Target
9 Group gets a non-competed contract for \$200,000.
10 Non-competed contract. Just signed up and added to
11 the -- I believe it was TransSystems contract
12 directed by Metra that they add Target Group to the
13 contract.

14 Target Group had a scope of work.
15 Had they done their job -- had Target Group done
16 their job, I would tell you here today we would not
17 have had the Englewood Flyover crisis, because their
18 job was to reach out to the community and to find
19 ways to bring jobs to the community and find ways to
20 certify subcontractors -- potential subcontractors
21 in the Englewood community to bid on this contract,
22 to do the advanced legwork.

23 It was -- the thought process
24 behind the kind of work -- take Target Group out of

L.A. COURT REPORTERS LLC - (312) 419-9292

169

1 it, because I'll come back to that in a minute --
2 but the thought process behind having an entity like
3 that come in and do that well in advance of the bid,
4 very smart, very smart.

5 Get -- do everything you can to
6 reach out to Englewood community to -- to get bids
7 that are representative of the community. No issue
8 with that strategy. I have an issue with how it was

9 done. But the reality is Target Group failed and
10 Target -- it was brought to my attention in -- in I
11 believe it was late 2011, early 2012, that -- that
12 they not only were a huge distance away from
13 completing the work that they were supposed to
14 complete, but they had expended their entire
15 \$200,000 and that they wanted -- they were alleging
16 that they had, I believe it was \$70,000 or so --
17 maybe it's more than that -- in bills that they
18 wanted to be paid for.

19 So they were asking for authority
20 for a change order and then in addition to that,
21 they wanted additional authority because they --
22 they needed to be able to complete the work under
23 the scope that would carry them through the award of
24 the Englewood Flyover.

L.A. COURT REPORTERS LLC - (312) 419-9292

170

1 So I had that evaluated. I found
2 out that they -- they, in fact, were not performing
3 well, and I directed the internal auditor, a
4 different person at that time. It was not
5 Mr. Capra -- Eric, to investigate it, to -- to close
6 this bid out or this contract out and to settle it
7 and pay them only for the work that they delivered.
8 only for the deliverables that we received.

9 He went through a long -- several

10 monthly process to, in fact, get that done and --
11 and during this time, I might add, Mr. Huggins gave
12 me a call and said, hey, you know, Joe Williams
13 called me. He says he's -- he hasn't been paid.
14 Could you look into that?

15 I hadn't put two and two together
16 at that particular point. I looked into it. And,
17 you know, eventually I forget where -- early 2012, I
18 think, we finally settled out with Joe Williams,
19 paid him for the deliverables we received and -- and
20 canceled it. No more -- no more contract with him.
21 It was just a failure.

22 Again, had he done what he was
23 supposed to do, I'm here today to tell you, I don't
24 think we would have had the Englewood Flyover

L.A. COURT REPORTERS LLC - (312) 419-9292

171

1 controversy.

2 So I guess the point I would close
3 on is public record will -- if you look up Joe
4 Williams and you look up his business entities that
5 he's involved in, it's all public record. You can
6 look at it on the computer. I looked at it after it
7 was brought to my attention. Joe Williams is a
8 business partner of Larry Huggins. Public record.
9 Public record.
10 So when this was brought to my

11 attention by Janice Thomas, I said -- I told her,
12 tell Iain Johnston they -- they need to look at
13 this. If this information is correct, they will
14 likely take it to the OEIG. She told Iain Johnston
15 about it, everything we knew about it, and we didn't
16 hear anything. Didn't hear anything. Kind of
17 thought maybe -- because the way the OEIG works is
18 when you take something to them you don't get a
19 report back. It's very secretive.

20 So months -- months went by and
21 none of us were getting any contact from the OEIG.
22 I mean, I had a huge file on this thing that I had
23 accumulated. So come December of 2012, I have a
24 meeting with Rick Capra, chief audit -- auditor and

L.A. COURT REPORTERS LLC - (312) 419-9292

172

1 I said, Rick, you know, I'm not sure what's going
2 on. This was turned over to Iain Johnston. Nothing
3 has happened. I think it should be turned over to
4 the OEIG. And his response was, well, I know about
5 that.

6 That was his response, our chief
7 auditor who reports directly to the Board. And so
8 then, again, a couple of months pass by. I still
9 don't hear any phone calls coming in, so obviously
10 he didn't turn it into the OEIG. So as part of my
11 visit with the OEIG, I turned it all in.

12 DIRECTOR ROSS: Just to follow-up on
13 that, was the Target Group a direct contract --
14 direct contractor with Metra or a subcontractor to
15 the lead contractor on that?

16 MR. CLIFFORD: That is an incredibly
17 messy matter. Because it was not handled properly.
18 It did not have the approval by IDOT or the NS to
19 add that type of contract to the overall CREATE
20 project. Even though initially TransSystems -- well,
21 TransSystems, they -- they told -- there is a record
22 that shows that Metra told TransSystems to add Target
23 Group.

24 So there is a record showing that.

L.A. COURT REPORTERS LLC - (312) 419-9292

173

1 And then when we settled this out, Metra has to pay
2 the \$200,000. Not TransSystems, and it's not
3 billed -- so it's paid through TransSystems to settle
4 the \$200,000 with Mr. Williams, but the point is the
5 \$200,000 could not come from the federal grant. It
6 was not approved to come from the federal grant.

7 DIRECTOR ROSS: So in other words --

8 MR. CLIFFORD: And there's messier --
9 there is even more mess in there in that thing
10 that's got to be sorted out.

11 DIRECTOR ROSS: But it was a Metra
12 contract in the final analysis? Metra paid the

13 bill?

14 MR. CLIFFORD: It was Metra dollars.

15 DIRECTOR ROSS: Yeah.

16 MR. CLIFFORD: Well, I'm sorry. I
17 don't -- I don't want to -- this -- I just want to
18 tell you, this is messy and I think -- I think -- I
19 think the feds paid the bill and Metra is supposed
20 to pay the bill and that part has got to be fixed.
21 This was messy how it was set up. It was not set up
22 right in 2010. Forget the fact that it should have
23 been completed, but it was not set up right and it's
24 a mess.

L.A. COURT REPORTERS LLC - (312) 419-9292

174

1 DIRECTOR ROSS: Well, this goes to the
2 heart of our audit inquiries. What -- what
3 happened?

4 MR. CLIFFORD: I'd -- if normal
5 procedure were followed, when they came back from
6 D.C., they should have drafted a scope of work for
7 the services of this outreach group, whoever it may
8 be, and it should have been put out on the street
9 for bidding. It should have been awarded to the
10 most responsive bidder. And then that group should
11 have had their -- their contract carefully overseen
12 by a project manager.

13 DIRECTOR ROSS: At which point it

14 could have been paid for by federal dollars?

15 MR. CLIFFORD: I can only answer that
16 by maybe, because it still would have needed
17 approval by the NS and IDOT and my understanding
18 that NS' position was they already covered that
19 base.

20 DIRECTOR ROSS: Do you think there was
21 a misappropriation of funds here or other
22 irregularities?

23 MR. CLIFFORD: I -- I think that's not
24 my call. I think the OEIG, now that they have all

L.A. COURT REPORTERS LLC - (312) 419-9292

175

1 the information, has to -- to investigate and figure
2 out what's going on. Unfortunately, one of the
3 major players involved in that discussion has passed
4 away.

5 DIRECTOR ROSS: Is the -- do you think
6 it was at all unethical or inappropriate?

7 MR. CLIFFORD: I can tell you it
8 doesn't feel good and it makes me very
9 uncomfortable.

10 CHAIRMAN GATES: I'm sorry. Any other
11 questions? Director Frega?

12 DIRECTOR FREGA: When I first came on
13 the Board a couple years ago, I was told that my
14 firm could -- or any entity that I had could not be

15 involved with any Metra work or CTA work or PACE
16 work or RTA work. It appears to me that Metra has
17 the same policy, does it not?

18 MR. CLIFFORD: Are you speaking with
19 respect to --

20 DIRECTOR FREGA: That a Board
21 member --

22 MR. CLIFFORD: -- to a conflict of
23 interest?

24 DIRECTOR FREGA: A Board member cannot

L.A. COURT REPORTERS LLC - (312) 419-9292

176

1 participate in -- in -- in any work that the -- that
2 your organization, Metra, would have?

3 MR. CLIFFORD: I don't know if I'm the
4 right person to answer that. I will tell you in
5 answering that, as a former elected official myself,
6 I understood very clearly what I needed to do to
7 avoid conflicts of interest and if I ever had any
8 concerns who I needed to ask to get the proper
9 opinion about it.

10 DIRECTOR FREGA: It appears like
11 Mr. Huggins had really a conflict of interest if he
12 was part of -- if he was a partner with Williams in
13 the Target Group and --

14 MR. CLIFFORD: I'm sorry. Let me stop
15 you there, if I can, sir. I did not say or allege

16 that he is a partner in the Target Group. He has
17 other business ventures of which he is a partner
18 with Joe Williams. That I could not find any
19 record -- public record to show that Mr. Huggins was
20 a partner in the Target Group.

21 DIRECTOR FREGA: I see.

22 MR. CLIFFORD: The potential conflict
23 of interest is that -- well, I'll stop there. I
24 think you can you put two and two together.

L.A. COURT REPORTERS LLC - (312) 419-9292

177

1 DIRECTOR FREGA: Fine. Thank you very
2 much for clarifying that. And thank you for your
3 service in the Marine Corps.

4 MR. CLIFFORD: Thank you, sir. Semper
5 Fi.

6 CHAIRMAN GATES: Director Magalis?

7 DIRECTOR MAGALIS: I just want to
8 thank Alex for appearing here today and -- and I
9 think answering a lot of questions that we had. I
10 go back to 2010 and think of the mess that we had at
11 Metra. I think of the challenges that you had when
12 you came in at Metra.

13 It wasn't a matter of coming in,
14 using the skills you had to simply move forward with
15 that agency. You had a situation where you had lots
16 of vacancies and recruiting top positions for a

17 manager is a time-consuming and a demanding activity
18 that unfortunately would take away some of the time
19 you had to address some of these other issues.

20 However, what I found in you, and
21 I can only speak for myself as finance chairman,
22 you're -- you're very straight to the point and you
23 say what you think and what you believe and
24 initially maybe even rubbed me the wrong way,

L.A. COURT REPORTERS LLC - (312) 419-9292

178

1 because I thought you were pushing too hard, but you
2 were pushing too hard for Metra that you believed
3 in.

4 So rather than just, say, well,
5 you're a tough guy, I met with you. I've gained a
6 lot of respect for your knowledge. I -- I really
7 gained a lot of respect for the different approach
8 that I saw you taking, which was opening the door of
9 Metra to look at issues, to look at, you know, how
10 are things being financed and are we being fair with
11 Metra and everything you did as far as I'm concerned
12 was highly professional and I think I've told you
13 that in the past.

14 I know we've met numerous times on
15 some very complicated formulas, trying to understand
16 them myself, and I've been here a long time. So
17 anyway, I just wanted to say that I think dealing

18 with what you were dealing with, you've done a
19 really good job and I, for one, was very
20 disappointed to hear that there was a problem
21 because we had just come through a major problem.
22 what we needed was let's put our
23 heads down, let's move forward, let's get things
24 back up and running and get back the credibility

L.A. COURT REPORTERS LLC - (312) 419-9292

179

1 that we at once -- one time had in that agency and
2 I -- I thought you were moving us in that direction.
3 And I just want to thank you and I guess ask one
4 quick question, a technical one, because there has
5 been so many questions asked already and I think
6 you've answered all of them that I could have
7 possibly come up with.

8 The one thing that bothered me
9 about the last hearing we had, which was with Metra,
10 at that time, of course, you were not here and I
11 understand you had -- both agencies had to work that
12 out, but the memo that was made available to the
13 House committee, the following day of our hearing at
14 the RTA, when was that actually in your mind made
15 available?

16 Was that a document that we could
17 have had for our hearing the day before it was
18 released at Metra? I mean, maybe that's an attorney

19 question.

20 MR. CLIFFORD: You're speaking to the
21 April 3rd memo?

22 DIRECTOR MAGALIS: Yes.

23 MR. CLIFFORD: Well, I drafted that
24 and distributed it to the Board on April 3rd. So it

L.A. COURT REPORTERS LLC - (312) 419-9292

180

1 was available then.

2 DIRECTOR MAGALIS: No, I'm talking
3 about when was it made public, because there was a
4 confidential --

5 MR. CLIFFORD: I didn't make it
6 public.

7 DIRECTOR MAGALIS: Okay.

8 MR. CLIFFORD: My understanding is
9 that Metra under pressure from the Mass Transit
10 Committee made it public.

11 DIRECTOR MAGALIS: Okay. And -- and
12 that really bothers me because that -- that is a
13 very good letter. I mean, that tells your story and
14 that's what was missing at our hearing.

15 I mean, I had a lot of different
16 questions had I had this and I -- I'll hold my
17 questions for when Metra speaks as to why they
18 didn't provide us that opportunity because we
19 didn't, you know, receive that.

20 My last point, I guess, would be
21 that right now, we were told by Metra that they're
22 going to have the agency managed during this
23 interim, which I would think will be a considerable
24 interim, because you're going to have trouble

L.A. COURT REPORTERS LLC - (312) 419-9292

181

1 finding qualified people to step up in a controversy
2 like this and come into this slot -- that position
3 again.

4 So they've got two people running
5 Metra presently, two staff people, and I'm not
6 questioning their capabilities because I don't know
7 them personally or know anything about them.

8 I guess I'm wondering who breaks
9 the tie? Is that Mr. O'Halloran that's going to be
10 breaking those ties and running Metra, or how is
11 that going to actually -- how do you think that will
12 work for an agency that you've been in, you know,
13 the pressures that are put on you. Now you've got
14 two people running that agency. How -- what do you
15 think about that? Is that a good thing?

16 MR. CLIFFORD: Certainly, you would
17 have to talk to Mr. O'Halloran about how he thinks
18 that works. I think it is a huge mistake, huge
19 mistake. The agency will suffer from a decision
20 like that. You -- you need -- you need that

21 overarching leader who knows the entire organization
22 to -- to make sure -- you need that overarching
23 leader as -- as any organization would need.

24 CHAIRMAN GATES: Mr. Shakman, could

L.A. COURT REPORTERS LLC - (312) 419-9292

182

1 you give me your mic?

2 MR. CLIFFORD: Oh, mine's back.

3 Sorry. I was quiet too long is what you're saying?

4 CHAIRMAN GATES: If there are too many
5 open mics, the system collapses for some reason. I
6 don't know.

7 MR. CLIFFORD: Okay. Anyway, I
8 believe you need that overarching leader who has
9 that experience across multi-disciplines to pull it
10 all together and make sure it functions properly.
11 There is too many pieces at play, too many
12 challenges here going on. In my opinion, bad
13 decision.

14 DIRECTOR MAGALIS: Okay. I appreciate
15 that comment, and you know a lot of people have
16 talked a lot about the amount of money that was paid
17 for your separation and I read the separation
18 agreement and I -- I guess from a perspective what I
19 would have liked to have seen is for -- if you had
20 stayed, we wouldn't be paying all that money.
21 That's obvious. And I think it's an unfortunate

22 situation that everybody is in, but I thank you for
23 coming today.

24 MR. CLIFFORD: Mr. Magalis, thank you

L.A. COURT REPORTERS LLC - (312) 419-9292

183

1 for the positive comments. I think you know clearly
2 from my opening remarks I would rather not be
3 sitting here. I'd rather not be talking about
4 severance, settlement, whatever you want to call it.
5 I'd rather be at the helm of Metra continuing to
6 lead that organization through all the many
7 challenges and changes and accomplishments it will
8 and should have.

9 DIRECTOR MAGALIS: And I believe that.
10 Thank you very much.

11 CHAIRMAN GATES: Any other questions
12 from the Board?

13 Good. Well, thank you very much.
14 I'm sure that Metra will have a challenge finding a
15 new CEO. Hopefully, they will get about that as
16 quickly as is reasonable.

17 At that point it's practically
18 noon. Why don't we take a break here for about
19 45 minutes so people can grab some lunch and so
20 forth and reconvene at 12:45, because Metra very
21 much wants to make a statement and I know --

22 (Whereupon, a discussion

23 071713 RTA BOARD
was had off the record.)

24 CHAIRMAN GATES: I'm sorry,

L.A. COURT REPORTERS LLC - (312) 419-9292

184

1 Mr. Shakman?

2 MR. SHAKMAN: How about a ten-minute
3 break?

4 CHAIRMAN GATES: All right. If that
5 is the will of the Board, let's take a ten-minute
6 break and continue to move forward. So five minutes
7 after 12:00.

8 (Whereupon, after a short
9 break was had, the
10 following proceedings
11 were held accordingly.)

12 SECRETARY MACLENNAN: If the Board
13 members would kindly rejoin the boardroom. Keep
14 going, keep going. Is everybody -- almost everybody
15 is back in place.

16 CHAIRMAN GATES: Excuse me. If we
17 could --

18 SECRETARY MACLENNAN: If everyone
19 would kindly settle down and sit down and let's get
20 back on track here.

21 Mr. Chairman, we do not need to
22 take a second role at this point as everybody is
23 here with the exception of Director Troiani who did

24 have to leave, but all other Board members are still

L.A. COURT REPORTERS LLC - (312) 419-9292

185

1 present. So we are -- we're good to go.

2 CHAIRMAN GATES: Good. We, first of
3 all, would like to thank Mr. Clifford and his group,
4 his advisers, for appearing before us. I'm sorry I
5 didn't do that at the close before we had our brief
6 intermission. I don't know whether they are still
7 with us or not, but okay -- good. Please send on
8 our thanks for appearing. Obviously, you didn't
9 have to do that.

10 Now, we are going to turn to Metra
11 and certainly thank them for appearing again before
12 us. I know this has been a long week for them, but
13 I know that there is a lot that still needs to be --
14 still needs to be discussed.

15 First of all, Chairman O'Halloran,
16 welcome. Do you have a statement?

17 MR. O'HALLORAN: Short. Thank you,
18 Chairman.

19 First of all, you know, we'd
20 certainly like everyone to remember that what you've
21 just heard from Mr. Clifford and his allegations,
22 they are his allegations, and they should not be
23 treated as fact.

24 As we have said from the

1 beginning, we dispute all of them. We categorically
2 deny everything Clifford alleges. Now that you have
3 heard and read about allegations in such detail, you
4 have a better understanding of the extent and the
5 complexity of the potential legal battle and of our
6 analysis that fighting this case, even when we
7 thought we would have won would have been lengthy,
8 costly and disruptive.

9 The main thing here is the timing.
10 we'd like to remind you that Mr. Clifford did not
11 level these accusations until he was told there was
12 a possibility -- just a possibility his contract
13 would not be extended. He did not report his
14 concerns to the OEIG or any other investigative body
15 for than nine months.

16 In fact, had we agreed to extend
17 Mr. Clifford's contract, we may have never learned
18 any of this about his alleged political pressure.
19 The only resolution that would have not resulted --
20 that would have not resulted in legal action.
21 That's the only thing that would have happened.

22 By contrast, our Board and myself
23 turned this -- these allegations over to the OEIG
24 the minute I heard about them. The minute

1 Mr. Clifford made the allegation this -- he thought
2 this was illegal. When that came to me from this
3 correspondence to Mr. Darley, I immediately went to
4 Board counsel and I immediately had to take -- it
5 turned over to the OEIG for investigation.

6 This is the exact opposite of
7 trying to sweep something under the rug. His
8 April 3rd memo came to us. We turned it over to the
9 OEIG. As I previously testified for God knows how
10 many hours now, I denied Mr. Clifford's allegations,
11 but out of an abundance of caution immediately
12 forwarded all of his claims to the inspector
13 general.

14 I have never intervened with
15 Metra's staff regarding any jobs or contracts, no
16 matter what Mr. Clifford may allege. The Board
17 attempted a fair and unbiased review process for
18 Mr. Clifford that was upended by his threatened
19 legal strategy, which resulted in the settlement.

20 If, as alleged by Mr. Clifford, I
21 was seeking to protect Speaker Madigan, why would I
22 take his allegations immediately over to the OEIG if
23 I thought there was pressure from Speaker Madigan?
24 It's just not consistent. It just doesn't make

1 sense.

2 The other thing that doesn't make
3 sense to me is the timeline of all of this. I must
4 have just an ability to compress getting things done
5 dramatically. I became chair -- I was elected chair
6 in November. My first meeting with Mr. Clifford was
7 in December. I only had three one-on-one meetings
8 to this date with Mr. Clifford.

9 So I had a meeting in December,
10 one in January and one in February. During that
11 time, there were the holidays. The one meeting he
12 alludes to, the December 17th meeting, we met for
13 like five minutes and then went around the entire
14 agency going to Christmas parties.

15 The second meeting, which was in
16 January, which was a little more substantive, that
17 was less than an hour at his office, and the third
18 one again was compressed because we had a meeting
19 with Hillard Heintze about the police situation.

20 So in this time, there were
21 holidays, I was on vacation for two weeks in January
22 and by March -- the beginning of March, this
23 allegation comes over to Director Darley about
24 illegal acts. So think about the timeline on that

1 with all of that -- this is all happening in, like,
2 60 days.

3 And in that time I pressured him
4 for patronage. I did all of these terrible things.
5 I did everything in that amount of time. All I
6 tried to do when I became chairman was to institute
7 what I thought were the policies that a Board of
8 this nature should have. I tried to -- we did put
9 in a committee structure. There was no committee
10 structure. So things would just come to the Board
11 and be debated. A committee structure gives
12 purpose, gives more involvement with respect to the
13 Board members and makes the rest of the process go
14 more smoothly.

15 I tried to put in some oversight.
16 While I was a Board member, we took all of
17 purchasing and we said, you know what, purchasing
18 shouldn't be something that this Board from an
19 oversight perspective just approves after the fact.
20 I've never heard of anything like that. So we put
21 in the ability to see and ask questions about things
22 that were being put through at Metra over \$100,000.

23 It was the same intent that I had,
24 no matter what Mr. Clifford may allege from a

1 nefarious nature.

2 The same attempt with the hiring
3 ordinance. He says it was unwieldy. It's resulted
4 in maybe four or five people being reviewed by this
5 Board on a monthly basis. I don't know how unwieldy
6 that is. And there has been nothing that anyone has
7 taken exception to except for the fact that we get
8 to see it. He hired the number -- one of the number
9 two, three people at the agency, and we didn't know
10 even -- we didn't know what it was. We didn't know
11 what the package was. We didn't know how much they
12 were getting. I think I may have alluded to this
13 last time.

14 But, you know, it wasn't that. It
15 was that this Board wanted oversight. This Board
16 wanted an ability -- and I thought it needed
17 oversight. The Pagano fiasco showed a situation
18 that there was not oversight, and I believe that
19 this Board has a responsibility for oversight and
20 that involvement.

21 Now, he keeps alleging all of
22 this -- this involvement. The biggest thing that
23 was next with respect to what I wanted to institute
24 was a formal review process. Every single member of

1 Metra gets a review, a formal review except the CEO.

2 Mr. Clifford's idea of a formal
3 review prior to that, and I saw the first one after
4 I came on the Board the first year, was really he's
5 going to go into executive session and tell us
6 everything that the agency did. That's not a
7 review. That's an acclamation.

8 We wanted to put in a formal
9 review process. We took that process that he now
10 calls a chicanery, if you will. We took that
11 process, we put it through the committee process as
12 it should be, through employment practices. It
13 outlined a 360 degree. It outlined the Board having
14 input and doing their own little analysis. It
15 outlined stakeholder review, getting input from
16 other stakeholders that are important to us; unions,
17 getting input from the oversight authorities and our
18 sister agencies. You know, what's your relationship
19 here? How is that going?

20 And then the last thing was we
21 were going to set some metrics, some performance
22 metrics. To me, it all makes sense. The minute we
23 started going down that path, Mr. Clifford, who now
24 says, oh, he doesn't -- he doesn't try and influence

1 Board members started to do trips to every single
2 one of the Board members to try and fight this. So
3 he was out there lobbying the Board members against
4 a process that we were trying to put through to
5 review him.

6 So it's just incredible to me to
7 be listening to this. My dad used to make a comment
8 on things of this nature and he'd just call it
9 hooley. Well, what we heard today was a whole lot of
10 hooley. And, you know, when he gets into these
11 things that are -- making allegations that affect
12 people's lives and people's perception of
13 individuals that are on that Board, it just -- I
14 just can't even believe it. It's just amazing to
15 me.

16 Now, he alluded to a situation
17 with respect to meeting with him on these two
18 individuals and me going in there and saying, this
19 was my real first meeting in January and do I have
20 any concerns? I said, yes, I have concerns. I have
21 concerns about our director of procurement. And I
22 have concerns about our counsel, you know, our
23 in-house counsel.

24 What are those concerns? I

1 outlined those concerns. There had been several --
Page 186

2 as I sat as a director, several situations which
3 came to the Board at Mr. Clifford's recommendation.
4 So this was already on the Board agenda. That's
5 when we would get it. And we'd look at it.

6 One of them was the banking
7 services. Banking services, I'm sitting there as a
8 Board member. It comes in this big packet. I take
9 a look at it and I'm thinking, wait a minute. This
10 is something that we've looked at -- we've been
11 waiting for two years. You know, we did like nine
12 amendments to the banking services. This is all the
13 banking services of Metra.

14 And low and behold the
15 recommendation that Mr. Clifford put forward towards
16 the Board was that we have the same three banks that
17 had always done the banking services for the entire
18 history of Metra come back and it had never been bid
19 before. This was the first time it was ever bid.
20 So I look at it and I think, that's odd, and
21 supposedly we had 100 -- over 110 people respond. I
22 thought, that's odd.

23 I went to Acting Chairman Huggins
24 and I said, this doesn't make any sense to me. You

1 know, after all of this, you know, can we take a
2 look -- can we put a stutter step? Sometimes

3 stutter steps are good things.
4 Can we put a stutter step in this
5 and take a look at it? He formed an ad hoc
6 committee. The ad hoc committee was myself,
7 Director Darley and Director Widmer. They got
8 our -- our auditor to -- the Board auditor to get
9 all the information. We met then with the director
10 of procurement, the Board auditor in this ad hoc
11 committee and what we were able to find out was
12 there were only two other banks besides the three
13 that were being awarded that were even sent the RFP.
14 104 non-banks were sent the RFP.

15 I said at the time, couldn't we
16 have just gotten the Crain's list, like, the top 25
17 Crain's banking institutions and send it to them? I
18 mean, no wonder we didn't get good response. And
19 then that was just the first of many things that
20 were in there that were just a mess.

21 The -- the recommendation that
22 came both from Board counsel, in-house counsel, as
23 well as the Board auditor was, this has to be tossed
24 back. This can't even stand the light of day to go

L.A. COURT REPORTERS LLC - (312) 419-9292

195

1 forward with this, which is what we did.

2 So his big allegation of how Brad
3 O'Halloran, the nefarious guy, with respect to

4 making the comment of wintrust was when the new list
5 comes out, I said, well, did we get the top 25 in
6 there, and he shows me the list and I said, well,
7 wintrust isn't even on here and there were a number
8 of other banks that were missing.

9 So it wasn't to do anything beyond
10 that. It was just to basically say, hey, let's get
11 this right and that was before even the bid went
12 out. So what I'm trying to say is here's an example
13 of how Mr. Clifford could take something as innocent
14 as that and turn it into something that, to me,
15 would look untoward. So don't believe every
16 untowardness.

17 The other situation was come in
18 here and -- so that's -- I'm getting back to the
19 concerns that I tried to voice about both the
20 counsel and the other -- I just said, listen, here's
21 the problems that I feel. These are the problems
22 that I have. I think I'm -- I have a right to my
23 opinion as both a Board member and certainly as
24 chairman to be able to talk to the executive

1 director and say, you know, I can't explain some of
2 this stuff. I couldn't explain why counsel had
3 advised us that there was a blackout period that we
4 couldn't even get the status and the banking was one

5 of those. We couldn't even get the status of
6 something.

7 she said that it was legally
8 within -- not within our bounds. We went out and
9 got another opinion, and it was within our bounds.
10 Another situation with respect to that was -- was
11 when we asked, well, you know what, why can't we
12 start bidding this stuff online? why can't we do
13 some of this online? Everybody does that. You
14 know, online bidding Grainger has got everything
15 online right now. why can't we do it? well, we're
16 prohibited from doing that. This was in open
17 session. We went and researched it and we're not
18 prohibited.

19 And, in fact, Alex Wiggins was
20 already working on a way to do it online. So these
21 were some of the things I was trying to express. I
22 never said hire. I never said fire. Okay. That
23 would -- then there is the third meeting that's in
24 February where I absolutely said to him, we are

L.A. COURT REPORTERS LLC - (312) 419-9292

197

1 still dating, because every single one of these
2 meetings Mr. Clifford did one thing and that was,
3 what about my extension, what about my extension,
4 what about my extension?

5 And the next one is where he
Page 190

6 throws this whole Madigan thing at me. I
7 absolutely, positively, did not ever say to
8 Mr. Clifford the statement that he has made. I
9 categorically deny it. I never made it to
10 Mr. Clifford ever.

11 So it's hard to dispute things
12 when you're trying to go at things that you just sit
13 there and you go, are you kidding me? What is this?

14 Now, Mr. Clifford has been able to
15 talk about some of the things and what I would like
16 to know is I don't know if we get the same
17 procedure, because you've asked what were the
18 problems? And we really haven't been able -- there
19 is this disparagement thing that seems to have
20 gotten pretty disparaging, to be honest with you,
21 that we have -- I want to know if we get the same
22 waiving to be able to talk about what really the
23 problems are.

24 So if Mr. Clifford's counsel is

L.A. COURT REPORTERS LLC - (312) 419-9292

198

1 here --

2 CHAIRMAN GATES: I think one of
3 Mr. Clifford's counsels is here.

4 MR. O'HALLORAN: So I want to know
5 can -- can we get the same ability to make
6 statements with respect to Mr. Clifford?

071713 RTA BOARD

7 CHAIRMAN GATES: I didn't know that
8 they controlled that process, but if -- I certainly
9 will ask them if you want to request that they waive
10 something, we certainly will ask them.

11 UNIDENTIFIED SPEAKER: If we have
12 something to waive in that regard, he can say
13 whatever he wants to respond to your question.

14 MR. O'HALLORAN: Okay. And the
15 question would be with respect to what were some of
16 his performance issues?

17 CHAIRMAN GATES: We're going to ask
18 for some -- all right. Fine. We're going to ask a
19 number of questions.

20 MR. O'HALLORAN: Sure.

21 CHAIRMAN GATES: When you're done with
22 your statement, but it sounds like, am I correct,
23 Mr. Clifford's counsel will waive any -- any
24 confidentiality agreement?

L.A. COURT REPORTERS LLC - (312) 419-9292

199

1 UNIDENTIFIED SPEAKER: Yes.

2 CHAIRMAN GATES: That's a yes.

3 MR. O'HALLORAN: Okay.

4 CHAIRMAN GATES: So you're free to
5 ask -- make any answer you want.

6 MR. O'HALLORAN: So some of the
7 things -- some of the issues that were brought to my
Page 192

8 attention as I came into this whole situation and
9 over that period of time were, number one,
10 Mr. Clifford's failure to address safety concerns.

11 Despite repeated requests from the
12 director of safety to fill vacant safety officer
13 positions, Clifford refused to approve the filling
14 of vacant positions. In addition, he scaled back
15 the successful safety task force of the labor
16 management committee -- this was brought to me by
17 the unions -- and sought to eliminate the successful
18 safety captains program as a quote, unquote cost
19 saving procedure.

20 Number two, contracting with
21 high-priced consultants in excess of \$1.6 million.
22 In order to compensate for his lack of rail
23 experience and lack of overall high level management
24 experience, Clifford contracted with outside firms

L.A. COURT REPORTERS LLC - (312) 419-9292

200

1 for consulting services to an excessive degree.

2 Now, all of this hasn't been
3 consummated. Some of it's been stopped. So
4 consulting contracts were entered into under
5 Clifford in excess of 1.6 million.

6 Failure to advise Board members of
7 executive level hires. Despite explicitly
8 representing to the Board that he would inform the

071713 RTA BOARD

9 Board of hiring decisions of key personnel before
10 they were made, Clifford repeatedly failed to inform
11 the Board. These high level hires without
12 notification included deputy executive director,
13 chief financial officer, chief information officer
14 and chief marketing officer.

15 Not only did he fail to keep the
16 Board informed, but what I found out subsequent to
17 that, I said, well, how did we know that this is
18 what was supposed happen? So we went back and
19 listened to the tapes of when he was hired, and one
20 Board member at that point absolutely asked
21 Mr. Clifford if -- would they -- would the Board
22 still have influence -- not influence, but input,
23 just knowledge, of these hires?

24 He promised that they would, that

L.A. COURT REPORTERS LLC - (312) 419-9292

201

1 it would be a collaborative process. Then he
2 granted excessive benefits to certain hires.
3 without Board knowledge or consent Clifford granted
4 additional vacation benefits and relocation payments
5 to certain of its hires. when confronted by the
6 internal audit department, Clifford claimed that the
7 granting of these special benefits to certain hires
8 were within his prerogative and Board notification
9 consent was unnecessary.

10 Lack of grant oversight. Clifford
11 failed to adequately monitor grants, nor did he
12 ensure that his staff did so. As an example, Metra
13 utilized federal grant money to purchase in excess
14 of \$1 million of security cameras in mid 2011, but
15 failed to install a single camera for two years.
16 Clifford finally ordered the urgent installation of
17 cameras in 2013 only after Metra faced the forced
18 return of these federal funds by May 31st of 2013.
19 Another procurement situation that forced a rushed
20 procurement and created another letdown, in my
21 opinion, by the director of purchasing.

22 Failure to address the significant
23 inventory issues. We already talked about that.
24 You already brought it up, Mr. Chairman.

L.A. COURT REPORTERS LLC - (312) 419-9292

202

1 Poor relationship with unions,
2 labor unions. Clifford both refused to work with or
3 meet Metra's labor unions. Metra and its unions had
4 an excellent working relationship prior to his
5 arrival. The union relationships deteriorated so
6 significantly, for the first time in Metra history
7 unions filed for contract mediation. Metra's two
8 largest unions, BLET and the UTU, are formally
9 mediating contract disputes with Metra. I brought
10 this up at the last meeting.

071713 RTA BOARD

12 ridership. Six quarters Metra has experienced
13 declining ridership. Clifford failed to present any
14 plans to improve ridership. His only apparent
15 attempt to improve ridership was a ticket giveaway
16 program, which so far has produced a disappointing
17 single digit ticket redemption rate.

18 Relationships with our contract
19 carriers. You addressed the BNSF. I didn't realize
20 until I went upstairs, which isn't too hard to do at
21 the BNSF, that we haven't had a contract in ages
22 with them and further negotiations were completely
23 stalled. why? well, I'll let you make your own
24 conclusions as to why.

L.A. COURT REPORTERS LLC - (312) 419-9292

204

1 Deficiencies in human resources.
2 The human resource department continued to falter.
3 The hiring process remains cumbersome for department
4 managers to fill vacant positions and it takes an
5 excessively long time. It just wasn't happening.
6 Procurement. We already talked a
7 little bit about procurement. This whole blackout
8 period thing was crazy.
9 Training programs. The training
10 situation is abysmal. That was brought up to me by
11 the -- the unions including the Brotherhood of
12 Railway Signalmen.

13 The relationships with the
14 Englewood community situation. I mean, I get on the
15 Board and before I know it, every one is marching
16 around the building. So my timing in all of this is
17 not great.

18 Flood procurements. I talked
19 about banking. There is several procurements that
20 were just completely flawed, but Mr. Clifford put
21 them to the Board, including the National Black
22 Chamber of Commerce procurement. That was going to
23 the Board. Mr. Clifford didn't stop that. I
24 stopped it.

L.A. COURT REPORTERS LLC - (312) 419-9292

205

1 Failing to address the police
2 overtime issue. Clifford failed to address the
3 longstanding police overtime issue that received
4 media attention following the Pagano scandal. Prior
5 to April 2012, Clifford represented to the external
6 auditing firm of Blackman Kallick that he planned to
7 initiate a study of Metra contract employee overtime
8 hours to determine the cost benefit of hiring
9 additional employees and/or determining the ability
10 to reduce overtime.

11 Despite his publicly reported
12 presentation, we're getting stories again, May 2013,
13 in the Sun-Times because this didn't happen.

071713 RTA BOARD

14 Disengaged from the FTA tri-annual review process.
15 He was completely disengaged from this process. The
16 planning of the 2013 FTA tri-annual review.

17 This comprehensive audit conducted
18 every three years by the FTA reviews 18 different
19 process areas of Metra. Metra's last comprehensive
20 FTA review, the procurement system review -- shocker
21 there -- resulted in a scathing report and
22 significant remedial action by the procurement
23 department.

24 As a result of negative

L.A. COURT REPORTERS LLC - (312) 419-9292

206

1 procurement system review, it is expected that Metra
2 will have received heightened scrutiny during the
3 2013 tri-annual review. Rather than being engaged
4 in the important planning process and directing all
5 staff to help prepare, Clifford was disengaged.

6 Since August 2012, Alex Wiggins
7 and Rick Capra have been readying the agency for the
8 tri-annual review without any support from Clifford.

9 CHAIRMAN GATES: Chairman O'Halloran,
10 could you slow down just a little bit? We're
11 missing a few words here. I know you're excited
12 about this, and rightly so, but --

13 MR. O'HALLORAN: Yeah, and I sort of
14 felt like, you know, you guys heard so much from me

071713 RTA BOARD

15 last time that --

16 CHAIRMAN GATES: well, we -- we're --

17 MR. O'HALLORAN: -- maybe --

18 CHAIRMAN GATES: -- happy to --

19 MR. O'HALLORAN: Maybe -- maybe, you

20 know, like --

21 CHAIRMAN GATES: We want to make sure
22 we understand it.

23 MR. O'HALLORAN: -- I'll be a wake-up
24 call bad voice for you.

L.A. COURT REPORTERS LLC - (312) 419-9292

207

1 CHAIRMAN GATES: Right. We want to
2 make sure we understand what we're hearing.

3 MR. O'HALLORAN: well, one of the
4 other things, and this certainly should come to your
5 heart, is the refusal that I feel that Mr. Clifford
6 had to work with the CTA and PACE in pursuit of the
7 regional fare integration.

8 In fact, at our last meeting, his
9 last meeting, he went on a terror with respect to
10 CTA basically saying that CTA left -- CTA and PACE
11 just moved forward without us and that, you know, we
12 were excluded from the process. I don't believe
13 that's the case. I don't believe we were excluded
14 from the process. I believe it was a not invented
15 here situation and I don't think that we can have

16 that going forward.

17 I think we have to have
18 cooperation and collaboration. It can't be
19 combative. If there was anything I can say is that
20 all of these stakeholder situations, the one thing
21 that I continuously ran into as I was being apprised
22 of what the situation was was that the approach was
23 combative and not collaborative. And that's what
24 stirred up a lot of these situations.

L.A. COURT REPORTERS LLC - (312) 419-9292

208

1 Those were just a few of the
2 points, but I guess what I would like to leave you
3 with before you ask me questions or if Mr. Huggins
4 wants to talk is it's just amazing to me that during
5 this whole process if Mr. Clifford thought something
6 was illegal, immoral, untoward, that it was either
7 in the process with the Latino caucus, if it was
8 during the Englewood Flyover, if it was during the
9 whole Madigan/Mr. Ward situation, if it was during
10 any of this, why didn't Mr. Clifford take it to the
11 OEIG?

12 I heard some sort of mumble jumbo
13 about, oh, I gave it to Iain Johnston, who he is
14 questioning his integrity. He is now a federal
15 magistrate. So I don't know. Maybe they screwed up
16 there as well. But he didn't say anything was

17 illegal. He didn't say anything was illegal until
18 he sent this correspondence to Director Darley on
19 3/9.

20 He even said before he wasn't sure
21 he believed anything was illegal, but on 3/9, he did
22 believe it was illegal. What was the difference?
23 The difference was Mr. Clifford believed at that
24 time he may not get his extension. He may not get

L.A. COURT REPORTERS LLC - (312) 419-9292

209

1 this contract extension.

2 Therefore, it went from, well, I
3 don't think it was illegal and I kind of talked to
4 Iain Johnston to, oh, it's absolutely illegal. The
5 minute I saw the word illegal, I called counsel and
6 I said, this is what I'm reading. Let me read it to
7 you. It was on a Sunday. Let me read it to you.
8 What do we do? Where does this go? They told me
9 the OEIG. I said get it there. It was there by
10 Tuesday.

11 Why didn't Mr. Clifford do that?
12 Now, he kind of says, well, this was talked about
13 sort of, but I can tell you Mr. Clifford never told
14 me. I've never heard him say -- until I saw that
15 word illegal, I never heard him say illegal. I
16 never heard him say anything about this stuff, that
17 it was untoward, that this was something that should

18 be reported to somebody beyond the agency. It was
19 never said.

20 The thing that to me is just --
21 again, I guess, as an end, he claims he is the
22 whistleblower. That's why we're in this whole
23 thing, because as I understand it, you don't have to
24 be the first person with the whistle to be alleged

L.A. COURT REPORTERS LLC - (312) 419-9292

210

1 as a whistleblower, but I can tell you right now I'm
2 the first person with the whistle. I blew the
3 whistle. That's why we're all here today. That's
4 why I get to go through all of these great six-hour
5 ordeals that I'm now living with and, as you know,
6 this is a -- it's a part-time gig and turning into
7 a very bad hobby. So that's pretty much all I have
8 to say.

9 CHAIRMAN GATES: Good. With that --

10 DIRECTOR PANG: Yeah, and I have a
11 question.

12 CHAIRMAN GATES: Well, I was going to
13 hold those until after we've done this. But go
14 ahead. Let's -- go -- first of all, does anyone
15 else on that panel wish to make a statement?

16 MR. HUGGINS: Absolutely.

17 CHAIRMAN GATES: Mr. Huggins?

18 MR. HUGGINS: I guess I'm here today

19 to kind of clear up some -- some misunderstandings
20 and some misstatements and bring some clarity to
21 some issues that is basically untrue.

22 As I sat here and listened to Mr.
23 Clifford talk, I truly understand that he is one of
24 the greatest spin doctors that I've ever seen in my

L.A. COURT REPORTERS LLC - (312) 419-9292

211

1 life. There were three allegations that was made
2 today and after today I think there is four
3 allegations. So I'm going to address all four.

4 The first allegation is that I
5 had a conversation with him as it relates to Speaker
6 Madigan and Patrick Ward and another gentleman.
7 That is true that I did have that conversation with
8 him, but I had that conversation with him is because
9 Sam Smith came to me and said that he's been -- he's
10 been talking to Mr. Clifford to try and get a
11 request that was made by Speaker Madigan and he
12 asked me as the acting chairman of Metra if I would
13 have that conversation with Mr. Clifford and I told
14 him that I would.

15 That's the only reason I'm in here
16 today as it relates to that particular situation.
17 And in the conversation I had with Mr. Clifford, he
18 accused the Speaker of having him to do something
19 that was illegal, and as I said to Mr. Clifford, I

20 said, because I'm asking you the same thing that
21 I've been told that Mr. -- that Speaker Madigan
22 wanted, you're also accusing me of having you to do
23 something that was illegal. I was highly insulted
24 by Mr. Clifford, and I immediately got up and left

L.A. COURT REPORTERS LLC - (312) 419-9292

212

1 his office.

2 So for him to say that we had a
3 30-minute conversation or argument about that is
4 totally false and let the record speak that the only
5 conversation I've had with Mr. Clifford as it
6 related to Patrick Ward and the other gentleman that
7 was mentioned was at that meeting. So I don't
8 understand where the pressure came from me in terms
9 of him trying to -- of me trying to get him to hire
10 someone that the Speaker had recommended. So I
11 totally deny Mr. Clifford's allegations about me
12 trying to put pressure on him for Speaker Madigan.

13 The second allegation is the fact
14 that Mr. Clifford and I, we did go to Springfield
15 and we met with the entire -- with the Hispanic
16 caucus. In those conversations, one of the things
17 that came up and that was the caucus wanted to know
18 how many Hispanics worked for the agency. And I
19 forgot what that number was. I think it was about
20 100 and something.

22 fair share of construction dollars with the
23 railroads.

24 And what came out of that meeting

L.A. COURT REPORTERS LLC - (312) 419-9292

214

1 is the fact that the railroads really and truly
2 don't have an affirmative action program. The
3 question that I asked Secretary Ray LaHood is that
4 one of the biggest problems that we have is that
5 there is a personal net worth issue of \$750,000 and
6 that keeps a lot of minority contractors from really
7 going into this industry.

8 Secretary LaHood turned to
9 Chairman Oberstar and asked him, where was this
10 legislation about the personal net worth issue?
11 Oberstar's comments was that it was buried in
12 legislation. It was buried in a committee, and he
13 challenged Oberstar to bring that -- bring it out of
14 committee so that at some point it can come up to
15 the floor and it can get passed.

16 It took about a year later. That
17 legislation did get passed and now the personal net
18 worth instead of being \$750,000 is \$1.32 million.
19 Now, that all happened from that meeting that we had
20 in Washington that Mr. Clifford talked about.

21 The second part of that meeting
22 was that Metra was given the challenge to make sure

23 that the Englewood Flyover became a model project
24 and Phil Pagano said that he would actually make

L.A. COURT REPORTERS LLC - (312) 419-9292

215

1 sure that that happened. So of course when we got
2 back to Chicago, Phil Pagano and Sam Deano who was
3 the DBE director at the time reached out to Joe
4 Williams at Target Group.

5 Now, Target Group had done work
6 for Metra in the past and in doing work with their
7 HR department. Now, that was a decision that Phil
8 Pagano and Sam Deano made to reach out to Target
9 Group. It was a decision that Larry Huggins had
10 nothing to do with.

11 Yes, I know Joe Williams and, yes,
12 Joe Williams and I, we are business partners. We
13 are business partners in a company called Granite
14 Development. Joe owns a company called Target
15 Group, and that's what Target does. He is an
16 affirmative action consultant assisting minorities
17 in trying to get jobs in the industry.

18 Now, everybody -- there is a lot
19 of people around this table that know who Joe
20 Williams is. Now, have I committed a crime or sin
21 because I know Joe Williams? Have I committed a
22 crime or a sin because I am Joe Williams' partner?
23 And the answer to all of those questions is no. It

24 is wrong for Mr. Clifford to sit here and make

L.A. COURT REPORTERS LLC - (312) 419-9292

216

1 allegations that's totally unfounded trying to
2 actually put dispersions on Joe Williams as a
3 businessperson and me as an individual. I have an
4 issue with that.

5 The fourth thing, of course, is
6 the Englewood Flyover. Now, as a Board member that
7 represents the city of Chicago, the Englewood
8 Flyover was a city of Chicago -- it was a project
9 that was done in the city of Chicago. And when you
10 have a \$93 million contract that comes in the heart
11 of the African-American community that has less than
12 one percent minority participation, I went to every
13 Board member and told them that in my opinion we
14 cannot award this contract, and that what I was
15 prepared to do is to not put it on the agenda and
16 hold it up for 90 days in order for us to give the
17 contractors an opportunity to get this worked out,
18 because there is no way that that project can go on
19 in that community unless you had increased
20 African-American participation.

21 Every single Board member
22 supported me on that issue. As a matter of fact, we
23 actually sat down with our legal counsel -- in-house
24 legal counsel, Metra's legal counsel to discuss

L.A. COURT REPORTERS LLC - (312) 419-9292

217

1 strategy as to what can happen in order to make sure
2 that the contractor increases the African-American
3 participation.

4 Mr. Clifford sat in on those
5 discussions and, yes, he had an issue with it. He
6 felt that the contractor had met the legal
7 responsibilities in its contract of 25 percent DBE
8 and yes, he had. But from a moral standpoint, the
9 general contractor was wrong.

10 We were called to Washington, D.C.
11 with the Secretary of Transportation to discuss ways
12 in which we could help that situation correct
13 itself. Now, where the \$10 million came up is the
14 fact that one of the ad hoc committee groups came
15 back and said that since there was \$25 million of
16 DBE that was made up of females, Hispanics and
17 others and no DBEs that the African-American
18 community should have \$25 million.

19 My response back to Mr. Clifford
20 is that, one, I told him that -- that -- that number
21 is not going to work, and let's see if we can maybe
22 get the number down to about 10 million. So what I
23 made was a suggestion. It was not my idea. I mean,
24 it was my idea for the suggestion, but it was not

1 something that I said that we had to do.

2 Now, where the \$50,000 came up --
3 in -- at was that part of -- out of the memorandum
4 of understanding what they wanted to do was make
5 sure that there was somebody that was going to
6 monitor the project, because as you very well know
7 that when you look at the Red Line, you have the
8 Urban League and you have other outside agencies and
9 that's what they do, and they are paid to do that.

10 And then, of course, Congressman
11 Rush was going to -- was going to recommend who that
12 monitor would be, and that was a discussion that I
13 had with Mr. Clifford way before the memorandum of
14 understanding or the agreement was made. So for him
15 to come here today and say that that conversation
16 took place a month or two months after he was sick
17 and he was gone is not true.

18 As a matter of fact, you can get
19 on the phone and call Janice Thomas right here now,
20 because she is not here so she has not heard any of
21 this and ask her if that discussion did not take
22 place about the \$50,000. So it's not that I went
23 behind his back after the fact and tried to get that
24 put on the agenda. That was a part of the agreement

1 up front.

2 Yes, Mr. Clifford had some issues
3 with it, but as I said to him that we want to get
4 this issue resolved so that I can call the Board
5 back and -- and -- and get it done. That is a part
6 of the agreement they would like to see in that
7 memorandum of understanding. So if we want to get
8 this project moving forward, let's do it.

9 Now, he agreed to that. He did
10 not disagree. He ended up agreeing to that, but he
11 said that's something that you would have to take
12 before the Board because it was not in his budget,
13 and I told him that I would definitely do that. Now
14 the problem that came up was when he had Janice
15 Thomas to explain to the Board, you know, why the
16 \$50,000 came up.

17 He put Congressman Rush's name in
18 that memorandum and I told Mr. Clifford -- I said,
19 Mr. Clifford, that's wrong. You should not end up
20 putting the Congressman on the front for this, and
21 if you're going to do that then just take it off.
22 So that's why it never really came up. So all of
23 these things were discussed with Mr. Clifford.

24 Now, do I apologize for trying to

1 stand up for the African-American community and make
2 sure that there was inclusion? No, I don't.
3 Because that is something that I truly believe in
4 and that's something I've always fought for. That
5 was -- in my opinion, that was truly the right thing
6 to do. In the board's opinion it was the right
7 thing to do. In Mr. Clifford's opinion it was the
8 wrong thing to do. You know, from a legalist
9 perspective, Mr. Clifford was right. From a
10 moralist perspective, Mr. Clifford was wrong.

11 And that is why I am truly kind of
12 dumfounded that in his allegations that he would
13 actually bring that up. I am dumfounded in his
14 allegations that he would bring up the fact that I
15 have an issue with Hispanics being promoted, because
16 at the end of the day, minorities are two of the
17 largest growing groups that are out here.

18 So I don't know what
19 Mr. Clifford's agenda was, but I just have issues
20 with that, and I don't apologize for it. I don't
21 think that I have done anything that was wrong. For
22 Mr. Clifford to say that he and I, we had arguments.
23 Sure, we had arguments. There are things that we
24 disagreed upon. Mr. Clifford was arguing with you

1 guys on things that you guys disagreed on.

2 So everybody had the right to
3 debate, but does that mean that I hate Mr. Clifford?
4 No, it don't. Does that mean I tried to sabotage
5 Mr. Clifford? No, it don't. And the fact of the
6 matter is, there is not one Board member that can go
7 and tell you that I went behind Mr. Clifford's back
8 to try and get him ousted.

9 So at the end of the day, the
10 truth speaks for itself. I have said my peace and
11 any questions that you guys have of me, I'll be glad
12 to answer them.

13 CHAIRMAN GATES: Good. In the -- I'm
14 sorry. Attorney Gagliardo?

15 MR. GAGLIARDO: Mr. Chairman, I would
16 like to make comments, but if the Board would like
17 to ask questions first, I'm happy to wait. I just
18 didn't want to be silent and --

19 CHAIRMAN GATES: No, go ahead. Go
20 ahead.

21 MR. GAGLIARDO: Is that okay? All
22 right. Thank you.

23 You know, there are a lot of
24 disagreements about what Mr. Clifford said today,

1 but there is one thing that we agree upon totally,
2 and that this agreement was 100 percent about him
3 being able to get another job and to deal with his
4 claimed damages.

5 There's been references that --
6 that this is hush money or there were some sort of
7 cover up and it's actually not the case at all.
8 Even the letters of reference that Mr. Clifford
9 referred to arose out of the settlement process and
10 were provided in an effort to help him get a job as
11 he moved forward, because as you will recall, you
12 know, part of the money that Metra might have to pay
13 is contingent upon whether or not he has another
14 job. It's in our interest to have him employed and
15 these Board members were willing to write letters of
16 reference and that was fine and that -- that served
17 the purpose.

18 But in terms of this being some
19 sort of confidential back room deal in a smoke
20 filled room, it's anything but that. The
21 confidentiality provision not only benefits Metra
22 that we wouldn't get into a war of words as we have
23 gotten in here today before the public where it
24 might affect Metra's -- the perception of Metra by

1 the public by oversight agencies. It might affect
2 Metra's internal operations. It might affect
3 someone's willingness to come and be a candidate.

4 At the same time, the
5 confidentiality and non-disparagement provisions
6 benefited Mr. Clifford because he was concerned that
7 people at Metra, whether it be Board members or
8 other employees, were going to say things that were
9 going to affect his reputation and were going to
10 affect his ability to get a job.

11 You know, I have to go back to
12 this agreement that was adopted is the agreement
13 that was recommended by Judge O'Connell after a
14 12-hour mediation and it included the provisions
15 that we're talking about, not just the financial
16 amount of money.

17 Also in terms of, you know,
18 somehow hiding things, if Metra was hiding
19 something, why would Chairman O'Halloran have sent
20 the very vague, general March allegation to the OEIG
21 literally a day after he became aware of it? Why
22 would Metra have gone out and hired former U.S.
23 Attorney from the central district, Rodger Heaton,
24 to conduct an internal factual investigation? If

1 Metra was hiding anything, why would they have
2 distributed this settlement agreement immediately
3 after it was approved by the Metra Board on
4 June 21st?

5 Frankly, after the legislative
6 committee hearing last Thursday where the
7 legislative committee was insisting that this --
8 this April 3rd memo be produced, Chairman O'Halloran
9 directed me to produce the document, and I did it on
10 Friday, the very next day, and that -- that became
11 the public document that -- that -- that we've been
12 talking about.

13 But what's also been lost in this
14 is that if you look at the settlement agreement, the
15 settlement agreement contemplates that this
16 information was going to become public. We never --
17 you know, we never thought otherwise, because you're
18 an oversight agency. Whether it's you, the RTA,
19 whether it's the OEIG, we knew that there were going
20 to be questions and those questions were going to
21 have to be answered.

22 So if you look at the terms of the
23 agreement, whether it's with regard to the mutual
24 confidentiality provision, there is an express

1 exception except for, you know, that -- an exception

2 with regard to entities with oversight, legislative
3 or other authority over Metra, including but not
4 limited to the Office of the Executive Inspector
5 General, for the agencies of the Illinois Governor
6 or as otherwise required by law, and then even in
7 the non-disparagement provision there is an -- there
8 is an exception.

9 so the fact is that the very
10 agreement that we entered into that everybody is
11 claiming -- or not everybody, but a number of people
12 have claimed was done to hide things, that very
13 document expressly contemplates that we were going
14 to have to be before you, you know, and whatever
15 other oversight committee, talking about the terms
16 of the agreement and talking about the issues and
17 what happened leading up to it. So that's with
18 regard to that point.

19 with regard to when this
20 information was disclosed, it was disclosed on
21 April 3rd, 2013. Notwithstanding Mr. Clifford's
22 statements here today, notwithstanding Director
23 Shaffer's statements, a review has been done of all
24 executive session tapes from March 2012 forward.

L.A. COURT REPORTERS LLC - (312) 419-9292

226

1 There is no mention of Speaker Madigan. There is no
2 mention of the Fly -- you know, the issue that

3 something illegal is going on with the Flyover
4 Project and there is no mention of the Hispanic
5 caucus nowhere.

6 So my conclusion is, look, if --
7 if Mr. Clifford would have reported it, it would
8 have been there. Frankly, I believe that if
9 Director Shaffer had known of something that he
10 thought was illegal -- I have known him for a long
11 time. He's not shy, he would have reported it.
12 It's not in there. Okay?

13 So the first time that the Board
14 became aware that Mr. Clifford was claiming that
15 anything retaliatory was going on was in that --
16 that April 3rd memo, and as I said before, as soon
17 as Chairman O'Halloran received that, he ordered
18 that it be turned over to the OEIG and it was, just
19 as the March sort of general e-mail was immediately
20 turned over to the OEIG.

21 So, you know, I -- I just --
22 what's somewhat ironic, too, about the discussion of
23 the February -- the description of the February
24 conversation with Chairman O'Halloran, that

L.A. COURT REPORTERS LLC - (312) 419-9292

227

1 conversation is alleged by Mr. Clifford to have
2 taken place before the Board was notified of this
3 issue, certainly before Chairman O'Halloran was

4 notified of it, and Chairman O'Halloran already said
5 this, but I think it bears repeating.

6 If Chairman O'Halloran was so
7 concerned about protecting Speaker Madigan, why
8 would he have immediately turned over this April 3rd
9 memo to the Office of the Executive Inspector
10 General? You have to think about that and answer
11 that question in your own minds.

12 You know, I -- I didn't mean to be
13 disrespectful earlier. I was upset because there
14 were a handful of items that -- that were heard
15 today for the first time notwithstanding the
16 April 3rd memo and notwithstanding the 12-hour
17 mediation.

18 This issue regarding this
19 recommendation that a Mr. Hynes be promoted. Never
20 heard of this. And I've spend a lot of time in
21 conversations with Mr. Clifford's counsel about
22 this. Never heard of that until today.

23 This issue with Representative
24 Hernandez, never heard of it before today. It's

L.A. COURT REPORTERS LLC - (312) 419-9292

228

1 obviously not in the April 3rd memo and -- and the
2 same thing. The bid issue regarding the financial
3 institutions, that -- that is not in the April 3rd
4 memo, nor was that ever mentioned in the -- in the

5 mediation.

6 I also have to point out that
7 there is a reference in the April 3rd memo that
8 Speaker Madigan reportedly -- and if you look at the
9 language, that's what it says, reportedly -- let me
10 just -- so I'm not -- Mr. Madigan also reportedly
11 requested that another individual receive a job with
12 Metra. And then Mr. Clifford says in his letter, I
13 didn't implement those requests.

14 Although we heard of that in this
15 memo, there have never ever been any additional
16 details provided, and Mr. Clifford didn't even
17 provide any additional details today. So I just
18 want to point out that, like I said, three of the
19 topics that Mr. Clifford raised are news to me.

20 Regarding the Flyover, I'm just
21 going to make a couple of comments, because Director
22 Huggins, I think has -- has at least explained what
23 happened, but I mean, I think the context of what
24 was going on is very important.

L.A. COURT REPORTERS LLC - (312) 419-9292

229

1 You have Metra about to consider
2 this Flyover contract. On May 2nd of 2012, it
3 receives -- or it's in a letter dated May 2nd, 2012,
4 directed to actually Director Huggins. Three
5 Congressmen say that, we want you to not consider

6 this right away. We want you to take a look at
7 whether this could be rebid or whether there is some
8 other creative step Metra could take, because out of
9 the \$93 million, about 110 or \$120,000 was
10 designated for an African-American contractor.

11 There is no dispute that the DBE
12 requirements were met. But when you think of the
13 context, Metra receives this letter. There is a
14 Board meeting to consider the issue and the three
15 Congressmen show up. How often in the history of
16 Chicago has one Congressman, let alone two or three,
17 shown up to discuss an issue, and then layered on
18 top of that, you have public marches being led by
19 Congressman Rush and community leaders, you know,
20 questioning whether this was the appropriate route
21 to go.

22 So in my humble opinion, and I'm
23 not a director, but it seems to me I spent ten years
24 in city government, and I've spent 25 years

L.A. COURT REPORTERS LLC - (312) 419-9292

230

1 representing governmental agencies. In the face of
2 those circumstances, in my opinion, it would have
3 been suicide and irresponsible to run forward and
4 just approve the agreement.

5 MR. HUGGINS: Joe, can I step in one
6 minute on that?

071713 RTA BOARD
MR. GAGLIARDO: Sure.

7
8 MR. HUGGINS: Out of the \$112,000
9 contract that was listed in DBE, it was a security
10 contract. It only meant that you would have two
11 security guards, not one construction contract, not
12 one construction job. So you would have possibly
13 the two individuals that was working maybe was
14 making \$15 an hour instead of having some
15 construction job that was paying \$30 an hour plus.

16 So that is why the congressman was
17 upset. That is why the community was upset. And
18 when you talk about -- Alex talking about putting
19 pressure on people, Alex went to our legal counsel
20 and said that if the contractor decided to sue
21 Metra, that they would not hold me harmless.

22 So in other words, if there was a
23 lawsuit, I was going to have to defend myself for
24 standing up for what I thought was right. So, I

L.A. COURT REPORTERS LLC - (312) 419-9292

231

1 mean, I just have a problem with this, and I have a
2 problem with -- with Alex Clifford making an issue
3 out of the Englewood Flyover. It is just simply
4 wrong. That was the worst thing I think he ever
5 could have done.

6 MR. GAGLIARDO: All right. Just --

7 MR. HUGGINS: That's my opinion now.

8 MR. GAGLIARDO: In terms of the -- the
9 end result of the contract, the contract was not
10 modified. It was awarded as it was bid, as Mr.
11 Clifford decided there was some understanding met
12 between the community and the contractor.

13 But with regard to the Congressman
14 Rush \$50,000 contract, it -- it -- it did never go
15 forward at the Board and you will remember
16 Mr. Clifford testified about he was discussing this
17 in October. Well, here's a memo dated November 16,
18 2012 from Mr. Clifford to the Board of Directors
19 with the recommendation authorizing executive
20 director/CEO to execute a professional services
21 contract with National Black Chamber of Commerce,
22 Washington, D.C., to provide community liaison
23 services for the duration of the Englewood Flyover
24 project. The contract term is for a three-year

L.A. COURT REPORTERS LLC - (312) 419-9292

232

1 period and the contract amount is not to exceed
2 \$50,000.

3 It does reference Acting Metra
4 Board Chairman Larry Huggins, having met with
5 Congressman Rush on the first page, but this is the
6 memo dated November, a month after Mr. Clifford
7 testified about where this memo is recommending that
8 the project move forward, and it didn't move forward

9 because of Chairman O'Halloran.

10 In terms of the evaluation
11 process, Mr. Clifford was concerned that the
12 evaluation was going to be gerrymandered. I've got
13 to tell you, if he was worried about just the Board
14 evaluation, you know, I don't know who can control
15 who, but that at least arguably makes some sense.
16 When you talk about that this evaluation was going
17 to include his own self-evaluation. It was going to
18 include a 360 evaluation, which would include his
19 peers. It was going to include evaluations by the
20 Metra Board members, and it was going to include
21 evaluations by third-party stakeholders, whether
22 it's unions or the other railroads that Metra does
23 business with, how is anybody going to control the
24 outcome of whatever those people's or entities'

L.A. COURT REPORTERS LLC - (312) 419-9292

233

1 opinions were going to be about Mr. Clifford?

2 It made no sense. He might not
3 have liked the evaluation process. He might have
4 wished for a different evaluation process. But he
5 was the CEO. He wasn't the Board. And he was to be
6 subject -- subjected to that -- that process. So it
7 was a fair and comprehensive evaluation process and
8 how did it get -- get -- up ended?

9 You heard about it and I'm going

10 to talk about it in a minute about this screening.
11 Part of what -- what happened was Mr. Clifford --
12 because his counsel was already involved in having
13 sent a letter to Metra asserting claims,
14 Mr. Clifford was consulting about -- with his couple
15 about various issues and one of the issues that came
16 up was Mr. Clifford wanted to record an interview
17 that was going to take place of him.

18 Now, before I go on, Metra goes
19 out, hires a company that specializes in these
20 evaluations and says, look, we just want you to use
21 your normal process. They say nothing that --
22 because at this point there was already the
23 April 3rd memo. They say nothing to the evaluator
24 about the fact that there is any disputes, because

L.A. COURT REPORTERS LLC - (312) 419-9292

234

1 they don't want to tarnish the process.

2 It turns out that when
3 Mr. Clifford talks to the -- Dr. Mayfield, who was
4 going to be doing the evaluation, he is the one that
5 discloses that he's got these claims against Metra
6 and he's in this dispute, and he insists that he
7 wants to have the conversation she has with him tape
8 recorded so that in the event there is future
9 litigation there will be a record of what he said.

10 Dr. Mayfield says, that's not the

11 way we would normally conduct evaluations where
12 people are recording the interview. I don't think
13 that this is an appropriate way to proceed. So the
14 evaluation process gets turned on -- gets turned on
15 its head. In terms of the screening that Mr.
16 Clifford talked -- I'm sorry.

17 UNIDENTIFIED SPEAKER: Did it violate
18 present procedure?

19 MR. GAGLIARDO: No, it didn't
20 because -- yeah. That ended up being the death
21 knell and Mr. Clifford was sent an e-mail saying
22 that as a result of your insistence that the
23 conversation be recorded, the -- the person is
24 refusing to go forward with the evaluation, because

L.A. COURT REPORTERS LLC - (312) 419-9292

235

1 that's not a normal way of proceeding.

2 UNIDENTIFIED SPEAKER: But was this in
3 February or March?

4 MR. GAGLIARDO: No, no, no. This is
5 in -- this is in, like, May.

6 UNIDENTIFIED SPEAKER: So the process
7 was late, though, right and that was part of his
8 concern, right?

9 MR. GAGLIARDO: No. I -- I'm -- no.
10 I don't think that that was it. What happened was
11 in March -- on March 7th, the Board announced that

12 it was going to conduct this evaluation process. On
13 April 3rd, Mr. Clifford sends the memo to the Board.

14 And what I'm going to talk about
15 in another minute -- because I want to go back to
16 his letter. If you look at the first paragraph you
17 wonder, well, why did he decide on April 3rd? I
18 think the director that's not here anymore asked
19 that question. Why -- why then?

20 The answer is in the first
21 paragraph of the letter. Because the first
22 paragraph of the letter says that, I know that my
23 performance is on the agenda for the April 5th
24 meeting. Okay?

L.A. COURT REPORTERS LLC - (312) 419-9292

236

1 So we know that that's what
2 motivated him to bring -- to bring the issues
3 forward. So what happened, Director, is it wasn't
4 delayed. The process was unfolding. It was
5 announced in March. Then the Board considered what
6 the process should be and then the Board started to
7 move forward with it, and then it got up ended
8 because of the tape recording issue.

9 In terms of the screening, I just
10 need you to -- to -- you know, I know you're here
11 all impartial and you are listening very carefully
12 and you've given everybody a lot of time, but you

13 have to think about you have an executive director
14 who has threatened to sue you, and you don't know
15 where it's going to come out. Is it -- is he going
16 to get terminated and there is going to be
17 litigation? You're going to work some settlement
18 agreement out like we did and he's not going to be
19 here, or is somehow this all going to be worked out
20 and he's going to remain? Okay?

21 well, if you have somebody who
22 you're not sure whether they are going to be in the
23 ballgame, you know, for the full nine innings, are
24 you going to really want to entrust in that person

L.A. COURT REPORTERS LLC - (312) 419-9292

237

1 the decision-making regarding very significant hires
2 where you would expect that -- that whoever the
3 executive director is would want to hire someone
4 where he or she felt there was a synergy? So of
5 course you don't want these higher level positions
6 being filled until you have a little bit more
7 certainty.

8 Another issue was we had been
9 advised that Mr. Clifford had sought access to
10 possibly over 15,000 e-mails. Okay? we didn't know
11 why he was accessing the e-mails, whose e-mails he
12 was accessing. Was -- accessing -- was he possibly
13 accessing information that were attorney/client

14 communications? who knew?

15 But it was unusual for someone to
16 start accessing thousands of e-mails. So that
17 became a concern. And then as I described, for
18 example, with the evaluation process, you know, his
19 counsel was involved, which made things complicated,
20 because you want him running the agency, not talking
21 to counsel and figuring out how he's got to run the
22 agency in relation to his claims.

23 And then there was a dispute that
24 after the evaluation was going forward -- and

L.A. COURT REPORTERS LLC - (312) 419-9292

238

1 Mr. Clifford would dispute this, but there was a
2 feeling that he was trying to do an end-run around
3 the process by going directly to Board members.

4 So there were a whole series of
5 issues, these aren't the only ones, that were the --
6 the subject of the discussion, you know, regarding
7 the screening and why it was necessary.

8 Now, let me just go -- go back
9 to the letter, because I think this is -- this is
10 where -- you know, this is what started it, and it
11 was started when Chairman O'Halloran as a
12 whistleblower received it and reported it to the
13 OEIG, because frankly, the earlier allegation in
14 March was just very simply that I think that a small

15 number of Board members might not want me to get a
16 new contract, because I didn't engage in political
17 patronage. There were no details at all.

18 This is the first time there were
19 ever any details but both of those -- in both of
20 those incidents, Chairman O'Halloran was the
21 whistleblower. But what we know is that the
22 incidents -- the two incidents, the Hispanic caucus
23 and Speaker Madigan occurred a year -- over a year
24 before this April 3rd memo, and the Flyover occurred

L.A. COURT REPORTERS LLC - (312) 419-9292

239

1 between May and July of 2012. So it was -- I don't
2 know -- 9 to 11 months before this -- this memo was
3 written.

4 But in terms of if you look at the
5 timeline, again, because I think it's important, on
6 March 7th of 2013, it's announced by the Board
7 that there is going to be this comprehensive review.
8 On March 8th, Mr. Clifford has a conversation with
9 Director Darley that he described where he
10 understands now that whether or not his contract is
11 going to get renewed is going to depend on the
12 outcome of this evaluation. Okay?

13 On March 9th is when Mr. Clifford
14 sends the e-mail to Director Darley with the general
15 allegation that I just made. That allegation gets

16 presented to Chairman O'Halloran on a Sunday, which
17 is March 10th, and on Monday, March 11th, the call
18 was made to the OEIG to schedule the meeting to
19 report the allegation and the meeting was scheduled
20 for and took place on Tuesday, March 12th.

21 In terms of the -- the -- my
22 observations, you know, I think -- I think that the
23 first paragraph says it all. I am writing in
24 connection with the board's consideration of my

L.A. COURT REPORTERS LLC - (312) 419-9292

240

1 performance as executive director/CEO of Metra and
2 possible renewal of my employment agreement, which
3 expires on February 10, 2014. That's why this came
4 to light.

5 As Chairman O'Halloran said, maybe
6 if his contract wasn't at issue this wouldn't have
7 come to light and then again, as I said, why
8 April 3rd? Because it goes on to say, review of my
9 performance is an agenda item for the Board
10 employment practices committee meeting scheduled for
11 April 5th, 2013 in two days, just two days later.

12 So I talked last time about why
13 from my legal standpoint based on my 35 years of
14 experience it made sense to settle the case. I'm
15 happy to answer any questions. I want everybody to
16 know that I made the recommendation based on the

17 mediator's recommendation. I'd make the same
18 recommendation today, notwithstanding the firestorm
19 because I think it was the right thing to do from a
20 legal standpoint and frankly from an operational
21 standpoint.

22 Thank you for your attention and
23 thank you for giving me the opportunity to speak.

24 CHAIRMAN GATES: Thank you very much.

L.A. COURT REPORTERS LLC - (312) 419-9292

241

1 Anyone else on the panel want to
2 make a statement? Alex, you're the only one left.

3 MR. WIGGINS: Certainly.

4 Mr. Chairman, I think you can appreciate that --
5 that the relationship between a deputy and the ED is
6 a very close, unique one. And we worked in close
7 proximity.

8 As a matter of fact, my office was
9 about 20 feet away from his for the -- for the
10 better part of a year. So it's difficult to have
11 this -- this conversation. I -- I can say that to
12 do this job properly, you cannot be a yes man or a
13 yes woman. You have to give your boss feedback from
14 your perspective and so over that year, Alex and I
15 had a number of issues that we agreed on and a
16 number of topics that we disagreed on.

17 The first, most significant was I

18 gave him very good counsel as the Board was going
19 through an election process in determining who the
20 next chairman would be that he's staff -- and Alex,
21 I think, forgot that he was staff. I think he
22 actually thought that the Board worked for him as
23 opposed to him working for the Board.

24 And my counsel was to stay out of

L.A. COURT REPORTERS LLC - (312) 419-9292

242

1 that process. Let that process run its course. As
2 staff, we carry out policy decisions. But he became
3 heavily engaged in that process and actually -- was
4 actually trying to manipulate outcomes, and that was
5 a significant disagreement that he and I had.

6 what follows then is he goes
7 through this phase where he is having difficulty in
8 his relationships interacting with the Board members
9 and as his deputy, I'm giving him my -- my best
10 advice and as his contract renewal came up for
11 discussion, my advice to him was to build those
12 relationships and build that trust and let that --
13 let your work speak for yourself -- for itself,
14 rather.

15 But that's really not the choice.
16 He chose actually a confrontational approach and --
17 and so in the months leading up to his resignation,
18 I went from, I think, a very productive relationship

19 and although we disagreed on many topics, I think
20 there was at one time mutual respect. He became
21 obsessed with doing whatever he could to renew his
22 contract, and that really became the focus of how he
23 approached the day. And the day-to-day
24 organizational matters, operational manager --

L.A. COURT REPORTERS LLC - (312) 419-9292

243

1 matters weren't being given the appropriate
2 attention, and so the -- the timing of the -- the
3 memorandum is, to me, being a deputy, quite suspect,
4 because his entire focus was solely on renewing the
5 contract.

6 And when you serve in a leadership
7 position in a public agency, in particular at the
8 deputy or CEO level, you know, this is a privilege.
9 This is not a right. Tomorrow I don't have a right
10 to come back to my job. And as a CEO, next year I
11 don't have a right in Alex's case to have my
12 contract renewed. I have to earn that. And in his
13 case, he was having difficulty doing that. And so
14 as a leader, my advice was take a look at what
15 happens across the country to people who have the
16 awesome responsibility of managing people and
17 leading organizations.

18 When you find that -- that the
19 relationship is not growing the way you want, when

20 you find that those conditions of your employment
21 may be changing or you're -- you're -- the
22 perception of your value is changing, then you
23 graciously nod and accept the fact that it's time to
24 start looking for another opportunity and you work

L.A. COURT REPORTERS LLC - (312) 419-9292

244

1 collaboratively with your boss to actually make a
2 very smooth transition and a smooth exit to move on
3 to your next job, to move on to your next job
4 without the controversy.

5 And so my observation in Alex's
6 choice to raise the April 3rd memo as a
7 confrontational point, he actually did not take that
8 graceful approach and make that a graceful change.
9 He had that option, but he chose otherwise.

10 UNIDENTIFIED SPEAKER: Some of our
11 Board members -- yeah, a number of our Board members
12 have other commitments, as someone said, this is a
13 --

14 CHAIRMAN GATES: Someone said this is
15 a part-time job for us and for many of you, and
16 we're going to lose some of our members to their
17 full-time jobs. So I think first right now I'd like
18 to turn it over to our Board members to ask whatever
19 questions they want, and then we can follow-up
20 with -- with questions from the auditor and our

071713 RTA BOARD
21 general counsel. Director Pang?

22 DIRECTOR PANG: So given Metra's long
23 list of Mr. Clifford's performance issues, it seems
24 that both the riders and the taxpayers were put in

L.A. COURT REPORTERS LLC - (312) 419-9292

245

1 jeopardy by not having a formal performance
2 management process in place that established goals,
3 measurements, timing of key discussions, how goals
4 were set.

5 Is that process now in place for
6 the next CEO/executive director, and the second part
7 of the question is and for the interim dual
8 management structure that you've put in place?

9 MR. O'HALLORAN: Well, we developed an
10 entire process. We intend to follow the entire
11 process. The thing that's unusual about this is
12 everyone had a formal process in place. So Alex
13 Wiggins, Don Orseno, everyone else in the
14 organization had a very formal process in place.
15 There was never a formal process for the ED/CEO. I
16 don't know why. I think it's historical in nature.
17 I absolutely agree with you that it has to be in
18 place and it has to have the kind of metrics that
19 you just alluded to.

20 DIRECTOR PANG: Yeah. I think, you
21 know, 360 feedback, to me, is one input into how you

22 measure somebody's performance. The key is goal
23 setting and the measurement so that it's very fair
24 and transparent, and I believe this Board would like

L.A. COURT REPORTERS LLC - (312) 419-9292

246

1 to see what that process is. Of course, we wouldn't
2 want to see the details of anybody's performance
3 review, but we would want to see how that's
4 established -- how those things are established and
5 then if they are in place, because it obviously put
6 taxpayers at jeopardy with the severance agreement,
7 but worse it could put riders in jeopardy if safety
8 standards are not being met.

9 MR. O'HALLORAN: Absolutely.

10 CHAIRMAN GATES: We will ask our audit
11 department, Mr. Zumach who is right here to audit
12 the performance evaluation for all -- frankly, all
13 service boards. It's -- this
14 is a question that, frankly, we have not dealt with.
15 More financial in nature, but your -- your comments
16 are right on. It puts people in jeopardy. It puts
17 institutions in jeopardy and there's obviously a
18 huge financial risk if it's not carried out
19 correctly.

20 MR. O'HALLORAN: I also think,
21 Chairman, that we could all learn from each other
22 from the other agencies and again, that should be a

23 collaborative process.

24 CHAIRMAN GATES: Director Totten.

L.A. COURT REPORTERS LLC - (312) 419-9292

247

1 DIRECTOR TOTTEN: Thank you,
2 Mr. Chairman.

3 Chairman O'Halloran, I -- when you
4 Google your name, you find out that you went to the
5 University of Notre Dame, which was a great choice.

6 MR. O'HALLORAN: Twice.

7 DIRECTOR TOTTEN: Good education, you
8 should be very smart, but taking that, why did you
9 seek this job or did you seek it?

10 MR. O'HALLORAN: Well, that's a real
11 good question. I -- you know what, in life
12 sometimes different challenges are presented to you.
13 I think that I looked at it as a challenge. I
14 looked at it as something that I felt -- at the time
15 I certainly, you know, felt that I had the
16 confidence of the rest of the Board members. I
17 think I have the confidence of most of those Board
18 members still and, you know, they always say what
19 doesn't kill you makes you stronger. So...

20 DIRECTOR TOTTEN: Did you speak it
21 or did someone ask you to take the job? Did
22 someone ask you if you were interested in taking
23 the job?

24

071713 RTA BOARD
MR. O'HALLORAN: well, I think that --

L.A. COURT REPORTERS LLC - (312) 419-9292

248

1 I don't know. I think it -- leadership sometimes
2 just seeks you. I don't know. I just felt that I
3 could do the job. So...

4 DIRECTOR TOTTEN: well, in order to
5 get the job, you had to have somebody back you to do
6 it.

7 MR. O'HALLORAN: I had a unanimous
8 vote of all members of the Board.

9 DIRECTOR TOTTEN: Yeah, but I mean not
10 necessarily the chairmanship, but to be in the -- on
11 the Board in the first place.

12 MR. O'HALLORAN: Certainly, I think
13 when my name was floated as a candidate, several
14 other appointing authorities contacted me and asked
15 me questions about my background, what I did, all of
16 those types of things, and I answered as honestly as
17 I possibly could.

18 DIRECTOR TOTTEN: Okay. But you --
19 did you put your name forward? I guess that's what
20 I was trying to get at, or did someone put your name
21 forward?

22 MR. O'HALLORAN: No one put my name
23 forward. If it was put forward, it was by me.

24 DIRECTOR TOTTEN: Okay.

1 MR. O'HALLORAN: And, boy, you know,
2 in life, you have these crossroads, don't you?

3 DIRECTOR TOTTEN: Amen. Thank you.

4 CHAIRMAN GATES: Director Buchanan?

5 DIRECTOR BUCHANAN: Thank you, Mr.
6 Chairman.

7 Just, you know, two questions I
8 have. For those that we serve, meaning the riders,
9 I believe if somebody offered the riders \$718,000,
10 they'd be pretty happy. Okay?

11 The second issue I have is what is
12 going to be put in place in the future for the next
13 CEO or the next top official for Metra? Are we
14 going to be addressing this issue three years,
15 six years from now again?

16 MR. O'HALLORAN: I certainly hope not.
17 You know, I was asked a similar question by the
18 legislators and there are no guarantees in life. I
19 think what you do is you make the best decisions as
20 the situations are presented to you. I believe
21 right now, you know, we have a team that can move
22 forward. I think they understand what they need to
23 do to move forward, and I think that we evaluate
24 that in the way that Director Pang alluded to.

1 We evaluate it and we -- we see if
2 we're getting the results. You know, one of the
3 things -- it's great. I mean, I think that
4 PowerPoints and presentations and all of this stuff
5 is wonderful, but at the end of the day, it doesn't
6 really run the railroad. What runs the railroad is
7 people that are out there really getting things
8 done, and we have to get back to getting things
9 done.

10 You alluded to the 700 and some
11 thousands dollars. Well, you know, it was a
12 collective mistake. I certainly wouldn't blame it
13 on Mr. Clifford in any way, shape or form, but I
14 think it was a mistake to change the ten ride to no
15 advantage for people, and I think we've paid the
16 price, and I think our ridership has paid the price
17 and I'm hoping that I get the support of the Board
18 in August to change that back. So I don't know if
19 that answered your question.

20 DIRECTOR BUCHANAN: No, it did help.

21 MR. O'HALLORAN: How do we stop it in
22 the future?

23 DIRECTOR BUCHANAN: Do we have a
24 plan -- does Metra have a plan for the next incoming

1 CEO to come in and run and be -- have a personal
2 service contract that is not going to do the same
3 thing that we have this problem with right now?

4 MR. O'HALLORAN: Not as of yet.

5 DIRECTOR BUCHANAN: Is it definitely a
6 three-year term and not two --

7 MR. O'HALLORAN: I don't know that it
8 has to be a three-year term.

9 DIRECTOR BUCHANAN: Or a one-year.

10 MR. O'HALLORAN: I don't know where
11 that came from.

12 DIRECTOR BUCHANAN: well, I don't
13 have -- what I have the issue with is I don't
14 understand how he thought in the future that he
15 would continue on at his pleasure and not the
16 board's pleasure.

17 so I would be hoping that there
18 would be some kind of language in there that people
19 would understand that this is a contract; one-year,
20 two-year, three-year, and that you would be reviewed
21 in ample time so you could finish your term and if
22 the Board wanted to go in a different direction, the
23 Board could go in a different direction.

24 MR. O'HALLORAN: well, I have only

1 been presented this in both the private sector as
2 well as out at the Village of Orland Park and
3 frankly, the village managers that I have seen and
4 there has been several, one that's -- the current
5 has been there quite some time, as well as in the
6 private sector, it typically is a situation of if
7 you have a Board, the executive director or
8 president or CEO or whatever the title may be
9 doesn't feel that the Board reports to them. They
10 understand that they report to the Board.

11 I would think that's the case.
12 And how do we ensure that that happens? You hire
13 the right individual.

14 DIRECTOR BUCHANAN: I agree with what
15 you're saying. I'm saying, is there a process where
16 that individual that's going to be the person that
17 runs Metra, he will be understood that it's a term
18 limit of whatever you impose, the Board wants, one,
19 two, three years, and that he will be reviewed at a
20 proper time either to be kept on or let go.

21 MR. O'HALLORAN: There isn't now and
22 there will be.

23 DIRECTOR BUCHANAN: That was my
24 question. Thank you.

1 MR. O'HALLORAN: Okay. Sorry.

2 CHAIRMAN GATES: Director Ross?

3 DIRECTOR ROSS: Thank you, Mr.

4 Chairman.

5 I think we've been at this for
6 almost, what, seven hours now and with no disrespect
7 to your legal counsel, I would have to tell you that
8 I still haven't heard anything today that justifies
9 the amount of money that Mr. Clifford was paid.
10 And, in fact, your presentation this afternoon
11 today -- or this afternoon, rather, makes it even
12 worse for me, because you've laid out a whole litany
13 of concerns that would to me seem to be a basis for
14 cause for termination.

15 I -- I just don't get it and I
16 don't think the public does either, and that's
17 assuming, of course, that everything you have told
18 us is factual and I'm not going to dispute that,
19 because I have no way of knowing. But if it is, in
20 some respects it makes your position even worse.

21 UNIDENTIFIED SPEAKER: Yeah, I agree.
22 I'd like to say something that's been bothering me,
23 but I'm trying to think about how to say it.

24 And by the way, you have a good

1 lawyer. He represents you well in my opinion,
2 but -- but -- but when you -- when you listed out
3 all of the things that were flaws; high
4 underemployment, a sum of money that the average
5 person in the region doesn't see for long periods of
6 time, if that's true, I -- you want to know -- you
7 have to act like a Board to get Board respect.

8 MR. GAGLIARDO: First, I would say
9 that the settlement, again, remember that there were
10 the six months of entitlements under the contract,
11 which almost came to \$200,000 and then on the back
12 end, it's slightly over \$300,000 that's contingent,
13 essentially depending upon whether he has another
14 job.

15 So in our best case scenario, if
16 Mr. Clifford gets another job, the amount at issue
17 is probably around \$215,000. And I'm not minimizing
18 that. \$215,000 is a lot of money. But I think as
19 we've seen from what has unfolded in the -- in the
20 press and unfolded before you and before the Mass
21 Transit Committee, the fact is, if there was
22 litigation, even if it was won, and I think that the
23 litigation was defensible and I think that it could
24 have been won, the question becomes at what -- at

1 what cost?

2 And if -- if -- if Metra, you
3 know, had made a decision -- it's not my decision.
4 I made the recommendation, but if Metra had made a
5 decision, you know, let's just go litigate this, the
6 cost would have been substantial just in the defense
7 of the case, even if successful, and then you have
8 the issue of during the litigation process, you
9 know, what's the intangible, which is very
10 substantial. What's the intangible impact on Metra
11 and -- and -- you know, its operations, its
12 relationship with stakeholders, and then on top of
13 it, you've got -- Mr. Clifford would have been
14 asserting claims that would have entitled him to
15 attorneys' fees had he prevailed.

16 And Director Coulson has been a
17 litigator for a long time. He's -- I'm not saying
18 that to the exclusion of other people, but I look
19 over at him because we've known each other for a
20 long time and he's -- he's an aggressive litigator.

21 The fact is, is that if you start
22 litigating and you -- as you're going forward,
23 Metra's not only paying the fees to the lawyer
24 that's representing it, but if, in fact, there is

L.A. COURT REPORTERS LLC - (312) 419-9292

2 some point in time, Mr. Clifford's fees would have
3 to be considered just like they were considered
4 here, and part of the money that was being paid was
5 for \$75,000 in attorneys' fees and I can tell you
6 that without a claim even being filed,
7 Mr. Clifford's fees were far in excess of that.

8 So my response is, look,
9 reasonable people can disagree. Reasonable lawyers
10 can disagree about what the right course of action
11 is. That's all I could say to you is that I spent
12 12 hours in a mediation with the former Chief Judge
13 of the Circuit Court of Cook County who is a
14 preeminent mediator in Chicago and Illinois. He
15 recommended a deal. Both sides were unhappy.

16 Mr. Clifford, he wasn't asked the
17 question, but if he was, he would -- you know, he
18 was hoping that he was going to get far more -- far
19 more. We were hoping that we were going to pay far
20 less. So it ended up being a situation where after
21 12 hours, for all the reasons we've talked about,
22 the mediator asked whether I would recommend it
23 because he was recommending it to both sides and
24 that's how it moved forward.

1 So I understand, and I think, you
2 know, part of what we need to keep in mind, and
Page 248

3 again, \$200,000 is a lot of money, but if
4 Mr. Clifford gets a job -- and that's why those
5 letters of reference were important. That's why the
6 confidentiality and the non-disparagement were
7 important, then that \$300,000 plus falls off -- off,
8 you know, at the end.

9 And we already owed him almost
10 \$200,000. So what it really comes down to is, you
11 know, roughly 200,000, plus the gamble on the
12 remaining slightly over \$300,000. You know, I gave
13 my best judgment at the time. I would do the same
14 thing today. I know people disagree with me on --
15 and, you know, will continue to disagree with me,
16 but that was my opinion, still is and -- and again,
17 also the mediator's.

18 UNIDENTIFIED SPEAKER: Could you just
19 speak to the future then? Right now it's our
20 understanding that the two deputies will be running
21 the agency. Is that a short-term solution, a
22 long-term solution, and if not, what's the process
23 for moving forward?

24 MR. O'HALLORAN: I believe firmly that

1 it can be a long-term solution. We'd need to
2 reevaluate it. I'd like to see if we can go the
3 next six months, and again that's just my opinion.

4 I'm one vote on the Board, but I -- I think that the
5 two executive deputies or the deputy directors are
6 doing a great job, and I think they can do a great
7 job and I think -- I think you will start to see
8 that very quickly.

9 So I'd say that, you know, we look
10 at it after six months and say, hey, how are things
11 going? And if then we have -- I think the worst
12 thing to do right now would be to have a knee jerk
13 reaction and just say, okay, let's go do a national
14 search, and let's find somebody. First of all, I
15 don't know that anybody would apply, but let's go to
16 a national search and let's find somebody.

17 What we need to do is, you know,
18 make the organization whole, and I think that these
19 two can do that.

20 UNIDENTIFIED SPEAKER: Can you
21 benchmark this organizational structure against any
22 other transit system in the county using two people
23 to run it?

24 MR. O'HALLORAN: I can't, no. I don't

1 know. I mean, I don't know the answer to that. I
2 know that there are a lot of private entities, you
3 know, public companies, private entities that do
4 exactly the same thing.

5 UNIDENTIFIED SPEAKER: That's my
6 questions.

7 CHAIRMAN GATES: Any other questions?
8 Director Coulson?

9 DIRECTOR COULSON: Well, I agree with
10 my colleagues. To some extent, if you're trying to
11 trivialize Mr. Clifford's claims and say, you know,
12 the case was frivolous or whatever, then you
13 overpaid for the releases. On the other hand, if he
14 had a substantial case, which he might have won and
15 who knows what a Chicago jury might have done, then
16 it's worth paying more to make him go away.

17 It's like you're kind of caught
18 here in the middle. On the one hand, you're
19 minimizing his claims and I assume you are calling
20 him a liar, basically. You know, in that case you
21 could have fired him for cause, you could have fired
22 him without cause and paid about \$320,000, or you --
23 and you could have let him sue.

24 And if it's a frivolous case, you

L.A. COURT REPORTERS LLC - (312) 419-9292

260

1 know, Mike Shakman is not in the habit of filing
2 frivolous cases, and the expense to Mr. Clifford of
3 preceding with a lawsuit would have been just as
4 considerable as the expense of defending it.

5 So I have a little trouble trying
Page 251

6 to characterize how much the release was worth. And
7 I'm not sure you want to take the position that he
8 had a -- he had a weak case. I think that hurts the
9 settlement, as one of my colleagues said.

10 MR. GAGLIARDO: Well, Director
11 Coulson, I think, as you know, and you hit the nail
12 on the head, who knows what a jury would have done.
13 With the best cases in my 35 years, I've won cases
14 that I absolutely should have lost, and I have lost
15 cases that I absolutely should have won.

16 So the one thing that I know is
17 that there are no givens. So again, you know, did I
18 think the claims are defensible? Absolutely. Do I
19 think we could have won? Yes. Was there a risk?
20 Yes. There's always a risk. And, you know, I have
21 to say that, you know, I -- I factored in the fact
22 that this was being strongly recommended by former
23 Judge O'Connell, and factored that into my analysis
24 and my decision to make the recommendation.

L.A. COURT REPORTERS LLC - (312) 419-9292

261

1 DIRECTOR COULSON: And I'm -- I'm a
2 little troubled by Metra's approach to this then.
3 Metra seems to be in a mode of controlling and
4 confining and limiting disclosures, when it seems to
5 me you ought to be in the opposite mode. I read
6 Paragraphs 8F and 11A of the settlement agreement.

7 I don't see any limitation on Mr. Clifford's ability
8 to testify as to subject matter in front of this
9 tribunal, and yet you are making objections and you
10 were sort of threatening him with, you know,
11 breaching the settlement agreement if he -- if he
12 went outside the scope of -- of this April 4th
13 letter. I don't understand the theory on which you
14 can control the subject matter of his testimony.

15 MR. GAGLIARDO: All right. Well --

16 DIRECTOR COULSON: I mean, you didn't
17 today. In fact, it didn't become an issue today,
18 but...

19 MR. GAGLIARDO: Right. But first of
20 all, the -- the letter that was sent to him at
21 Chairman O'Halloran's direction was that we
22 encouraged him to come before you today and testify.

23 As you know, he did not appear
24 before the Mass Transit Committee of the House. So

L.A. COURT REPORTERS LLC - (312) 419-9292

262

1 we encouraged it. We said that he could talk about
2 the -- the -- you know, the contents of the
3 April 4th letter.

4 Director Coulson, you know, he --
5 he was the CEO of the organization. He had access
6 to confidential procurement information. He had
7 access to attorney/client privileged information.

8 He is not the client. Metra is. And it's Metra's
9 privilege to waive.

10 You think about the -- the -- the
11 information that the people at the highest level of
12 your organization have. It's sensitive. It's not
13 that you're hiding something, but you don't want
14 confidential information, information that should
15 not be generally available to the public to be --
16 you know, to be discussed.

17 That's where the hang-up -- that's
18 where the hang-up was, and the hang-up related to
19 the paragraph -- the paragraph of the agreement
20 which talks about confidential information, which is
21 separate and distinct from the one paragraph that
22 talks about that -- that the parties can come
23 before, you know, this body or other oversight
24 bodies and also the non-disparagement had the

L.A. COURT REPORTERS LLC - (312) 419-9292

263

1 exception for coming before these bodies, but
2 that -- that did not substitute a general waiver
3 and, in fact, I think Mr. Clifford has a fiduciary
4 obligation to protect that information.

5 DIRECTOR COULSON: So that was your
6 concern? It had nothing to do with the facts of
7 this case?

8 MR. GAGLIARDO: No.
Page 254

9 DIRECTOR COULSON: All right. Well,
10 it's good to have that on the record.

11 I think -- after the testimony of
12 these two gentlemen, I think the May 22, 2012,
13 letter by attorneys on the Englewood Project needs
14 to be disclosed. It needs -- I think that both
15 those gentlemen talked about their communications
16 with counsel for Metra. I don't think it's
17 privileged, and I think if it is, Metra ought to
18 say, let's let it all hang out and we ought to see
19 it.

20 MR. GAGLIARDO: It has been turned
21 over to your auditors, Director.

22 DIRECTOR COULSON: Okay. Well, I
23 don't know that. I haven't seen it.

24 MR. GAGLIARDO: I know, but I had

L.A. COURT REPORTERS LLC - (312) 419-9292

264

1 mentioned that earlier.

2 DIRECTOR COULSON: And I noticed a
3 week ago Tuesday, I think, Mr. O'Halloran had a --
4 what did he have, some kind of a press conference at
5 the Union League Club, which according to the papers
6 that he talked about the facts of this case and he
7 disparaged Mr. Clifford. And I'm wondering why that
8 wasn't a violation of the settlement agreement.

9 MR. GAGLIARDO: I wasn't present. I
Page 255

10 can't tell you, but what I can tell you is that
11 under the agreement, a Board member is authorized to
12 talk about his or her vote and a Board member is
13 also able to disclose factual information concerning
14 events that occurred during Clifford's employment
15 with Metra.

16 Because we could not be hamstrung
17 with a confidentiality agreement that would not
18 allow us to talk about him. What if you called us
19 before you to inquire about some program that Mr.
20 Clifford was involved in and we took the position
21 that we weren't going to answer? That would be
22 untenable. That would be an untenable and
23 unsupportable position.

24 So we had to be in a position and

L.A. COURT REPORTERS LLC - (312) 419-9292

265

1 we made it clear in the agreement that we have the
2 right to talk about Metra operations.

3 DIRECTOR COULSON: But a press
4 conference to talk about Mr. Clifford is not
5 contemplated in either 8F or 11A in my opinion.

6 MR. GAGLIARDO: We disagree.

7 DIRECTOR COULSON: Okay.

8 MR. GAGLIARDO: And I respectfully say
9 that.

10 DIRECTOR COULSON: And also, Mr.
Page 256

071713 RTA BOARD

11 O'Halloran last week testified that you hired Rodger
12 Heaton, former Springfield U.S. Attorney, to do a
13 report and he found no wrongdoing.

14 Where is that report? I mean, I
15 don't know. What did Mr. Heaton do? Who did he
16 talk to? Where are the fruits of that report? You
17 certainly can't claim attorney/client as to that
18 since you've summarized its contents. Where is the
19 Heaton report?

20 MR. GAGLIARDO: I have not seen a
21 final report. I just know what his preliminary
22 conclusions were.

23 DIRECTOR COULSON: I think we need to
24 look at that, too. I think that would be helpful.

L.A. COURT REPORTERS LLC - (312) 419-9292

266

1 Let me ask, Mr. O'Halloran if I
2 might just briefly. Mr. Clifford says that at some
3 time in the spring of 2013, you told him that you
4 needed to arrange a meeting with Speaker Madigan to
5 assess what damage I have done to Metra and its
6 future funding by my refusal to accede to Speaker
7 Madigan's request.

8 Did that conversation take place?

9 MR. O'HALLORAN: There was a
10 conversation that took place. I never made that
11 statement. I started out with my statement today

12 saying I never made that statement.

13 DIRECTOR COULSON: So that's a
14 fabrication by Mr. Clifford?

15 MR. O'HALLORAN: I never made that
16 statement.

17 DIRECTOR COULSON: And what is your
18 relationship with Speaker Madigan?

19 MR. O'HALLORAN: I have no
20 relationship with Speaker Madigan. Speaker Madigan
21 wouldn't know me until all of this if he were in
22 this room.

23 DIRECTOR COULSON: And did you have
24 any further communications with Speaker Madigan

L.A. COURT REPORTERS LLC - (312) 419-9292

267

1 either directly or through intermediaries regarding
2 Mr. Clifford's performance?

3 MR. O'HALLORAN: No.

4 DIRECTOR COULSON: To your knowledge,
5 was Speaker Madigan angry at Metra because of
6 Mr. Clifford's positions?

7 MR. O'HALLORAN: Not to my knowledge.

8 DIRECTOR COULSON: You do go down to
9 Springfield from time to time, don't you?

10 MR. O'HALLORAN: I've been down there
11 once.

12 DIRECTOR COULSON: Have you been --
Page 258

13 okay. To your knowledge, was the Latino caucus
14 angry at Metra because of what Mr. Clifford
15 supposedly did?

16 MR. O'HALLORAN: Not to my knowledge.
17 You'd have to ask them.

18 DIRECTOR COULSON: And you said that
19 you expressed some concerns about the counsel and
20 the procurement. Do you remember -- do you remember
21 saying that?

22 MR. O'HALLORAN: Yes.

23 DIRECTOR COULSON: And Mr. Clifford
24 says you called them incompetent and wanted one

L.A. COURT REPORTERS LLC - (312) 419-9292

268

1 replaced and one demoted. Is that part of the
2 conversation, too?

3 MR. O'HALLORAN: I called him
4 incompetent. I did not demand his either firing or
5 replacement. I'm not sure what you just said,
6 though.

7 DIRECTOR COULSON: And I assume you
8 are committed to merit hiring at Metra?

9 MR. O'HALLORAN: Absolutely.

10 DIRECTOR COULSON: And you're
11 committed in contract procurement to observe all
12 state, federal and internal procurement rules?

13 MR. O'HALLORAN: Yes.

071713 RTA BOARD

15 DIRECTOR COULSON: And do you think it
16 would be helpful going forward to have some kinds of
17 rules or procedures in place to deal with these
18 requests, which would both protect the public
19 official and protect the Metra employee maybe by
20 making everything public?

21 MR. O'HALLORAN: I think there should
22 be absolutely a process to address exactly that, not
23 to just -- because, you know, you're kind of in a
24 situation where you don't want to be rude, but at

L.A. COURT REPORTERS LLC - (312) 419-9292

270

1 the same time you don't want to be encouraging. So
2 I think you've got to have that and I think it
3 should be some sort of a -- probably a training
4 process that goes on with every Board member.

5 It might be something that the RTA
6 could develop for all Board members and -- as well
7 as any of the employees or government relations folk
8 or any of that. I think it's a -- I think it's a
9 heck of a great idea.

10 DIRECTOR COULSON: I think we need to
11 do that. We need to have bright line rules, because
12 most public officials are trying to do the right
13 thing. Most Metra employees are trying to do the
14 right thing. And this just -- has the potential to
15 embarrass both of them if it's not handled properly.

071713 RTA BOARD

16 CHAIRMAN GATES: The RTA Board goes
17 through that type of training --

18 DIRECTOR COULSON: That's all.

19 CHAIRMAN GATES: -- periodically. We
20 just went through it a few months ago here, and we
21 would be happy to share certainly our experience
22 with you, which I consider any public Board or
23 frankly any public company Board to be something
24 that's absolutely essential.

L.A. COURT REPORTERS LLC - (312) 419-9292

271

1 DIRECTOR COULSON: Yeah. I could go
2 on forever, but I'm not.

3 CHAIRMAN GATES: Thank you. Good.
4 Because there is -- are there any other Board
5 members -- do any of the other Board members have
6 any other questions?

7 With that, I'd like to turn the
8 next segment of questioning over to Mike Zumach, who
9 is the head of our audit department, and Nadine
10 Lacombe, who is our general counsel. They have been
11 reviewing some of the documents we've received. As
12 I said, 90 percent of the documents we have
13 requested have not come in yet, but they have looked
14 at hundreds of pages so far, as well as attended
15 the -- the -- the state mass -- or the House Mass
16 Transit Committee hearing and have been monitoring

071713 RTA BOARD

17 this situation and received a number of different
18 inputs, and I know that they have some fairly
19 specific questions that they would like to ask you.
20 So at this point, I'd like to turn it over to them.

21 DIRECTOR ZUMACH: Thank you,
22 Mr. Chairman.

23 Normally, I'm used to going last
24 because my name starts with a Z, but I'll jump ahead

L.A. COURT REPORTERS LLC - (312) 419-9292

272

1 of Nadine real quickly.

2 Just a few questions, and I know
3 we've gone over multiple times the referral process
4 of the information going to the Office of the
5 Executive Inspector General and I know they are
6 probably going to cringe. The honorable inspector
7 general is back there. Actually, there is two
8 inspector generals back there, and the deputy for
9 the transit boards.

10 From what I've seen so far -- I
11 have seen the March 9th memo -- or e-mail that came
12 in and saw that that was transmitted to yourself,
13 Mr. Chairman, and then Board counsel, forwarded that
14 e-mail over to the OEIG. My question was, was there
15 any other transmittal -- any other documentation as
16 to what was provided to the OEIG? And the
17 individual whose name is on the e-mail arises.

18 MR. O'HALLORAN: Mr. Zumach, the
19 e-mail you saw was the transmittal of the -- oh,
20 thank you -- was the transmittal of the March 9th
21 e-mail that was received by the chairman and by
22 Director Darley. There was then a meeting with the
23 OEIG to -- where it was physically handed to them
24 and then that e-mail followed.

L.A. COURT REPORTERS LLC - (312) 419-9292

273

1 As you know, there then were
2 numerous follow-up requests from the OEIG for
3 additional documents, and those -- I mean, we
4 continually receive requests from the OEIG. As you
5 know, we don't necessarily know which ones relate to
6 an investigation of our initial referral and which
7 ones relate to other investigations. So I would say
8 there have been numerous documents turned over. We,
9 of course, don't know which ones relate to that
10 specific referral.

11 DIRECTOR ZUMACH: Well, I've -- I've
12 looked at a multitude of the documents in two
13 document requests, and I guess my question is that,
14 so there is no way to really tell or for someone
15 there is no audit trail, if you will, no document
16 that shows what you expressed to them other than
17 what's in that memo?

18 MR. O'HALLORAN: Sure. I mean, the
Page 264

071713 RTA BOARD

19 referrals were simply referrals. As you know from
20 the memo, it was just a general allegation of
21 illegal activity, and that's what was turned over.
22 We didn't know anymore other than that at the time.
23 So that's what was -- that was the referral.

24 DIRECTOR ZUMACH: Okay. And then

L.A. COURT REPORTERS LLC - (312) 419-9292

274

1 in -- when the April 3rd document came out, then
2 that was also transmitted in that same format?

3 MR. O'HALLORAN: Correct.

4 DIRECTOR ZUMACH: Separate meeting, no
5 meeting?

6 MR. O'HALLORAN: There was -- there
7 was no meeting at that point. Of course, we said we
8 were -- we've made several offers to meet, of
9 course, but the OEIG has not taken us up on that.
10 But that was simply a referral with an offer to
11 contact us if they needed more information.

12 DIRECTOR ZUMACH: Okay. Thank you.
13 You know, and I'm hoping the OEIG is not hearing
14 anything new for the first time here today.

15 MR. O'HALLORAN: I would suspect not.

16 DIRECTOR ZUMACH: On the information
17 that was relating to -- I believe it was Mr. Heaton
18 who was the individual that the Board had hired to
19 do the review -- to do some type of internal

071713 RTA BOARD

20 investigation, was that it?

21 MR. O'HALLORAN: Roger Heaton with an

22 H?

23 DIRECTOR ZUMACH: Yes.

24 MR. O'HALLORAN: Yes.

L.A. COURT REPORTERS LLC - (312) 419-9292

275

1 DIRECTOR ZUMACH: And what -- when did
2 that occur, at what point?

3 MR. O'HALLORAN: That was -- that was
4 shortly after Mr. Gagliardo was hired. Just to add
5 to the timeline, when the April 3rd memo and
6 Mr. Shakman's letter were received with, you know,
7 the threat of litigation, Metra's general counsel
8 along with us as Board counsel, immediately advised
9 which happened that Metra hired outside independent
10 counsel, which was Mr. Gagliardo, and then soon
11 thereafter on his suggestion, Mr. Heaton was hired
12 as to do the investigation in support of any
13 potential litigation. So whether -- I don't know if
14 it was another two days, a week, it was pretty close
15 to that point.

16 DIRECTOR ZUMACH: So I guess I'm
17 trying to figure out what -- what his scope was,
18 what he was asked to do, and it's my understanding
19 there is no document of his results?

20 MR. O'HALLORAN: That's correct.

071713 RTA BOARD

21 There is no -- there is no final report. As --
22 there is no -- people keep referring to a final
23 report. There is not. His investigation was to
24 assist Mr. Gagliardo in the -- in the defense of

L.A. COURT REPORTERS LLC - (312) 419-9292

276

1 Metra for what looked to be an oncoming lawsuit.
2 DIRECTOR ZUMACH: Okay. And how much
3 did we pay for that?
4 MR. O'HALLORAN: I don't have that
5 information.
6 DIRECTOR ZUMACH: No idea? Okay.
7 okay.
8 MS. LACOMBE: I think you've covered
9 most of what I wanted to ask you, but I just had a
10 few more remaining --
11 CHAIRMAN GATES: Could you identify
12 yourself?
13 MS. LACOMBE: Oh, yes, I'm Nadine
14 Lacombe, the general counsel for the RTA.
15 My first question is, do you plan
16 to release the executive session minutes from
17 March 2012 to the present at least to our auditors?
18 Because we would like to take a look at those
19 ourselves to sort of determine whether or not
20 Mr. Clifford's allegations that he actually made
21 some of these reports to the Board in closed session
Page 267

22 are accurate or not accurate.

23 MR. O'HALLORAN: Right. I -- I know
24 you've made the request. I think we're working on

L.A. COURT REPORTERS LLC - (312) 419-9292

277

1 that. I -- the only reason I won't say yes is
2 because I haven't closed the loop yet to see if
3 that -- if we've received final sign off to release
4 those. But to date, there is nothing we've been --
5 that's been withheld from your auditors based on
6 privilege.

7 MS. LACOMBE: Okay. Great. I
8 apologize if I ask you for things that you've
9 already turned over because I, unlike Mike, have not
10 gone through all the documents yet.

11 If we could talk for a little
12 while about this screening agreement or this
13 screening document. We haven't talked about it a
14 whole lot, but I have some concerns about what the
15 contents of that agreement were and to what degree
16 the executive -- I mean not the executive director,
17 the CEO responsibilities or duties were limited, for
18 how long, and why the RTA was not informed of that?

19 MR. O'HALLORAN: Again, the -- it's --
20 it's perhaps a lot more innocuous than it sounds. I
21 talked about the -- Mr. Shakman's letter came in.
22 You're in this very difficult situation where the

23 CEO of the entire organization has threatened
24 litigation against the organization.

L.A. COURT REPORTERS LLC - (312) 419-9292

278

1 MS. LACOMBE: And when you say the
2 "Shakman letter," you mean the cover letter that
3 accompanied the April 3rd memo?

4 MR. O'HALLORAN: Correct, correct.

5 MS. LACOMBE: Okay.

6 MR. O'HALLORAN: And Mr. -- and
7 you've -- the April 3rd memo, of course, refers to
8 Mr. Shakman setting forth our legal claims.

9 MS. LACOMBE: Right.

10 MR. O'HALLORAN: So you have the CEO
11 of an organization threatening litigation against
12 the organization over which he is the top executive.
13 You -- and to boot, he's made allegations against
14 the Board, which is the governing body of the -- of
15 the organization.

16 As I said, one of the first things
17 that we did was say, okay, we advised everyone, the
18 Board, Mr. Clifford, we need to get outside counsel
19 to represent the organization on this. We brought
20 in Mr. Gagliardo as one of the most respective --
21 respected lawyers in this area.

22 The other issue you have, though,
23 is what I consider standard when things like this

24 happens, if any employee has threatened a lawsuit is

L.A. COURT REPORTERS LLC - (312) 419-9292

279

1 that employee should be screened from involvement
2 from the organization's position on that lawsuit.

3 So, for instance, the CEO normally
4 would have the authority to go to the general
5 counsel and say, brief me on all the litigation
6 that's going on. Well, I don't think anyone could
7 dispute that Mr. Clifford should not have been in a
8 position at that point to go to the general counsel
9 of Metra and say, tell me what Metra's strengths and
10 weaknesses are on the case that I might potentially
11 be bringing against Metra.

12 Because of his position -- his
13 high level position, it became a lot more messy.
14 You know, for instance, what if he's in -- everyone
15 in the whole world has now heard all of the
16 allegations. What if he's in a meeting where, you
17 know, people's views of, say, the Englewood Flyover
18 are -- are being raised or the performance of the
19 procurement department.

20 Well, should Mr. Clifford, as a
21 potential plaintiff against Metra, be, you know, in
22 effect allowed to sort of coach or direct people?
23 He is their boss saying, well, no you're remembering
24 it incorrectly. The process and the investigation

1 should have an opportunity to take its path.

2 So the screening memo was nothing
3 more, again, than what I consider pretty standard in
4 litigation like this or potential litigation where
5 you say, do your job, but you should not be
6 involved -- and the memo came jointly from the
7 general counsel and Board counsel. This wasn't a
8 Board versus staff thing. This was a -- this was
9 sort of a what's the proper protocol.

10 The memo basically said, dear
11 CEO, in your role as CEO -- we're not advising you
12 as Mr. Clifford, you know, potential plaintiff, but
13 in your role as CEO, you should not -- you should
14 screen yourself from all communications regarding
15 your potential claims from discussions or meetings
16 regarding some of these underlying events and facts.

17 That's all it was. It became
18 much -- and it did, as Mr. Clifford alluded to --
19 surprisingly we received a letter back not from
20 Mr. Clifford as CEO saying, okay, I will abide by
21 the advice of the general counsel. We received a
22 letter back from his lawyer, you know, arguing over
23 what, you know, the day-to-day functions of the CEO.

24 And with all due respect to

1 Mr. Shakman, my problem with that at the time was I
2 don't think Mr. Shakman has ever run a railroad. So
3 I didn't think Mr. Clifford's personal lawyer should
4 be interjecting himself as to how he screens
5 himself. It was eventually resolved with
6 Mr. Clifford agreeing, and it was his agreement. He
7 said, I will refrain from -- I will screen myself
8 from certain communications. He also agreed not to
9 take any employment action against senior employees,
10 because we had been receiving complaints from people
11 that they felt that Mr. Clifford had either
12 threatened or they felt they were going to threaten
13 retaliation if they didn't support him in his bid to
14 get a new contract.

15 I don't know whether that's true.
16 We just knew we were receiving the complaints. So
17 Mr. Clifford agreed to not take any employment
18 action with senior employees while this was going
19 on.

20 MS. LACOMBE: And when -- when was
21 that arrangement in place? For what time period?

22 MR. O'HALLORAN: Well, we can turn --
23 we will turn those communications --

24 MS. LACOMBE: Roughly.

1 MR. O'HALLORAN: -- up to your
2 auditors.

3 MS. LACOMBE: I mean, was this right
4 after the April memo or was it in May? I won't told
5 you to it.

6 MR. O'HALLORAN: Yeah. I was going to
7 say it was -- this all -- it seems like years, but
8 it all -- it probably all took place in April and
9 May and I can't remember where on the continuum that
10 took place.

11 MS. LACOMBE: I mean, from an
12 operational perspective, and I'll turn to Chairman
13 O'Halloran or Director Huggins.

14 CHAIRMAN GATES: Just quickly, that
15 screening memo now is not in place for any -- any
16 employee at -- or any screening -- is there any
17 screening memo in place for any employee at Metra?

18 MR. GREEN: I don't know what Metra's
19 legal -- because we don't obviously get involved in
20 most potential employment lawsuits. So I don't know
21 what Metra normally does. This was something we
22 worked on specifically with Metra's general counsel
23 because of the unique situation here where it was
24 the CEO who is threatening to sue you.

1 CHAIRMAN GATES: That's not my
2 question.

3 MR. GREEN: Okay.

4 CHAIRMAN GATES: Is there a screening
5 memo in place today for anyone at Metra?

6 MR. GREEN: And my answer is I don't
7 know. I only was aware of this situation.

8 CHAIRMAN GATES: Does anybody know?

9 MR. GREEN: Mr. Chairman I can answer
10 that. I don't believe we have any screening memos
11 in place right now.

12 CHAIRMAN GATES: Okay. Sorry Nadine.

13 MS. LACOMBE: No, that's okay. My
14 only concern is if he was limited in things that he
15 normally would be permitted to do as the CEO of the
16 agency, who was handling the matters that he wasn't
17 permitted to handle during this roughly two-month
18 time period?

19 MR. GAGLIARDO: The limitations really
20 related to being screened from the litigation or
21 communications relating to the claims. That was
22 really the goal.

23 MS. LACOMBE: I was just concerned
24 because Andy just -- Mr. Green just mentioned that

1 there were certain actions he was precluded from
2 taking against -- with regard to senior staff and
3 that sounds more management related to me.

4 MR. GREEN: It was just terminating or
5 taking employment actions against senior staff.

6 MS. LACOMBE: Oh, it didn't have to do
7 with, like, evaluating or if somebody needed to be
8 written up or get a verbal warning or anything like
9 that?

10 MR. GREEN: No. I don't remember the
11 exact language, but it really was -- and he could --
12 he could bring it out to the Board if something
13 needed to be done, but it was just -- it was to
14 quell concerns about retaliation while all of this
15 was going on by his subordinates.

16 MS. LACOMBE: Did you say we have a
17 copy of that already or we're going to have a copy?

18 MR. GREEN: I know we're providing you
19 documents on a daily basis. I don't know if you
20 have it at this point.

21 MS. LACOMBE: It's in there? Okay.
22 Good.

23 There is a little bit of a
24 discrepancy about whether or not an evaluation of

1 Mr. Clifford took place last year and whether it was
2 a formal evaluation. I don't know if we're
3 parsing -- mincing words or not. Was he evaluated
4 in 2012?

5 MR. GREEN: I guess I shouldn't have
6 come up here. The -- what I believe the differences
7 of opinion are is in 2012, Mr. Clifford did in
8 executive session do a presentation, I guess, of
9 what he felt his accomplishments were. And there
10 was some discussion and I believe that's what he's
11 referring to as his evaluation.

12 MS. LACOMBE: And you do not deem that
13 to have been a formal evaluation of him?

14 MR. O'HALLORAN: I do not.

15 MS. LACOMBE: And is there any reason
16 why there wasn't a formal evaluation done since it
17 was called for in his employment agreement? And I
18 guess I shouldn't be asking you because you weren't
19 here at that time. I suppose I should be asking
20 Director Huggins.

21 MR. HUGGINS: No, there was not a
22 reason as to why we didn't do it. You know,
23 Mr. Clifford really tried to keep us abreast of
24 issues and things that was going on, and to be

1 honest with you, up until a certain point, you know,
2 Mr. Clifford had a good relationship with the Board.
3 why things soured, I couldn't give you an honest
4 answer for that, as a matter of fact, but you know,
5 but things happen.

6 UNIDENTIFIED SPEAKER: And just to add
7 onto that, you had mentioned several times there
8 were several factors, for example, actually hiring
9 Mr. Wiggins here was one of them where the Board was
10 not even apprised of the hiring until it had already
11 occurred and all the terms with that.

12 Did the Board voice their
13 displeasure?

14 MR. HUGGINS: Well, I particularly
15 voiced my displeasure. As a matter of fact, I found
16 out that Mr. Wiggins was being hired up in Lake
17 Geneva playing golf by a friend of mine that said
18 that he had heard that Alex Wiggins was going to be
19 our deputy executive director and on Monday when I
20 came back to Chicago and I had a conversation with
21 Mr. Clifford, he asked me if I would keep it a
22 secret, and I asked him why it's important that you
23 have to keep a high level position like this a
24 secret and -- and, you know, we had our disputes

1 about that, so -- but anyway that's what happened.

2 So as I said at the end of the
3 day, it just so happens that Alex Wiggins really is
4 a very capable employee of working at Metra, but it
5 could have been a situation where he wasn't. And
6 for our -- for Alex Clifford to have brought on a
7 person without the board's input I thought was the
8 wrong thing to do. And that really kind of started
9 almost a little disconnect with Alex Clifford and
10 myself.

11 UNIDENTIFIED SPEAKER: That and you
12 have a very good network, obviously, if you found
13 out while you were playing golf. I play in Lake
14 Geneva, not very well.

15 I just have one line of
16 questioning that I have left, and I know it's been a
17 long day, but what I'm trying to discern and where
18 I'm having a disconnect is at what point was the
19 full Board of Metra apprised of the activities?

20 so, for example, the April -- the
21 March e-mail came in, and I believe was that
22 distributed to all the Board members?

23 UNIDENTIFIED SPEAKER: That one was
24 not distributed to all the Board members

1 immediately. That was turned over to the OEIG. All

2 the Board members were told of the circumstances and
3 turned it over to the OEIG, and initially it was not
4 discussed for the express purpose to allow the OEIG
5 time to come in.

6 We assumed they'd wanted to
7 interview Board members, and we didn't want to be
8 accused of everyone getting in a room and getting
9 their story together. So that wasn't -- the
10 April 3rd memo, which was really the -- you know,
11 again, the threat of litigation, that was
12 immediately distributed to the Board members, and I
13 believe there was a special meeting soon thereafter.

14 UNIDENTIFIED SPEAKER: Okay. Yeah. I
15 haven't seen the minutes of any of those meetings
16 yet. At what point was the Board apprised that
17 there was going to be settlement negotiations?

18 UNIDENTIFIED SPEAKER: I can't tell
19 you the exact date, but the settlement negotiations
20 were the result of a -- of feedback from the Board
21 that we should enter into discussions to see if this
22 could be resolved.

23 UNIDENTIFIED SPEAKER: Was that in a
24 meeting?

L.A. COURT REPORTERS LLC - (312) 419-9292

289

1 UNIDENTIFIED SPEAKER: Yes.

2 UNIDENTIFIED SPEAKER: Okay. And --

3 and the reason I ask is because when I go through
4 the April and May Board minutes, you know, there is
5 continual discussion about the CEO's evaluation
6 process and how that's going to work, and I was just
7 kind of curious about why we're spending all that
8 time on that if the settlement agreement was going
9 on?

10 UNIDENTIFIED SPEAKER: We were
11 trying -- and perhaps it was a fool's errand. We
12 were really trying to complete the evaluation
13 process because no one was presuming that a
14 settlement could be achieved. If you look at that
15 April 3rd memo, what Mr. Clifford asked for was a
16 fair evaluation.

17 The evaluation process that's
18 outlined in the public minutes of the employment
19 practices committee and then I think in several
20 other meetings was, you know, he obviously took
21 issue with it, but it was the collective attempts of
22 the Board to come up with a full, fair, documented
23 evaluation process that was pretty much
24 unimpeachable, and we were attempting to continue

L.A. COURT REPORTERS LLC - (312) 419-9292

290

1 with that, because again, we were not assuming that
2 a settlement could be achieved. We just reached a
3 point where -- where the dispute overtook our

4 ability to do that.

5 UNIDENTIFIED SPEAKER: Okay. Thank
6 you.

7 MS. LACOMBE: I wanted to ask a couple
8 of questions about Board involvement in sort of
9 day-to-day Metra operations since it's been kind of
10 a major issue that Mr. Clifford brought up today and
11 just so we set the record straight, he seems to have
12 been having some kind of dispute with either just
13 the chairman or certain members of the Board about
14 how day-to-day operations should be run and whether
15 he should be in charge or you should be in charge.

16 Just for the record, what is your
17 position on the degree of involvement that's
18 appropriate from the Board in day-to-day operations?

19 CHAIRMAN GATES: My personal opinion?

20 MS. LACOMBE: Uh-huh, as chairman of
21 the Board.

22 CHAIRMAN GATES: My opinion -- yeah.
23 My opinion as chairman is that the Board sets policy
24 and operations handles operations or administration

L.A. COURT REPORTERS LLC - (312) 419-9292

291

1 and the operator handles that, but at the same time,
2 I believe the Board needs to be -- have oversight
3 and that just, you know, this -- this agency got
4 into all kinds of trouble because there wasn't

5 enough oversight, in my opinion. So certainly the
6 Board needs to set policy.

7 MS. LACOMBE: And just so we can set
8 the record straight, too, on the allegations that
9 you specifically asked for people to be fired and
10 demoted, I know you have denied that allegation, but
11 when you say that you expressed concerns about those
12 two employees, so we're clear today, because
13 Mr. Clifford did make this allegation or at least he
14 implied that part of the reason or maybe the entire
15 reason that you had concerns with these folks is
16 because one issued a legal opinion that disagreed
17 with perhaps the way you wanted to handle the
18 Flyover, Director Huggins, or number two, that one
19 of them gave an opinion that a potential conflict of
20 interest was going to be created if we added some
21 financial institution to the list of bidders for
22 the -- the banking RFP that went out.

23 Can you set the record straight on
24 whether any of that had anything to do with your

L.A. COURT REPORTERS LLC - (312) 419-9292

292

1 concerns with these employees?

2 CHAIRMAN GATES: Absolutely not. My
3 concern with the employees on the financial
4 institution situation was that I, frankly, couldn't
5 understand how you can send out an RFP to only a

6 limited handful of banks when you can go on any list
7 that's out there. And why would you send them to
8 106 non-banks for the services? I didn't understand
9 it.

10 So, no, and there were several
11 other instances in procurement that were similarly,
12 in my opinion, bungled. And then there were several
13 other opinions that came back that just didn't -- I
14 think positions were taken to get to an end result
15 versus positions that were taken based on what I
16 think would be a strong legal opinion.

17 MR. WIGGINS: Can I add to that?

18 So essentially the issue in
19 procurement really dates back to the FTA's
20 procurement system review. And so right before I
21 arrived on property, the procurement team received
22 critical feedback and a critical report performance
23 from the FTA. And so within the first two weeks of
24 me being on the job, you know, Clifford and I talked

L.A. COURT REPORTERS LLC - (312) 419-9292

293

1 about, you know, one, being prepared to replace that
2 director, but most importantly, let's look at what
3 we can do to invest in training to make sure that
4 the staff and that leader are up to par.

5 And so it was Clifford's directive
6 to me initially to be prepared if we don't get the

7 results that we -- that we -- that we want. So we
8 spent the better part of nine months, and I would --
9 and I would give, you know, Clifford as much credit
10 for this as anyone else, including that director of
11 ensuring that the team had the appropriate training.

12 So we put them through NTI,
13 National Transit Institute training. We actually
14 brought in a consultant who actually did work for
15 the FTA to actually ensure that our contracting
16 department -- our team was properly trained and that
17 they knew what the rules were.

18 We had a subsequent review where
19 the team went from -- and I'm just, you know,
20 throwing out hypotheticals. Let's say the first
21 review was a D minus. The second review came in as
22 maybe a C plus, and so they were making progress in
23 a very short period of time.

24 Mr. Clifford wasn't happy. He

L.A. COURT REPORTERS LLC - (312) 419-9292

294

1 wanted an A and frankly, I -- I think it's
2 reasonable to expect an A. And so -- and that was
3 late December -- I want to say it was late 2012 or
4 early 2013. He then asked me, look, Alex, go ahead.
5 I want you to go ahead and start preparing a
6 recruitment for a new procurement director.

7 And, you know, I started to, you

8 know, put my notes and started to map that out.
9 After a short time, a couple of weeks or a month or
10 so he sent me an e-mail saying, hey, halt the
11 presses. I actually don't want to do that. So
12 don't -- don't make that move unless I communicate
13 to you otherwise. So the issue of procurement
14 really was where it appropriately belonged. The
15 leadership of the organization knew that we had an
16 issue and we knew that we had to address it, because
17 we do in late 2013 have an upcoming FTA tri-annual
18 review, and if we don't nip those issues in the bud
19 and address them, then that, you know, subjects our
20 agency to a loss of funding.

21 It was something that was taken
22 very serious last year. So that's -- that's the
23 background on procurement.

24 MS. LACOMBE: Okay. So Mr. Clifford

L.A. COURT REPORTERS LLC - (312) 419-9292

295

1 had his own concerns about procurement long before
2 Chairman O'Halloran ever --

3 MR. WIGGINS: Absolutely, absolutely.

4 MS. LACOMBE: Okay.

5 MR. HUGGINS: And for the record, from
6 a legal -- legal perspective, I did not disagree
7 with Terry Barnett. I disagree with Terry Barnett
8 from a community perspective and from a moral

9 perspective, and I got along very well with Terry.
10 As a matter of fact, I got along very well with all
11 of the employees at Metra, and I have been a
12 champion for their causes. So the record will speak
13 for that.

14 MS. LACOMBE: Thank you. I had just a
15 couple more questions if the chairman will indulge
16 me.

17 CHAIRMAN GATES: You're indulged.

18 MS. LACOMBE: I wanted to set the
19 record straight a little bit, because it was a
20 little bit murky what we heard earlier from
21 Mr. Clifford about the meeting with the Latino
22 caucus. I'm still unclear on what the request was
23 that was made and, Director Huggins, since you were
24 present at that meeting, could you enlighten us on

L.A. COURT REPORTERS LLC - (312) 419-9292

296

1 specifically what was requested of Metra during that
2 meeting?

3 MR. HUGGINS: Well, really it was just
4 a meeting where Latino caucus wanted to know in
5 terms of how many employees actually were employed
6 with Metra and so it was -- it was almost like it
7 was a factfinding and we agreed to get that
8 information back to -- to the Latino caucus, and the
9 only thing that I think that -- that Mr. Clifford

10 disagreed upon was when the question was asked
11 whether or not that -- that we would hire somebody
12 in a deputy position and he disagreed with that.

13 MS. LACOMBE: When you say whether you
14 would hire somebody in the deputy position, do you
15 mean accept resumes from them? Is this --

16 MR. HUGGINS: Yeah, just resumes, just
17 resumes. There was no person that there was a
18 position that was open. Would you consider hiring a
19 Hispanic in that position?

20 MS. LACOMBE: Okay. So they weren't
21 expecting you to --

22 MR. HUGGINS: It was just a request.

23 MS. LACOMBE: -- absolutely hire
24 someone --

L.A. COURT REPORTERS LLC - (312) 419-9292

297

1 MR. HUGGINS: No, no, no.

2 MS. LACOMBE: -- that they recommended?

3 MR. HUGGINS: No, it was just a
4 request and I -- I -- I felt there was nothing wrong
5 with making that request. And that's -- that's what
6 I shared with Mr. Clifford when he asked me that.

7 MS. LACOMBE: And he also mentioned
8 that -- I can't remember which one of you stopped
9 the \$50,000 contract from proceeding.

10 Chairman O'Halloran, could you

11 explain why that -- that contract did not go
12 forward?

13 MR. O'HALLORAN: I -- you know, it was
14 the first thing that was kind of handed into my lap
15 in December, and I really wanted staff to kind of
16 look at it more closely and understand, you know,
17 what the criteria was and what the results we
18 expected were and just kind of put it on hold, and
19 it's been on hold ever since.

20 MS. LACOMBE: And my last question is,
21 I think somebody in the General Assembly, I can't
22 remember which one of the representatives, said that
23 they had basically at that point determined that
24 this outcome was the cheapest outcome, but maybe it

L.A. COURT REPORTERS LLC - (312) 419-9292

298

1 wasn't what they thought was the best outcome.

2 Do you still -- do you still feel
3 that this is the best possible outcome in this
4 situation?

5 MR. O'HALLORAN: I think we were
6 presented two bad choices. You know, it's really
7 turned into do we want to have a situation where we
8 end up in prolonged litigation for many, many years
9 probably with respect to this and the organization
10 can't move on quickly. We could probably sit until
11 February and then end up with the same litigation if

12 we sat and it would go on and on and on and Mr.
13 gagliardo, I think, made a very strong case based on
14 the mediation agreement to the entire Board that,
15 you know, this is a lot. And we understand that.

16 And as I said before, that we knew
17 we were going to catch hell, if you will, for it,
18 but we were presented with, here's your
19 alternatives, forever or, you know, a long time and
20 a lot more money than this or this, and we kind of
21 took this.

22 CHAIRMAN GATES: Yes, Director Melvin?

23 DIRECTOR MELVIN: Yes, just two quick
24 things.

L.A. COURT REPORTERS LLC - (312) 419-9292

299

1 Mr. Huggins, thank you very much
2 for your comments. I really appreciated having that
3 kind of background on your sentiments and stuff like
4 that. It makes a lot of sense. And I understand a
5 lot more about your perspective having heard those
6 comments.

7 Mr. Chairman O'Halloran, what's
8 going to be different? I mean, Metra's got like a
9 little bit of history here of the last two CEOs not
10 really completing the situation well. The audits
11 aren't on-time. Is something going to change? What
12 are you going to do differently going forward here?

13 MR. O'HALLORAN: I think that the
14 deputy executive directors have a mandate, if you
15 will, right now to start moving a lot of this
16 forward and I think you're going to start to see
17 those results quickly. I think going forward, you
18 know, we -- we absolutely -- you know, we need to
19 and I brought this up the last time I was here,
20 although that does seem like years ago.

21 We need to put specific parameters
22 on here, you know, whether it be to being able to
23 take credit cards on trains, whether it be able to
24 get a wifi project. Okay. Fine. It's great. It's

L.A. COURT REPORTERS LLC - (312) 419-9292

300

1 great if we put it up on this happy, wappy slide.
2 when are we going to get it done? By when?
3 And we want to hold people to it.
4 There has got to be dates and accountability. We
5 can't continue with this, oh, well, you know, it's
6 just kind of moving along, and I think that these
7 gentlemen have embraced that and maybe, Mr. Wiggins,
8 you would like to...

9 MR. WIGGINS: Certainly. One of the
10 reports that we have recently put together was
11 monthly and KPI, key performance indicators,
12 actually looking at the functioning of the
13 organization, kind of like lab results for how we're

14 doing, how long it takes us to get contracts or how
15 long it takes us on Board personnel, what our
16 on-time performance is, and so we have been sharing
17 that -- producing that information monthly and
18 sharing that with the Board. I think that's
19 something we can make public as well, because many
20 transit agencies across the country put -- identify
21 those core and key KPIs and actually communicate
22 them.

23 And so I think both my -- my
24 colleague and I are really operation and results

L.A. COURT REPORTERS LLC - (312) 419-9292

301

1 driven. It's really about the numbers. You know,
2 we can -- we can talk all day, but it's really about
3 the numbers and the results, and we'll be
4 increasing -- as we develop additional KPIs, we'll
5 be communicating those more freely.

6 CHAIRMAN GATES: Good. I think there
7 are a few KPIs that this Board would like to give
8 you. But we'll hold that for a moment.

9 I think our -- this portion of our
10 Board meeting is concluded, unless there are any
11 further questions. This is just the first agenda
12 item of about a dozen we have ahead of us. But we'd
13 like to, first of all, I mention that our audit will
14 continue very aggressively, very expeditiously and

15 hopefully we will come back with results and
16 recommendations, you know, my question is within the
17 next 60 days. It really depends on how quickly this
18 group can get the documents and get through the
19 documents, but we hope to move this along
20 aggressively and expeditiously.

21 And meanwhile, we'd like to thank
22 you for appearing today. You did so voluntarily, as
23 did Mr. Clifford. But I think you have enlightened
24 the public, the taxpayers, your riders and all the

L.A. COURT REPORTERS LLC - (312) 419-9292

302

1 stakeholders as to the many issues that are included
2 within this -- within this situation. And I thank
3 you very much for appearing.

4 All right. At this time I'd
5 like to recess this Board meeting and reconvene --
6 and begin to --- begin the committee meetings and
7 then we will reconvene as a full Board after the
8 committee meetings.

9 (Whereupon, no further audio
10 was transcribed from this
11 date.)
12
13
14
15

071713 RTA BOARD

- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24

L.A. COURT REPORTERS LLC - (312) 419-9292

303

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16

17
18
19
20
21
22
23
24

L.A. COURT REPORTERS LLC - (312) 419-9292

304

1 STATE OF ILLINOIS)
2) SS.
3 COUNTY OF C O O K)

4
5
6
7
8
9
10
11
12
13
14
15
16
17

I, LORI ANN ASAUSKAS, CSR, RPR,
do hereby state that I am a court reporter doing
business in the City of Chicago, County of Cook,
and State of Illinois; that I transcribed by means
of machine shorthand the audio proceedings held in
the foregoing cause, and that the foregoing is a
true and correct transcript to the best of my
ability of my shorthand notes so taken as aforesaid.

Lori Ann Asauskas, CSR, RPR.

071713 RTA BOARD
Notary Public, Cook County, Illinois

18

19

20 SUBSCRIBED AND SWORN TO
21 before me this ___ day
21 of _____, A.D., 2013.

22

23 _____
Notary Public

24

L.A. COURT REPORTERS LLC - (312) 419-9292

27



**Regional
Transportation
Authority**

175 W. Jackson Blvd,
Suite 1650
Chicago, IL 60604
312-913-3200
rtachicago.org

REGIONAL TRANSPORTATION AUTHORITY

REQUEST FOR PROPOSALS

REQUISITION NO. [PROCUREMENT WILL INSERT SOLICITATION NO.]

FOR

[INSERT PROJECT DESCRIPTION]

Confidentiality and Non-Disclosure: Firms requiring assistance shall contact only [name], [title], at (312) 913-[ext.], or James Kozicki, Manager, Procurement and Contracting, at (312) 913-3228. Firms, including all team sub-consultants, who contact any RTA personnel, either verbally or in writing, concerning this solicitation package, are in violation of the procedures for this procurement and any submitted proposals may be disqualified.

Proposals may be subject to disclosure under the Freedom of Information Act, 5 ILCS 140/1 *et seq.* Proprietary information will be protected to the full extent of the RTA's ability, provided that the owner of the information clearly identifies those portions of the proposal containing proprietary information.

TABLE OF CONTENTS

I. RTA BACKGROUND 3
II. INTRODUCTION..... 3
III. SCOPE OF SERVICES 3
IV. PROPOSAL REQUIREMENTS..... 4
V. EVALUATION PROCESS AND CRITERIA..... 6

Appendicies

APPENDIX A – Sample Agreement..... 8
APPENDIX B – EEO Requirements..... 31
APPENDIX C – Disadvantaged Business Enterprise 34
APPENDIX D – Insurance Requirements 50
APPENDIX E – Bid Protest Procedures..... 51
APPENDIX F – Non-Collusion Affidavit..... 54
APPENDIX G – Vendor/Contractor Certification..... 55
APPENDIX H – Vendor/Contractor Affirmative Assurances 57
APPENDIX I – Vendor Reference Form 59
APPENDIX J – Cost Proposal..... 60
APPENDIX K – Table of Exceptions..... 61

I. RTA BACKGROUND

The Illinois State Legislature created the Regional Transportation Authority ("RTA") in 1974 to provide public transportation in the six-county area surrounding Chicago in northeastern Illinois. These counties are Cook, DuPage, Kane, Lake, McHenry and Will, covering approximately 3,700 square miles and serving approximately eight million residents.

In 1983, the RTA Act was amended with substantial changes made to the RTA's organization, funding and operations. The amended Act created three "service boards" known as the Chicago Transit Authority (CTA), Metra commuter rail, and Pace suburban bus, including paratransit. The RTA's primary responsibilities are now financial and budget oversight of CTA, Metra, and Pace, and regional transit planning issues.

The RTA's mission is to ensure a fiscally sound, comprehensive and coordinated transit system in northeastern Illinois. It is governed by a sixteen-member Board of Directors which employs an Executive Director to administer and manage the organization.

Additional information can be obtained at www.rtachicago.com.

II. INTRODUCTION

The RTA is seeking to procure the services of a contractor to **[INSERT A BRIEF DESCRIPTION OF THE SCOPE AND YOUR GOALS FOR THE PROJECT].**

The contractor shall meet the following objectives:

- **[INCLUDE BULLET POINT GOALS, IF A BIT MORE DETAIL CAN BE PROVIDED THAN ABOVE]**

III. SCOPE OF SERVICES

A. **[LIST THE FIRST TASK OR PHASE OF YOUR PROJECT]**

[DEFINE WHAT THIS PHASE ENTAILS, AS WELL AS WHAT THE RTA SHOULD RECEIVE ONCE THIS PHASE IS COMPLETE. THE MORE ACCURATE THE DELIVERABLES LISTED, THE BETTER THE QUALITY OF THE PROPOSALS RTA WILL RECEIVE.]

B. **[LIST THE SECOND TASK OR PHASE OF YOUR PROJECT]**

[DEFINE WHAT THIS PHASE ENTAILS, AS WELL AS WHAT THE RTA SHOULD RECEIVE ONCE THIS PHASE IS COMPLETE. THE MORE ACCURATE THE DELIVERABLES LISTED, THE BETTER THE QUALITY OF THE PROPOSALS RTA WILL RECEIVE.]

C. **[LIST THE THIRD TASK OR PHASE OF YOUR PROJECT]**

[DEFINE WHAT THIS PHASE ENTAILS, AS WELL AS WHAT THE RTA SHOULD RECEIVE ONCE THIS PHASE IS COMPLETE. THE MORE ACCURATE THE DELIVERABLES LISTED, THE BETTER THE QUALITY OF THE PROPOSALS RTA WILL RECEIVE.]

D. **[ETC.]**

IV. PROPOSAL REQUIREMENTS

A. Format

Submittals shall be prepared on standard size paper (8 ½" x 11") with removable binding on the left hand side. The proposal shall contain sufficient detail to enable the RTA to evaluate it according to the criteria outlined in Section V, Evaluation Process and Criteria. The RTA may request additional written information and/or oral presentations.

Each proposal is to consist of three parts, each to be bound separately, with removable binding, binder clips or stapled in the upper left hand corner, as follows:

Part 1 - Technical Proposal (1 original and 1 electronic copy submitted on a CD)

Part 2 - Cost Proposal (1 original and 1 electronic copy submitted on a CD)

Your Cost Proposal must include completed copies of **Appendices F through K**.

Part 3 - DBE Proposal (1 original and 1 electronic copy submitted on a CD)

The cover letter must contain a commitment to provide the services described in this RFP. Each cover letter must include the name and address of your company, the requisition number, the project name, the name, title, address and telephone numbers and signature of a representative who is authorized to negotiate a contract with RTA and/or whom we may contact with questions regarding your response.

Proposers should refrain from using expensive materials for their submittals. All submittals become the property of the RTA and will not be returned. All costs incurred in the preparation and presentation of the proposal are the responsibility of the proposer. Issuance of this RFP does not commit RTA to pay any cost incurred in the preparation of this proposal. Proposers are advised to adhere to the submittal requirements. Failure to comply may be cause for rejection of the submission. RTA reserves the right to accept or reject any or all submittals or parts thereof, to extend the time for submission of proposals, to negotiate with any or all proposers, and to award a contract to the proposer whose initial proposal is most advantageous to RTA, without further discussion or negotiation.

Additional documents describing the firm should be submitted as separate items. The cover letter lists the due date and time before which the proposals must be submitted.

B. Content

PART 1. TECHNICAL PROPOSAL

Proposers must submit a technical proposal. The following elements must be addressed in the technical proposal:

Sections must be separated by labeled tabs and organized in accordance with Proposal Requirements A. Format. All Proposals must be tabbed to reflect the submittal contents requirements as follows:

1. Project Overview

The proposal must contain a project overview which describes the relative roles of its staff and any sub-contractors, as well as the proposer's concept of the overall project, including but not limited to the following:

[LIST THE FIRST TASK OR PHASE OF YOUR PROJECT AND SUMMARIZE YOUR REQUIRED DELIVERABLES.]

[LIST THE SECOND TASK OR PHASE OF YOUR PROJECT AND SUMMARIZE YOUR REQUIRED DELIVERABLES.]

[LIST THE THIRD TASK OR PHASE OF YOUR PROJECT AND SUMMARIZE YOUR REQUIRED DELIVERABLES.]

[ETC.]

2. Qualifications

a) Firm

Applicable Firm qualifications must be presented in this section covering the proposer's experience on similar or related engagements including experience, if any, with transit or municipal accounts. The firm must have at least **[DEFINE THE EXPERIENCE LEVELS OF THE FIRM. EX: 3 YEARS]**. The firm shall provide **[HOW MANY REFERENCES ARE REQUIRED? MUST THE REFERENCES BE FOR PROJECTS COMPLETED WITHIN A SPECIFIED PERIOD? EX: THE PAST 3 YEARS.]**, using the attached Vendor References Form provided in **Appendix I**.

b) Staffing

This section must contain the resumes for all personnel who will be involved in the engagement. The Proposer must identify the contractor representatives, their specialized experience, and professional qualifications as it relates to this contract as described in **Section III. Scope of Services**. **[DEFINE THE EXPERIENCE LEVELS OF THE KEY PERSONNEL. EX: 5 YEARS.]** of experience in performing work similar to that of this RFP. The RTA reserves the right to request and secure replacement personnel from the firm to substitute for any or all persons previously selected, for any reason.

c) Organizational Chart

The proposer shall provide an organizational chart showing upper management and other areas within the corporate structure and organizational charts showing the responsibilities of the employees for this project.

d) **[LIST ANY OTHER QUALIFICATION INFORMATION THAT YOU NEED TO DETERMINE THE QUALIFICATION LEVEL OF A FIRM AND ITS STAFF FOR YOUR PROJECT.]**

C. Table of Exceptions

The summary must state whether the Proposal does or does not fully comply with the requirements as defined in this RFP and shall provide a detailed list of exceptions to the Scope of Services or other RFP requirements including all exhibits and appendices. This list must be in table form (**Appendix K**) and must identify the page, section number, provision and the specific exception, non-conformance and/or substitute language proposed. **Failure to identify any specific items of non-compliance will result in RTA assuming compliance.** The RTA, at its sole discretion, may reject any exception within the proposal.

D. Financial Background

Documents supporting a firm's and subcontractor(s)' financial stability and ability to perform the contract **must** be included as well. Proposers must provide audited financial statements for the past year and information pertaining to any past bankruptcy, contract defaults and violations of any regulatory acts. This information will be used to determine vendor responsibility. If audited financials are not available, provide the most recent version of the financials available.

E. Insurance

After award of a contract, the successful proposer shall procure and maintain during the term of the contract, at vendor's expense, insurance as described on the **INSURANCE REQUIREMENTS** found in **APPENDIX D**. Verification of insurance must be provided within 10 days following award of a contract.

PART 2. COST PROPOSAL

A fully completed Cost Proposal must include the following items:

1. Signed copies of all RTA certification forms provided in **Appendices F – K**, including all necessary documents from your proposed subcontractors.
2. The Cost Proposal must be valid for at least 120 days from the submission date.
3. **[INCLUDE ANY OTHER COST OR CERTIFICATION REQUIREMENTS HERE]**.

PART 3. DISADVANTAGED BUSINESS ENTERPRISE (DBE) GOAL

The DBE goal for this procurement is **[INSERT DBE GOAL]**%. Proposers must complete the DBE Goal detailed in **Appendix C**. Responses to this section must be submitted separately from Technical and Price Proposal sections. Proposers must describe their firm's policy and approach to utilize disadvantaged firms in order to comply with the DBE Goal. The RTA encourages any team arrangements that will work to the benefit of this project. If such arrangements are made, the contractor must assume full responsibility for the work performed by all subcontractors.

All proposed DBE firms must be certified as DBEs by the Illinois Unified Certification Program (IL UCP).

V. EVALUATION PROCESS AND CRITERIA

All proposals will be evaluated by the RTA, which reserves the right to make an award or choose not to award to any Proposer, after determining which proposal it finds to be most advantageous. The evaluation will be based primarily on the written proposal. However, the RTA may also require oral presentations by those Proposers in the competitive range. All responses will be evaluated by one or more evaluation committee(s). Following the initial evaluation process, the RTA may select Proposers in the competitive range for negotiations.

The RTA reserves the right to reject any or all proposals, or parts thereof, as it deems necessary for any reason. In addition, the RTA reserves the right to make an award to one responsive, responsible Proposer whose offer best conforms to the requirements of this solicitation and is most advantageous to the RTA.

In reviewing and evaluating the responses to this RFP, the RTA will consider the following factors, which are listed in the order of their relative importance, beginning with the most important:

1. **[INSERT THE MOST IMPORTANT CRITERION]**, **([INSERT A REFERENCE TO THE SECTION THAT PRIMARILY DISCUSSES THE REQUIREMENTS PERTAINING TO THIS CRITERION])**;
2. **[INSERT THE SECOND MOST IMPORTANT CRITERION]**, **([INSERT A REFERENCE TO THE SECTION THAT PRIMARILY DISCUSSES THE REQUIREMENTS PERTAINING TO THIS CRITERION])**Credentials and experience of key individuals designated for the project and commitment of the key individuals to this project (Section IV. Part1.2(b)
3. **[INSERT THE THIRD IMPORTANT CRITERION]**, **([INSERT A REFERENCE TO THE SECTION THAT PRIMARILY DISCUSSES THE REQUIREMENTS PERTAINING TO THIS CRITERION])**]
4. **ETC.**

[THIS PARAGRAPH IS ONLY AN EXAMPLE OF ONE METHOD OF EVALUATING COST. THERE ARE MULTIPLE METHODS AVAILABLE. PROCUREMENT STAFF WILL WORK WITH YOU TO DETERMINE WHICH IS BEST.]

Award will be made to the Proposer whose proposal offers the combination of the above criteria and cost offering the best overall value to the RTA. The RTA will compare differences in the technical and management criteria, as stated above, with differences in cost. The RTA is more concerned with obtaining superior technical or management features than with making an award at the lowest overall cost. However, the RTA will not make an award at a significantly higher overall cost in order to achieve slightly superior technical or management features. Cost is not expected to be the controlling factor in the selection of a Proposer for this RFP. The degree of importance of cost as a factor could become greater depending upon the equality of the proposals for the other listed criteria evaluated; where proposals are determined to be substantially equal, total price and other price factors would become the controlling factor.

The RTA retains the right to require additional information including revised pricing information from any Proposer, and to determine the veracity of the information in the proposal. A proposal found to be based on inaccurate or misrepresented information may be dismissed from further consideration.

Firms in the competitive range (in contention for negotiations or award of the contract) may be required to make oral presentations. Failure of a firm to report for an oral presentation will be cause for dismissal of the proposal from further consideration, provided that the RTA has given adequate notice for the Proposer to prepare the oral presentation. However, the RTA is not required to hear a presentation from any Proposer and reserves the right to issue a contract based on the initial proposal submitted without providing any firm an opportunity for oral presentations or negotiations.

After determining which Proposers are in the competitive range, the RTA may conduct negotiations with those Proposers to discuss any deficiencies in their proposal and to ensure that the Proposers fully understand all the requirements of this RFP. Should negotiations occur, the RTA may issue to those Proposers remaining in the competitive range an invitation to submit a Best and Final Offer (BAFO). The BAFO will reflect the Proposer's final cost/price proposal to the RTA based on all the clarifications to the proposed Scope of Work included in the oral presentation and/or negotiations.

As a final component of the evaluation process, RTA may determine a relative ranking of Proposers based on an all-inclusive evaluation.

APPENDIX A
SAMPLE AGREEMENT – NOT FOR EXECUTION



[Highlighted text means action needs to be taken]

[Leave Red text if task order contract]

[Leave green text if cost + fixed fee contract]

[Leave pink text in only if applicable]

[Leave blue text if RTA has option to extend]

AGREEMENT FOR PROFESSIONAL AND CONSULTING SERVICES

This Agreement for Professional and Consulting Services (this "Agreement") is entered into as of the date of execution hereof, in the City of Chicago and the State of Illinois, by and between the Regional Transportation Authority, a unit of local government, body politic, political subdivision and municipal corporation existing under the Constitution and laws of the State of Illinois (the "Authority"), having offices located at 175 West Jackson Boulevard, Chicago, Illinois 60604, and _____ (the "Contractor"), having offices located at _____.

For good and valuable consideration, the receipt of which is mutually acknowledged, the Authority and the Contractor hereby agree as follows:

ARTICLE 1. CONTRACTOR'S SERVICES

1.1 Scope and Description of Services. The Contractor will perform for the benefit of the Authority the services described in the attached *Exhibit A*, which is incorporated by reference herein as though fully set forth (the "Services"). The Contractor must furnish all professional services, labor, materials, tools, equipment and supervision necessary or appropriate to fully perform the Services and all other duties and responsibilities of the Contractor pursuant to this Agreement.

1.2 Standard of Performance. The Contractor shall perform all Services required of it under this Agreement in accordance with the practices, methods, standards, degree of judgment and skill that are ordinarily possessed and exercised by (and generally accepted as being appropriate for) professionals of good standing who are performing work which is of similar scope, nature and complexity as the Services (the "Professional Standard").

1.3 Compliance with Laws. In the performance of the Services, the Contractor shall comply with, and ensure that the Services comply with, all applicable federal, state and local laws, regulations, rules, ordinances, codes, permits, licenses, approvals, orders, declarations and decrees in effect from time to time (collectively, the "Laws").

1.4 Independent Contractor. The Contractor is engaged by the Authority only for the purpose and to the extent set forth in this Agreement, and the Contractor's status during the period of this engagement is that of an independent contractor and nothing herein will at any time be construed to create the relationship of employer and employee, principal and agent, partners, or joint venturers between the Authority and the Contractor, or between the respective officers, directors, partners, managers, employees or agents of the Authority and the Contractor. The Contractor will not be an employee or agent of the Authority, nor claim to

be acting as such, and will have no authority whatsoever to bind the Authority, waive any contractual requirements or make any statements or representations on behalf of the Authority.

ARTICLE 2. TERMS OF PAYMENT FOR SERVICES

2.1 Contract Sum. [The contract sum for the Contractor's performance of the Services (the "Contract Sum") shall be calculated as set forth in the attached *Exhibit B*, which is incorporated by reference herein as though fully set forth, but in no event shall the contract sum exceed _____ Dollars (\$ _____).]

[If the Authority exercises its option to extend the term of this Agreement pursuant to Section 3.1, the Contract Sum shall be increased by _____ Dollars (\$ _____) for each additional year of the Term.]

[The Contractor shall be compensated on a task-by-task basis. For each task order to be performed by Contractor pursuant to this Agreement (a "Task"), the Contract Sum for the Contractor's performance of the Services (the "Contract Sum") shall be calculated pursuant to the attached *Exhibit B*, which is incorporated by reference herein as though fully set forth.]

2.2 Invoices. The Contractor shall submit an invoice to the Authority within thirty (30) days after the end of each month for which payment is sought. Such invoice shall cover all Services completed to the end of such month that were not covered by a previously submitted invoices and shall be directed to the attention of "Accounts Payable." Additionally, all invoices must show Authority Account Number _____ and Authority Purchase Order Number _____.

2.3 Documentation Supporting Invoices. Each invoice for payment submitted by the Contractor must include (i) costs attributable to direct labor, including current and cumulative hours worked by key personnel, **itemized by Task, if appropriate**, with billing rates; (ii) all other direct and indirect costs for which reimbursement is being requested; (iii) the previous two items for any Contractor Related Parties (hereinafter defined) utilized over the invoiced period; (iv) a monthly progress report, as provided for in Section 3.4; and (v) the amounts previously invoiced, the amount currently due, and the total amount paid or due, including the invoice being submitted. The Contractor shall also attach to each invoice such receipts or other information as may reasonably be required by the Authority to substantiate the amounts properly owing to the Contractor.

2.4 Lien Waivers. To the extent required by the Laws or requested by the Authority, the Contractor must also submit to the Authority (all in a form reasonably satisfactory to the Authority) a lien waiver from the Contractor covering the amounts for which payment is then being sought.

2.5 Payment of Amounts Due. The Authority will pay all amounts properly owing to the Contractor as set forth in each invoice within thirty (30) days following receipt of such invoice, provided that the necessary supporting data set forth in Section 2.3 is received with the invoice. However, if the Authority objects to all or any portion of any invoice or the supporting documentation therefor, the Authority will so notify the Contractor within fifteen (15) days after receipt of such invoice, setting forth the deficiencies in the invoice or supporting documentation. The Authority will then withhold that portion of the invoice which is in dispute until the deficiencies are cured, at which point the Authority shall pay the remainder of the invoice within thirty (30) days.

2.6 [Fixed Fee Payment. The fixed fee is included in the maximum payment set forth above in Section 2.1 and shall be paid within thirty (30) days of the Services being completed to the satisfaction of the Authority. No portion of the fixed fee sum shall be paid to the Contractor prior to the completion of the Services unless paid pursuant to a termination for convenience under Article 13 of this Agreement. It is understood and agreed that the fixed fee sum is a fixed amount which cannot be exceeded because of any differences between estimated and actual costs of performing the work required by this Agreement, and in no event shall the total of payments to the Contractor exceed the maximum set forth in Section 2.1.]

2.7 Withholding Payment. Notwithstanding anything to the contrary herein contained, no compensation will be paid to or claimed by the Contractor for services required to correct deficiencies attributable to errors or omissions of the Contractor, and all such errors or omissions must be corrected by the Contractor at the Contractor's sole cost and expense. The Authority has the right to withhold from payment due the Contractor such sums as are reasonably necessary to protect the Authority against any loss or damage which may result from: (i) the negligence of or unsatisfactory Services provided by the Contractor or Contractor Related Parties; (ii) the failure by the Contractor or any Contractor Related Parties to perform the Contractor's obligations hereunder; or (iii) claims filed against the Authority relating to the Services. Any sums withheld from the Contractor as provided in this Article, and subsequently determined to be due and owing to the Contractor, will be immediately paid to the Contractor.

2.8 No Assignment of Contract Funds. The Contractor must not transfer or assign any Contract funds or claims due, or to become due, without first obtaining the written approval of the Authority.

2.9 Records. The Contractor's records relating to the Services must be kept in accordance with generally accepted principles of accounting consistently applied and must be retained by the Contractor for a period of not less than three (3) years following the completion of the Services. Such records must be available to the Authority or any authorized representative of the Authority, upon reasonable prior notice, for audit and review during normal business hours at the Authority's offices, 175 West Jackson Boulevard, Suite 1650, Chicago, Illinois 60604.

2.10 Authority Appropriation. The Authority and the Contractor agree that, if the term of this Agreement extends beyond the current fiscal year of the Authority (the current fiscal year being the year in which the first date of the term of this Agreement falls), this Agreement is subject to the appropriation of funds by the Authority's Board of Directors for each subsequent year.

ARTICLE 3. TIME FOR COMPLETION OF SERVICES

3.1 Term of Agreement. The term of this Agreement shall begin on the date of execution hereof and end on _____ (the "Term"). [The Authority, in its sole discretion, may exercise ___ option[s] to extend the Term by one year each, by giving written notice to the Contractor at any time prior to the expiration of the Term.] The Contractor must complete all Services within the Term. The Contractor must furnish such manpower, materials, facilities, and equipment and must work such hours, including overtime operations, as may be necessary to ensure the progress and completion of the Services within the Term. Time is of the essence of this Agreement.

3.2 Schedule. The Contractor will perform the Services in a timely manner according to the schedule in the attached *Exhibit C*, which is incorporated by reference herein as though fully set forth (the "Schedule"). If the Contractor is behind in performing the Services, based on the Schedule, the Authority may direct the Contractor to promptly submit a plan to bring the Services back into compliance with the Schedule. The Contractor must take such action as necessary to bring the general progress of the Services into

compliance with the Schedule and must bear the entire cost of such action. The Contractor will also be liable for any increased costs or damages incurred by the Authority related to such action unless the variance from schedule was caused by an Excusable Delay (as defined below).

3.3 Unavoidable Delay. If the Contractor is delayed in the delivery of the Services pursuant to this Agreement by an Excusable Delay (as defined below) legitimately beyond its reasonable control, it must, within seven (7) days after the Excusable Delay commences, give a written notice request for extension to the Authority. Failure to submit such request in a timely manner will be sufficient cause for denying the request for an extension of time. Requests for an extension of time must specify the cause of the delay, an approximation of the length of the delay, and such other proofs as are reasonably related to the cause of the delay. The Authority will examine the request and all documents supplied by the Contractor and will determine if the Contractor is entitled to an extension. The Authority shall not unreasonably deny any request for extension hereunder.

An "Excusable Delay" is a delay arising from force majeure (including fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, act of foreign enemies, hostilities (regardless of whether war is declared), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalization, government sanction, blockage, embargo, labor dispute, strike, lockout or interruption or failure of electricity or telephone service. The Contractor may not terminate this Agreement because of such circumstances.

3.4 Progress Reports. The Contractor must prepare and submit monthly progress reports describing the Services performed in the prior month and anticipated to be performed in the following one-month period. The thirty (30) day period for payment of invoices provided for in Article 2 shall toll until the corresponding progress report is received for the period invoiced.

ARTICLE 4. PERSONNEL

4.1 Key Personnel. The names of the key personnel of the Contractor (the "Key Personnel") who will perform or be responsible for supervising performance of the Services on behalf of the Contractor are set forth in the attached *Exhibit G*.

4.2 Qualifications. Any personnel performing the Services on behalf of the Contractor must be suitably qualified and experienced to perform the Services in accordance with the requirements of this Agreement and the Professional Standard.

4.3 Substitution of Key Personnel. If, in the opinion of the Authority, the performance of any Key Personnel is unacceptable, such Key Personnel may no longer be assigned to the Services, and the Contractor must furnish to the Authority the name of a substitute person meeting the requirements set forth in this Section. The Contractor may not remove any Key Personnel from the Services without the prior written approval of the Authority unless such Key Personnel are no longer employed by or affiliated with the Contractor or for bona fide promotion, health, or personal reasons. Such approval will not be unreasonably withheld.

4.4 Responsibility for Employees. The Contractor has, and hereby retains, full control over the employment, direction, compensation and discharge of all persons employed by the Contractor who are assisting in the performance of services under this Agreement. The Contractor is solely responsible for the compensation, benefits, contributions and taxes, if any, of all employees. The Contractor must, at its own

expense, comply with all applicable workers compensation, unemployment insurance, employer's liability, tax withholding, minimum wage and hour, and other Laws.

ARTICLE 5. CONTRACTOR RELATED PARTIES

5.1 Contractor Related Parties. "Contractor Related Party" means any subcontractor, consultant, agent or other entity with which the Contractor directly, or through another party, contracts to perform a portion of the Services. The names of the Contractor Related Parties to be retained by the Contractor, if any, are set forth in the attached *Exhibit H*.

5.2 Responsibility for Contractor Related parties. The Contractor has, and hereby retains, full control over the employment, direction, compensation and discharge of all Contractor Related Parties. The Contractor is solely responsible for the compensation, benefits, contributions and taxes, if any, of all Contractor Related Parties.

5.3 Qualifications. All Contractor Related Parties must be suitably qualified and experienced to perform the Services in accordance with the requirements of this Agreement and the Professional Standard. To the extent required by any Laws, all Contractor Related Parties, and their respective personnel performing the Services, must be suitably licensed or certified to perform the Services.

5.4 Substitution of Contractor Related Parties. If, in the opinion of the Authority, the performance of any Contractor Related Party is unacceptable, such Contractor Related Party may no longer be assigned to the Services, and the Contractor must furnish to the Authority the name of a substitute Contractor Related Party meeting the requirements set forth in this Section.

5.5 Sworn Statements and Lien Waivers. To the extent required by the Laws or requested by the Authority, the Contractor must also submit to the Authority (all in a form reasonably satisfactory to the Authority) with each invoice a statement setting forth all Contractor Related Parties retained by the Contractor in connection with the performance of the Services, together with a lien waiver from each such Contractor Related Party covering the amounts for which payment is then being sought.

5.6 Prompt Payment. The Contractor agrees to pay each Contractor Related Party under this Agreement for satisfactory performance of its subcontract no later than fourteen (14) calendar days from the receipt of each payment the Contractor receives from the Authority. A delay in or postponement of payment to the Subcontractor requires good cause and prior written approval of the Authority. Failure to comply with these prompt payment requirements is a breach of this Agreement which may lead to any remedies permitted under law, including, but not limited to, Contractor debarment. In addition, Contractor's failure to promptly pay its Contractor Related Parties is subject to the provisions Section 9 of the Local Government Prompt Payment Act (50 ILCS 505/9).

5.7 Contracts with Contractor Related Parties. The Contractor will not contract with any Contractor Related Party for performance of a portion of the Services without first securing the Authority's approval of the proposed Contractor Related Party. Each contract with a Contractor Related Party must: (a) require such Services to be performed in accordance with the requirements of this Agreement, including without limitation the requirements of all Laws and the Professional Standard; (b) require the Contractor Related Party to agree to be bound by all the terms and conditions of this Agreement applicable to the Contractor and/or Contractor Related Parties; and (c) contain such other terms and conditions as the Authority may reasonably request. The Contractor shall be responsible for payments to Contractor Related Parties out of the Contract Sum or other funds of the Contractor.

5.8 Authority as Third Party Beneficiary. The Authority will be expressly identified as a third party beneficiary in any agreement between the Contractor and a Contractor Related Party. The Contractor, in all agreements with Contractor Related Parties entered into under this Agreement, must include clauses designating the Authority as a third party beneficiary of the provisions contained in, but not limited to, the following:

1. Section 1.3 – “Compliance with Laws”
2. Section 2.9 – “Records”
3. Article 6 – “Warranties and Representations”
4. Article 8 – “Indemnification and Limitation of Liability”
5. Article 10 – “Confidentiality”
6. Article 12 – “Events of Default, Remedies, Stop Work Order, Termination for Convenience”
7. Article 13 – “Termination for Convenience”
8. Section 14.5 – “Consent to Service of Process and Jurisdiction”
9. Article 15 – “Regarding the Illinois Department of Transportation”
10. Article 16 – “Regarding the Federal Transit Administration”

5.9 Compliance with Laws. The Contractor shall cause all Contractor Related Parties to comply with the Laws.

ARTICLE 6. WARRANTIES AND REPRESENTATIONS

In connection with the execution of this Agreement, the Contractor warrants and represents as follows:

6.1 Feasibility of Performance. The Contractor (i) has carefully examined and analyzed the provisions and requirements of this Agreement, including all Exhibits hereto; (ii) understands the nature of the Services required; (iii) from its own analysis has satisfied itself, to the extent reasonably possible, as to the nature of all things needed for the performance of this Agreement and all other matters that in any way may affect this Agreement or its performance; (iv) represents that this Agreement is feasible of performance in accordance with all of its provisions and requirements; and (v) can and will perform, or cause to be performed, the Services in accordance with the provisions and requirements of this Agreement.

6.2 Ability to Perform. The Contractor hereby represents and warrants to the Authority, with the intention that the Authority rely thereon in entering into this Agreement, that: (a) the Contractor is financially solvent; (b) the Contractor, and each Contractor Related Party, has the training, capability, experience, expertise, and licensing necessary to perform the Services in accordance with the requirements of this Agreement and the Professional Standard; (c) the Contractor possesses and will keep in force all required licenses, permits and accreditations to perform the Services; (d) the Contractor has full power to execute, deliver and perform this Agreement and has taken all necessary action to authorize such execution, delivery

and performance; (e) the individual(s) executing this Agreement are duly authorized to sign the same on the Contractor's behalf and to bind the Contractor hereto; and (f) the Contractor will perform the Services described herein promptly, diligently and continuously with an adequate number of qualified personnel to ensure such performance.

6.3 Unauthorized Code. Any concepts, works, information, data, computer programs and other ideas and materials developed, invented, prepared or discovered by the Contractor or any of its employees, agents or Contractor Related Parties, either alone or in collaboration with others, which relate to the actual or anticipated activities, business or research of the Authority, which result from or are suggested by the Services or any other work the Contractor or the Contractor Related Parties may do for the Authority, or which result from use of the Authority premises or property (collectively, the "Developments") in electronic form will be free, at the time of receipt by Authority, of any computer virus, software locks or other such unauthorized code. Unauthorized code includes harmful programs or data incorporated into the software which destroys, erases, damages or otherwise disrupts the normal operation of the software or other programs, hardware or systems utilized by Authority or allows for unauthorized access to the software or other programs, hardware or systems utilized by Authority. Unauthorized code also includes any mechanism, such as password checking, CPU serial number checking or time dependency, that could hinder Authority freedom to fully exercise its rights under this Agreement.

6.4 Certifications. The certifications, assurances and statements made by the Contractor in the Vendor/Contractor Certification and RTA Certifications and Assurances, attached hereto and incorporated herein as *Exhibits D and E*, respectively, are true, accurate and complete as of the date hereof.

6.5 Equal Employment Opportunity Clause. In the event of the Contractor's non-compliance with the provisions of this Equal Employment Opportunity Clause, the Illinois Human Rights Act (775 ILCS 5/1 *et seq.*) (the "Human Rights Act") or the rules and regulations (the "Rules and Regulations") of the Illinois Department of Human Rights (for the purposes of this Article 6, the "Department"), the Contractor may be declared ineligible for future contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations, and this Agreement may, in addition to any remedies provided pursuant to this Agreement, be canceled or voided in whole or in part, and such other sanctions or penalties may be imposed or remedies invoked as provided by statute or regulation. During the performance of this Agreement, the Contractor agrees as follows:

- (1) That it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, marital status, national origin or ancestry, age, sexual orientation, physical or mental handicap unrelated to ability, or an unfavorable discharge from military service; and further that it will examine all job classifications to determine if minority persons or women are underutilized and will take appropriate affirmative action to rectify any such underutilization.
- (2) That, if it hires additional employees in order to perform this Agreement or any portion thereof, it will determine the availability (in accordance with the Department's Rules and Regulations) of minorities and women in the area(s) from which it may reasonably recruit and it will hire for each job classification for which employees are hired in such a way that minorities and women are not underutilized.
- (3) That, in all solicitations or advertisements for employees placed by it or on its behalf, it will state that all applicants will be afforded equal opportunity without discrimination on the basis of race, color, religion, sex, marital status, national origin or ancestry, age, sexual orientation,

physical or mental handicap unrelated to ability, or an unfavorable discharge from military service.

- (4) That it will send to each labor organization or representative of workers with which it has or is bound by a collective bargaining or other agreement or understanding a notice advising such labor organization or representative of the Contractor's obligations under the Human Rights Act and the Department's Rules and Regulations. If any such labor organization or representative fails or refuses to cooperate with the Contractor in its efforts to comply with such Act and Rules and Regulations, the Contractor will promptly so notify the Department and the Authority and will recruit employees from other sources when necessary to fulfill its obligations thereunder.
- (5) That it will submit reports as required by the Department's Rules and Regulations, furnish all relevant information as may from time to time be requested by the Department or the Authority, and in all respects comply with the Human Rights Act and the Department's Rules and Regulations.
- (6) That it will permit access to all relevant books, records, accounts and work sites by personnel for the Authority and the Department for purposes of investigation to ascertain compliance with the Human Rights Act and the Department's Rules and Regulations.
- (7) That it will include verbatim or by reference the provisions of this clause 10.1 in every subcontract it awards under which any portion of this Agreement's obligations are undertaken or assumed so that such provisions will be binding upon such subcontractor. In the same manner as with other provisions of this Agreement, the Contractor will be liable for compliance with applicable provisions of this clause 10.1 by such subcontractors, and it will promptly notify the Authority and the Department in the event any subcontractor fails to or refuses to comply therewith. In addition, the Contractor will not utilize any subcontractor declared by the Illinois Human Rights Commission to be ineligible for contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations.

6.6 Disadvantaged Business Enterprise Assurance. In accordance with 49 CFR Part 26.13(a), as amended, the Contractor assures the Authority that it shall not discriminate on the basis of race, color, national origin or sex in the performance of this Agreement or the award and performance of any subcontract hereunder. Furthermore, the Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this Agreement, which may result in its termination or such other remedy as the Authority deems appropriate. While there is no Disadvantaged Business Enterprise ("DBE") requirement related to the Services, the Contractor agrees that it will certify to the Authority its DBE status and the DBE status of any Contractor Related Parties if any of the same have been accorded such status.

Disadvantaged Business Enterprise Assurance. In accordance with 49 CFR Part 26.13(a), as amended, the Contractor assures the Authority that it shall not discriminate on the basis of race, color, national origin or sex in the performance of this Agreement or the award and performance of any subcontract hereunder. Furthermore, the Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this Agreement, which may result in its termination or such other remedy as the Authority deems appropriate. The DBE Compliance Plan attached hereto as an exhibit is incorporated by reference herein as though fully set forth. Implementation of its DBE Compliance Plan is a legal obligation of the Contractor, and failure to carry out its terms shall be treated as a violation of this Agreement for which the

Authority may impose sanctions as provided for in the Compliance Plan. The Authority may also in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001, as amended, and/or the Program Fraud Civil Remedies Act, 31 U.S.C. 3801 et seq., as amended, or other statutes as appropriate. The Contractor further agrees to comply with all procedural, reporting and invoicing requirements that the Authority may now or hereafter establish in order to comply with the DBE Program and to include the language set forth in this Disadvantaged Business Enterprise Assurance in each subcontract it executes.

6.7 Public Works Employment Discrimination Act. The Contractor certifies and agrees that it will comply with the Public Works Employment Discrimination Act (775 ILCS 10/1 et seq.). In confirmation and furtherance of the foregoing, the Contractor agrees that no person shall be refused or denied employment in any capacity on the ground of unlawful discrimination, as that term is defined in the Human Rights Act, nor be subjected to unlawful discrimination in any manner, in connection with the contracting for or the performance of any work or service of any kind, by, for, on behalf of, or for the benefit of the Authority, including without limitation, the Services to be provided pursuant to this Agreement.

6.8 Drug-Free Workplace. The Contractor certifies and agrees that it will provide a drug-free workplace as required by the Drug Free Workplace Act (30 ILCS 580/1 et seq.) and that it will comply with all provisions thereof.

ARTICLE 7. INSURANCE

7.1 Unless otherwise specified or required by the Authority, the Contractor shall maintain such insurance as is customary and reasonable within the Contractor's industry for entities performing services similar to the Services, which insurance shall cover, at a minimum, all claims, whenever made, arising out of or in relation to the performance of or failure to perform the Services pursuant to this Agreement in the amounts set forth in *Exhibit F*. The Contractor shall furnish certificates evidencing such insurance to the Authority prior to commencement of the Services, and shall promptly furnish to the Authority notices of cancellation, renewal or non-renewal of such insurance. Such insurance must be kept in full force and effect until the date that all Services are complete and final payment for such Services is made.

ARTICLE 8. INDEMNIFICATION AND LIMITATION OF LIABILITY

8.1 General Indemnification. To the fullest extent permitted by law, the Contractor will indemnify, defend and hold harmless the Authority and its officers, directors, employees, agents, affiliates and representatives, from and against any and all injuries, death, losses, damages, claims, suits, liabilities, judgments, costs and expenses that may in any manner accrue against the Authority as a consequence of the execution of this agreement or performance of the Services, including those arising or resulting from, or occasioned by or in connection with any and all claims which are based upon or make the contention that any of the Developments or other materials supplied to the Authority or used by the Authority in the manner recommended by the Contractor, in whole or in part, constitute infringement of any copyright, trademark, patent, trade secret or other proprietary rights of any third party.

This indemnity applies whether any loss for which the Authority seeks indemnity is caused or contributed to by the sole or partial negligent act or omission of the Contractor, Contractor's employees, or Contractor Related Party. The Contractor must, at its own expense, appear, defend, and pay all charges of attorneys and all costs and other expenses arising in connection with this indemnity. If any judgment is rendered against the Authority, the Contractor must at its own expense satisfy and discharge the judgment. If indemnity pursuant to this Section is not permitted by the Laws, then, to the maximum extent permitted by law, the Contractor must make full contribution to the Authority for its percentage share of any liability that is

attributable to an act or omission of the Contractor or a Contractor Related Party. The Contractor expressly waives any legal limitations on its liability to the Authority for contribution, including but not limited to limitations related to the payment of workers compensation benefits. The Contractor expressly understands and agrees that any performance bond and payment bond, or insurance protection required by this Contract or otherwise provided by the Contractor, will in no way limit the responsibility to indemnify and defend the Authority pursuant to this Section. The indemnification contained herein will survive the termination or expiration of this Agreement.

8.2 No Liability for Consequential Damages. In no event will the Authority be liable to the Contractor, whether such liability arises in tort, in equity or in contract, for incidental, indirect or consequential damages, including, but not limited to, loss of profits or revenue, loss of use of equipment or facilities, cost of capital, underutilization of equipment, facilities or labor, or downtime costs, except as and if provided in Articles 12 and 13 hereof.

8.3 No Liability of Public Officials. In carrying out any of the provisions of this Agreement or in exercising any power or authority granted to them thereby, there will be no liability imposed upon any employee or officer of the Authority, either personally or as officials of the Authority; it being understood that in such matters they act as representatives of the Authority.

ARTICLE 9. RECORDS, DEVELOPMENTS AND INTELLECTUAL PROPERTY RIGHTS

9.1 Developments; Intellectual Property Rights. All concepts, works, information, data, computer programs and other ideas and materials developed, invented, prepared or discovered by the Contractor or any of its employees, agents or Contractor Related Parties, either alone or in collaboration with others, which relate to the actual or anticipated activities, business or research of the Authority, which result from or are suggested by the Services or any other work the Contractor or the Contractor Related Parties may do for the Authority, or which result from use of the Authority premises or property (collectively, the "Developments") and any trademark, trade secret, copyright, patent, common law right, title or slogan or any other proprietary right ("Proprietary Rights") in such Developments will be the sole property of the Authority. The Contractor hereby assigns (and agrees to cause all Contractor Related Parties to assign) to the Authority the Contractor's (or the Contractor Related Parties') entire right and interest in any such Development, and will execute (or cause the Contractor Related Parties to execute) any documents in connection therewith that the Authority may reasonably request. The Contractor agrees to enter into agreements with all of its Contractor Related Parties necessary to establish the Authority's ownership in the Developments, and the Contractor agrees to provide the Authority with copies of such agreements if requested by the Authority.

The Contractor shall retain all right, title, and interest in and to any know-how, concepts, techniques, methodologies, ideas, processes, models, templates, utilities, routines, and trade secrets of the Contractor that were developed by or for it independent of this Agreement or that, to the extent they are of general application may have been discovered, created, or developed by the Contractor as a result of its own efforts in providing the Services (collectively, the "Contractor Property"). The Authority shall acquire no rights or interest to the Contractor Property except for a non-exclusive, non-transferable, royalty-free right to use such Contractor Property solely in connection with any deliverable or work product to the extent any Contractor Property is incorporated therein. The Authority shall not sublicense or otherwise grant any other party any rights to use, reproduce, distribute, publicly display/perform, or otherwise exploit or create derivative works from the Contractor Property.

This Agreement will not preclude the Contractor from using its general knowledge, skills and experience for its other clients, provided that the Contractor does not use in connection therewith any Developments or Confidential Information

At all times during the term of this Agreement, upon request from the Authority and upon termination or expiration of this Agreement, the Contractor will immediately provide to the Authority the then-current version of any Developments and any data derived therefrom in the Contractor's possession, indexed and arranged to the satisfaction of the Authority.

Upon completion or termination of the services the Contractor shall return any Confidential Information as required by the Professional Standard or the Laws and, in the event that the Services are comprised, in whole or in part, of a license for computer software, provide the Authority with an electronic copy of any data produced by such software.

ARTICLE 10. CONFIDENTIALITY

10.1 Confidential Information Defined. "Confidential Information" shall mean all information, whether in written, verbal, graphic, electronic or any other form, which is disclosed to or observed by the Contractor in the course of its performance of Services hereunder. Confidential Information will include Developments, business plans, forecasts, projections, analyses, Authority employee and vendor information (including social security numbers, addresses, telephone numbers, and email addresses), software (including all documentation and codes), hardware and system designs, architectures and protocols, specifications, manufacturing, logistic and sale processes.

10.2 Use of Confidential Information. (a) The Contractor (i) will use Confidential Information only in connection with Contractor's performance of the Services, and (ii) will not disclose Confidential Information except to the Contractor's employees and Contractor Related Parties to the extent such employees or Contractor Related Parties need to know such Confidential Information in connection with the performance of the Services. In addition to the requirements of the foregoing sentence, if the Contractor wishes to disclose Confidential Information to a Contractor Related Party, the Contractor Related Party must agree in writing to be bound by equally restrictive confidentiality requirements as contained in this Agreement.

(b) In addition to the requirements of the foregoing paragraph, if the Contractor wishes to disclose Confidential Information to a Contractor Related Party, the Authority must first consent to such disclosure and the Contractor Related Party must agree in writing to be bound by the terms and conditions of this Article in a document satisfactory to the Authority. The Contractor will be responsible and liable for any unauthorized disclosure, publication or dissemination by any party who obtained Confidential Information from the Contractor, including Contractor's employees and Contractor Related Parties.

(c) This Article does not apply to any information that (i) the Contractor can demonstrate that it possessed prior to the date of this Agreement without obligation of confidentiality, (ii) the Contractor develops independently without use of any Confidential Information, (iii) the Contractor rightfully receives from a third party without any obligation of confidentiality to such third party, (iv) is or becomes publicly available without breach of this Agreement, or (v) must be disclosed as required under the Laws; provided, however, that the Contractor must give the Authority reasonable notice prior to such disclosure and will reasonably cooperate with any efforts requested by the Authority to limit the nature or scope of the disclosure.

10.3 Disclosure of Confidential Information. Confidential information may be disclosed as required by the Laws.

ARTICLE 11. APPROPRIATION OF FUNDS

11.1 Authority Appropriation. The Authority and the Contractor agree that, if the term of this Agreement extends beyond the current fiscal year of the Authority (the current fiscal year being the year in which the first date of the term of this Agreement falls), this Agreement is subject to the appropriation of funds by the Authority's Board of Directors for each subsequent year. If the Authority fails to make such an appropriation, the Authority may terminate this Agreement and the Contractor will be entitled to receive, as its sole and exclusive remedy, compensation for Services properly performed to the date of termination to the extent the Authority has funds available and appropriated to pay the Contractor such amount.

ARTICLE 12. EVENTS OF DEFAULT, REMEDIES, STOP WORK ORDER, TERMINATION FOR DEFAULT

12.1 Contractor Events of Default. The following will constitute events of default ("Events of Default") hereunder:

1. Any material misrepresentation, whether negligent or willful and whether in the inducement or in the performance of this Agreement, made by the Contractor to the Authority, or any material breach of a representation, covenant or warranty of the Contractor made herein.
2. The Contractor's failure to perform any of its obligations under this Agreement, including, but not limited to, the following:
 - a) failure to perform the Services or any portion thereof with sufficient personnel and equipment or with sufficient material to ensure the performance of the Services;
 - b) failure to perform the Services in accordance with the standards of performance applicable thereto;
 - c) insolvency, filing of bankruptcy or assignment for the benefit of creditors;
 - d) failure to comply with a material term of this Agreement; or
 - e) any other acts specifically and expressly stated in this Agreement as constituting an Event of Default.
3. Any change in ownership or control of the Contractor without the prior written approval of the Authority, which consent will not be unreasonably withheld.

12.2 Declaration of Default. The Authority will notify the Contractor of any circumstances that the Authority believes to be an Event of Default and will – if the Event of Default is reasonably curable within 30 calendar days or less – allow the Contractor a reasonable amount of time to proceed to cure such Event of Default, which period of time will be no more than thirty (30) calendar days.

If the Contractor has failed to proceed to cure the Event of Default within such cure period, the Authority may declare the Contractor to be in default; provided, however, if such Event of Default cannot

reasonably be cured within the cure period, the Authority may, in its sole discretion, allow the Contractor additional time in which to cure such Event of Default so long as the Contractor diligently pursues such cure.

Written notification of any decision of the Authority to declare the Contractor in default will be provided to the Contractor, and such decision will be final and effective upon the Contractor's receipt of such notice. The Authority has the sole discretion to declare the Contractor in default.

12.3 Remedies for Default. Upon giving notice of a declaration of default due to the occurrence of an Event of Default, the Authority may invoke any or all of the following remedies:

1. the right to take over and complete the Services, either directly or through others;
2. the right to terminate this Agreement effective at a time specified by the Authority;
3. the right to seek specific performance, an injunction or any other appropriate remedy;
4. the right to recover money damages;
5. the right to withhold all or any part of the Contractor's compensation hereunder; and/or
6. the right to require the Contractor to discontinue any Services and deliver all materials accumulated in the performance of the Services, whether completed or in process, to the Authority.

12.4 Remedies Nonexclusive. The remedies under the terms of this Agreement are not intended to be exclusive of any other remedies provided, but each and every such remedy will be cumulative and will be in addition to any other remedies, existing now or hereafter, at law, in equity or by statute. No delay or omission to exercise any right or power accruing upon any Event of Default will impair any such right or power, nor will it be construed as a waiver of any Event of Default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient.

12.5 Stop Work Order. The Authority may at any time, by delivering written notice to the Contractor (a "Stop Work Order"), require the Contractor to stop all or any part of the performance of Services required by this Agreement for a period of up to ninety (90) days after the Contractor receives a Stop Work Order. The Stop Work Order shall include the following: a clear description of the Services to be suspended; guidance as to the action to be taken with Contractor Related Parties; and other requests for minimizing costs. Upon receipt of the Stop Work Order, the Contractor will comply with its terms and take all reasonable steps to minimize costs for Services covered by the Stop Work Order during the period of work stoppage. Within a period of ninety (90) days after the Contractor's receipt of a Stop Work Order, or within any extension of that period to which the Contractor and the Authority have agreed in writing, the Authority will either cancel the Stop Work Order or terminate this Agreement pursuant to the terms hereof. Provided this Agreement has not theretofore been terminated, the Contractor will resume performance of Services upon cancellation or expiration of any Stop Work Order.

12.6 Authority Default. The Contractor may declare the Authority in default and terminate the Agreement if the Authority fails to pay the undisputed portion of an invoice within thirty (30) days following receipt of such invoice.

ARTICLE 13. TERMINATION FOR CONVENIENCE

13.1 Right of Authority to Terminate for Convenience. The Authority may terminate this Agreement, in whole or in part, at any time, when it is in the Authority's best interest. If the Authority decides to terminate the Agreement, the Authority will send a written Notice of Termination for Convenience to the Contractor specifying the extent to which performance of the Services under the Agreement are terminated. Such notice will be effective on the date of receipt. The Contractor shall then restrict its activities and those of the Contractor Related Parties to winding down their work. No payment will be made for Services performed after the Notice of Termination becomes effective, except for winding down activities specified in the termination notice and as provided in this Article. The Contractor agrees to accept such payment as its sole and exclusive remedy for termination under this Article, and under no circumstances is the Contractor entitled to anticipatory, unearned profits or consequential damages as a result of a termination or partial termination under this Article

13.2 Obligations of the Contractor upon Termination for Convenience. After receipt of a Notice of Termination for Convenience, except as otherwise directed by the Authority, the Contractor must do the following:

1. If applicable, deliver to the Authority in the manner, at the times, and to the extent directed by the Authority, any completed or partially completed portion of the Services through the effective date of termination, which if the Agreement had been completed, would have been required to be furnished to the Authority;
2. Complete performance of each part of the Services as shall not have been terminated by the Notice of Termination for Convenience in accordance with the Agreement; and
3. Take such action as may be necessary, or as the Authority may direct, for the protection and preservation of the property related to this Agreement which is in the possession of the Contractor and in which the Authority has or may acquire an interest.

13.3 Payment upon Termination for Convenience. After receipt of a Notice of Termination for Convenience, the Contractor shall submit to the Authority its termination claim, in a manner clearly showing how the claim amount was calculated. Such claim shall be submitted promptly and will be waived if not submitted within 60 days of the effective date of termination unless an extension is granted in writing by the Authority.

In the event of a failure of the Contractor and the Authority to agree upon the amount to be paid the Contractor by reason of the termination of the Services for convenience, the amount payable to the Contractor with respect to Services performed prior to the effective date of the Notice of Termination for Convenience will be the total of:

1. The portion of the Contract Sum, including any profit component thereof, related to the Services completed by the Contractor immediately prior to the Notice of Termination, adjusted to account for defective work not remedied. The total sum to be paid to the Contractor hereunder shall not exceed the Contract Sum, as reduced by the amount of payments otherwise made;
2. The cost of settling and paying claims arising out of the termination of the Services under subcontracts or orders, exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the Subcontractor prior to the

effective date of the Notice of Termination under the Agreement, which amounts shall be included in the cost on account of which payment is made under (a) above; and

3. The reasonable cost of the preservation and protection of property incurred pursuant to sub-section 3 of Section 13.2.

13.4 Price Adjustment upon Partial Termination. If the termination hereunder is partial, prior to the settlement of the terminated portion of this Agreement, the Contractor may file with the Authority a request in writing for an adjustment of the price or prices specified in the Contract relating to the continued portion of the Agreement (the portion not terminated by the Notice of Termination for Convenience), and such adjustment as may be agreed upon will be made in such price or prices.

13.5 Flow Through to Contractor Related Parties. The Contractor shall insert in all agreements with Contractor Related Parties that the Contractor Related Party shall stop work on the date of and to the extent specified in a Notice of Termination for Convenience from the Authority. The Contractor shall communicate, immediately upon receipt thereof, any Notice of Termination for Convenience issued by the Authority to the affected Contractor Related Parties of any tier.

13.6 No Other Payments; No Damages. Under no circumstances is the Contractor entitled to anticipatory, unearned profits as a result of a termination or partial termination under this Article. The payment to the Contractor determined in accordance with this Article constitutes its exclusive remedy for a termination hereunder. In no event shall the Authority be responsible for unabsorbed or underabsorbed overhead as part of termination claims under this Article.

13.7 No Waiver. Anything contained in this Agreement to the contrary notwithstanding, a termination under this Article shall not waive any right or claim to damages that the Authority may have and the Authority may pursue any cause of action that it may have under the Agreement.

ARTICLE 14. GENERAL PROVISIONS

14.1 Amendments. This Agreement, including all Exhibits hereto and any addenda thereto, constitutes the entire Agreement between the Contractor and the Authority. It supersedes all prior or contemporaneous communications, representations or agreements, whether oral or written, relating to the Services set forth in this Agreement. No modification, addition, deletion, etc. to this Agreement including, without limitation, changes to the Contract Sum or the Services, will be effective unless and until such changes are reduced to writing and executed by the authorized officers of each party. If no such written and mutually executed instrument exists, then the Contractor will not be compensated for any changed work or out-of-scope Services performed.

14.2 Assignment. Neither this Agreement nor any of the rights, interests or obligations under it shall be assigned, in whole or in part, by operation of law, change of control, merger or otherwise without the prior written consent of the Authority. Such consent is not required in instances where the parent company of the Contractor succeeds to all or any part of the Contractor's operations, though in no case is an assignment of this Agreement valid unless the successor accedes to all of the terms, conditions and requirements of this Agreement as a condition precedent to such succession.

14.3 Solicitation and Employment. The Contractor will not employ any person employed by the Authority at any time during the term of this Agreement to perform any Services required by the terms of this

Agreement. Further, the Contractor will not solicit for employment any of the Authority's employees during the term of this Agreement without the prior consent of the Authority.

14.4 Governing Law. This Agreement will be interpreted under, and governed by, the laws of the State of Illinois, without regard to choice of law principles.

14.5 Consent to Service of Process and Jurisdiction. The Contractor agrees to exclusive jurisdiction of Illinois state and federal courts for the resolution of any dispute related to this Agreement. The Contractor hereby irrevocably submits, and will cause any Contractor Related Parties to submit, to the original jurisdiction of those State or Federal courts located within the County of Cook, State of Illinois, with regard to any controversy arising out of, relating to, or in any way concerning the execution or performance of this Agreement. The Contractor agrees that service of process on the Contractor may be made, at the option of the Authority, either by registered or certified mail addressed to the applicable office as provided for in this Agreement, by registered or certified mail addressed to the office actually maintained by the Contractor, or by personal delivery on any officer, director, or managing or general agent of the Contractor.

14.6 Notices. All notices given under this Agreement shall be in writing, whether physical or electronic, and will be deemed properly served (i) if delivered in person to the individual to whom it is addressed, (ii) 3 days after deposit in the United States mail, if sent postage prepaid by United States registered or certified mail, return receipt requested, or (iii) if sent via electronic mail to the address(es) specified below, as follows:

If to the Authority:

[Redacted]
(Project Manager)
Regional Transportation Authority
175 West Jackson Boulevard, Suite 1550
Chicago, Illinois 60604
email: [Redacted]
phone: [Redacted]
fax: [Redacted]

with a copy to: Manager of Procurement
and Contracting (at address listed above)

If to the Contractor:

[Redacted]
[Redacted]
[Redacted]
email: [Redacted]
phone: [Redacted]
fax: [Redacted]

The foregoing addresses may be changed from time to time by notice to the other party in the manner provided for herein.

14.7 Interpretations. The headings of this Agreement are for convenience of reference only and in no way define, limit or describe the scope or intent of this Agreement. Words importing the singular number will include the plural number and vice versa, unless the context otherwise indicates. All references to any exhibit or document will be deemed to include all supplements and/or amendments to any such exhibits or

documents entered into in accordance with the terms and conditions hereof and thereof. All references to any person or entity will be deemed to include any person or entity succeeding to the rights, duties and obligations of such persons or entities in accordance with the terms and conditions of this Agreement.

14.8 Joint and Several Liability. In the event that the Contractor, or its successors or assigns, if any, is comprised of more than one individual or other legal entity (or combination thereof), then and in that event, each and every obligation or undertaking herein stated to be fulfilled or performed by the Contractor will be the joint and several obligation and undertaking of each such individual or other legal entity.

14.9 Third Party Beneficiaries. The parties agree that this Contract is solely for the benefit of the parties and nothing herein is intended to create any third party beneficiary rights for Contractor Related Parties or other third parties other than the Chicago Transit Authority, the Commuter Rail Division of the Authority, and the Suburban Bus Division of the Authority.

14.10 Setoff. The Authority shall have the right of setoff of any claim of the Authority against any payments due or to become due to the Contractor or the retention under this Agreement or any other contract or obligation of the Contractor to the Authority.

14.11 Severability. The invalidity of any one or more phrases, sentences, clauses or sections contained in this Agreement will not affect the remaining portions of this Agreement or any part thereof.

14.12 No Waiver of Legal Rights. Neither the acceptance by the Authority, or any representative of the Authority, nor any payment for, or acceptance of, the whole or any part of the Services, nor any extension of time, nor any possession taken by the Authority, will operate as a waiver by the Authority of any portion of this Agreement, or of any power herein reserved, or any right of the Authority to damages herein provided. A waiver of any breach of this Agreement will not be held to be a waiver of any other or subsequent breach. The Authority may only waive its rights in a writing executed by the Executive Director or General Counsel of the Authority. Whenever under this Agreement the Authority by a proper power waives the Contractor's performance in any respect, or waives a requirement or condition to either the Authority's or the Contractor's performance, the waiver so granted will only apply to the particular instance and will not be deemed a waiver forever or for subsequent instance of the performance, requirement, or condition. No such waiver will be construed as a modification of this Contract, regardless of the number of times the Authority may have waived the performance, requirement, or condition.

14.13 Advertising and Publicity. The Contractor may not disclose, use, or refer to this Agreement or any of its terms, or the name of the Authority, in any advertising, publicity releases, promotional materials, or materials distributed to existing or prospective customers without the prior written consent of the Authority.

14.14 Counterparts. This Agreement may be executed in one or more counterparts, which together shall constitute one and the same instrument.

ARTICLE 15. REGARDING THE ILLINOIS DEPARTMENT OF TRANSPORTATION.

15.1 The records described in Article 2 must be available, upon reasonable prior notice, for audit and review by the Illinois Department of Transportation ("IDOT").

15.2 The Contractor will also indemnify, defend and hold harmless IDOT to the same extent that it does the Authority under Article 8 of this Agreement.

15.3 IDOT, will not be subject to any obligations or liabilities by or to the Contractor or Contractor Related Parties in connection with the Services, notwithstanding any concurrence in the retention or solicitation of the Contractor or Contractor Related Parties.

15.4 To the extent IDOT is providing funding for all or any portion of the Contract Sum, the Developments and Proprietary Rights are the sole property of IDOT. The Contractor hereby assigns (and agrees to cause all Contractor Related Parties to assign) to IDOT the Contractor's (or the Contractor Related Parties') entire right and interest in any such Development, and will execute (or cause the Contractor Related Parties to execute) any documents in connection therewith that the Authority may reasonably request. The Contractor agrees to enter into agreements with all of its Contractor Related Parties necessary to establish IDOT's ownership in the Developments, to the extent that IDOT is providing funding for all or any portion of the Contract Sum, the Contractor agrees to provide the Authority with copies of such agreements if requested by the Authority or IDOT. The foregoing does not apply to any inventions that the Contractor made prior to the Contractor's retention by the Authority, or to any inventions that the Contractor develops without using any of the Authority equipment, supplies, facilities or Confidential Information and that do not relate to the Services or the Authority business or research, or the Services the Contractor performs for the Authority. The Contractor hereby grants to IDOT (to the extent IDOT is providing funding for all or any portion of the Contract Sum) a perpetual, irrevocable, non-exclusive right and license, with the right to sublicense, to use all materials, software, technology, data or other goods or services, that are not Developments but that are required to use fully and completely the Developments.

15.5 To the extent IDOT is providing funding to pay all or a portion of the Contract Sum, this Agreement and the obligation of the Authority to pay the Contract Sum is contingent upon approval of this Agreement (if required by IDOT) and appropriation of the relevant funding by IDOT (which may in turn be contingent upon an appropriation of funds to IDOT by the Illinois General Assembly or the federal government). If IDOT fails to approve this Agreement (if approval is required by IDOT), appropriate such funding or provide such funding, the Authority may terminate this Agreement and the Contractor will be entitled to receive, as its sole and exclusive remedy, compensation for Services properly performed to the date of termination to the extent the Authority has funds available and appropriated to pay the Contractor such amount. Upon the request of the Contractor, the Authority will inform the Contractor as to whether IDOT is providing funding to pay all or a portion of the Contract Sum and the status of approval of this Agreement by IDOT. In the event of a conflict between this Agreement and any funding agreement between the Authority and IDOT, the terms of such funding agreement will control.

15.6 IDOT will not be subject to any obligations or liabilities by or to the Contractor or Contractor Related Parties in connection with the Services, notwithstanding any concurrence in the retention or solicitation of the Contractor or Contractor Related Parties.

ARTICLE 16. REGARDING THE FEDERAL TRANSIT ADMINISTRATION.

16.1 Federal Assurances. The certifications, assurances and statements made by the Contractor in this Article and the Federal Certifications and Assurances attached hereto as *Exhibit J* are true, accurate and complete as of the date hereof. The term "Grantee" in the Federal Certifications and Assurances shall be understood to mean "Contractor" for the purposes of this Agreement.

16.2 Access to Records. The Contractor and all Contractor Related Parties must provide to the U.S. Secretary of Transportation and the Comptroller General of the United States or their duly authorized representatives, access to all records as required by 49 U.S.C. § 5325(g).

16.3 Federal Indemnity. The Contractor will also indemnify, defend and hold harmless the Federal Transit Administration (the “FTA”) to the same extent that it does the Authority under Article 8 of this Agreement.

16.4 No Federal Government Obligations. The Federal Government shall not be subject to any obligations or liabilities to the Contractor or any Contractor Related Party. Notwithstanding that the Federal Government may have concurred in or approved any solicitation, subagreement, lease, third party contract, or arrangement in connection with this Agreement, the Federal Government has no obligations or liabilities to any entity other than the Authority, including the Contractor and all Contractor Related Parties.

16.5 Fraud and False or Fraudulent Statements or Acts. The Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 et seq., and U.S. DOT regulations, “Program Fraud Civil Remedies,” 49 C.F.R. Part 31, apply to the Contractor’s and all Contractor Related Parties’ activities in connection with the Project. By executing this Agreement, the Contractor certifies or affirms the truthfulness and accuracy of each statement it has made, it makes, or it may make in connection with the Services. In addition to other penalties that may apply, the Contractor also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation to the Federal Government, the Federal Government reserves the right to impose on the Recipient the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, to the extent the Federal Government deems appropriate. If the Contractor makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation to the Federal Government or includes a false, fictitious, or fraudulent statement or representation in any agreement with the Federal Government in connection with a Project authorized under 49 U.S.C. chapter 53 or any other Federal law, the Federal Government reserves the right to impose on the Recipient the penalties of 49 U.S.C. § 5323(l), 18 U.S.C. § 1001, or other applicable Federal law to the extent the Federal Government deems appropriate.

16.6 Federal Changes. The Contractor agrees that Federal laws and regulations control the award and implementation of the Services. The Contractor also agrees that certain Federal directives provide Federal guidance applicable to the Services, except to the extent that FTA determines otherwise in writing. Thus, FTA strongly encourages adherence to applicable Federal directives. The Contractor understands and agrees that unless the Contractor or the Authority requests FTA approval in writing, the Contractor may incur a violation of Federal laws or regulations. The Contractor understands and agrees that Federal laws, regulations, and directives applicable to the Services and to the Contractor on the date on which this Agreement was executed may be modified from time to time. In particular, new Federal laws, regulations, and directives may become effective after the date on which the Contractor executes this Agreement, and might apply to this Agreement. The Recipient agrees that the most recent of such Federal laws, regulations, and directives will apply to the administration of the Project.

16.7 Energy Conservation. The Contractor agrees to comply with applicable mandatory energy efficiency standards and policies of applicable State of Illinois energy conservation plans issued in accordance with the Energy Policy and Conservation Act, as amended, 42 U.S.C. §§ 6321 et seq., except to the extent that the Federal Government determines otherwise in writing.

16.8 Federal Termination Provisions. The Contractor agrees that the Federal Government may suspend or terminate all or any part of the Federal assistance to be provided for the Services if the Authority

has violated the terms of its Grant Agreement or Cooperative Agreement for the Services, or if the Federal Government determines that the purposes of the laws authorizing the Services would not be adequately served by the continuation of Federal assistance for the Services. The Contractor understands and agrees that any failure to make reasonable progress on the Services that endangers substantial performance of the Services shall provide sufficient grounds for the Federal Government to terminate its assistance for this Agreement. In general, termination of Federal assistance for the Project will not invalidate obligations properly incurred by the Authority before the termination date to the extent those obligations cannot be canceled. If, however, the Federal Government determines that the Authority has willfully misused Federal assistance by failing to make adequate progress, by failing to make reasonable and appropriate use of the Services, or by failing to comply with the terms of any applicable grant agreements for the Services including this Master Agreement, the Federal Government may require the Authority to refund the entire amount of Federal assistance provided for the Project or any lesser amount as the Federal Government may determine, which refund would take precedence over payment to the Contractor were the Authority's appropriation insufficient to fund both amounts.

16.9 Debarment and Suspension. The Contractor agrees to comply, and assures the compliance of each Contractor Related Party, with Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, and U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 CFR Part 1200, which adopts and supplements the provisions of U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 CFR Part 180. The Contractor agrees to, and assures that each Contractor Related Party will, review the "Excluded Parties Listing System" at <http://epls.gov/> before entering into any arrangement in connection with the Services.

16.10 Lobbying. The Contractor agrees that: (i) In compliance with 31 U.S.C. § 1352(a), it will not use funds received from this Agreement to pay the costs of influencing any officer or employee of a Federal agency, Member of Congress, officer of Congress or employee of a member of Congress, in connection with making or extending the Grant Agreement or Cooperative Agreement funding this Agreement; (ii) in addition, it will comply with other applicable Federal laws and regulations prohibiting the use of Federal assistance for activities designed to influence Congress or a State legislature with respect to legislation or appropriations, except through proper, official channels; and (iii) It will comply, and will assure the compliance of each Contractor Related Party, with U.S. DOT regulations, "New Restrictions on Lobbying," 49 C.F.R. Part 20, modified as necessary by 31 U.S.C. § 1352.

16.11 Clean Air. Except to the extent the Federal Government determines otherwise in writing, the Contractor agrees to comply with all applicable Federal laws and regulations in accordance with applicable Federal directives implementing the Clean Air Act, as amended, 42 U.S.C. §§ 7401 through 7671q.

16.12 Clean Water. Except to the extent the Federal Government determines otherwise in writing, the Contractor agrees to comply with all applicable Federal laws and regulations in accordance with applicable Federal directives implementing the Clean Water Act, as amended, 33 U.S.C. §§ 1251 through 1377.

16.13 Patent Rights; Right in Data and Copyrights. To the extent the FTA is providing funding for all or any portion of the Contract Sum, the Developments and Proprietary Rights are the sole property of the FTA. The Contractor hereby assigns (and agrees to cause all Contractor Related Parties to assign) to the FTA the Contractor's (or the Contractor Related Parties') entire right and interest in any such Development, and will execute (or cause the Contractor Related Parties to execute) any documents in connection therewith that the Authority may reasonably request. The Contractor agrees to enter into agreements with all of its Contractor Related Parties necessary to establish the FTA's ownership in the Developments and agrees to provide the Authority with copies of such agreements if requested by the Authority or the FTA. The foregoing does not

apply to any inventions that the Contractor made prior to the Contractor's retention by the Authority, or to any inventions that the Contractor develops without using any of the Authority equipment, supplies, facilities or Confidential Information and that do not relate to the Services or the Authority business or research, or the Services the Contractor performs for the Authority. The Contractor hereby grants to the FTA (to the extent the FTA is providing funding for all or any portion of the Contract Sum) a royalty-free, perpetual, irrevocable, non-exclusive right and license, with the right to sublicense, to use all materials, software, technology, data or other goods or services, that are not Developments but that are required to use fully and completely the Developments.

ARTICLE 17. CONTRACT DOCUMENTS

17.1 Contract Documents. Each of the following described documents, when required by the solicitation (the "Contract Documents") (copies of which are attached hereto) is hereby incorporated herein and forms a part of this Agreement:

- Exhibit A: Scope of Services
- Exhibit B: Payment Terms
- Exhibit C: Schedule
- Exhibit D: Vendor/Contractor Certification
- Exhibit E: RTA Certifications and Assurances
- Exhibit F: Insurance Requirements
- Exhibit G: Key Personnel
- Exhibit H: Contractor Related Parties
- Exhibit I: DBE Compliance Plan
- Exhibit J: Federal Certifications and Assurances

17.2 Conflicts among Contract Documents. In the event of a conflict between the terms of this Agreement and the terms of any of the other Contract Documents, the terms of this Agreement will govern.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates recited below.

Contract No.: _____

[Name of Contractor]

Regional Transportation Authority

By _____

By _____

(Print Name) _____

Joseph G. Costello

Title _____

Title: Executive Director

Date: _____

Date: _____

Approved as to form and legality

By _____

Title: Deputy General Counsel

Date: _____

APPENDIX B EEO COMPLIANCE REQUIREMENTS

I. EEO Compliance Requirements

The Regional Transportation Authority requires that all proposers/bidders submit the information below to the RTA Paralegal, 175 West Jackson, Suite 1550, Chicago, Illinois 60604 along with the bid/proposal. It is to be clearly identified and marked to the attention of the Paralegal.

EQUAL EMPLOYMENT OPPORTUNITY

1. For bids or proposals \$50,000 or more, or for any bid amount which when added to prior awards made to the bidder/proposer within the calendar year preceding the bid opening date equals \$50,000 or more, the bidder/proposer shall provide:
 - a. **Current Work Force Utilization Analysis (Exhibit A)**
 - b. **Current Affirmative Action Plan (Exhibit B)** (only required if bidder/proposer employs more than 15 persons)
2. For bids or proposals \$20,000 to \$49,999, or for any bid amount which when added to prior awards made to the bidder within the calendar year preceding the bid opening date will equal \$20,000 or more, the bidder/proposer shall provide:
 - a. **Current Work Force Utilization Analysis**

The Work Force Utilization Analysis submitted (or on file with the RTA) must be dated within the 12 month period preceding contract award. The Affirmative Action Program (including goals and timetables for correcting underutilization, where applicable) must be acceptable and current at the time of contract award.

DEFINITIONS:

Disadvantaged Business Enterprise (DBE): means a small business concern:

- (1) Which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and
- (2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

Socially and Economically Disadvantaged Individuals: means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are:

- (1) **BLACK:** A person with origins in any of the black racial groups of Africa, who is not of Hispanic origin.
- (2) **HISPANIC:** A person of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
- (3) **NATIVE AMERICAN:** A person of American Indians, Eskimos, Aleuts, or Native Hawaiian origin.
- (4) **ASIAN or PACIFIC ISLANDERS:** A person of Japan, China, Taiwan, Korea Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia or Hong Kong. The Indian subcontinent including: Bangladesh, Bhutan, India, Nepal, Sikkim, Pakistan and Sri Lanka.
- (5) **"WOMEN,"** regardless of race, ethnicity, or origin; and
- (6) **"OTHER,"** individuals found to be socially and economically disadvantaged by the Small Business Administration (SBA) pursuant to Section 8(a) of the Small Business Act

CURRENT WORKFORCE UTILIZATION ANALYSIS

Company: _____ Date: _____
 Address: _____ City: _____ State: _____ Zip: _____
 Prepared By: _____ Title: _____ Phone: _____ Email: _____

Have you filed an Affirmative Action Plan with the RTA? Yes _____ No _____

Job Categories	Totals					Male					Female				
	White	Black	Hispanic	Native American	Asian or Pacific Islander	White	Black	Hispanic	Native American	Asian or Pacific Islander	White	Black	Hispanic	Native American	Asian or Pacific Islander
Officials/Managers															
Availability															
Professionals															
Availability															
Technicians															
Availability															
Sales Workers															
Availability															
Office and Clerical															
Availability															
Skilled Craftsmen															
Availability															
Semi-Skilled															
Craftsmen															
Availability															
Laborers															
Availability															
Service Workers															
Availability															
Other															
TOTALS															

CIVIL RIGHTS REQUIREMENTS

The following requirements apply to this Contract:

- (1) **Nondiscrimination** – In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the American with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- (2) **Equal Employment Opportunity** – The following equal employment opportunity requirements apply to this Contract.
 - a. **Race, Color, Creed, National Origin, Sex** – In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal Transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 C.F.R. Parts 60 et seq. (which implement Executive Order No. 11375, “Amending Executive Order 11246 relating to Equal Employment Opportunity,” 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect any activities undertaken in the course of this project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection of training; including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
 - b. **Age** – In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §§ 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
 - c. **Disabilities** – In accordance with section 102 of the American with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, “Regulations to Implement the Equal Employment Provisions of the American with Disabilities Act,” 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- (3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

APPENDIX C
DISADVANTAGED BUSINESS ENTERPRISE REQUIREMENTS

REGIONAL TRANSPORTATION AUTHORITY (RTA)
DISADVANTAGED BUSINESS ENTERPRISE (DBE) COMPLIANCE PLAN

Project name: _____

Vendor name: _____

Instructions for Completing the DBE Compliance Plan

It is the objective of the Regional Transportation Authority (RTA) to promote the participation of Disadvantaged Business Enterprises (DBEs) in the performance of its contracts. To promote this objective, the RTA has established a DBE Program in conformance with U.S. Department of Transportation (U.S. DOT) regulations at 49 CFR Part 26. Additional information and guidance about the regulations is available at www.osdbuweb.dot.gov. Additional information on the RTA's DBE Program is available at www.rtachicago.org/dbe.

A proposer or bidder for this RTA project (referred to herein as "Vendor") must either achieve or exceed the DBE contract goal established for this project through DBE participation or must sufficiently document its good faith efforts to meet the DBE goal.

A DBE is a business certified through the Illinois Unified Certification Program (IL UCP), in accordance with the U.S. DOT's requirements. The firm must be IL UCP certified as a DBE at the time of bid or proposal submittal in order to be counted as a DBE on this project. Other certifications are not acceptable and dollars spent with firms not DBE certified will not be counted towards achieving the DBE contract goal on this project. Information on DBE certification through the IL UCP, including a listing of certified DBEs, is available at www.dot.state.il.us/ucp/ucp.html. All DBE certifications must be pre-certifications, i.e., certifications that have been made final before the due date for bids/proposals as required by 49 CFR 26.81(c).

All Vendors must submit the DBE Compliance Plan to the RTA at the time specified by the RTA. A Vendor that is itself a DBE must still submit the DBE Compliance Plan to the RTA. Specific instructions for completing this DBE Compliance Plan are included for each Section. The DBE Compliance Plan must be signed and dated by an authorized representative of the Vendor. **If the DBE Compliance Plan is not submitted at the time specified by the RTA, the Vendor may be deemed non-responsible and its bid/proposal rejected.**

The RTA-approved DBE Compliance Plan will be incorporated into any contract relating to this project and will be attached as an exhibit thereto. Sections I – VII are the DBE Compliance Plan and supporting forms.

Questions about this DBE Compliance Plan may be directed to the RTA's DBE Coordinator by email at DBE@rtachicago.org or by telephone to 312-913-3213.

DBE Compliance Plan Check List

Please complete the following steps:

- () Review Section I, DBE Program Provisions and DBE Compliance Plan Instructions.
- () Complete and sign Section II, DBE Participation Commitment, even if no DBEs will be utilized. Submit it with your bid/proposal (or as otherwise specified by the RTA).
 - Designate the Vendor's DBE contact person for the project.
 - List all DBE subconsultants, subcontractors, suppliers and joint venture partners.
 - Describe the area of specialty and type of work to be performed by the DBE subconsultant, subcontractor, supplier and joint venture partner.
 - List the dollar amount of DBE participation commitment.
 - List the total proposal/contract price.
- () If the DBE contract goal was not fully achieved through participation, complete Section III, Documentation of Good Faith Efforts to Achieve DBE Contract Goal, and submit it with your bid/proposal (or as otherwise specified by the RTA).
 - Complete the Good Faith Efforts checklist and attach relevant documents.
 - Complete Good Faith Efforts Contacts Log.
- () If the Vendor proposes to achieve the DBE contract goal by entering into a joint venture arrangement with a DBE, complete Section IV, DBE Joint Venture Agreement. Submit a copy of the Joint Venture Agreement with your bid/proposal (or as otherwise specified by the RTA).
- () Complete Section V, Letter of Intent, for each DBE proposed to be utilized on the project as a subconsultant, subcontractor or supplier (but not as a joint venture partner), and submit it with your bid/proposal (or as otherwise specified by the RTA).
- () Have an authorized officer of the Vendor sign Section VII, Attestation, and have it notarized.
- () Submit entire DBE Compliance Plan to the RTA with your bid/proposal (or as otherwise specified by the RTA).

SECTION I
DBE PROGRAM PROVISIONS AND DBE COMPLIANCE PLAN INSTRUCTIONS

The DBE Compliance Plan must list all DBE firms that will participate on the project as subconsultants, subcontractors, suppliers or joint venturer partners for the Vendor. By listing a subconsultant, subcontractor, supplier or joint venture partner on the DBE Compliance Plan, the Vendor indicates that the firm agrees to the price and scope of work proposed. In the event the Vendor is awarded a contract (or, in the case of a task order contract, task orders are established), the Vendor agrees to contract with the firms listed on the Compliance Plan for the scope and price disclosed. These Provisions and Instructions will be incorporated by reference into the contract.

Counting DBE Participation Towards the DBE contract Goal

All DBE's must be certified by the IL UCP at the time the bid/proposal is submitted to the RTA. The value of the work actually performed by the DBE, including supplies purchased or equipment leased by the DBE, will be counted toward the DBE contract goal established by the RTA in the manner set forth in 49 CFR 26.55.

If a DBE subconsultant, subcontractor, supplier or joint venture partner elects to subcontract part of the work to another firm (i.e., to a second tier subcontractor), the value of the second tier work may be counted toward the DBE contract goal only if the second tier subcontractor is itself a DBE. Work that a DBE subcontracts to a second tier non-DBE will not count towards the goal.

After contract award, when evaluating compliance with DBE requirements, the RTA will not credit the participation of a DBE subconsultant, subcontractor or supplier towards the DBE contract goal until that amount has been paid to the DBE.

The participation of a DBE subconsultant, subcontractor, supplier or joint venture partner that "graduates" from the Illinois Unified Certification Program, based upon exceeding the firm size or personal net worth limitations, after contract award and execution of a subcontract with the Vendor, will be counted toward achieving the contract goal (as set forth in 49 CFR 26.87(i)). The participation of a DBE subconsultant, subcontractor, supplier or joint venture partner that loses its certification eligibility before it signs a subcontract for this RTA project for any reason or as a result of fraud, collusion or any other misconduct after contract award shall not be counted toward the contract goal. RTA may require that a subconsultant, subcontractor, supplier or joint venture partner that loses its certification because of misconduct be replaced.

The DBE must perform a "Commercially Useful Function" on the contract in the "Area of Specialty" for which it is certified as a DBE to be counted towards the DBE contract goal. Commercially Useful Function means responsibility for the execution of a distinct element of the work on the project and carrying out its responsibilities by actually performing, managing, and supervising the work involved. To determine whether a firm is performing a Commercially Useful Function, the RTA will evaluate the amount of work subcontracted, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the credit claimed for its performance of the work, industry practices, and other relevant factors. Area of Specialty means the description of a DBE's activity most reflective of the firm's claimed specialty or expertise, as listed on its IL UCP letter of certification. The RTA does not make any representations concerning the ability of any DBE to perform work within its Area of Specialty or the quality of any DBE's work. It is the responsibility of the Vendor to determine the capability and capacity of DBEs to perform the proposed work.

Demonstrating Good Faith Efforts to Achieve the DBE Contract Goal

If the Vendor cannot achieve the DBE contract goal through DBE participation on the contract (or, in the case of a task order contract, on the relevant task order), it must document adequate "Good Faith Efforts" to do so in Section III of this document, including providing any supporting documentation requested by the RTA in order to be found responsible.

A Vendor must show that it took all necessary and reasonable steps to achieve the DBE goal. The fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a Vendor's failure to achieve the DBE contract goal, as long as such costs are reasonable. Also, the ability or desire of a Vendor to perform the work on the project with its own forces or organization does not relieve the Vendor of the responsibility to achieve the DBE contract goal through participation or to make Good Faith Efforts to do so. A Vendor is not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

The RTA, in its sole discretion, will determine whether the Vendor has made adequate Good Faith Efforts to achieve the DBE contract goal. In evaluating the Vendor's Good Faith Efforts, the DBE participation and/or Good Faith Efforts of other vendors on this project or projects of a similar nature may be considered for comparative purposes.

If the RTA determines that the Vendor has made Good Faith Efforts to achieve the DBE contract goal, the Vendor will be eligible for contract award (provided that it is otherwise eligible for award).

If the RTA determines that the Vendor has not made Good Faith Efforts to achieve the DBE contract goal, the RTA will notify the Vendor of that determination and will provide the apparent successful Vendor an opportunity for administrative reconsideration prior to contract award as set forth in 49 CFR 26.53(d).

The RTA may request written clarification of items on the DBE Compliance Plan; however, such clarification does not provide an opportunity to augment listed DBE participation commitments or Good Faith Efforts. Changes to the DBE Compliance Plan are permitted only pursuant to the procedures established in Section VI of this document.

Only those vendors who make adequate good faith efforts to meet a contract DBE goal on a contract funded in whole or in part with federal funds will be eligible for contract award.

Joint Ventures with DBEs

Joint venture(s) that the Vendor enters into with DBEs may be counted toward the DBE contract goal. A joint venture is an association between two or more persons, or any combination of types of business enterprises and persons numbering two or more, proposing to perform a for-profit business enterprise in which each joint venture partner contributes property, capital, effort, skill and knowledge, and in which the DBE joint venturer is responsible for a distinct, clearly defined portion of the work on the project and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest. Joint venturers must have an agreement in writing specifying the terms and conditions of their relationships and their risks and responsibility. The joint venturers must complete Section VI of the DBE Compliance Plan, submit a copy of their joint venture agreement at the time of submitting their DBE Compliance Plan, and must each provide the attestation to the DBE Compliance Plan at Section VII of this document.

Changes to the DBE Compliance Plan or Substitutions of Subconsultants, Subcontractors or Suppliers

The Vendor may not make changes to its DBE Compliance Plan or its contractual DBE commitments, or substitute a subconsultant, subcontractor or supplier at any time, without the prior written approval of the RTA. Requests for changes or substitutions must be made on the form provided in Section VI of this document. **Unauthorized changes or substitutions, including the performance by the Vendor's own forces of the work designated for a subconsultant, subcontractor or supplier may render the Vendor ineligible for contract award or, if a contract has already been established, will be considered a material breach of the contract.** The facts supporting the request for changes or substitutions must not have been known, or could not reasonably have been known, by the Vendor prior to submitting the DBE Compliance Plan to the RTA.

Section VI, Request for Change of Compliance Plan, should be submitted only if and when the Vendor seeks to change its DBE Participation Commitments as contained in Section II of this document, or make any other changes to its previously submitted DBE Compliance Plan. Changes or substitutions requested by the Vendor shall not be considered approved until such approval is given to the Vendor by the RTA in writing.

In the event that a Vendor's request for change(s) to its Compliance Plan or substitution(s) will result in a change in the Vendor's DBE participation, and the revised participation does not achieve the DBE commitment in the Compliance Plan, the Vendor will be required to submit an updated Section III of the DBE Compliance Plan to demonstrate that it made Good Faith Efforts to achieve the DBE contract goal.

If the Vendor's request involves adding a new DBE subconsultant, subcontractor or supplier, the Vendor must submit with the Request for Change of Compliance Plan a signed and notarized Letter of Intent (Section V of this document), from the DBE identified in the revised Compliance Plan.

The RTA will evaluate the Vendor's request and, in its sole discretion, may approve or reject the request. The written request for a change or substitution must state specific reasons for the proposed change or substitution. Acceptable reasons for changes may include, but are not limited to, the following:

- Unavailability of the subconsultant, subcontractor or supplier after the initial submission of the DBE Compliance Plan;
- Failure of the subconsultant, subcontractor or supplier to perform the agreed scope(s) of work;

- Financial incapacity of the subconsultant, subcontractor or supplier;
- Failure of the subconsultant, subcontractor or supplier to honor the proposal price;
- Mistake of fact or law about the scope(s) of work where a reasonable price cannot be agreed upon;
- Failure of the subconsultant, subcontractor or supplier to meet bonding, insurance, or licensing requirements specified in the solicitation; or
- Withdrawal of the bid or proposal by the subconsultant, subcontractor or supplier.

A statement from the DBE to be substituted stating why it cannot perform on the project may be submitted to support the request. Where the reason for the requested change is a valid mistake or disagreement between the Vendor and the subconsultant, subcontractor or supplier on the scope of work, the request must document all efforts made by the parties to reach an agreement for a reasonable price for the corrected scope of work.

Records Retention

The Vendor must maintain a record of all relevant data with respect to the utilization of DBEs, including but without limitation, payroll records, invoices, canceled checks, sworn statements and books of account for a period of at least 5 years after the RTA's final acceptance of the work. Full access to these records shall be granted to the RTA, or to any municipal, state or federal authorities, by the Vendor upon 48 hours written demand by the RTA. The RTA shall have the right to obtain from the Vendor any additional data reasonably related or necessary to verify any representations by the Vendor in the DBE Compliance Plan or documents regarding the Vendor's compliance with its Compliance Plan or the DBE Program Provisions.

Sanctions

The RTA reserves the right to withhold payment to the Vendor to enforce the provisions of the Vendor's DBE Compliance Plan and the RTA's DBE Program. Final payment shall not be made on the contract until the Vendor demonstrates, to the reasonable satisfaction of the RTA, achievement of the DBE contract goal or its Good Faith Efforts to achieve the DBE contract goal, pursuant to its DBE Compliance Plan.

The RTA will periodically review the Vendor's compliance with its DBE Compliance Plan and the terms of its contract. Without limitation, the Vendor's failure to comply with its DBE Compliance Plan, failure to cooperate in providing information regarding its compliance, or the provision of false or misleading information or statements concerning compliance, certification status of subconsultants, subcontractors, suppliers or joint venture partners, Good Faith Efforts or any other material fact or representation shall constitute a material breach of contract and entitle the RTA to declare a default, terminate the contract, or exercise those remedies provided for in the contract or at law or in equity.

SECTION II
DBE Participation Commitment

This form must be completed and submitted by the Vendor with its bid or proposal (or at the time otherwise specified by RTA) even if no DBE subcontractors will be utilized. Failure to do so may render the Vendor non-responsible and cause its bid/proposal to be rejected and/or render the Vendor ineligible for contract award, at the RTA's sole discretion.

Project Name: _____

Vendor Name: _____

RTA's DBE contract goal for the project: _____%

The undersigned will enter into complete subcontracts, purchase orders or other appropriate agreements or joint venture agreements with all listed DBEs for work as described in this Section II, DBE Participation Commitment, and will enter into such agreements within 5 business days after the date of final execution of the contract with the RTA (or, in the case of a task order contract, 5 business days after final execution of the relevant task order to which the DBE participation commitments apply). Copies of each signed subcontract, purchase order, or other agreement with a DBE must be submitted to the RTA within 10 business days after execution.

The Vendor designates the following as its DBE contact person:

Name: _____

Please Print or Type

Address: _____

Telephone: _____ E mail: _____

All DBEs must be certified with the Illinois Unified Certification Program (IL UCP, www.dot.state.il.us/ucp/ucp.html) at the time you submit your bid/proposal. If the DBE contract goal is achieved, in whole or in part, through a joint venture with a DBE, you must also complete the Joint Venture Affidavit, Section III, and submit it along with a copy of the joint venture agreement with your bid/proposal (or as otherwise specified by the RTA).

All DBE subconsultants, subcontractors, suppliers or joint venture partners must be listed on the following form.

By: _____

Name/Title

DBE Prime, Subconsultant, Subcontractor, Supplier or Joint Venture Partner Participation Commitments:

Name of Prime, Subconsultant, Subcontractor, Supplier or Joint Venture Partner	Is firm certified as a DBE under the IL UCP? (yes or no)	If DBE certified, list DBE Area of Specialty as shown on IL UCP certification	Description of Work to be Performed	Dollar amount of subcontract
				\$ _____
				\$ _____
				\$ _____
				\$ _____
Total DBE participation: (Total Dollar Amount of all DBE subcontracts).				\$ _____
Total proposal/contract price:				\$ _____

SECTION III
Documentation of Good Faith Efforts to Achieve DBE Contract Goal

If the DBE contract goal was not achieved, the Good Faith Efforts checklist (Section III A) and contacts log (Section III B) must be submitted with your bid or proposal (or as otherwise specified by the RTA). **Failure to do so may render the Vendor non-responsible and cause its bid or proposal to be rejected, and/or render the Vendor ineligible for contract award, at the RTA's sole discretion.** The Vendor must provide documentation in support of its Good Faith Efforts to the RTA at the time it submits its bid or proposal. The RTA also reserves the right to independently verify that these efforts have been made.

SECTION III A
Good Faith Efforts Checklist

A representative of the Vendor should insert his/her initials on the line before each of the efforts described below that have been undertaken by the Vendor. Documentation evidencing those activities undertaken by the Vendor should be attached to this form. **If any of the items below were not completed, attach a detailed written explanation why such effort was not completed.** If any other efforts were made to obtain DBE participation in addition to the items listed below, attach a detailed written explanation of those efforts. The amount of effort that a Vendor must undertake to meet the DBE contract goal varies from contract to contract but includes a number of distinct activities geared to actually finding DBE subcontractors. Examples of the types of documentation that may be attached to support good faith efforts are listed below. These are examples only and are not intended to be the only type of documentation that Vendors can use. The Vendor should use its own judgment when determining which documentation in its possession best evidences the good faith efforts it has made.

_____ Identified portions of the project work which could be performed by available DBEs, including, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation.

Ex: A clear summary of the work the Vendor intends to perform with its own employees and a clear summary of the work the Vendor identified as available for subcontracting.

_____ Solicited through reasonable and available means (e.g., written notices, advertisements) DBEs to perform the types of work that could be subcontracted on this project, within sufficient time to allow them to respond. (The DBE Directory is available at www.dot.state.il.us/ucp/ucp.html.)

Ex: Copies of all advertisements, notices and solicitation letters placed in newspapers, trade magazines or small business media, posted in any public place or sent directly to DBE firms.

_____ Provided timely and adequate information about the plans, specifications and requirements of the project. Followed up initial solicitations to answer questions and encourage DBEs to submit proposals or bids.

Ex: Completion of the attached Good Faith Efforts Contacts Log including information on dates of initial contact and all follow-up contacts w/DBE's. If contact was written, copies of solicitation letter and any other written information could be attached.

_____ Negotiated in good faith with interested DBEs that submitted proposals or bids and thoroughly investigated their capabilities.

Ex: Explain thoroughly why you were not able to reach agreement with each DBE listed on the Good Faith Efforts Contacts Log and attach copy of bids if any, submitted by those DBE's.

_____ Made efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as may be required for performance of the contract (if applicable).

Ex: A brief written description of the assistance provided to DBEs.

_____ Utilized resources available to identify available DBEs, including but not limited to DBE assistance groups; local, state and federal minority or women business assistance offices; and other organizations that provide assistance in the recruitment and placement of DBEs.

Ex: Copies of letters, facsimiles and email messages sent to organizations, and responses received, and name and phone number of person(s) contacted.

SECTION III B
Good Faith Efforts Contacts Log For Soliciting
DBE Subconsultant, Subcontractor or Supplier Participation

Use this form to document all contacts and responses (telephone, e-mail, fax, etc.) regarding the solicitation of DBE subconsultants, subcontractors and suppliers. Duplicate as needed. (It is not necessary to show contacts with DBEs with which the Vendor reached an agreement to participate on this project, as shown on Section II of this document.)

Name of DBE firm	Date and method of contact	Scope of work solicited	Reason agreement was not reached

SECTION IV
DBE Joint Venture Agreement

If Vendor proposes to utilize a joint venture arrangement for this project to meet the DBE contract goal, this form must be submitted with the bid or proposal (or as otherwise specified by the RTA). Failure to do so may render the Vendor non-responsible and cause its bid or proposal to be rejected, and/or render the Vendor ineligible for contract award, at the RTA's sole discretion. (Attach additional sheets as necessary for additional joint venture partners.)

Attach a copy of the joint venture agreement(s). The agreement(s) must describe each partner's roles and responsibilities and demonstrate that the DBE partner's share in the capital contribution, control, management, risks, costs and profits of the joint venture is equal to its ownership interest.

If there is any change in the information submitted below or to the joint venture agreement after this form is submitted to the RTA, you must immediately inform the RTA.

Name of joint venture: _____

Address: _____

Telephone: _____ **Fax:** _____ **Email:** _____

Contact person: _____

Name of non-DBE partner: _____

Address: _____

Telephone: _____ **Fax:** _____ **Email:** _____

Contact person: _____

Name of DBE partner: _____

Address: _____

Telephone: _____ **Fax:** _____ **Email:** _____

Contact person: _____

SECTION V
Letter(s) of Intent between Vendor and
DBE Subconsultant, Subcontractor or Supplier

A separate Letter of Intent must be provided for each DBE subconsultant, subcontractor or supplier. Failure to provide a Letter of Intent may result in that DBE firm's participation not being counted for purposes of achieving the DBE contract goal. The Letter of Intent must match the description of services or products and the amount stated in Section II, DBE Participation Commitment. (Duplicate this form as needed.)

Project name: _____

Name of Vendor: _____

Address: _____

Street

City

State

Zip Code

Telephone: (____) _____ Fax: (____) _____ Email: _____

Name of DBE subconsultant, subcontractor or supplier: _____

Address: _____

Street

City

State

Zip Code

Telephone: (____) _____ Fax: (____) _____ Email: _____

Proposed subcontract amount: \$: _____

Specific description of work to be performed by DBE:

The Vendor and the DBE listed above hereby agree that upon the execution of a contract for the above-named project with the RTA, the DBE will perform the scope of work described above for the price indicated above.

Vendor: _____ DBE: _____
Name of Firm Name of Firm

By: _____ By: _____
Signature Signature

Print Name and Title

Print Name and Title

SECTION VI
Request for Change of Compliance Plan or Substitution of
Subconsultants, Subcontractors, Suppliers or Joint Venture Partners

This form should be submitted only if and when the Vendor seeks to change its previously submitted and approved DBE Compliance Plan or to substitute a previously approved subconsultant, subcontractor, supplier or joint venture partner. **Failure to obtain prior written approval from the RTA before making the change may render the Vendor ineligible for contract award, at the RTA's sole discretion, or, if a contract has already been established, will be a material breach of the contract.**

Vendor name: _____

Project Name: _____

Current total contract price: \$ _____

DBE goal established by RTA for the project: _____%

DBE participation prior to proposed change: _____% \$ _____

DBE participation after proposed change: _____% \$ _____

Complete the following with this request for change:

- Revised Section II, DBE Participation Commitment form.
- Updated Section III, Good Faith Efforts form (if applicable).
- Section V, Letter(s) of Intent between Vendor and DBE (if applicable).
- Section VII, Attestation and Affidavit

Detailed explanation of reasons for requesting change (attach additional pages and supporting documentation as necessary):

PROPOSED DELETION:

Name of subconsultant, subcontractor or supplier:

Contact Person: _____

Telephone No.: _____

E mail: _____

Amount of subcontract/joint venture: \$ _____ (_____ % of Vendor's contract)

Description of work: _____

PROPOSED ADDITION:

Name of subconsultant, subcontractor or supplier:

Contact Person: _____

Telephone No.: _____

E mail: _____

Amount of subcontract/joint venture: \$ _____ (_____ % of Vendor's contract)

Description of work: _____

Is the firm DBE certified by the IL UCP?: _____ yes _____ no

If yes, area of specialty identified in IL UCP certification: _____

**SECTION VII
Attestation and Affidavit**

This form must be submitted with your bid or proposal (or as otherwise specified by the RTA). Failure to do so may render the Vendor non-responsive and cause its bid or proposal to be rejected, and/or render the Vendor ineligible for contract award, at the RTA's sole discretion.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER PENALTY OF PERJURY THAT THE CONTENTS OF THE FOREGOING DOCUMENT ARE TRUE AND CORRECT, THAT I HAVE READ THE DBE COMPLIANCE PLAN INSTRUCTIONS AND THAT I AM AUTHORIZED ON BEHALF OF VENDOR TO MAKE THIS ATTESTATION.

Name of Vendor

Name/Title

Signature Date

On this _____ day of _____, 20____,
the above signed officer, _____,
Name of Affiant

personally appeared and, known by me to be the person described in the foregoing Affidavit, acknowledged that (s)he executed the same in the capacity stated therein and for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and seal.

Notary Public Signature
Commission Expires: _____

Seal

APPENDIX D
INSURANCE REQUIREMENTS

APPENDIX E BID PROTEST PROCEDURES

BID PROTEST PROCEDURES

The Regional Transportation Authority (the RTA) will entertain protests from interested parties regarding its procurement actions. The RTA will respond to any bona fide protest filed in a timely manner provided that the protest is not of a frivolous or vexatious nature. The RTA will not allow a protest to delay the procurement of needed goods or services unless it is apparent that the RTA participated in a practice that granted an unfair advantage to a participant in the procurement.

Definitions

“**Contract**” means any contract, agreement, purchase order, or order placed by the RTA to receive goods or services from an external source.

“**Day or Days**” means a working day or days of the RTA.

“**Interested Party**” means a participant or prospective participant in an RTA procurement whose direct economic interest is affected by the award of the contract for the procurement.

“**Offer**” means a response to an RTA procurement solicitation, including but not limited to quotations, bids, proposals and expressions of interest or qualifications.

Submission of Protests

Any interested party may file a bid protest with the RTA on the basis that the RTA failed to comply with a federal or state law or that the RTA failed to follow its own Procurement Regulations. A valid protest must include the following information:

1. Name and address of the protestor;
2. Identification of the procurement action being protested; and
3. A statement of the reason for the protest, identifying the federal or state law or the RTA Procurement Regulation that the protestor alleges has been violated by the RTA.

Types of Protests and Deadline to File

The deadline for a valid protest will be determined by the progress of the procurement. Please see below. The RTA will recognize three different types of protest:

1. Protest regarding solicitation

Any protest regarding the solicitation must be filed no later than the established due date for the solicitation to the deadline to submit offers.

This type of protest includes a claim that the solicitation contained exclusionary or discriminatory specifications, or that the basis for award or any claim that the procurement documents or the procurement process violate a federal or state law or fail to follow its own Procurement Regulations.

2. Protest regarding offer evaluation

Any protest regarding the evaluation of offers must be filed no later than five (5) days from the day that the RTA’s decision to award is announced. Any protest filed after such date which raises such issues will not be considered as a valid protest but may be considered to the benefit of the RTA.

This type of protest challenges the RTA’s determination of responsiveness of offers and responsibility of offerors, errors in calculation, or that the RTA’s evaluation of offers violated a federal or state law or its own Procurement Regulations.

3. Protest regarding award of contract

Any protest regarding the award of the contract must be filed no later than ten (10) days after the date of award of the contract. Any protest filed after such date which raises an issue regarding the award will not be considered as a valid protest but may be considered to the benefit of the RTA.

This type of protest will only be entertained by the RTA if the protestor is able to demonstrate that the party awarded the contract fraudulently represented itself as a responsible bidder or that the RTA violated a federal or state law or its own Procurement Regulations in awarding the contract.

The RTA's Response to Protests

The RTA will notify a protestor upon receipt of a timely protest and may, where appropriate, request further information. The RTA may, at its sole discretion, meet with the protestor to review the issues raised in the protest. The RTA's consideration of the protest, except as otherwise provided in the following paragraph "**Decisions by the RTA,**" will be in accordance with the following provisions:

Protest regarding solicitation

Upon receipt of a valid protest regarding solicitation, the RTA may postpone the deadline for submission of offers until resolution of the protest.

If the protest regarding the solicitation includes a claim of unduly restrictive or exclusionary specifications, the RTA will, in considering the protest, consider both the specific needs of the RTA for the feature or item challenged and any effect on competition of including the specification regarding that feature or item. If the RTA determines that such feature or item was included in the specification in order to meet a legitimate need of the RTA, and was not unduly restrictive of competition or designed to exclude a particular competitor, then the RTA will deny the protest.

Protest regarding evaluation of offers

Upon receipt of a valid protest regarding the evaluation of offers, the RTA will suspend its evaluation of all offers until resolution of the protest. If the RTA determines that the protestor has established that there are reasonable doubts regarding the responsiveness of an offer or the responsibility of an offeror or regarding the RTA's compliance with federal or state law, or its Procurement Regulations.

Protest after award

Upon receipt of a timely protest regarding the award of a contract, the RTA will issue a stop work order, if necessary, until the resolution of the protest. If the RTA determines that the protestor has established a prima facie case that the contract was awarded fraudulently or in violation of a federal or state law, or the RTA's Procurement Regulations.

Protest regarding bid evaluation

Any bid protest regarding the evaluation of bids by the RTA must be filed with the RTA no later than twenty (20) days after the opening of bids. Any protest files after such date which raises issues regarding the bid evaluation will not be considered by the RTA.

This type of protest would include any challenge to determinations by the RTA of the responsiveness of a bid or the responsibility of a bidder, or any claim that the evaluation of bids violated federal or state law, or the RTA's Procurement Regulations.

Protest Regarding Award of Contract

Any protest regarding the award of the contract must be filed no later than ten (10) days after the date of award. Any protest regarding the award of the contract filed after that date will not be considered by the RTA.

This type of protest will only be entertained by the RTA if the protestor is able to demonstrate that the party awarded the contract fraudulently represented itself as a responsible bidder or that the RTA violated federal or state law, or its own Procurement Regulations in the award of the contract.

Decisions by the RTA

As indicated above, in most instances, the RTA will suspend the procurement action upon receipt of a bona fide bid protest. However, the RTA reserves the right, notwithstanding the presence of a protest, to proceed with the appropriate action in the procurement process in the following instances:

- a. when failing to fulfill the need for the items or services would cause irreparable harm to the RTA or its Service Boards;
- b. when the RTA determines that the protest is vexatious or frivolous; or
- c. when delivery or performance will be unduly delayed, or other undue harm would occur by delaying the award of the contract.

After review of a bid protest submitted under these provisions, the RTA will issue a written decision on the basis of the information provided by the protestor, the result of any meetings with the protestor, and the RTA's own investigation of the matter. If the protest is upheld, the RTA will take appropriate action to correct the procurement to protect the rights of the protestor, including, but not limited to, reissuance of the procurement, revised evaluation of the offers or the RTA's conclusion of the evaluation of the offers, or termination of the contract. If the protest is denied, the RTA will terminate the suspension of the procurement that was imposed during the consideration of the protest and will proceed with the procurement.

Reviews of protests by FTA will be limited to:

- (1) a grantee's failure to have or follow its protest procedures, or its failure to review a complaint or protest; or
- (2) violations of Federal law or regulation.

An appeal to FTA must be received by the cognizant FTA regional or Headquarters Office within five (5) working days of the date the protester learned or should have learned of an adverse decision by the grantee or other basis of appeal to FTA.

**APPENDIX F
NON-COLLUSION AFFIDAVIT**

NON-COLLUSION AFFIDAVIT

STATE OF _____

IMPORTANT: This affidavit must be properly completed and submitted with all bids.

COUNTY OF _____

_____, being first duly sworn, deposes and says that he is
(Enter name of person making affidavit)

_____, the bidder submitting this
(Enter "Sole Owner", A "Partner", "President", or other proper title)

proposal; that such bid was not made in the interest of or on the behalf of any undisclosed person, partnership, company, organization or corporation; that such bid is genuine and not collusive or sham, and that said bidder has not been a party to any agreement or collusion among bidders or prospective bidders in restraint of freedom of competition by agreement to bid a fixed price, or otherwise, or to refrain from bidding and has not, directly or indirectly, by agreement, communication or conference with anyone attempted to induce action prejudicial to the interest of the Regional Transportation Authority or of any bidder or anyone else interested in the proposed contract.

SUBSCRIBED AND SWORN TO ME this

_____ day of _____, 20_____

(Signature of Person Making Affidavit)

Notary Public

APPENDIX G
VENDOR/CONTRACTOR CERTIFICATION
(MUST ALSO BE COMPLETED BY ALL PROPOSED SUB-CONTRACTORS)

NAME OF VENDOR/CONTRACTOR: _____

Please answer all questions. Attach additional pages as necessary.

A. NATURE OF ENTITY

1. Indicate whether the Vendor/Contractor ("VC") is an individual or legal entity:

<input type="checkbox"/> Individual	<input type="checkbox"/> Limited Liability Company	<input type="checkbox"/> Limited partnership
<input type="checkbox"/> Business corporation	<input type="checkbox"/> Joint venture	<input type="checkbox"/> Sole proprietorship
<input type="checkbox"/> General partnership	<input type="checkbox"/> Limited partnership	<input type="checkbox"/> Other _____
2. State of incorporation or organization, if applicable: _____
3. For VCs not organized in the State of Illinois: Is the VC authorized to do business in the State of Illinois as a "foreign entity" (i.e., a non-Illinois entity)? Yes No
If the VC is not currently authorized to do business in the State of Illinois as a foreign entity, then the VC should provide a copy of its application with the Illinois Secretary of State for such authorization with the VC's bid submission.
4. Is the VC a certified Disadvantaged Business Enterprise (DBE)? Yes No

B. ORGANIZATION INFORMATION

1. List below the names and business addresses of each person or entity having an ownership, partnership, joint ventureship, membership, managership, or other, similar, beneficial interest in the VC, including the percentage of ownership interest. For corporations, this response may be limited to those shareholders who own shares equal to or in excess of 7.5% of any class of the corporation's outstanding shares. If the VC is a wholly-owned subsidiary of another entity, provide ownership information of the ultimate parent entity of the VC.

<u>Name</u>	<u>Business Address</u>	<u>Ownership Interest</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

2. List below the names and titles of all executive officers and board members of the VC, as applicable.

<u>Name</u>	<u>Title</u>
_____	_____
_____	_____
_____	_____
_____	_____

C. LOBBYIST INFORMATION

List each and every person that is retained or anticipated to be retained by the VC with respect to or in connection with the matter to which this Certification relates (i) who for compensation or on behalf of any person other than himself, undertakes to influence any legislative or administrative action, or (ii) for whom any part of whose duty as an employee of another includes undertaking to influence any legislative or administrative action. Also indicate whether the lobbyist is currently retained or anticipated to be retained and whether fees are actual or anticipated. If there are none, write "none."

<u>Name</u>	<u>Business Address</u>	<u>Fees</u>
_____	_____	_____
_____	_____	_____

D. CERTIFICATION

Under penalty of perjury, the person signing below: (1) warrants that he/she is authorized to execute this Certification on behalf of the VC, (2) warrants that all certifications and statements contained in this Certification are true, accurate and complete as of the date furnished to the RTA, and understands that the provisions of 31 U.S.C. Section 3801 *et seq.* and other related Federal, state or local laws regarding false claims and statements may be applicable thereto.

By: _____

(Signature)

(Typed/Printed Name)

(Title)

(Date)

APPENDIX H
VENDOR/CONTRACTOR AFFIRMATIVE ASSURANCES
RTA Certifications and Assurances

A. CONFLICTS OF INTEREST

The Vendor/Contractor ("VC") certifies, to the best of its knowledge and belief, that:

1. No member of the RTA's Board of Directors, RTA Board member's spouse or an immediate family member of the RTA Board member living in the RTA Board member's residence, or RTA employee has, or will have, a direct pecuniary interest in the contract to which this Certification relates.
2. No member of the RTA's Board of Directors, RTA Board Member's spouse or an immediate family member of the RTA Board member living in the RTA Board Member's residence, or RTA employee holds more than a 7.5% ownership interest in the VC.
3. If any member of the RTA's Board of Directors, RTA Board Member's spouse or an immediate family member of the RTA Board member living in the RTA Board Member's residence, or RTA employee holds an ownership interest in VC of 7.5% or less, that ownership interest shall be disclosed in writing and attached to this Certification

B. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

The VC certifies, to the best of its knowledge and belief, that it and its principals, officers and directors, and any other individuals identified in SECTION B of the separate "VENDOR/CONTRACTOR CERTIFICATION":

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal, state or local department or agency;
2. Have not within a three-year period preceding the date of this Certification been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state or local) transaction or contract under a public transaction, or convicted of or had a civil judgment against them for a violation of Federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (2) of this Certification;
4. Have not within a three-year period preceding the date below had one or more public transactions (Federal, State or local) terminated for cause or for default by VC;
5. Are in compliance with subpart C of 49 C.F.R. § 29; and
6. Are not presently barred from bidding on this contract as a result of a violation of either 720 ILCS § 5/33E-3 (Bid Rigging) or 720 ILCS § 5/33E-4 (Bid Rotating). (If an exception exists as set forth in the Statute, please provide a complete written explanation and supporting documents.)

The VC acknowledges that, pursuant to 720 ILCS § 5/33E-11, making any false statement material to Section B(6) of this Certification constitutes a Class 3 felony under the laws of the State of Illinois. If the VC is unable to certify to the truth of the statements in this Certification, the VC shall attach an explanation to this Certification. **The VC further agrees and warrants that VC will not enter into any third-party contract or subcontract for work on the project to which this Certification relates unless and until such subcontractor provides a written certification to VC in the form set forth herein, and also agrees to require such certification in all sub-subcontracts.**

C. CONTRACT INCORPORATION, COMPLIANCE, PENALTIES, DISCLOSURE

The VC understands and agrees that:

1. The certifications, disclosures, and acknowledgments contained in this Certification will become part of the contract between the VC and the RTA and are material inducements to the RTA's execution of such contract. The VC understands that it must comply with all statutes, ordinances, and regulations on which this Certification is based.
2. If the RTA determines that any information provided in this Certification is false, incomplete or inaccurate, any contract or other agreement in connection with which it is submitted may be rescinded or be void at the sole discretion of the RTA, and the RTA may pursue any remedies under the contract or agreement (if not rescinded or void), at law, or in equity, including terminating the VC's participation in the matter to which the Certification relates and/or declining to allow the VC to participate in other transactions with the RTA.
3. Some or all of the information provided on this Certification and any attachments to this Certification may be made available to the public on the Internet, in response to a Freedom of Information Act request, or otherwise. By completing

and signing this Certification, the VC waives and releases any possible rights or claims which it may have against the RTA in connection with the public release of information contained in this Certification and also authorizes the RTA to verify the accuracy of any information submitted in this Certification and authorizes the RTA to conduct appropriate background checks regarding the VC.

4. The information provided in Sections A, B and C of this Certification and on the separate "VENDOR/CONTRACTOR CERTIFICATION" must be kept current while the contract related to the Certifications are in effect. In the event of any changes to information provided in Sections A, B and C of this Certification, or on the separate "VENDOR/CONTRACTOR CERTIFICATION", the VC must promptly supplement the appropriate Certification by disclosing the additional information in writing. Further, in the event of any changes in the officers, directors, or principals of the VC while the contract related to this Certification or the separate "VENDOR/CONTRACTOR CERTIFICATION" is in effect, the VC must promptly supplement the appropriate Certification by disclosing the additional information in writing.

D. CERTIFICATION

Under penalty of perjury, the person signing below: (1) warrants that he/she is authorized to execute this Certification on behalf of the VC, (2) warrants that all certifications and statements contained in this Certification are true, accurate and complete as of the date furnished to the RTA, and understands that the provisions of 31 U.S.C. Section 3801 *et seq.* and other related Federal, state or local laws regarding false claims and statements may be applicable thereto.

By: _____
(Signature) (Typed/Printed Name)

(Title) (Date)

APPENDIX I VENDOR REFERENCE FORM

Reference Contact Information			
Reference Name		Initial Date of Work with Contact	
Contact Name		Original Contract Term	
Address		Any Contract Extensions	
		Termination Date of Contract	
		Reason for Termination	
Contact Title		Telephone Number	
E-mail		Fax Number	
Nature of Relationship with Company			
Approximate \$ Size of the Contract			
Services provided/Software Implemented			
Name of Vendor Project Manager and Client Project Manager			
Detailed Description of Your Responsibilities			
Roles & Responsibilities:			
Were you the Prime Contractor?			
Subcontractors & Responsibilities:			

APPENDIX J COST PROPOSAL

Cost and Price Analysis - Professional Services Contracts		This form, when completed by Vendor/Offeror, will not be disclosed outside RTA channels.		
Name and Address of Offeror		Title of Project		
Detail Description		Estimated Hours	Rate/Hour	Total Estimate Cost (dollars)
1. Direct Labor (specify)				
Total Direct Labor				
2. Burden (Overhead - specify) Department of Cost Center		Burden Rate	X Base =	Burden(\$)
Total Burden				
3. Direct Material				
Total Material				
4. Special Testing (including field work at Government Installations)				
Total Special Testing				
5. Special Equipment (if direct charge-specify in Exhibit B on reverse)				
6. Travel (if direct charge)				
a. Transportation				
b. Per Diem or Subsistence				
Total Travel				
7. Consultants (identify-purpose-rate)				
Total Consultants				
8. Subcontracts (Specify in Exhibit A on next page)				
9. Other Direct Costs (Specify in Exhibit B on reverse - explain royalty cost, if any)				
10. Total Direct Cost and Burden				
11. General and Administrative Expense (Rate % of item nos.)				
12. Total Estimate Cost				
13. Fixed Fee or Profit (state basis for amount in proposal)				
14. Total Estimate Cost and Fixed Fee or Profit				



EXHIBIT C

VENDOR/CONTRACTOR CERTIFICATION

NAME OF VENDOR/CONTRACTOR: _____

Please answer all questions. Attach additional pages as necessary.

A. NATURE OF ENTITY

- 1. Indicate whether the Vendor/Contractor ("VC") is an individual or legal entity:

<input type="checkbox"/> Individual	<input type="checkbox"/> Limited Liability Company	<input type="checkbox"/> Limited partnership
<input type="checkbox"/> Business corporation	<input type="checkbox"/> Joint venture	<input type="checkbox"/> Sole proprietorship
<input type="checkbox"/> General partnership	<input type="checkbox"/> Limited partnership	<input type="checkbox"/> Other _____
- 2. State of incorporation or organization, if applicable: _____
- 3. For VCs not organized in the State of Illinois: Is the VC authorized to do business in the State of Illinois as a "foreign entity" (i.e., a non-Illinois entity)? Yes No
 If the VC is not currently authorized to do business in the State of Illinois as a foreign entity, then the VC should provide a copy of its application with the Illinois Secretary of State for such authorization with the VC's bid submission.
- 4. Is the VC a certified Disadvantaged Business Enterprise (DBE)? Yes No

B. ORGANIZATION INFORMATION

1. List below the names and business addresses of each person or entity having an ownership, partnership, joint ventureship, membership, managership, or other, similar, beneficial interest in the VC, including the percentage of ownership interest. For corporations, this response may be limited to those shareholders who own shares equal to or in excess of 7.5% of any class of the corporation's outstanding shares. If the VC is a wholly-owned subsidiary of another entity, provide ownership information of the ultimate parent entity of the VC.

<u>Name</u>	<u>Business Address</u>	<u>Ownership Interest</u>

2. List below the names and titles of all executive officers and board members of the VC, as applicable.

<u>Name</u>	<u>Title</u>

C. LOBBYIST INFORMATION

List each and every person that is retained or anticipated to be retained by the VC with respect to or in connection with the matter to which this Certification relates (i) who for compensation or on behalf of any person other than himself, undertakes to influence any legislative or administrative action, or (ii) for whom any part of whose duty as an employee of another includes undertaking to influence any legislative or administrative action. Also indicate whether the lobbyist is currently retained or anticipated to be retained and whether fees are actual or anticipated. If there are none, write "none."

<u>Name</u>	<u>Business Address</u>	<u>Fees</u>

D. CERTIFICATION

Under penalty of perjury, the person signing below: (1) warrants that he/she is authorized to execute this Certification on behalf of the VC, (2) warrants that all certifications and statements contained in this Certification are true, accurate and complete as of the date furnished to the RTA, and understands that the provisions of 31 U.S.C. Section 3801 *et seq.* and other related Federal, state or local laws regarding false claims and statements may be applicable thereto.

By: _____
(Signature) (Typed/Printed Name)

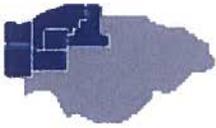
(Title) (Date)



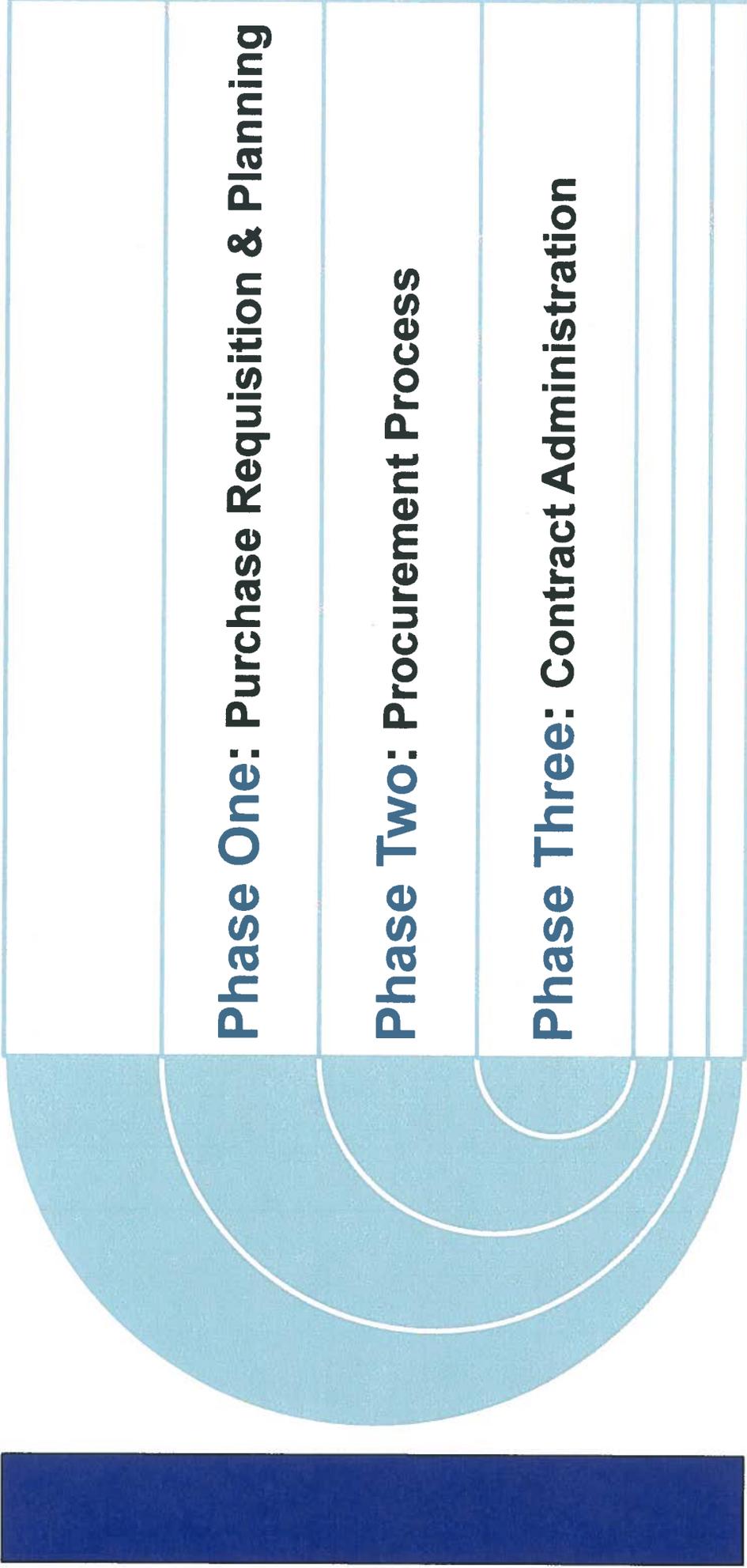
**Regional
Transportation
Authority**

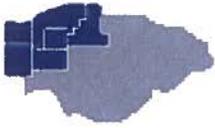
PROCUREMENT PROCESS AT THE RTA

**A Training Guide For Project Managers
& Buyers**



Procurement Guide



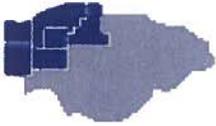


Phase One: Purchase Requisition & Planning

1. Meet with Procurement Staff

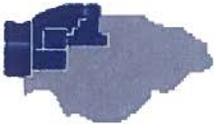
Establish:

- ✓ What is needed, when it's needed (Scope of Services & Timing)
- ✓ Source of funds & Reasonable Cost Estimate
- ✓ Procurement method
 - ✓ IFB (low bidder wins, negotiations are not allowed)
 - ✓ RFP (responses are evaluated, the contract is negotiated)
 - ✓ RFQ/QBS
 - ✓ Small purchase (\$10,000 or less)
 - ✓ Sole source (waiver from competitive bidding)



Phase One: Purchase Requisition & Planning

- Procurement Timing: From concept to vendor-on-board
 - IFBs = 2-3 months; RFPs = 4 months
 - **Is public notice required by law?**
 - **Is the scope of services new, highly technical, unusual or complex?**
 - **Will the contract require Board approval?**
 - ✓ Consider:
 - ✓ Date of desired meeting
 - ✓ Board Secretary deadlines for submission of memos/ordinances



Phase One: Purchase Requisition & Planning

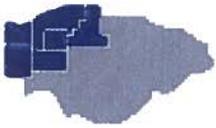
- Procurement Timing continued...
 - **Benefits of planning ahead**
 - ✓ Better pricing
 - ✓ Stronger scope
 - ✓ Better DBE participation
 - ✓ Beneficial contract terms
 - ✓ Improved likelihood of Board approval





Phase One: Purchase Requisition & Planning

- Procurement Timing continued...
 - **Potential Delays**
 - ✓ Insufficient bids
 - ✓ Need for interviews with bidders/proposers
 - ✓ Multiple non-responsive bids
 - ✓ Conflicts of interest
 - ✓ Incomplete documentation by vendor
 - ✓ Protests
 - ✓ Prolonged negotiations



Phase One: Purchase Requisition & Planning

3. Prepare 3 forms:

- ✓ **Procurement Checklist**
 - Including a recommended evaluation team and criteria for RFPs
- ✓ **DBE Opportunities Form**
- ✓ **Potential Vendor Contact Information**



Phase One: Purchase Requisition & Planning

4. Prepare a Purchase Request in SharePoint
 - ✓ Please see the Procurement Guide for step-by-step instructions



Phase Two: Procurement Process

Your procurement will proceed in one of three ways

- **By informal competitive process:**
 - if \$10,000 or less
- **By public competitive process:**
 - if \$10,000 or more
- **Or go directly to the Contracting Phase:**
 - if a request for waiver from competitive bidding has been approved



Phase Two: Procurement Process

By informal competitive process:

- If \$10,000 or less
- Soliciting competitive quotes required
- EXEMPT from public bidding – newspaper publication NOT required

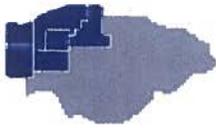




Phase Two: Procurement Process

By public competitive process:

- **If \$10,000 or more**
 - ✓ Public solicitation required (newspaper publication)
 - ✓ Competitive bidding required
- **Procurement reviews Purchase Requisition**
- **Procurement routes Solicitation for approval:**
 - ✓ Procurement Manager
 - ✓ Project Manager
 - ✓ ITS (if applicable)
 - ✓ Regulatory Compliance Officer (for DBE review)
 - ✓ Deputy General Counsel



Phase Two: Procurement Process

Waiver from Competitive Bidding

- **Exceptions**
 - ✓ Sole Source
 - ✓ Services of expert witnesses, law firms, attorneys, and other providers of professional services “whose assistance is . . . necessary to solve a legal complaint”
 - ✓ Services of lobbyists and legislative consultants
 - ✓ Professional services and utilities for which the Board determines competitive procurement is not “advantageous”
 - ✓ IGAs (and agreements between RTA and other transit agency or unit of local government)



Phase Two: Procurement Process

Emergency

The Executive Director and the Chairman can declare the existence of an emergency:

- Allows E.D. or Procurement Manager to authorize negotiation and award of an emergency contract
- Should be procured through competition whenever possible
- Written report to the Board as soon as possible
- Emergency Contract must be ratified by 2/3 vote of the Board or else is terminated immediately following Board meeting



Phase Two: Procurement Process

Board Approval Required

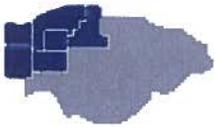
- Agreements valued above \$100,000
- Certain contract amendments
- Emergency contracts
- Sole source contracts
- IGAs



Phase Two: Procurement Process

Evaluation of Responses

- IFBs → lowest responsive, responsible bidder wins
- RFPs → multiple factors evaluated, and the contract is negotiated
 - Evaluation criteria and weights are established by PM and Procurement
 - Evaluation committee established by PM and Procurement
 - The committee scores the proposals using the criteria
 - » Each committee member scores the proposals independently
 - The scores go directly to the Procurement staff
 - A competitive range is established by the Manager, Procurement & Contracting
 - » Next steps are also identified (these will vary case-by-case)



Phase Two: Procurement Process

Contract Award

- Procurement notifies PM of final scoring competition
- Project Manager drafts decision memorandum in support of contract with successful bidder/proposer
- Notification of award made by Procurement
- No-award letters mailed to unsuccessful bidders/proposers by Procurement



Phase Two: Procurement Process

PROPOSER/BIDDER PROTEST

- Any participant or prospective participant in a RTA procurement can file a bid protest.
- Types of protests and deadlines to file:
 - Protest regarding the solicitation (filed no later than solicitation due date)
 - Protest regarding offer evaluation (filed no later than 5 days from the day that RTA decision to award is announced)
 - Protest regarding award of contract (filed no later than 10 days after contract award date)



Phase Two: Procurement Process

What happens if a protest is filed during the procurement process?

1. Procurement will notify the Project Manager.
2. Procurement and Legal will assess the bid protest and review the procurement process to determine the next steps.
3. Procurement and Legal may determine that it is in RTA's best interests to suspend the procurement until an investigation is completed.
4. After further review, Procurement and Legal may determine that it is in RTA's best interests to cancel the procurement and possibly start the process over.
5. During a bid protest, it is critical that only Procurement has contact with the bidders or potential bidders.



Regional
Transportation
Authority



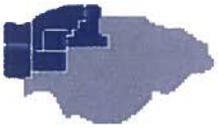
Phase Three: Contracting

- ✓ **Project Manager uploads exhibits to SharePoint in Word format, if possible**
- ✓ **Project Manager uploads Board Ordinance, if necessary**
- ✓ **Procurement staff prepares the Purchase Order and the contract recommendation file (red folder) from documents in SharePoint**



Phase Three: Contracting

- ✓ Draft contract is prepared
- ✓ Contract is routed for review:
 - Procurement Manager
 - Project Manager
 - Grants and Capital programs, if applicable
 - Regulatory Compliance Officer/DBE Coordinator
 - Deputy General Counsel
- ✓ Contract sent to vendor for signature
- ✓ RTA executes after Board approval, if required
- ✓ Procurement staff uploads final, executed contract to SharePoint



Contract Exhibits



Exhibits A-J



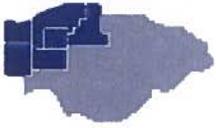


Contract Exhibits

- **Exhibit A: Scope of Services**
- **Exhibit B: Payment Terms**
- **Exhibit C: Schedule**
- **Exhibit D: Key Personnel**
- **Exhibit E: Contractor Related Parties**
- **Exhibit F: Vendor/Contractor Certification**
- **Exhibit G: RTA Certifications and Assurances**
- **Exhibit H: Insurance Requirements**
- **Exhibit I: DBE Compliance Plan**
- **Exhibit J: Federal Certifications and Assurances**

Note: Not all of the above exhibits are in every contact.

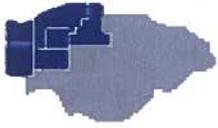




Scope of Services (Exhibit A)

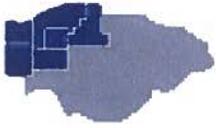
The purpose of a Scope of Services is to define all processes and work required to complete a project including:

- Project justification
- Deliverables
- Objectives
- Project assumptions and limitations



Scopes of Services (Exhibit A)

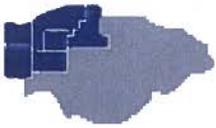
Well Drafted Scope	Poorly Drafted Scope
Detailed and focuses on deliverables	Too general and vague
Breaks project into discrete tasks w/deliverables (where applicable)	Insufficient information or vendor duties unclear
Conforms with scope in solicitation	Significantly alters scope in solicitation



Payment Terms (Exhibit B)

Payment Terms contain the budgets for each contract and the means/frequency of payment.

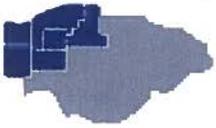




Schedule (Exhibit C)

The schedule is a list of milestones: all the tasks to be completed and associated deadlines.

This ensures that the contractor understands the entire scope and can deliver services in a timely manner.

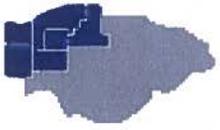


Key Personnel (Exhibit D)

Key Personnel are:

- personnel directly responsible for management of the contract; or
- personnel whose professional/technical skills are essential for successful implementation of a project.

This allows the RTA to ensure that the right blend of experts will be working on a project.

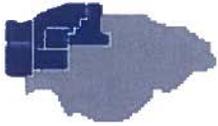


Contractor Related Parties (Exhibit E)

Requires:

A list of subcontractors working on a project/contract.

This prevents a vendor from changing subcontractors without the RTA's approval; also increases transparency with regard to use of tax dollars.



Vendor/Contractor Certification (Exhibit F) RTA Certifications and Assurances (Exhibit G)

- **Vendor/Contractor Certification Exhibit identifies the company with whom the RTA is doing business and its primary owners/responsible personnel.**
- **RTA Certifications and Assurances Exhibit ensures full disclosure of potential conflicts of interest.**



Insurance Requirements (Exhibit H)

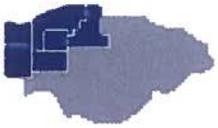
This exhibit's contents ensure the RTA and taxpayer dollars are protected if something goes wrong (e.g., a third party is injured).



DBE Compliance Plan (Exhibit I)

This exhibit documents all DBE firms that will participate on the project and the extent to which they will participate, pursuant to federal regulations.





Federal Certifications and Assurances (Exhibit J)

When applicable, this exhibit's purpose is to comply with federal regulations for federal funding.

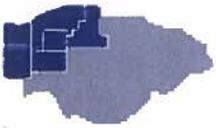




DBE Compliance

Disadvantaged
Business
Enterprise (DBE)





DBE Compliance

What is a Disadvantaged Business Enterprise or DBE?

A for-profit small business:

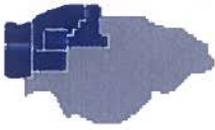
- (1) that is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in which 51 percent of the stock is owned by one or more such individual; and
- (2) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.



DBE Compliance

- **The RTA has established a DBE Program in accordance with 49 CFR Part 26.**
- **Pursuant to federal law applicable to all recipients of FTA funds, the RTA has established an overall agency DBE goal of 19%:**
 - **to ensure non-discrimination in the award and administration of contracts**
 - **to help remove barriers to the participation of DBE firms**
 - **to provide flexibility to establishing and providing opportunities for DBEs**

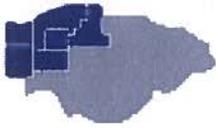




DBE Compliance

DBE regulation (49 CFR Part 26)

- A DBE goal is not required on all projects/contracts, however the agency is required to determine whether a goal is appropriate.
- A DBE goal for a project/contract doesn't need to be the same as the overall agency goal.
- A DBE goal is identified for possible sub-contractors on a project/contract.
- A DBE goal can be fulfilled by a prime vendor who is also a DBE.



DBE Compliance

- A DBE goal is a numerically expressed objective (%) based upon a determination of DBE availability.
- Prime vendors are *required* to meet the goal or demonstrate that good faith efforts were made.



DBE Compliance

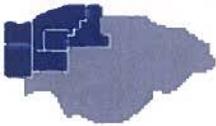
DBE Subcontracting Goal-Setting Process

1. Procurement provides the DBE Opportunities form to the Project Manager.
2. The Project Manager should assess all potential subcontracting scopes of work and develop an estimate of the percentage of the subcontractable work. This should be indicated on the form.



DBE Compliance

3. The Project Manager provides the completed form to the Regulatory Compliance Officer (RCO) is also our DBE Coordinator), and the RCO will review the form.
4. The RCO will determine whether there are enough DBEs (no fewer than 2 in the IL UCP - Illinois Unified Certification Program) to perform each element of subcontracted scope of work identified. If there are at least 2, then a DBE goal will be set for the project/contract.



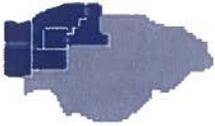
DBE Compliance

Good Faith Efforts

Vendors who do not meet the goal are required to make good faith efforts and the RTA encourages vendors to do so as DBE prime vendors or to use DBEs as sub-consultants, sub-contractors, suppliers or joint venture partners on projects.

The RCO makes the final determination of whether good faith efforts have been achieved.





DBE Compliance

A bidder must, in order to be responsible and/or responsive, comply with the solicitation's DBE requirements. The bidder can accomplish this in either of two ways:

- 1. By meeting the goal in full by self-fulfilling or subcontracting; or**
- 2. If the goal is not met in full, by documenting adequate good faith efforts.**

Bidder must show that it took all necessary and reasonable steps to achieve a DBE goal which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful.



DBE Compliance

It's up to the RTA to make a fair and reasonable judgment whether a bidder that did not meet the goal made adequate good faith efforts.

It's important to consider the quality, quantity, and intensity of the different kinds of efforts that the bidder has made.

The efforts employed by the bidder should be those that one could reasonably expect a bidder to take if the bidder were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal.

Completing the Good Faith Efforts forms does not necessarily mean that the good faith efforts provided will be accepted by the DBE Coordinator.



Regional
Transportation
Authority



PROCUREMENT PROCESS AT THE RTA

Please see Procurement Guide and Rules

- **Procurement Rules must be adhered to at all times.**
- **The Procurement Guide is available on the intranet to help with procedural questions.**
- **The Legal and Procurement departments will assist with questions of interpretation – do not hesitate to ask.**



Roles and Responsibilities

COMING SOON . . . Project Managers & Contractors



Regional
Transportation
Authority



Roles and Responsibilities

- **Contractor Responsibilities**
- **Contractor Prohibitions**
- **Project Manager Responsibilities**
- **Project Manager/RTA Recourse**



**Regional
Transportation
Authority**

Q & A

Thank you for attending.

March 22, 2013



RTA PROCUREMENT GUIDE

Introduction

This Guide will help you understand the procurement process at the RTA. The procurement process is divided into the following three phases:

- Phase One Purchase Requisition & Planning: This phase is the most important phase of the entire procurement process. This is where a project manager prepares a cost estimate, a procurement checklist, a DBE goal is set, potential vendors are identified, and a Purchase Request is created and uploaded to Sharepoint.
- Phase Two Procurement Process: This is the intermediate phase, where a solicitation document is sent out, if required, and a vendor is chosen.
- Phase Three Contract Administration: This is the final phase, where an agreement is signed between the RTA and the chosen vendor.

The Procurement and Legal staff ("P&L staff") will help guide you through the process, but how efficient the process is depends on you as Project Manager.

Phase One: Purchase Requisition & Planning

1. MEET WITH PROCUREMENT STAFF

The first step is to meet with the Procurement staff to discuss your project. At this initial meeting, you can ask questions, and the Procurement staff will help you find the forms you need to begin your purchase requisition. There's more information about these forms below.

At this initial meeting, be prepared to talk about what is needed, when it's needed (scope of services and timing), the source of funds of the project, and the procurement method.

2. DEVELOP A COST ESTIMATE

You must determine the estimated dollar value of the purchase. Preparing a reliable cost estimate is necessary to determine whether there are sufficient funds in your department's budget, whether public bidding is necessary, and which approvals are required for your purchase requisition. The Finance Department must confirm that the funds are budgeted and available for the project. The cost estimate is used by Procurement staff to determine whether the final cost of the contract appears fair and reasonable.

It's important to get this right from the beginning. If your cost estimate is off for any reason, the entire procurement process will be delayed. For example, if there isn't enough money in the

March 22, 2013

budget for your project, the procurement will be canceled. The same result occurs when you haven't provided enough details in your cost estimate to be able to evaluate a bidder's proposal.

You can use any logical source to develop your estimate as long as it is reasonable. There are many factors to consider besides price, quality, quantity and delivery. You must determine [what type of procurement](#) you need:

- Invitation for bid (IFB)
- Request for proposal (RFP)
- Request for qualifications (RFQ) for the professional services of lawyers, lobbyists, architects, engineers and surveyors and other procurements
- Small purchase (\$10,000 or less)
- Sole source (waiver from competitive bidding)

You also need to have an idea of [how contractors calculate their costs](#) so your cost estimate properly reflects whether your procurement is a lump sum contract, for example, or a costs plus fixed fees contract.

Finally, understand that [formal bidding](#) must be used whenever a procurement is estimated to cost more than \$10,000 unless your procurement falls within one of the exceptions set forth in the RTA's Procurement Rules and Regulations.

Timing – an IFB typically takes about 2-3 months whereas a RFP takes about 4 months from the initial meeting with Procurement until a contract is executed and the vendor begins the work.

3. PREPARE A PROCUREMENT CHECKLIST FORM

STEP ONE: First, you prepare your [Procurement Checklist Form](#). Think of this as a short guide to the procurement process. It's helpful to you as a project manager because it tells you what you must do before your purchase requisition can proceed. It's helpful to the P & L staff because it serves as a one-page summary of the procurement.

To complete this form, [you need to](#):

- Describe the scope of your proposed procurement
- Estimate the total cost
- Indicate the source of funds (e.g. RTA, IDOT, FTA, other)
- Enter an account code and AA code
- Indicate the type of vendor payment (e.g. fixed price, cost plus fixed fee, etc.)
- Describe the proposed contract term
- Describe the criteria for evaluating responses from vendors
- Propose members you'd like on the evaluation team (usually teams have approximately 3-5 members)

March 22, 2013

- Attach a list of potential vendors the P & L staff should solicit and these vendors' contact information, if available (be sure to include DBE firms)

Remember, your procurement cannot begin until this form is completed and approved.

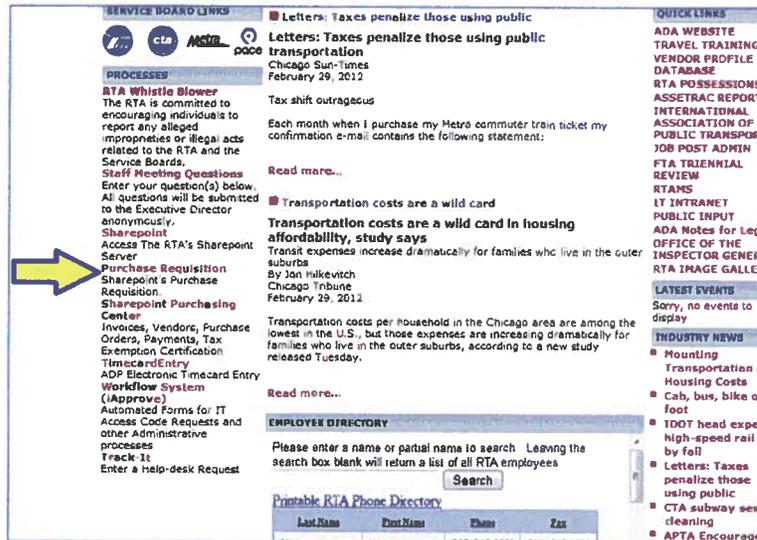
STEP TWO: Prepare the Vendor Contact Information Form. This form helps the P & L staff contact appropriate vendors to solicit their bids on your project. As a project manager, it is your responsibility to prepare a list of proposed vendors with their contact information.

STEP THREE: Complete the DBE Opportunities Form. As Project Manager, you will obtain this form from Procurement staff. The Project Manager should assess all potential subcontracting scopes of work and develop an estimate of the percentage of the subcontractable work. The Project Manager will then provide the completed form to the DBE Coordinator to review. If the Project Manager identifies subcontracting opportunities, the DBE Coordinator will determine whether there are enough DBEs (no fewer than 2 in the IL UCP-Illinois Unified Certification Program) to perform each element of subcontracted scope of work identified. If there are at least 2, then a DBE goal will be set for the project/contract.

4. PREPARE PURCHASE REQUEST IN SHAREPOINT

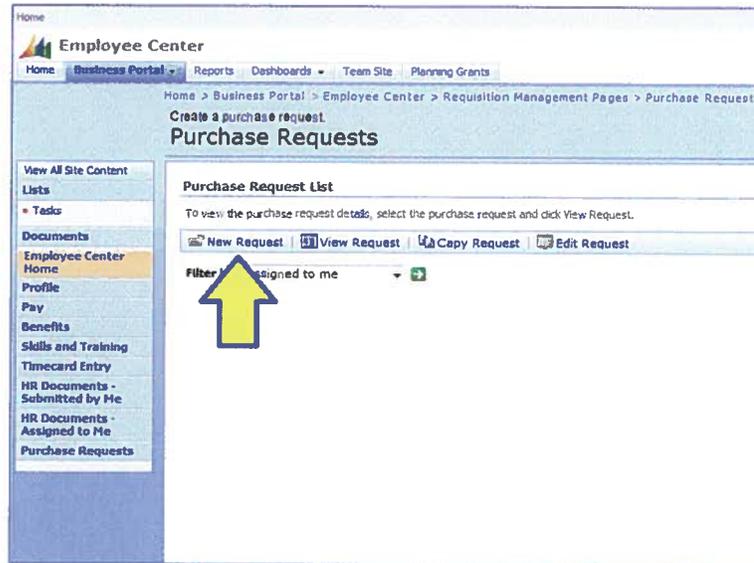
Once you have completed the Procurement Checklist and supplementary forms, and they have been approved by P&L staff, you will need to create a Purchase Request in Sharepoint. To create a Purchase Request in Sharepoint, you will need to do the following:

1. From the RTA intranet homepage, click the link that says "Purchase Request" on the left-hand side of the screen, and, if necessary, enter your Sharepoint username and password.

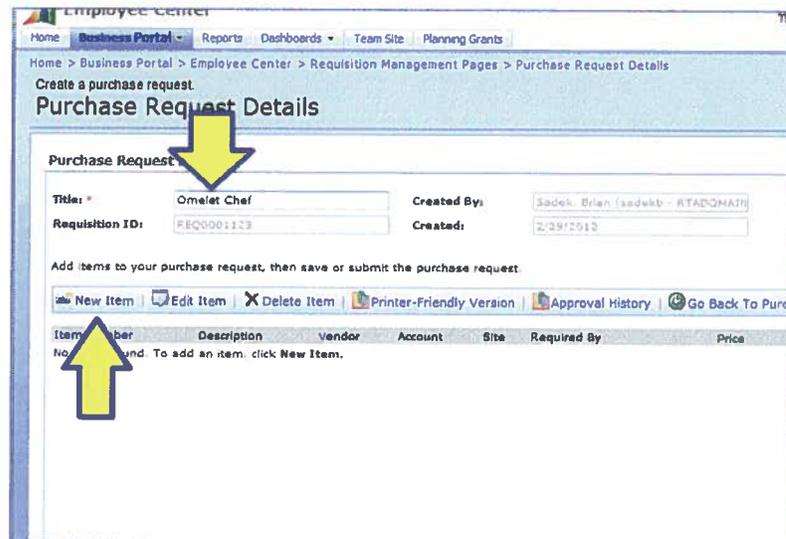


March 22, 2013

2. Once into Sharepoint, click "New Request".



3. This will take you into the Purchase Request Details screen. Once there, type in a title for the good or service that you are seeking and click on "New Item".



March 22, 2013

4. The following screen will pop-up at this time. Under “Item Number”, input the AA Code applicable to your procurement. At this time, you typically will not know your vendor. If your good or service includes a shipping charge, or another charge in addition to the price of the item, make a separate entry for that item and amount. (Also, please note that P&L staff cannot see anything typed into the “Comments” entry at this time.)

The screenshot shows a 'RequestionLine -- Webpage Dialog' window titled 'Business Portal - Requestion Management' with the subtitle 'Add Item: Omelet Chef'. The window contains a form with the following fields and values:

- Item Number: AA CODE 999
- Description: Omelet Chef
- Vendor: (blank)
- Account: 000-410-33100
- Site: ATA
- Price: \$90,000.00
- Quantity: 1
- Unit of Measure: EACH
- Extended Price: \$90,000.00
- Required By: 3/29/2012
- Comments: (empty text area)

Buttons at the bottom include 'Save and Close' and 'Cancel'. A note at the bottom states: '* indicates a field is required before final approval'.

5. Once you have successfully entered the information required by the popup window, you will be back at the Purchase Request Details screen and will see your nearly-complete purchase request. At this point, you should click on “Show More Tasks”.

The screenshot shows the 'Purchase Request Details' screen for a request titled 'Omelet Chef'. The 'Purchase Request Details' section includes:

- Title: Omelet Chef
- Created By: (blank)
- Created: 3/29/2012

Below this is a table with the following data:

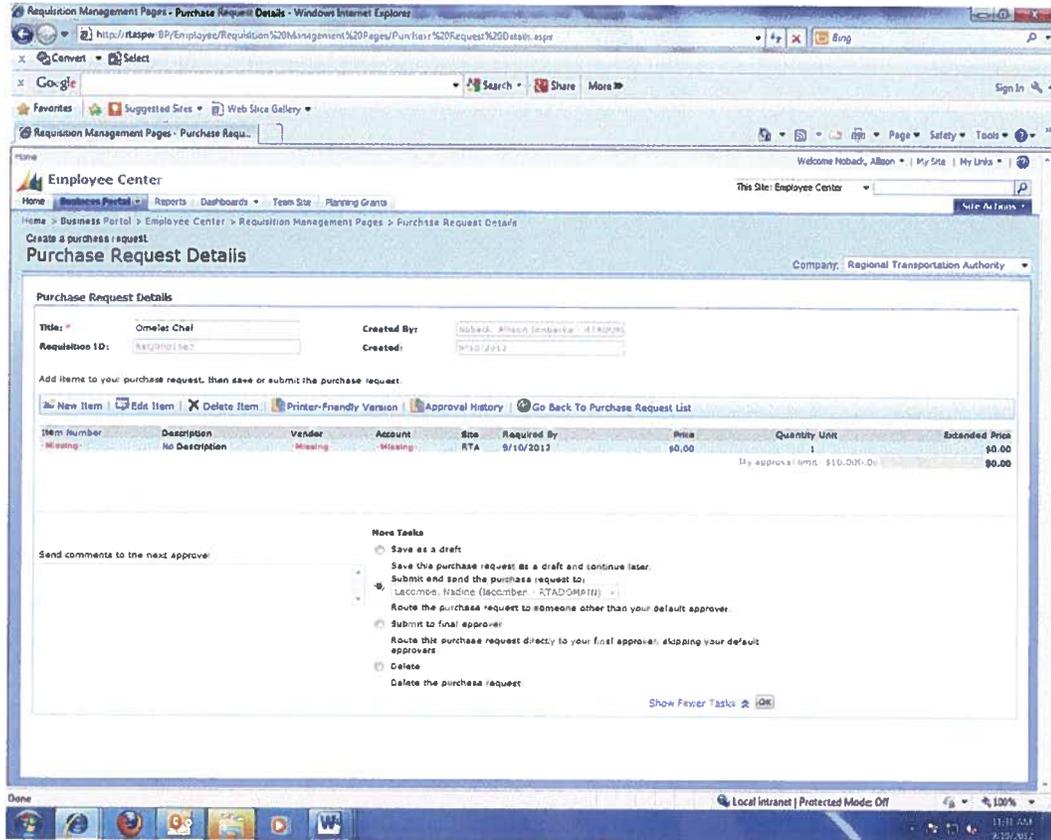
Item Number	Description	Vendor	Account	Site	Required By	Price	Quantity	Unit	Extended Price
AA CODE 999	Omelet Chef (Test Item)		000-410-33100	ATA	3/1/2012	\$90,000.00	1.00	EACH	\$90,000.00

A yellow arrow points to the 'Show More Tasks' button at the bottom right of the screen.

6. Once you have clicked on “Show More Tasks”, a number of options will appear. Double-check your Purchase Request information in the chart above, then click on the button

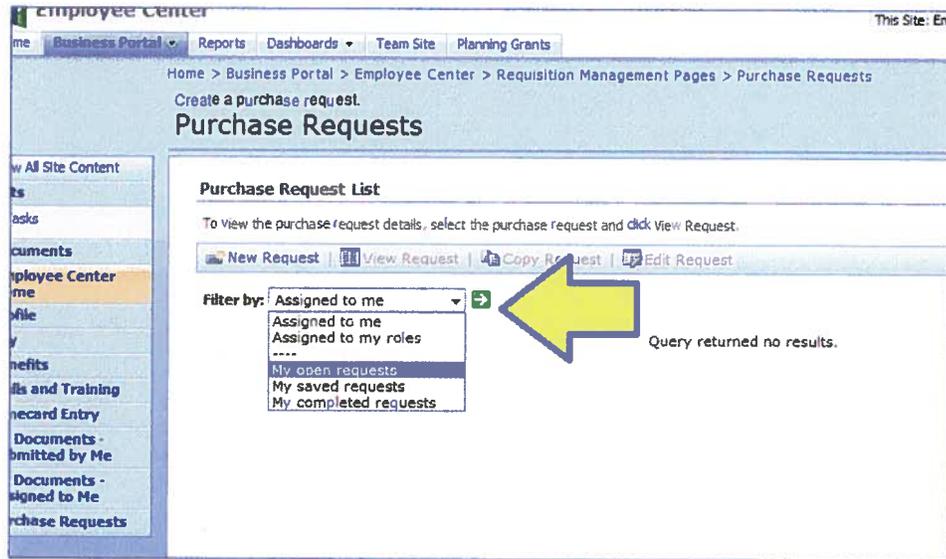
March 22, 2013

next to "Submit and send the purchase request to:" and hit the "OK" button. This will submit the request to the next approver, send an email to them to approve your Purchase Request, and send you back to the Purchase Request screen.



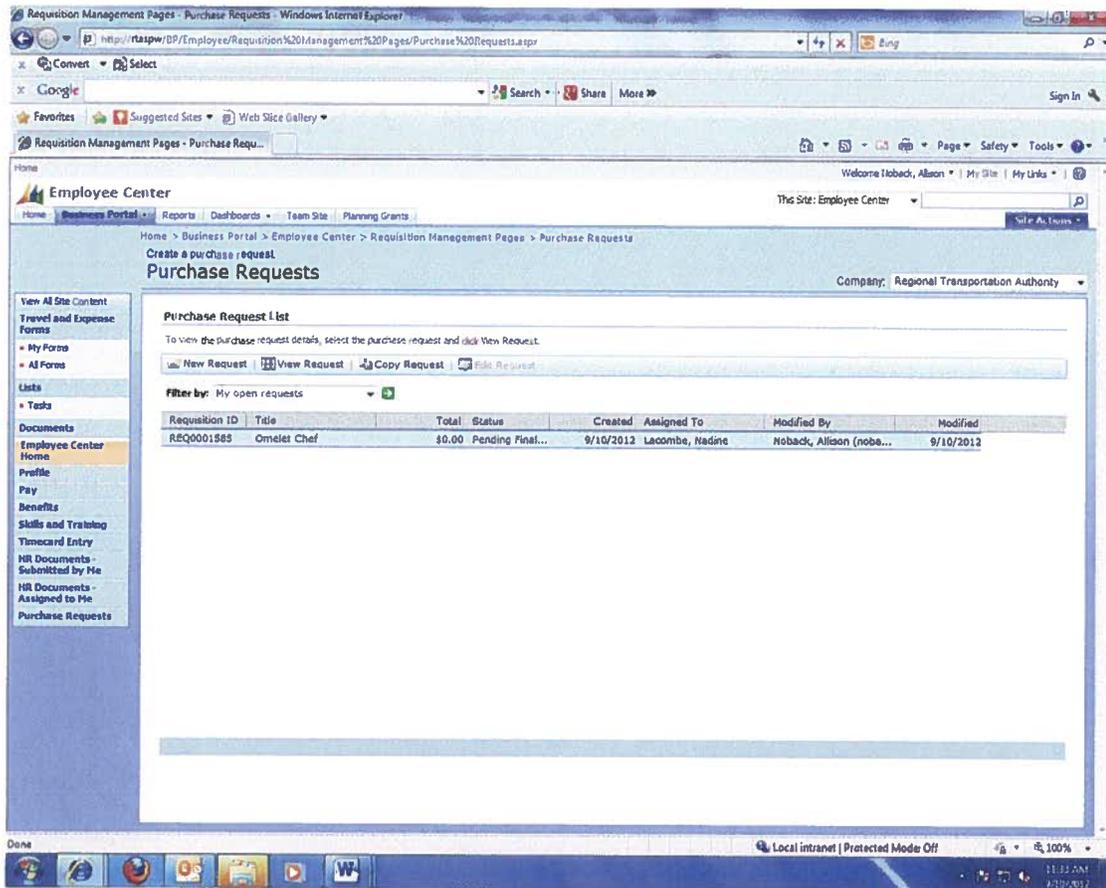
March 22, 2013

7. At the Purchase Request screen, open the drop down menu, select "My open requests", and then click on the green arrow next to the drop down menu.



March 22, 2013

8. You will now be able to follow the status of your Purchase Request in Sharepoint. Depending on your approval level and the dollar amount of the Purchase Request, it may need to be approved by your supervisor, your departmental manager, and the executive director.



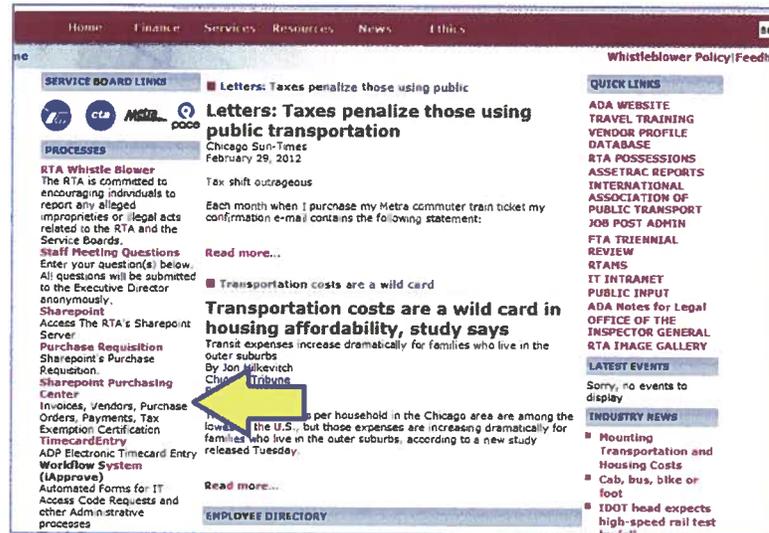
Once you have received all necessary approvals in Sharepoint, your Purchase Request will no longer show under “My open requests”. At this point, make note of your Purchase Request ID number and the title of your Purchase Request, as it is important for the next stage of the process, “Procurement”. In the example provided here, the Purchase Request ID number is “REQ0001123” and the title is “Omelet Chef”.

5. UPLOAD YOUR DOCUMENTS INTO SHAREPOINT PURCHASING CONTRACTS STORAGE

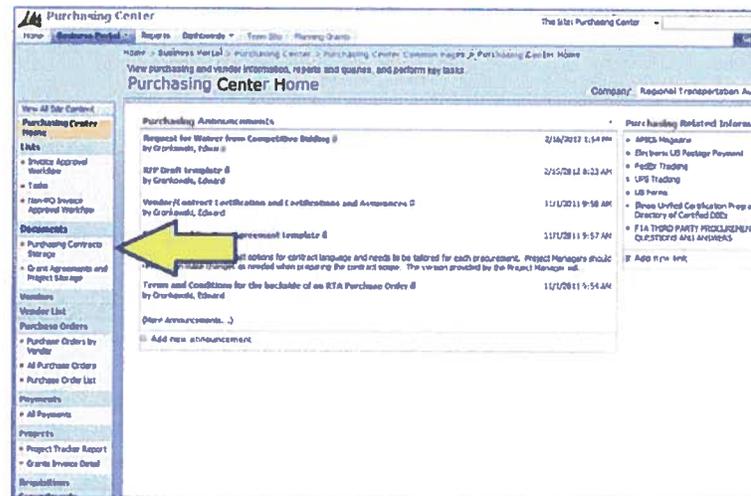
Once your purchase request has been approved, and you have completed the necessary forms, you need to upload your Procurement Checklist and all supplementary forms into Purchasing Contracts Storage. In order to do this, complete the following steps.

1. From the RTA intranet homepage, click the link that says “Sharepoint Purchasing Center” on the left-hand side of the screen, and, if necessary, enter your Sharepoint username and password.

March 22, 2013

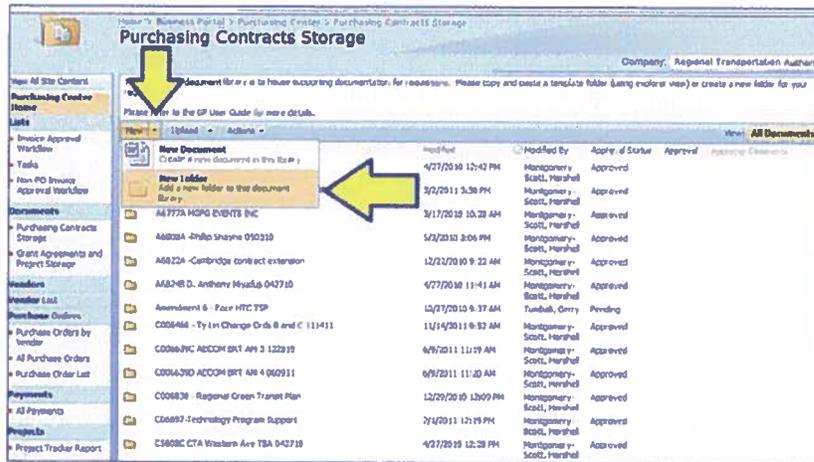


2. Once at the Purchasing Center Home page, click on "Purchasing Contracts Storage".

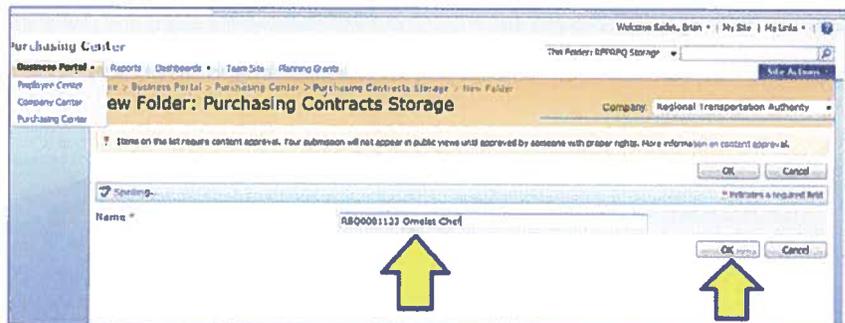


3. At the Purchasing Contracts Storage screen, click on the arrow next to the word "New" and, when it drops down, click on "New Folder".

March 22, 2013



- Once in the New Folder Screen, type in the Purchase Request number and title given to your procurement in the Purchase Request stage, as shown below, then hit the OK button. For the example given, the correct entry is "REQ0001123 Omelet Chef". It is important to note here that if you do not name your directory correctly, it may be hard to find your documents, and your procurement will likely be delayed.

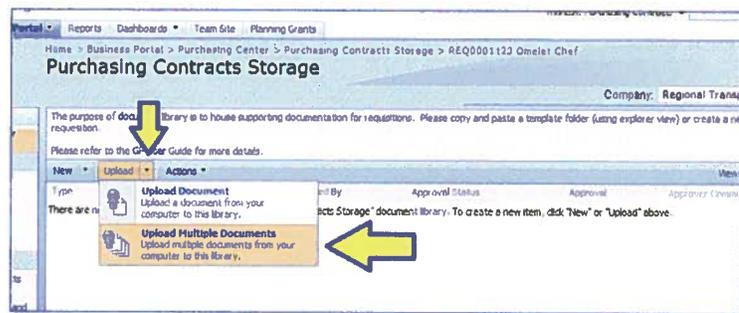


- Now that you have created your directory, scroll down the list of directories until you find yours, and then click on it, this will take you into your new folder.

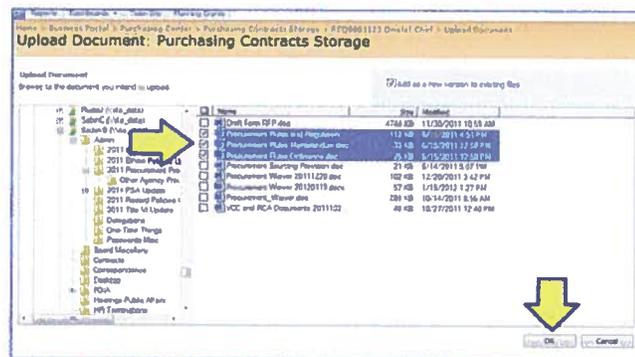


- Once in your folder, you will need to upload your Procurement Checklist, the supplemental forms, and any other documents you think will be of help to P&L staff in directing your procurement through the process. Click on the arrow next to "Upload", and when the drop down appears, click on "Upload Multiple Documents".

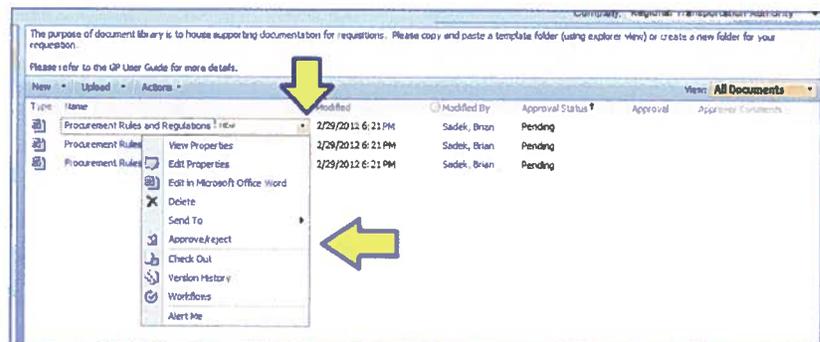
March 22, 2013



7. A directory structure will appear. Place a check mark next to any document(s) that you would like to upload (they will glow blue) and then hit the "OK" button. Next, click "Yes" when asked if you would like to continue.



8. Click on the arrow next to the name of each document and then click "Approve/Reject" when the drop down appears.



9. At this point, contact Procurement staff and inform them that you believe that you have completed your Purchasing Contracts Storage folder. Procurement staff will review the folder and one of two things will happen. Either (i) you will be missing some documentation or information, and Procurement staff will direct you to upload additional or updated documents, or (ii) Procurement staff will commence the procurement phase of the process using the information you have provided.

March 22, 2013

Once your purchase request is approved and all of the necessary items have been added to Sharepoint, you will move on to the Procurement Process phase.

Phase Two: Procurement Process

Congratulations! You've reached Phase Two, the Procurement Process phase. From here, your procurement will proceed one of three ways:

- (1) by an informal competitive procurement process, if the procurement is for \$10,000 or less;
- (2) by a competitive procurement process, if the procurement is for over \$10,000;
- (3) or go directly to Phase Three, the Contracting phase, if your request for a [waiver from competitive bidding](#) has been approved.

1. INFORMAL COMPETITIVE PROCUREMENT - \$10,000 OR LESS

Procurements valued at \$10,000 or less are exempt from formal bidding and don't need to be publicly solicited. **But they are not exempt from competitive bidding.**

The informal competitive procurement process means that Procurement staff will contact vendors to determine the lowest price for your product or service, rather than conducting a formal competitive process involving, for example, an RFP or IFB. Your procurement checklist for informal competitive procurements should identify which firms in the marketplace, including DBEs, can perform the work or provide the goods needed.

Under no circumstances should the names of other competing bidders be revealed to any other prospective bidder. Competition depends on the vendor's understanding that an order can only be won by extending the best available pricing. Knowledge of which competitors may bid or will not bid provides an unfair advantage to a bidder and exposes RTA to higher prices.

2. FORMAL COMPETITIVE PROCUREMENT - MORE THAN \$10,000

With the information you provided during the Purchase Requisition phase of the process, your procurement is now ready for review.

The Procurement staff will review it first and route it to the following people:

- Procurement Manager
- Project Manager
- ITS (if IT-related)
- Regulatory Compliance Officer/DBE Coordinator
- Deputy General Counsel

March 22, 2013

Once these reviews have been completed, the solicitation will be sent out and offers will be received.

Please click on the links below, if you're interested, for an explanation of:

- [Step-by-step of IFB process](#)
- [Step-by step of RFP process](#)
- [Step-by-step of RFQ process](#)

3. WAIVER FROM COMPETITIVE BIDDING

Please click on the link above to find out more about the exceptions to the formal competitive bidding process. These were discussed in Phase One.

Phase Three: The Contracting Phase

You're almost there! This is the final phase of the process, the Contracting phase. This is where an agreement is signed between the RTA and the chosen vendor.

Simply, the information you provided during the Purchase Request phase of the process and the changes made during negotiation of your procurement, if any, is all that's needed now to create a contract. Procurement will compile all of the information you have provided, and uploaded into Sharepoint, thus far and give it to Law staff to begin the contract.

To create the contract, Law staff will work with you and Procurement staff to draft a contract that meets the needs of your procurement. During this phase, Law staff will also conduct a search of the Illinois Secretary of State website to ensure that your vendor is registered to do business in the State of Illinois. If the vendor is not registered, Law staff will let you know and ask you to notify the vendor. The RTA cannot enter into the contract until the vendor has filed an application with the Illinois Secretary of State to register to do business in Illinois.

For additional information on how to see if your vendor is registered to do business in the State of Illinois, click on the following link: [SECRETARY OF STATE](#)

Once a contract has been created, Procurement staff will route the contract and all required forms to staff in the following positions for their review and approval:

- Procurement Manager
- Project Manager
- Grants and Capital Program, in certain circumstances

March 22, 2013

- Regulatory Compliance Officer/DBE Coordinator
- Deputy General Counsel

After review, the contract is sent to the vendor for signature. The RTA will then execute the contract. In instances where Board approval is required, RTA will execute the contract after the Board approves it. Board approval is required in the following instances:

- Agreements valued above \$100,000
- Certain contract amendments
- Emergency contracts
- Sole source contracts
- Intergovernmental Agreements

APPENDICES

What Type of Procurement is it?

- **RFP – REQUEST FOR PROPOSALS**

What are they? A Request for Proposal (RFP) invites vendors to submit proposals for personal, professional or consulting service contracts. An RFP is awarded based on an evaluation of multiple criteria, including cost. A committee evaluates each proposal against certain criteria which identify factors that are important to the project and are consistent with the needs, policies, and procedures of the RTA. Each evaluator must evaluate the firms independently – evaluations may not be conducted in groups.

What's needed? A detailed scope of services, the factors that comprise the evaluation criteria, proposed members of the evaluation committee, and a list of possible vendors is needed for the Purchase Request.

What's the RFP process?

1. RFPs are publicized.
2. Proposals are solicited from an adequate number of qualified sources.
3. Evaluators review and evaluate each proposal received, based on the evaluation criteria.
4. Along with price, a contractor's integrity, compliance with public policy, a record of past performance, and financial and technical resources are all considered before an award is made.
5. Awards will be made to the responsible vendor whose proposal is deemed to be the most advantageous to the RTA.

- **IFB – INVITATION FOR BIDS**

What's an IFB? An invitation for bids (IFB) is used when price is the sole determining factor in an award decision.

When is an IFB appropriate? An invitation for bids is indicated when:

- A complete, adequate, and realistic specification or purchase description is available.
- Two or more responsible bidders are able and willing to compete effectively for the business.
- The procurement lends itself to a firm fixed price contract.
- Selection of the successful bidder can be made principally on the basis of price.
- No discussion with bidders is needed.

- **PROFESSIONAL SERVICES (ARCHITECTS, ENGINEERS AND SURVEYORS, LAWYERS, AND LOBBYISTS)
– RFQ– REQUEST FOR QUALIFICATIONS**

March 22, 2013

What's an RFQ? A Request for Qualifications (RFQ) is published as a legal notice to establish a list of vendors interested in performing a needed service. Vendors on that list are then invited to present the qualifications and experience that enable them to perform the RTA's proposed scope of services.

Architects, Engineers and Surveyors: Procurement of the services of licensed architects, engineers and land surveyors fall under the Illinois Local Government Professional Services Selection Act which requires RTA to use a qualification-based selection process.

What's the process?

- Each vendor's qualifications are fully evaluated.
- Price must be excluded as an evaluation factor. However, level of effort may be negotiated.
- Negotiations are conducted with the vendor deemed to be the most qualified.
- If there is no agreement on level of effort, negotiations with the next most qualified vendor are conducted until a contract award can be awarded.
- An award is made to the most qualified vendor with a fair and reasonable price.
- A contract between the RTA and the vendor is executed.
- A purchase order is entered in GP so that the RTA can manage the contract.

- **SMALL PURCHASE PROCEDURE**

What is a small purchase? Small purchases are those that are expected to result in an order valued at \$10,000 or less. They are not publicly solicited, and they can be made at any time. RTA has wide discretion regarding the level of competition and the latitude provided to bidding firms. Usually, the RTA sets a deadline for all vendors to submit bids, but an offer can be accepted when all responses have been received.

Chaining/Stringing is prohibited. "Chaining" or "Stringing" is the prohibited practice of creating a number of small purchases. It's done to get around restrictions placed on formal bidding. This practice is a violation of the RTA Act and RTA's Regulations Governing Public Bidding. An employee found to have engaged in this practice is subject to discipline including discharge and in some instances criminal prosecution.

- **SOLE SOURCE – WAIVER FROM COMPETITIVE BIDDING**

The exception, not the rule! If the goods or service are available from a single or sole source, then the project manager must prepare a request for waiver from competitive bidding. You need to explain why the procurement is exempt from competitive bidding. The sole source justification requires approval of the Manager of Procurement and Contracting and the Deputy General Counsel. If the procurement is more than \$10,000, the Executive Director must also approve the procurement. Remember, a price quote from a sole source supplier is especially scrutinized because there's no competitive market force in play. The objective is to obtain a fair and reasonable price whether there is competition or not. A

March 22, 2013

reasonable price can be established through a cost or price analysis or by comparing the price to historical pricing paid by RTA and to the prices paid by the vendor's other customers. Never acknowledge to a vendor that his/her firm is the only source under consideration.

Describe what you need and when you need it

Remember to include anything special or unusual about your procurement so that vendors can bid accurately to meet your needs. Otherwise, you may wind up with the wrong product or paying higher prices because of limited competition.

March 22, 2013

How Do Contractors Calculate Their Costs?

Many terms may be unfamiliar to you and to the members of your evaluation committee. See the explanations below.

BREAKING DOWN COSTS

A contractor can break down cost in several ways.

Hourly Rate: This is the actual hourly rate paid to each contractor's employee. The rate can vary by specific employee or by title of employee. If the term of the contract extends over years, salary increases may be budgeted.

Burden Rate: This is essentially the cost of doing business. It includes employment costs, overhead costs, and other expenses generally incurred by the business that cannot be attributed to a specific project. It is expressed as a percentage, such as 150%. This indicates that after the burden is applied to the hourly rate, the consultant charges \$2.50 for every \$1.00 in direct labor charges. The burden rate, usually applies to certain professional services (e.g. architects), and it's audited and updated each year.

Direct Costs: These are the costs identified by the consultant as the costs included in the proposal that will be incurred in performing the work required under the contract, such as printing reports and purchasing software licenses needed to perform. Direct costs will also include the cost of contracts with subcontractors.

General and Administrative

Costs: This is a percentage mark-up for performing administrative tasks exclusive to the contract which are not included in the overhead rate, such as administering the invoicing for subcontractors.

Travel and

Lodging: This is a direct cost for the contractor's expenses for air travel, automobile travel exceeding 50 miles, hotel cost and meals for project personnel that need to travel to perform the work assigned to them under the contract.

Profit/

Fixed Fee: Profit or fixed fee, is the contractor's fee to perform the contract. Profit should not be determined as a percentage of the total cost of a project. RTA agrees to pay a fixed fee for a project, not a percentage of the contractor's cost. As a result, the contractor earns the same fixed fee no matter whether the project takes twice as much time and effort or only half of what was estimated. This is an incentive for the contractor to deliver the project early, thus making his/her time

March 22, 2013

on the project more profitable. Contracts that feature profit as a percentage of a contractor's cost, on the other hand, encourage the contractor to fall behind schedule and exceed the proposed cost since that increases net profit.

Remember, profit is built into the contractor's direct costs, which may also include the cost and profit margin of any subcontractor. When evaluating the profit proposed, project manager and the evaluation committee need to factor in profits of the prime contractor and the subcontractor.

Lump Sum Contract:

The preferred form of contract is a lump sum contract. This is a not-to-exceed amount that fully reimburses the contractor for all time and materials. If the contractor underestimates the level of effort or materials required to perform, he/she can't seek extra reimbursement.

Cost Reimbursement Contract:

This contract reimburses a contractor for costs, usually accompanied by a not-to-exceed amount that's clearly stated in the contract. In these types of contracts, it's important that you manage the contractor's performance to make sure the project is delivered on time and within budget. If you don't, your project could run out of money before the project is completed.

Fixed Fee Contract:

This is lump sum contract. The RTA agrees to pay a fixed fee, but no more, for the contractor's performance.

Cost Plus Fixed Fee Contract:

This type of contract provides for reimbursement of costs on top of a fixed fee (profit). Again, it's important to control costs so funds don't run out before your project is completed.

Commercial Rate per Hour Contract (or Labor Hour Contract):

Some contractors forego the cost-plus-fixed fee (profit) method and offer a single commercial rate per hour. This rate is charged in one of two ways: for each employee or for every hour that the firm spends in performing under the contract. Commercial rate contracts require strong management to ensure that the project is completed on time and budget. A commercial rate contract that finishes early will be less profitable to the consultant.

Task Order Contract:

A task order contract is a request for service(s) placed against an established professional services contract for an amount authorized in the professional services contract. The contractor is paid for an amount equal to the number of hours worked by each of the Contractor's Key Personnel based on a schedule established by the parties.

March 22, 2013

What is Formal Bidding?

Most procurements will be competitively bid because they are expected to cost more than \$10,000.

What is formal competitive bidding? Formal competitive bidding is an efficient, objective way of procuring most goods and services through a competitive process. It's designed to preclude partiality because the award is usually granted to the firm offering the lowest price at a public bid opening where prices are read aloud to witnesses.

Are all bids responsive? No. A responsive bidder is one that can offer a product that meets the RTA's specifications and all other terms and conditions. A bidder that takes exception to something important to the contract such as a product specification, terms and conditions is considered non-responsive and is not eligible for the award.

When is appropriate to get a waiver from competitive bidding? Section 4.06 of the RTA Act requires that NO contract may be awarded until after public notice is published and public bidding is conducted. So if you request a waiver from these requirements, you are asking for an exception from legal requirements.

The exceptions, under the RTA's Procurement Rules and Regulations Article 3.1, for Purchase Orders and contracts in excess of \$10,000 that do not have to be competitively bid are as follows:

- Sole Source – where the goods or services can be procured from only one source.
- The services of (i) expert witnesses, (ii) law firms, (iii) attorneys, and (iv) other providers of Professional Services whose assistance is, in the opinion of the General Counsel, necessary to solve a legal complaint.
- The services of lobbyists and legislative consultants.
- When federal funds are not used, such Professional services and utilities for which the Board determines that Competitive Procurement is not advantageous.
- For intergovernmental agreements, or where the procurement is otherwise for services between the RTA and another transportation agency or unit of local government.
- After receipt of a single non-responsive bid to an IFB, the RTA may negotiate with the single bidder to cure any deficiencies in the bid.

What is the process for requesting a waiver from competitive bidding? If the cost of your procurement will not, under any circumstance, exceed \$10,000, or you believe that your procurement may otherwise be exempt from the public notice and competitive bidding requirements, you must

March 22, 2013

complete a “Request for Waiver from Competitive Bidding” Form. You must provide a detailed explanation of why you believe a waiver from competitive bidding is justified.

Once you have completed the form, print it, sign it, and submit it to the Manager, Procurement and Contracting for approval. If your form is approved by the (i) Manager, Procurement and Contracting, (ii) an RTA attorney, and (iii) the Executive Director (for items over \$10,000), you will receive a waiver from competitive bidding.

What happens if there is an emergency? The RTA Procurement Rules and Regulations state that the Executive Director and the Chairman can declare the existence of an emergency that allows the Executive Director or the Manager of Procurement to authorize the negotiation and award of an Emergency Contract to purchase any goods or services needed only to the extent necessary to limit harm to the RTA. The Emergency Contract should be procured through competition whenever possible, and in a manner calculated to insure the best interests of the public. A written report of the nature and extent of the emergency, together with a statement of expenditures, must be reported promptly to the Board. Any Emergency Contract will be terminated immediately following the next meeting of the Board unless it is ratified by a two-thirds vote of the Board.

What You Need To Do To Complete the Procurement Checklist

Many of the items on the Procurement Checklist Form are straightforward. Here are some tips:

- **Item 1 (Scope):** This entry should be brief, for example: "Auditing Services for the RTA Pension Plan" or "Technical Planning Consultant Services for Community Planning Grants." If the procurement uses an RFP or IFB, say so right at the beginning: "The Regional Transportation Authority ("RTA") invites you to submit a proposal/bid to provide..." This is also important because it helps the P&L staff recognize what you want and respond appropriately.
- **Item 2: (Cost Estimate):** Please refer to the explanation of how to prepare a cost estimate. Remember, you have to develop a reasonable, detailed cost estimate. This is necessary so that Finance can ensure there's room in the budget for your project and to avoid having your procurement canceled or your project run into serious cost overruns.
- **Item 3 (Source of Funds):** Identify all potential sources of funds for your project. This allows P&L staff to approach the procurement appropriately throughout the process, including involving the Grants and Capital Program, if necessary, and treating the procurement as required by state and federal regulations.
- **Item 9 (List of Vendors):** You must provide a list of possible vendors to the P&L staff. This is the project manager's responsibility and it just makes sense. As project manager, you probably know far more about the technical requirements and professional qualifications required for your project than a member of the procurement staff. You want your IFB, RFP, etc. to be seen by vendors who are qualified and responsible.
- **Item 10 (Approvals):** Unless this checklist is approved by the Regulatory Compliance Officer and a representative of the Procurement Division, your procurement cannot move forward. While this sounds simple, many key things are settled at this point and need to be finalized and approved, such as type of procurement (RFP, IFB, informal competitive process, "sole source", etc.) and the DBE goal, if any.

Step-by-Step of the IFB Process

After a purchase requisition is uploaded to Sharepoint and all required approvals are obtained:

Procurement will arrange for publication of legal notice and provide you with a copy of the completed IFB.

Procurement will mail IFBs to firms selected from RTA's vendors list and distribute the IFB to firms that request copies or through the RTA website.

OPTIONAL

1. Procurement will schedule a pre-bid meeting and note the date, time and location in the legal notice;
2. Procurement will meet with the project manager and any other RTA staff involved in the procurement to identify any information that will be released at the pre-bid meeting and to prepare responses to any questions submitted in advance of the pre-bid meeting;
3. Procurement will convene the pre-bid meeting, distribute any prepared information. The RTA will receive and respond to questions regarding the procurement during the pre-bid meeting. Procurement will prepare and distribute meeting minutes and issue any addendum needed to revise the IFB;
 - Procurement will receive and timestamp all bids either mechanically or manually. Timely bids will be opened and read aloud.
 - Procurement will record each bid on an official tabulation of the bid opening.
 - Any sealed bid that is delivered without identification will be opened to identify its contents, resealed, labeled with the title, due date and due time. The opener will write "opened to identify," sign and date the outside of the container.
4. Procurement will determine the responsiveness and responsibility of each bid;
 - Responsiveness requires that a bidder has met the conditions of bidding and that its bid can be immediately accepted without need for any additional documentation;
 - Responsibility requires that the bidder can reasonably demonstrate that it has the ability to perform the requirements of the contract.
5. Procurement will direct any question regarding the product or service offered by the apparent low bidder to the project manager;
6. Procurement submits the bids of the three lowest bidders to the DBE Officer.

March 22, 2013

- DBE Officer reviews DBE participation offered by the firms in the competitive range and reports the level of participation to Procurement.
7. Procurement determines the lowest responsive and responsible bidder, identifies the lowest bidder to the project manager and prepares for the execution of that firm's bid as a contract;
 8. The project manager prepares the recommendation to the RTA Board and the ordinance if the total value of the awards to that vendor during the fiscal year exceeds \$100,000.
 1. If award is recommended to a bidder other than the lowest responsive and responsible bidder and there is a DBE participation goal assigned to the procurement, a reconsideration hearing *must be offered* to any responsive and responsible bidder that was lower in price than the recommended firm.
 - Upon approval by the RTA Board of Directors (if required), the Contract Approval form is prepared and routed for approval to the Manager of Procurement and Contracting, the Project Manager, the DBE Coordinator and the Deputy General Counsel. In approving the Contract Approval form, the Deputy General Counsel initials the execution page of the contract document.
 - If the contract is based on grant funding, the Contract Approval form is submitted to the Manager, Grants and Capital Program to obtain funding agency concurrence.
 9. Upon approval of the Contract Approval form, Procurement ensures that funding agency concurrence requirements have been obtained. Procurement submits the contract to the Contractor and to the Executive Director for execution.
 - One fully executed contract is sent to the contractor and one is retained for RTA permanent records. The project manager is copied on the transmittal to the contractor as notice that the contract has been issued.
 - The Manager of Procurement and Contracting provides written notification to each bidder that was not awarded a contract of the outcome of the procurement.

RTA Right to Reject Bids: RTA maintains the right to reject all bids and cancel the procurement when it is in RTA's best interest to do so. RTA may elect to re-issue any such procurement at its discretion. In contemplating the cancellation and re-issuance of a procurement, RTA needs to consider that in publicly opening bids, it has exposed pricing to bidders' competitors and could compromise the competitiveness of a subsequent procurement.

Cancellation/ Postponement of Bid Opening: If RTA decides to cancel or postpone the bid opening but hasn't sufficient time to publish the public notice, RTA should announce the cancellation or postponement at the date and time scheduled for the opening of bids and publish a legal notice as soon as practicable.

March 22, 2013

Re-issuance: Re-issuance of a procurement should include sufficient changes in the scope of services or be postponed a sufficient duration of time to diminish any potential advantage that competitors might have gained from the public bid opening.

March 22, 2013

Step-by-Step of the RFP Process

After a purchase requisition is uploaded to Sharepoint and all required approvals are obtained:

Procurement will arrange for publication of a legal notice and provide you with a copy of the completed RFP.

Procurement will schedule the pre-proposal meeting and note the date, time and location in the legal notice.

Procurement will mail RFPs to proposers list and distribute the RFP to firms that request copies.

OPTIONAL

Note that not all of these steps are required for every RFP. The necessary steps will vary case-by-case.

1. Procurement will schedule the pre-proposal meeting and note the date, time and location in the legal notice;
2. Procurement will meet with the project manager and any other RTA staff involved in the procurement to identify any information that will be released at the pre-proposal meeting and to prepare responses to any questions submitted in advance of the pre-proposal meeting;
3. Procurement will convene the pre-proposal meeting, distribute any prepared information. The RTA will receive and respond to questions regarding the procurement during the pre-proposal meeting. Procurement will prepare and distribute meeting minutes and issue any addendum needed to revise the RFP;
4. Procurement will receive, open and record each proposal submitted by deadline. Only Procurement can open proposals on behalf of RTA.
5. Procurement will evaluate each proposal for responsiveness and each proposer for responsibility.
6. Procurement will distribute a set of proposals to each evaluator along with detailed evaluation criteria.
7. Each evaluator reviews and independently evaluates each proposal, providing a score for each proposal in each evaluation factor contained in the published RFP. The criteria cannot be changed after the RFP has been advertised. Any questions regarding a factor or proposal are referred to Procurement.
8. When completed each evaluator submits the evaluations to Procurement. Procurement tabulates the evaluation and provides copies to the evaluators and determines the competitive range for the procurement.
9. Procurement arranges for the presentation of proposals by the firms in the competitive range if the evaluators are confident that presentations will help their evaluation.

March 22, 2013

10. Procurement submits the proposals of the firms in the competitive range to the DBE Officer.
 - DBE Officer reviews DBE participation offered by the firms in the competitive range and reports the level of participation to Procurement.
 - Procurement reports the DBE participation of each firm in the competitive range to the evaluators.
11. Procurement and the evaluators meet to determine the strategy for negotiations with each proposer.
 - Procurement arranges a meeting to negotiate with each firm in the competitive range. The invitation shall indicate the factors that will be discussed in negotiations including cost and DBE participation.
 - Procurement and the project manager meet and negotiate with each firm that is agreeable to negotiations. Upon the completion of the negotiations with each firm, Procurement may instruct the firm to submit a best-and-final offer which is to include any modifications to the proposal.
 - The deadline for submission of the best-and-final offers to Procurement will be the same for each firm and will provide each firm adequate time to prepare the best-and-final offer. No response will be opened until the deadline has past.
 - The best and final offers are submitted to the evaluators. The evaluators re-evaluate the proposals in the competitive range based on the information submitted in the best-and-final offers. The final evaluations are submitted to Procurement. Procurement calculates the final score for each proposal and determines which contractor is recommended
12. The project manager prepares a recommendation (also referred to as a justification memo) which summarizes the evaluation of proposals and recommends the award of a contract to the firm found to have offered the best proposal. Procurement reviews the recommendation and the full record of the procurement and recommends that the award may be submitted for approval to the appropriate party (the RTA Board if the award or dollar value of transactions with the recommended consultant for the fiscal year exceeds \$100,000, the executive director, or other depending upon the dollar amount and type of procurement).
 - The project manager prepares the staff recommendation to the RTA Board and the ordinance.
 - The project manager prepares the scope of services and terms of payment for the contract and submits those to Procurement.
 - Procurement submits the scope of services and payment terms along with the vendor certification to the legal administrative assistant for preparation of the contract.
13. Upon approval by the RTA Board of Directors, if required by the dollar amount of the award, the Contract Approval form is prepared and routed for recommendation and approval to the Manager of Procurement and Contracting, the Project Manager, the DBE Coordinator and the Deputy General Counsel. In approving the Contract Approval form, the Deputy General Counsel initials the execution page of the contract document. If the contract is based on grant funding, the Contract Approval

March 22, 2013

form is also submitted to the Manager, Grants and Capital Program for funding agency concurrence

14. Upon approval of the Contract Approval form, Procurement sends the contract in duplicate to the consultant for execution.
15. Upon return of the executed contracts to Procurement, the contracts are submitted to the Executive Director for execution.
16. One fully executed contract is sent to the consultant and one is retained for RTA's permanent record in the procurement file. The project manager is copied on the transmittal to the consultant as notice that the contract has been issued.
17. The Manager of Procurement and Contracting provides written notification to each proposer that was not awarded a contract of the outcome of the procurement.

Background Material - RFPs

Public Notice

RTA advertises its procurements in the Chicago Sun Times and will supplement this official legal notice with notices in any trade publication that could enhance competition. Placing an advertisement in a trade publication needs to take into account the publishing lead time required by the publication. RTA will supplement the official legal notice in other local publications that are directed to DBE businesses. We are required by the RTA Act to publish the legal notice no less than ten business days before the deadline for bids or proposals. The local daily newspapers usually have a lead time of 3-4 days. Trade publications are usually published less frequently and have longer lead times.

Process

RTA must publicly solicit offers for any procurement with an estimated value exceeding \$10,000. Exceptions to public bidding requirements may be granted when there is a bona fide sole or single source of supply or if other exceptions apply pursuant to the RTA Procurement Rules and Regulations Article 3.1.

Issuing the RFP

The prepared RFP is emailed or mailed to prospective proposers and placed on the RTA website so that interested firms can download the RFP. RTA must maintain a list of the firms that have received the RFP in case an addendum needs to be issued. Failing to control the distribution could result in some proposers submitting their proposals without the new or changed information that had been issued in an addendum. This could result in the unwarranted downgrading of a proposal and possibly the cancellation of the procurement.

RTA can be held accountable for the proposer's cost to prepare an offer when RTA causes a procurement to be spoiled through its neglect. Therefore, RTA must take reasonable steps to control the distribution. Obviously, RTA cannot be responsible when one firm passes the RFP on to other firms.

March 22, 2013

Pre-Proposal Meeting

The purpose of a pre-proposal meeting is to publicly respond to questions raised by prospective proposers so that all interested parties have identical knowledge before preparing their proposal. Although RTA can strongly encourage attendance by interested proposers, pre-proposal meetings cannot be mandatory since RTA cannot presume that a proposer does not have a conflicting commitment. Proposers are encouraged to submit questions prior to the meeting so that the question and RTA's considered response can be read into the meeting minutes and distributed to all interested parties. Emailing questions is acceptable. Submitting questions prior to the meeting is helpful to those that cannot attend at the designated time.

In deciding if a pre-proposal meeting is needed, RTA will consider the completeness of its description of the scope of work and the thoroughness of the description of important factors that may affect performance. The pre-proposal meeting is not intended to play a significant role in describing the scope of work and is held to clarify areas of uncertainty. It also provides an opportunity for interested sub-contractors to meet firms that intend to submit proposals to the RTA. Including a pre-proposal meeting will lengthen the solicitation period by 7 to 10 days to provide proposers to make travel and scheduling arrangements.

After the pre-proposal meeting, the RTA reviews and issues the transcript of the pre-proposal meeting and issues responses to any open questions. The transcript, list of attendees and RTA's responses to any questions that were not answered at the meeting are provided to every firm that has received the RFP.

Responses to RFPs must be submitted by RTA's deadline. There is no public announcement of the names of the firms that respond and proposals are not opened publicly (unlike an Invitation for Bids). Therefore, proposers are not aware of their competition. It is important that no one involved in the process of evaluating proposals or taking part in negotiations provide any proposer with information regarding the competition. This allows RTA to use the market to maintain a favorable negotiating position throughout the procurement process, even if a single firm is being considered. Although information regarding competitors may be exchanged by common subcontractors, no proposer can obtain complete knowledge of the level of competition if RTA keeps this information confidential.

Proposals received in response to an RFP are time stamped when received. Proposals that arrive after the deadline are summarily rejected and returned to the proposer unopened.

March 22, 2013

Evaluation of Proposals

Every proposal that RTA receives, regardless of its apparent deficiencies, must be evaluated. Even if a single proposal is submitted, it must be evaluated using the criteria set out in the RFP.

But keep in mind that in evaluating RFPs, the RTA establishes a competitive range. Included in the competitive range is any firm that has offered a proposal which, after negotiations, might be found to be the highest ranked. Proposals that are found to be so weak that they could not improve through negotiations are excluded from the competitive range.

The evaluators of the proposals should judge each proposer's effort to deliver the outcome described in the scope of services. The proposed cost should be adequate for the effort required to provide that outcome and it should be compared to the independent cost estimate that was prepared by the project manager when initiating the procurement. There is a balance between experience and the cost that RTA pays for additional experience. More skilled contractors tend to be higher priced, but can also perform the work with fewer labor hours. The profit proposed should be proportional to the risk required by each respective proposer to perform the services. A firm that is more capable could accept a lower profit because the risk is reduced by their knowledge and ability. The return on the level of their efforts is increased.

Negotiations

During negotiations, RTA is barred from technical leveling or technical transfusion. These terms describe situations where a proposer is asked to modify his/her proposal in negotiations to resemble another firm's offer or to include elements of another firm's offer to make the proposal more comparable.

When discussing a proposal in negotiations, RTA should identify areas in the proposal that were weak and ensure that there was no misunderstanding of the Proposer's offer. The proposer may decide to strengthen those areas if requested by RTA to provide a subsequent offer.

Issues that need to be discussed in negotiations should be conveyed to the proposer before negotiations. This allows the proposer to explore ways to improve the offer in those areas before meeting with RTA.

Upon completion of negotiations, each firm in the range of competitive proposals is requested to submit a best and final offer (BAFO) that includes any enhancements that were accomplished during negotiations. Each firm's BAFO is then re-evaluated and re-scored.

It is important to note that the highest scoring proposal does not necessarily represent the best value for RTA. The Project Manager may elect to recommend a proposer that offers the

March 22, 2013

best proposed outcome based on the reasonableness of the proposed price. The evaluators should state their recommendation in writing and provide the original score sheets and comments. The written recommendation and evaluation records are kept in the procurement file for the contract.

If a proposer presents a concept that the RTA did not include in its RFP and the RTA believes the idea is a good one, the RTA needs to determine if re-solicitation is necessary to encourage competition based on a revised scope of services.

How Much Time for an RFP?

How long does all this take? When in final draft, the RFP is reviewed and approved by a number of RTA divisions. At a minimum, it will be seen by Procurement, the Project Manager, DBE, and Legal. Only after the draft is finalized will Procurement place the legal notice for the procurement. It takes at least a three day lead time to place the legal notice and we must provide notice of at least ten working days. RTA must give serious consideration to providing proposers adequate time to prepare an offer and shouldn't limit competition by shortening the period just to expedite the contract award. The decision to hold a Pre-Proposal conference will also add time to the solicitation period as the following need to be considered:

In scheduling the award of the contract, the project manager needs to consider multiple factors and should not be backed against a deadline by failing to allow enough time. Delays will occur because evaluators are not available due to workload, vacation or personal time. The length of time to evaluate proposals is a function of the number of offers received and the number of evaluators. Evaluators need to be prepared to put in enough time to read each proposal and score the proposal based on the evaluation criteria published in the RFP. This may be a simple task or it may be complex depending on the makeup and number of proposals.

The negotiation team does not need to include the evaluation team but it is beneficial since the proposer and evaluators can discuss areas that have been identified as weaknesses and proposers can clear up any misconceptions or revise their proposal to improve on their weaknesses. Consequently, the proposer will be requested to revise their proposal with a best and final offer that will be re-evaluated by the evaluation team. The length of time from the proposal deadline to selecting a firm has many variables and the time allowed to reach the decision shouldn't be limited by an artificial deadline. In negotiations, time is one of the tools the RTA has to its advantage and a proposer that realizes that RTA is backed up against a time deadline will turn that to their advantage. RTA's negotiations are not limited to a single firm and could occur simultaneously with many firms.

You should also include enough time for the contract to be prepared and submitted to the contractor for execution before the Board receives a recommendation to authorize RTA's execution of the contract. Once the Board has authorized the contract award, RTA's ability to negotiate a more favorable offer is greatly diminished. Remember that the

March 22, 2013

recommendation to the Board is public, so the contractor will be aware of the maximum dollar limits authorized by the Board and will not need to negotiate a proposal any better than the cost or terms that have been authorized.

Proposer De-briefing

After execution of the contract, proposers that were not selected are notified in writing of RTA's award decision. Proposers that were not selected may contact Procurement and ask for a debriefing. During the debriefing, they can review the evaluation and scoring of their proposal only. The scores of the other proposers are not disclosed. The names of the evaluators are also not disclosed. Since the intention of the debriefing is to assist the proposer in improving its response to future RFPs, comments from the evaluators are encouraged so that losing proposers know what parts of their proposal can be improved. Evaluators can join in on debriefing sessions if they choose participate.

March 22, 2013

STEP-BY-STEP OF THE RFQ PROCESS

After a purchase requisition is uploaded to Sharepoint and all required approvals are obtained:

1. Procurement will arrange for publication of legal notice and provide you with a copy of the completed RFQ;
2. Procurement will schedule the pre-proposal meeting, if required, and note the date, time and location in the legal notice;
 - o Procurement will mail RFQs to proposers list and distribute the RFQ to firms that request copies;
 - o Procurement will convene the pre-proposal meeting (if required), prepare and distribute meeting minutes, confer with the Project Manager regarding changes or additional information to be made available and issue any addendum needed to revise the RFQ.
3. Procurement will receive and record each letter of interest submitted by the deadline.
4. Procurement will invite the interested firms to submit qualifications for RTA's consideration by a common deadline. Responses will be recorded and distributed to the evaluation team.
5. Procurement will review the responsibility of each firm. Any firm determined to be non-responsible will be removed from further evaluation and documentation of that finding will be placed in the procurement file.
6. Evaluators review and independently evaluate each firm's qualifications statement, providing a rating for each submittal in each evaluation factor contained in the published RFQ. Any question regarding a factor or proposal is referred to Procurement
 - o Each completed evaluation is submitted to Procurement. Procurement tabulates the evaluation and provides copies to the evaluators at the initial meeting of the Evaluators. Procurement arranges for the presentation of qualifications by the firms identified as most qualified if the evaluators feel that presentations will allow them to improve their evaluations;
7. Procurement submits the proposal of the firm identified as most qualified to the DBE Officer.
 - o DBE Officer reviews DBE commitment offered by the most qualified firm and advises Procurement of the acceptability of the firm's commitment.
 - o Procurement reports the DBE commitment of the firm under consideration to the evaluators.
8. Procurement and the evaluators meet to determine the strategy for negotiations with the highest rated proposer.
 - o Procurement arranges a meeting to negotiate with the firm identified as most qualified. The invitation shall indicate the factors that will be discussed in negotiations including cost and DBE participation.
 - o Procurement and the project manager meet and negotiate with the firm that is highest rated. Upon the completion of negotiations, Procurement will set a

- deadline and instruct the firm to submit an offer which is to include any modifications to the proposal agreed to in negotiations, addresses any outstanding issues and the proposed cost to perform the services.
- The offer is compared to the stated scope of services and estimated cost for the procurement to ensure that the initial intent was achieved. The DBE participation included in the offer is referred to the DBE Officer.
 - The DBE Officer calculates the participation offered and advises Procurement and the project manager of the acceptability of the offered DBE participation.
9. If negotiations with the highest rated firm fail to produce a best-and-final offer or if negotiations are terminated by either party before reaching a conclusion, negotiations with the next highest rated firm should be initiated. The project manager will prepare a summary of the terminated negotiations for the procurement file.
 10. The project manager prepares a recommendation which summarizes the evaluation of proposals and negotiations and recommends the award of a contract to the most qualified firm that was willing to successfully negotiate a contract to provide the services at a fair and reasonable cost.
 - The project manager prepares the staff recommendation to the RTA Board and the ordinance, if the total awards by RTA to the recommended consultant during the fiscal year exceed \$100,000.
 - The project manager prepares the scope of services and terms of payment (level of effort) for the contract and submits those to Procurement with any other documents that are to be included in the contract.
 11. Procurement submits the scope of services and payment terms (level of effort) along with the vendor certification to the legal administrative assistant for preparation of the draft contract.
 12. Upon approval by the RTA Board of Directors, the Contract Approval form is prepared and routed with the draft contract for review and approval to the Manager of Procurement and Contracting, the Project Manager and the Deputy General Counsel. In approving the Contract Approval form, the Deputy General Counsel initials the execution page of the contract document. If the project is provided with grant funding, the Contract Approval form is also submitted to the Manager, Grants and Capital Program to acquire funding agency concurrence.
 13. Upon approval of the draft contract and the Contract Approval form, Procurement provides the contract in duplicate to the consultant for execution.
 14. The vendor executes and returns the contract documents.
 15. If the contract is based on grant funds, Procurement confirms that funding agency concurrence has been obtained by the Manager, Grants and Capital Program.
 16. The contracts are submitted to the Executive Director for execution.
 17. One fully executed contract is sent to the Consultant and one is retained for RTA's permanent records. The project manager is copied on the transmittal to the Consultant as notice that the contract has been issued.
 18. The Manager of Procurement and Contracting provides written notification to each proposer that was not awarded a contract of the outcome of the procurement.

March 22, 2013

SECRETARY OF STATE

In order for the RTA to enter into a contract with a vendor, the vendor will need to be registered to do business in Illinois with the Secretary of State. At this point, though not required, it is a good idea to search the Secretary of State's database to ensure that your chosen vendor has registered itself. In order to search the database, go to <http://www.ilsos.gov/corporatellc/> and complete the following steps.

1. You will start at the screen below. Enter in the name of your vendor, or part of the name of your vendor, into the search box and then hit the "Submit" button.

The screenshot shows the search interface on the website [WWW.CYBER.IL.GOV](http://www.cyber.il.gov). The page title is "CORP/LLC - CERTIFICATE OF GOOD STANDING". It is for "JESSE WHITE, SECRETARY OF STATE".

Step 1
CHOOSE THE TYPE OF SEARCH
 Corporate and LLC
 Corporate
 LLC

Step 2
PLEASE CHOOSE A SEARCH METHOD
 By Name (Exact search from beginning of name)
 By Key Word (Word may appear anywhere in name)
 By Partial Word (Beginning of any word in name)
 By File Number

Step 3
ENTER YOUR SEARCH *

Buttons: * = Required fields

Yellow arrows point to the "Submit" button and the search input field.

2. Click on the name of your vendor.

The screenshot shows the search results page for "WOLVERINE". The page title is "CORPORATION/LLC SEARCH RESULTS". The search criteria is "WOLVERINE".

Entity Type	File Number	Corporation/LLC Name
LLC	MST 02549646	WOLVERINE ACQUISITIONS, LLC
LLC	MST 03021866	WOLVERINE ALTERNATIVE INVESTMENTS, LLC
LLC	MST 00632899	WOLVERINE ASSET MANAGEMENT, LLC
CORP	MST 66747901	WOLVERINE BUILDERS, INC.
LLC	MST 00341614	WOLVERINE CAPITAL, LLC
LLC	MST 03279995	WOLVERINE CAPITAL, LLC
LLC	MST 00580627	WOLVERINE CAPITAL MARKETS, LLC
LLC	MST 03889564	WOLVERINE CAPITAL PARTNERS, LLC
CORP	MST 58671533	WOLVERINE CONSTRUCTION, INC.
CORP	MST 65979934	WOLVERINE CONSULTING, INC.
CORP	OLD 65519461	WOLVERINE CONTRACTING COMPANY
CORP	MST 56231471	WOLVERINE CONTRACTING, INC.
LLC	MST 00669408	WOLVERINE CONVERTIBLE ARBITRAGE FUND, LLC
CORP	MST 61802924	WOLVERINE DEVELOPMENT CORPORATION
CORP	MST 54262523	WOLVERINE DISTRIBUTING COMPANY, INCORPORATED
CORP	MST 56702806	WOLVERINE ELECTRIC, INC.

A yellow arrow points to the name "WOLVERINE CAPITAL PARTNERS, LLC" in the search results table.

March 22, 2013

3. At this point, the file detail report will load, giving you the registration details of your selected vendor. Ensure that your vendor's registration status is "ACTIVE".

WWW.CYBER.ILLINOIS.COM

JESSE WHITE
SECRETARY OF STATE

LLC FILE DETAIL REPORT

Entity Name	WOLVERHE CAPITAL MARKETS, LLC	File Number	00580627
Status	ACTIVE	On	08/24/2011
Entity Type	LLC	Type of LLC	Domestic
File Date	07/19/2001	Jurisdiction	IL
Agent Name	JAMES T EASTERLING	Agent Change Date	02/20/2002
Agent Street Address	3500 THREE FIRST NATIONAL PLZ	Principal Office	175 W JACKSON BLVD STE 200 CHICAGO, IL 60604
Agent City	CHICAGO	Management Type	MBR View
Agent Zip	60602	Duration	PERPETUAL
Annual Report Filing Date	06/24/2011	For Year	2011
Series Name	NOT AUTHORIZED TO ESTABLISH SERIES		

[Return to the Search Screen](#) [Purchase Certificate of Good Standing](#)

If your vendor does not appear in the database, or is listed as anything other than "ACTIVE", contact your selected vendor and inform them that they need to register with the Secretary of State. Oftentimes the lack of a registration will not be discovered until legal review during the Contracting phase, and the contract will have to be put on hold until the RTA can confirm that the vendor has registered. As business registration can take upwards of a week, and consequently delay your contract for a week or more, you are encouraged to contact your vendor to get the registration process started if they are not yet registered so that your contract is not delayed.



EXHIBIT D

RTA CERTIFICATIONS AND ASSURANCES

A. CONFLICTS OF INTEREST

The Vendor/Contractor ("VC") certifies, to the best of its knowledge and belief, that:

- 1. No member of the RTA's Board of Directors, RTA Board member's spouse or an immediate family member of the RTA Board member living in the RTA Board member's residence, or RTA employee has, or will have, a direct pecuniary interest in the contract to which this Certification relates.
- 2. No member of the RTA's Board of Directors, RTA Board Member's spouse or an immediate family member of the RTA Board member living in the RTA Board Member's residence, or RTA employee holds more than a 7.5% ownership interest in the VC.
- 3. If any member of the RTA's Board of Directors, RTA Board Member's spouse or an immediate family member of the RTA Board member living in the RTA Board Member's residence, or RTA employee holds an ownership interest in VC of 7.5% or less, that ownership interest shall be disclosed in writing and attached to this Certification

B. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

The VC certifies, to the best of its knowledge and belief, that it and its principals, officers and directors, and any other individuals identified in SECTION B of the separate "VENDOR/CONTRACTOR CERTIFICATION":

- 1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal, state or local department or agency;
- 2. Have not within a three-year period preceding the date of this Certification been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state or local) transaction or contract under a public transaction, or convicted of or had a civil judgment against them for a violation of Federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- 3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (2) of this Certification;
- 4. Have not within a three-year period preceding the date below had one or more public transactions (Federal, State or local) terminated for cause or for default by VC;
- 5. Are in compliance with subpart C of 49 C.F.R. § 29; and
- 6. Are not presently barred from bidding on this contract as a result of a violation of either 720 ILCS § 5/33E-3 (Bid Rigging) or 720 ILCS § 5/33E-4 (Bid Rotating). (If an exception exists as set forth in the Statute, please provide a complete written explanation and supporting documents.)

The VC acknowledges that, pursuant to 720 ILCS § 5/33E-11, making any false statement material to Section B(6) of this Certification constitutes a Class 3 felony under the laws of the State of Illinois. If the VC is unable to certify to the truth of the statements in this Certification, the VC shall attach an explanation to this Certification. **The VC further agrees and warrants that VC will not enter into any third-party contract or subcontract for work on the project to which this Certification relates unless and until such subcontractor provides a written certification to VC in the form set forth herein, and also agrees to require such certification in all sub-contracts.**

C. CONTRACT INCORPORATION, COMPLIANCE, PENALTIES, DISCLOSURE

The VC understands and agrees that:

- 1. The certifications, disclosures, and acknowledgments contained in this Certification will become part of the contract between the VC and the RTA and are material inducements to the RTA's execution of such contract. The VC understands that it must comply with all statutes, ordinances, and regulations on which this Certification is based.
- 2. If the RTA determines that any information provided in this Certification is false, incomplete or inaccurate, any contract or other agreement in connection with which it is submitted may be rescinded or be void at the sole discretion of the RTA, and the RTA may pursue any remedies under the contract or agreement (if not rescinded or void), at law, or in equity, including terminating the VC's participation in the matter to which the Certification relates and/or declining to allow the VC to participate in other transactions with the RTA.
- 3. Some or all of the information provided on this Certification and any attachments to this Certification may be made available to the public on the Internet, in response to a Freedom of Information Act request, or otherwise. By completing and signing this Certification, the VC waives and releases any possible rights or claims which it may have against the RTA

in connection with the public release of information contained in this Certification and also authorizes the RTA to verify the accuracy of any information submitted in this Certification and authorizes the RTA to conduct appropriate background checks regarding the VC.

4. The information provided in Sections A, B and C of this Certification and on the separate "VENDOR/CONTRACTOR CERTIFICATION" must be kept current while the contract related to the Certifications are in effect. In the event of any changes to information provided in Sections A, B and C of this Certification, or on the separate "VENDOR/CONTRACTOR CERTIFICATION", the VC must promptly supplement the appropriate Certification by disclosing the additional information in writing. Further, in the event of any changes in the officers, directors, or principals of the VC while the contract related to this Certification or the separate "VENDOR/CONTRACTOR CERTIFICATION" is in effect, the VC must promptly supplement the appropriate Certification by disclosing the additional information in writing.

D. CERTIFICATION

Under penalty of perjury, the person signing below: (1) warrants that he/she is authorized to execute this Certification on behalf of the VC, (2) warrants that all certifications and statements contained in this Certification are true, accurate and complete as of the date furnished to the RTA, and understands that the provisions of 31 U.S.C. Section 3801 *et seq.* and other related Federal, state or local laws regarding false claims and statements may be applicable thereto.

By: _____
(Signature) (Typed/Printed Name)

(Title) (Date)



DBE OPPORTUNITIES

Section I: Project Manager completes this section, in collaboration with procurement staff as necessary, and delivers form to Procurement Division

Project Manager: _____

Project Name: _____

Description of Project:

List each category of work to be performed on the project (e.g., delivery services, printing, outreach activities, financial services, etc.)

Possible portions of the Scope of Work that could be subcontracted (to DBE or non-DBE firms): (complete for each element of scope that could potentially be subcontracted. Attach additional sheets if more than one area of work could be subcontracted.)

Estimated % of Total Contract Work that could be subcontracted: _____

Best estimate of total percentage of project work that can be subcontracted:

_____ %
(total of percentages above and from any additional sheets attached)
(if no portion of scope can be subcontracted insert 0%)
(if informal procurement, under \$10,000, insert "NA")

Project Manager _____ Date _____
Signature

Completed by Procurement Division:

Requisition No.:

Type of procurement: RFP X RFI/Q _____ IFB _____ Sole Source _____ Emergency _____
Internal (under \$10,000) _____

PROCUREMENT DIVISION DELIVER TO DBE COORDINATOR WHEN COMPLETE.

Section II – DBE Coordinator completes this section and returns form to Procurement

A. Possible DBEs to solicit as Prime Contractors (list names and addresses below, or attach list)

B. Are there sufficient DBEs (no less than 2) to perform work that could be subcontracted (for each element and/or category of work listed on page 1):

Yes ___ No ___

Possible DBEs to solicit for subcontractable scope (list names and addresses below, or attach list):

DBE Goal for Project _____

(sum of % of subcontractable scopes for which DBEs are available)

DBE Coordinator _____
Signature

Date: _____

DBE COORDINATOR RETURN TO PROCUREMENT DEPARTMENT WHEN COMPLETE



SEVERANCE POLICY AND PROCEDURES – EFFECTIVE NOVEMBER 20, 2013

PURPOSE

To (i) ensure consistency in determining whether and when to offer severance payments and (ii) establish the process for entering into separation/severance agreements.

POLICY

A severance pay agreement is a contract between a departing employee and his/her employer. Severance pay is a matter of agreement between an employer and an employee and is offered, as appropriate, when employment is ending. For purposes of RTA policy the terms “severance” and “separation” shall be synonymous. It shall be the policy of the RTA to enter into a severance agreement only when it is in the best interests of the agency to do so.

There is no legal obligation under the federal Fair Labor Standards Act or any other alternative federal or state law to provide severance pay to terminated employees. These agreements are entered into at the discretion of the Executive Director, following the guidelines contained herein.

ELIGIBILITY

Severance pay may be authorized by the Executive Director for full-time and part-time employees who have completed a minimum of six months of continuous service. In certain instances delineated below, consent of the RTA Board of Directors (Board) shall also be required.

PROCEDURES

General

1. The Executive Director must approve all terminations and severance agreements and has the authority to waive, under appropriate circumstances, any policy or procedure contained herein other than the requirement for Board approval or requirements imposed by statute.
2. For all severance agreements with a cumulative, actual or potential value in excess of \$100,000, including the cost of benefits, prior consent of a majority of the Board of Directors shall be required. For all other severance agreements, the RTA shall provide a copy of the agreement to the Chair of the Board’s Compensation Committee within five business days of execution. This notification is for information purposes only.
3. Once it is determined that an employee will be terminated, the Executive Director, in consultation with the Department Manager, the Legal Department (Legal), Human Resources

and/or other Senior Staff as needed, will determine whether a severance agreement may be warranted.

4. Human Resources will provide the General Counsel (or designee) with the job description, and employee demographic information, for analysis and to avoid disparate impact.
5. The General Counsel (or designee) will serve as primary contact for all severance agreement discussions with the employee or the employee's representative.
6. The General Counsel (or designee) shall be primarily responsible for reviewing and/or drafting the proposed agreement and will ensure that the proposed severance agreement contains such terms as are required under existing law.
7. The signed agreement must be received by Legal. Legal will provide Human Resources with the original document to be placed in the employee's personnel file. Legal will maintain a copy of the agreement.
8. Human Resources will provide payroll with the appropriate documentation to initiate payment per the agreement.

Benefits

9. At the time of separation, Human Resources will provide the employee with information on the continuation of benefits.
10. Separation from employment is considered a qualifying event. By law, as of the time of adoption of this policy, employees leaving the RTA have the option of continuing their current group health coverage for up to eighteen (18) months at their expense under the Consolidated Omnibus Budget Reconciliation Act (COBRA).
11. Absent contrary provisions of a severance agreement, if the employee elects not to continue medical and/or dental insurance, his/her medical coverage will end on the last day of the month of separation. Dental and vision coverage will end on the date of separation.
12. Eligible participants may continue current group life insurance coverage using the portability plan or convert to an individual policy.

Payroll

13. Federal Withholdings will be based on the employee's current withholding status on W-4 (pending the Supreme Court decision in *United States v. Quality Stores, Inc.*, we will continue to withhold and pay FICA taxes on severance payments otherwise taxable for federal income tax purposes; on October 1, 2013, the U.S. Supreme Court agreed to consider whether severance payments made to employees who are involuntarily laid off are subject to Social Security and Medicare payroll (FICA) taxes.)
14. Garnishments will be withheld based on directive provided by Legal.

15. State income withholding tax will be determined based upon state law (in most cases Illinois law will apply).
16. Medical insurance premiums including health, dental and vision will not be withheld, unless otherwise provided in the severance agreement.
17. Flexible Spending Account will not be withheld.
18. 401k and 457 and deferred compensation will not be withheld.
19. 401k and 457 loan payments will not be withheld.
20. Life Insurance premiums will not be withheld unless otherwise provided for in the severance agreement.
21. All earned and unused vacation time will be paid to the employee minus applicable deductions. Per Section 5.4 of the Employee Handbook, employees will not be paid for unused PTO or Reserve Sick days upon termination.

34

- Recipients
- Applications
- Execution
- Project Management
- Funding Adjustments
- Civil Rights
- DBE Reporting
 - New
 - Existing
- TEAM Administration
- Dynamic Query
- Charter Registration
- Static Reports
- TEAM Documentation
- ARRA Reporting: 1201
- Security Questions/Answers
- Help Desk Information
- Exit

Add DBE Uniform Report

* = Required, all fields are required except Grant Number

Recipient: 1898-CHICAGO RTA

Fiscal Year: * 2013

Grant Number(s):
(separated by commas;
 ex. DC-01-12340 or DC-01-1001-01)

Status: * New/Draft

Reporting Period: * Semiannual: Report due June 1

Annual DBE Goal(s):

Race Conscious Goal: * 17.00 %

Race Neutral Goal: * 2.00 %

Overall Goal: * 19.00 %

Awards/Commitments Made During This Reporting Period:

	A. Total Dollars	B. Total Number	C. Total to DBEs (dollars)	D. Total to DBEs (number)	E. Total to DBEs/Race Conscious (dollars)	F. Total to DBEs/Race Conscious (number)	G. Total to DBEs/Race Neutral (dollars)	H. Total to DBEs/Race Neutral (number)	I. Percentage of Total Dollars to DBEs
8. Prime Contracts Awarded This Period:	\$3272405	5	\$0	0	\$0	0	\$0	0	0%
9. Subcontracts Awarded/Committed This Period:	\$369000	6	\$369,000	6	\$369,000	6	\$0	0	100%
Total:			\$369,000	6	\$369,000	6	\$0	0	11%

DBE Awards/Commitments This Reporting Period Breakdown By Ethnicity & Gender:

	A. Black American	B. Hispanic American	C. Native American	D. Subcont. Asian American	E. Asian-Pacific American	F. Non-Minority Women	G. Other	H. Total (number)
10. Total Number of Contracts: (Prime and Sub)	2	0	0	0	0	4	6	
11. Total Dollar Value:	\$128000	\$0	\$0	\$0	\$0	\$241000	\$369,000	

Actual Payments on Contracts Completed This Reporting Period:

	A. Number of Prime Contracts Completed	B. Total Dollar Value of Prime Contracts Completed	C. DBE Participation Needed to Meet Goal (dollars)	D. Total DBE Participation (dollars)	E. Percentage of Total DBE Participation
12. Race Conscious:	0	\$0	\$0	\$0	0%
13. Race Neutral:	0	\$0	\$0	\$0	0%
Totals:	0	\$0	\$0	\$0	0%

35

UNIFORM REPORT OF DBE COMMITMENTS/AWARDS AND PAYMENTS

Submitted to: FTA - Vendor Number: 1888
 Grant Number:
 Fiscal Year: 2013
 Reporting Period: Semiannual: Report due Dec. 1
 Name and Address of Recipient: 175 W. Jackson ST, SUITE 1550, CHICAGO, IL 60604

Annual DBE Goal(s):	Race Conscious Goal: 17%			Race Neutral Goal: 2%		Overall Goal: 19%			I. Percentage of Total Dollars to DBEs
	A. Total Dollars	B. Total Number	C. Total to DBEs (dollars)	D. Total to DBEs (number)	E. Total to DBEs/Race Conscious (dollars)	F. Total to DBEs/Race Conscious (number)	G. Total to DBEs/Race Neutral (dollars)	H. Total to DBEs/Race Neutral (number)	
8. Prime Contracts Awarded This Period:	\$1,420,804.00	3	\$0	0	\$0.00	0	\$0.00	0	0.00%
9. Subcontracts Awarded/Committed This Period:	\$0.00	0	\$0	0	\$0.00	0	\$0.00	0	0.00%
Total:									
DBE Awards/Commitments This Reporting Period-Breakdown By Ethnicity & Gender:									
10. Total Number of Contracts: (Prime and Sub)									
11. Total Dollar Value: Completed	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0.00%
Actual Payments On Contracts Completed This Reporting Period:									
12. Race Conscious:	0	0	0	0	0	0	0	0	0.00%
13. Race Neutral:	1	1	1	1	545,787.00	1	\$0.00	\$0.00	0.00%
Totals:	1	1	1	1	545,787	1	\$0.00	\$0.00	0.00%
Submitted By:	Lillian Wallace								
Phone Number:	3129133213								
Signature of Authorized Representative:	<i>Lillian J. Wallace</i>								
Fax Number:	3129133216								

36

Regional Transportation Authority Severance Agreements from 2009 to date:

Date	Amount
9.28.09	- \$56,867.00 - 7 months COBRA coverage
12.28.10	\$42,000.00
3.14.11	\$24,741.62
9.2.11	\$41,243.12
10.11.11	\$16,473.23
12.2.11	\$17,035.48
12.9.11	\$88,814.23
9.5.12	\$7,031.53
10.18.12	\$27,059.52
11.20.12	\$15,260.38
1.16.13	\$15,000.00
4.24.13	\$5,125.00

**Statement by Alexander Clifford to
RTA Board On July 17, 2013**

I'm happy to be here and happy to answer your questions, so far as I can under the limited consent Metra has given me.

I want to be as helpful to the RTA as I can.

I also want to avoid having to litigate a dispute with Metra over any claim Metra might make, whether or not correct, that I have violated the Separation Agreement by answering your questions.

My lawyers and Metra's lawyers have differing views over what I can say under that Agreement. Because the RTA has oversight of Metra, my lawyers believe that the Separation Agreement permits me to answer any of your questions, other than those that would disclose the contents of privileged communications with lawyers for Metra. Metra takes a much narrower view.

On Monday Metra wrote that it had no objection if I answer the RTA's questions at this hearing limited to my April 3, 2013

memo to the Board. I'm prepared to do that. I stand behind my April 3 memo. You have the memo, so I won't repeat what's there now.

If you ask me a question that I cannot answer today because of the ground rules Metra has set, I would be happy to answer if Metra consents. I have nothing to hide.

Let me answer, to the extent that I can, several questions that have been asked in the last few weeks.

There have been suggestions that I did not reveal some of the events I described in the April 3 Memo until shortly before I wrote the memo.

I can address that issue because it is addressed, in part, in the April 3 memo. The claim that I kept silent is not accurate, and the Memo explains why it is not accurate.

With regard to the requests of Speaker Madigan and Representative Arroyo for action relating to jobs at Metra, I reported those facts to Board members shortly after they occurred

in 2012, and asked for guidance. This is confirmed, for example, in the first paragraph on page 3 of the April 3 memo.

Metra Board member Jack Schaffer also confirmed this on the Chicago Tonight program on Monday night. Mr. Schaffer said, and I quote:

“Every allegation in that memo, Alex Clifford brought to the Board at the time the incident happened, explained them, and then in one meeting, actually said, wait a minute when you guys hired me, have you changed your mind? And we said we had not.”

So I did report to the Board. Because most of the Board members supported my position, nothing improper was going to occur. There was nothing to report to anyone outside of the Board.

The events related to minority subcontractors for the Englewood Flyover project are also discussed in the Memo. I made those matters known to the Board at the time. See the last

paragraph on page 5 and the first paragraph on page 6 of the April 3 memo.

Metra has deleted some of the material in the last paragraph on page 5 from the copy it made public last Friday. If the RTA wants further information on this subject it could ask Metra to provide the omitted materials. A portion of the omitted material was printed in a newspaper article published yesterday.

Metra has made public statements that I tried to avoid the process for evaluating my performance earlier this year. It has also suggested that Metra somehow couldn't let me serve out the balance of my contract. Those statements are not correct.

I can address them because the evaluation process is covered in my April 3 memo. I didn't want to leave this job. I loved it. On page 1 of my memo I wrote:

"I am prepared to continue to work diligently and in good faith for Metra, pursuant to my employment agreement and applicable law,

whether or not the Board ultimately decides to renew my employment agreement.”

On Page 7 I explained that I wanted a fair evaluation process, not one that was a sham because Mr. O’Halloran and Mr. Huggins had already decided to replace me with Alex Wiggins.

So I asked for an evaluation to be conducted by other Board members and that those two Board members not participate in the vote on renewal.

I believe that a fair review process would have resulted in my contract being renewed. I was willing to let the chips fall where they may.

Mr. Schaffer stated his opinion on whether my contract would be renewed on Monday night on the Chicago Tonight program. He said:

“I will tell you there is no doubt in my mind if Alex Clifford had acceded to these political requests he would now have another 3 year contract and a nice pay raise.”

Metra and others have made negative public statements about my performance. Unfortunately, I cannot respond to those statements under the limited consent Metra has provided, although I would very much like to do so.

But I can provide you with copies of four recent letters about my performance as CEO from four current board members. Those board members gave me the letters to use in my efforts to find a new job. The letters are not subject to the confidentiality arguments Metra has made.

Those letters from Board members Darley, DeGraff, Mulder and Widmer are attached to this statement. They make very positive statements about me, for which I sincerely thank each of them. I also thank Jack Schaffer for his supporting remarks.

I can also direct you to positive statements by Metra Board members about my performance as Executive Director set forth in the public Metra board minutes 2011 and 2012. I have attached copies to this statement.

Questions have been asked about why to include confidentiality provisions in the Separation Agreement. Without Metra's consent I will not be able to answer those questions or provide documents that address that issue, or other communications exchanged during the settlement process.

Questions have been asked about whether the payments under the Separation Agreement were intended to be in exchange for keeping silent. Without Metra's consent I will not be able to answer that question or provide documents that address that issue.

People have asked whether the events described in the April 3 memo are all the possible improprieties during my time at Metra. Without Metra's consent I will not be able to answer that question either.

Now I will answer your questions, to the extent that I can. I may ask to confer with my lawyers, Michael Shakman and Edward Feldman, before responding to specific questions, if I feel that I need their guidance in deciding whether I can answer the question without Metra's consent.

**METRA BOARD MEMBERS'
LETTERS OF RECOMMENDATION FOR
ALEXANDER CLIFFORD**



W.S. Darley & Co.

325 Spring Lake Drive, Itasca, IL 60143 USA

Phone 630-735-3500 Fax 630-735-3560

pauldarley@darley.com

June 14, 2013

To Whom It May Concern:

Please let this letter serve as a letter of recommendation for Alex Clifford.

I've served on the Metra Board of Directors since April of 2011. During this time, Alex served as the Executive Director of the organization.

I have found Alex Clifford to be hard-working, driven, goal oriented and ethical. He is a strong leader and understands what it takes to manage an organization work efficiently.

I've been impressed by his ability to deflect praise back to his coworkers while ensuring accountability and a cohesive team environment.

If you should have any questions or wish to discuss this further, please do not hesitate to contact me.

Sincerely,

Paul C. Darley
President & CEO

CARMELL CHARONE WIDMER MOSS & BARR, LTD.

ATTORNEYS AT LAW
ONE EAST WACKER DRIVE, SUITE 3300
CHICAGO, ILLINOIS 60601
TEL: (312) 236-8033
FAX: (312) 236-6774



June 21, 2013

To Whom It May Concern:

I write to recommend Alexander D. Clifford for an executive leadership position in transportation.

From February 2011 through June 2013, Mr. Clifford was the CEO/Executive Director of Metra, a regional transportation agency in Chicago. Mr. Clifford was an agent of change, accomplishing much for Metra. Overall, his progressive leadership resulted in stability following a tumultuous period prior to his hire.

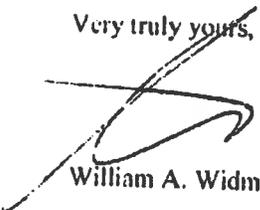
Some of Mr. Clifford's major accomplishments include resolving a \$60 million operating enterprise fund structural deficit and a 2011 \$18 million budget deficit. Working closely with the FTA, Mr. Clifford saved the agency from losing nearly \$11 million that was in threat of being pulled back soon after his arrival as a result of a poor federal audit before he was hired.

Under Mr. Clifford's leadership, Metra is a significantly more transparent agency today. Mr. Clifford renewed Metra's commitment to being a customer-focused public agency and identified new opportunities for the public to communicate to Metra. Mr. Clifford also has brought Metra forward in terms of technology. Over the past year, Mr. Clifford has lead the agency to its first strategic capital business plan and he has provided a road map that will lead to full compliance with a state law requiring Metra to have a regional fare media by early 2015.

Mr. Clifford has brought great focus to the challenges of a \$7 billion shortfall in funding necessary to keep the agency's infrastructure in a state of good repair over the next decade and he has advanced Metra's compliance with the federal law that requires new safety technology known as positive train control to be implemented on the Metra system.

I therefore recommend Mr. Clifford strongly and without reservation.

Very truly yours,



William A. Widmer, III

To Whom It May Concern:

I write to recommend Alexander D. Clifford for an executive leadership position in transportation.

From February 2011 through June 2013, Mr. Clifford was the CEO/Executive Director of Metra, a regional transportation agency in the City of Chicago. I am a member of the Metra Board of Directors, serving since 2005. I was also the Mayor of the Village of Arlington Heights for 20 years. Mr. Clifford was a change agent, and accomplished much for Metra. Overall, his progressive leadership resulted in stability following a tumultuous period prior to his hire.

Under Mr. Clifford's Leadership, Metra is a significantly more transparent agency today. Mr. Clifford renewed Metra's commitment to being a customer-focused public agency, and identified new opportunities for the public to communicate with Metra.

Some of Mr. Clifford's other major accomplishments include resolving a \$60 million operating enterprise fund structural deficit and a 2011 \$18 million budget deficit.

Mr. Clifford has brought great focus to the challenges of a \$7 billion shortfall in funding necessary to keep the agency's infrastructure in a state of good repair over the next decade, and he has advanced Metra's compliance with the federal mandates, that require new technology known as positive train control to be implemented on the Metra system.

I therefore recommend Mr. Clifford strongly and without reservation.

Sincerely,


Arlene J. Mulder



June 21, 2013

To Whom It May Concern:

We write to recommend Alexander D. Clifford for an executive leadership position in transportation

From February 2011 through June 2013, Mr. Clifford was the CEO/Executive Director of Metra, a regional transportation agency in Chicago. Mr. Clifford was an agent of change, accomplishing much for Metra. Overall, his progressive leadership resulted in stability following a tumultuous period prior to his hire.

Some of Mr. Clifford's major accomplishments include resolving a \$60 million operating enterprise fund structural deficit and a 2011 \$18 million budget deficit. Working closely with the FTA, Mr. Clifford saved the agency from losing nearly \$11 million that was in threat of being pulled back soon after his arrival as a result of a poor federal audit before he was hired.

Under Mr. Clifford's leadership, Metra is a significantly more transparent agency today. Mr. Clifford renewed Metra's commitment to being a customer-focused public agency, and identified new opportunities for the public to communicate to Metra. Mr. Clifford also has brought Metra forward in terms of technology. Over the past year, Mr. Clifford has lead the agency to its first strategic capital business plan and he has provided a road map that will lead to full compliance with a state law requiring Metra to have a regional fare media by early 2015.

Mr. Clifford has brought great focus to the challenges of a \$7 billion shortfall in funding necessary to keep the agency's infrastructure in a state of good repair over the next decade and he has advanced Metra's compliance with the federal law that requires new safety technology known as positive train control to be implemented on the Metra system.

We therefore recommend Mr. Clifford strongly and without reservation.

Thank you.

Don A. De Graff
President, Southeast Region
MIB Financial Bank, N.A.
Metra Board Member

**EXCERPTS FROM MINUTES OF METRA
PUBLIC MEETINGS OF BOARD OF DIRECTORS'
STATEMENTS REGARDING
ALEXANDER CLIFFORD'S PERFORMANCE**

MINUTES OF A PUBLIC MEETING OF THE BOARD OF DIRECTORS OF THE COMMUTER RAIL DIVISION OF THE REGIONAL TRANSPORTATION AUTHORITY

The Board of Directors of the Commuter Rail Division of the Regional Transportation Authority met in a public session for a Meeting of the Board on Friday, October 14, 2011, at 9:00 a.m. in the Metra Board Room at 547 West Jackson Boulevard, Chicago, Illinois, pursuant to notice.

The roll was then taken.

ROLL CALL

Present: Larry A. Huggins, Vice-Chairman
Paul C. Darley
Don A. De Graff
James C. LaBelle
Mike W. McCoy
Brad S. O'Halloran
Jack Partelow
Willis E. Pennington, Jr.
Jack Schaffer
William A. Widmer, III

Absent: Arlene J. Mulder

Item 2: Public Comment

Vice-Chairman Huggins called Reverend Booker Vance to come up and provide public comment. Ms. Linda Thisted stated that she would like to speak first. Ms. Thisted said that she is the Chair of the SOUL Transit Task Force. SOUL stands for South Siders Organized for Unity and Liberation. She explained that she was at the Board Meeting two and half years ago, and although the Chairman and Executive Director of Metra have changed, some things seem to be the same. She continued that SOUL is here today to object to not just the average proposed fare hike of 28%, but to the structure of those hikes. The fare hikes proposed at the September Board meeting had percentage hikes for Zone A and B monthly riders of 58% and 67%, respectively. This was more than twice the rate for Zone C and above. Since most Zone A and Zone B stations are in the City of Chicago, city riders are being asked to bear an unfair share of the burden, which is why SOUL is here today.

She continued that perhaps the inequitable fare structure was unintentional, but unfortunately Metra has a long and sorry history of mistreating the South side. One example was the first time SOUL met with Metra management about the Gold Line. Metra's primary focus was to come up with reasons as to why it would not work. She said that simple things, like trash pick up at stations have been almost impossible, and to this day the city stations are ignored. She added that when she was handing out flyers at the 93rd Street Station last week, she overheard how much broken glass there was at the 93rd Street parking lot and although people called to get it cleaned up, it was to no avail.

She stated that although the inevitable fare hikes for city stations may have been unintentional, none of them on the South side were surprised. She pointed out that when you look at the structure of the Metra Board, ten of the eleven seats are being held by suburban representatives, so it is inevitable that the suburbs will be favored over the city. She hopes that the Metra Board will equalize the fare hikes, although this may not be enough. She asked why there were no service cuts on the table to balance the budget, or specific plans to capture the fare revenue of riders who

**APPROVED BY THE
METRA BOARD OF DIRECTORS
ON FRIDAY, NOVEMBER 11, 2011**

Director De Graff commented that in addition to what Director Widmer has said and what Mr. Clifford had to offer, he has had the opportunity to be in municipal government now for twenty years and in the business world for forty. One of his obligations over those periods of times is to be able to find good leadership and it is not always easy to do. However, once you find good leadership you need to be able to retain good leadership. He continued that Metra is in a period of transition and it is his understanding that we have at least four officer positions that need to be taken care of. In addition to the Executive Deputy Director, there is the Communication and Marketing Officer Position, the Audit and Compliance Officer, and a Director of Real Estate and Contracts that still need to be filled.

He concluded that this being said, knowing the history of what has happened over the last two, three, five years in this transition, Metra has a proven expert in the rail industry and he is already proven in the last six months that he knows what he is doing and has the expertise and the credentials to provide critical advice. It would be foolish for the Board not to move forward on this contract, given that Mr. Clifford is offering up a four month extension, and there is a cap on the contract, it only seems reasonable that we move forward.

Director Schaffer stated that about this time last year, the Board was in the process of hiring a new Chief Executive Officer. He believes that Metra hired a pretty decent headhunter, who did a nationwide search. He continued that although he will not speak for the rest of the Board members that participated, he was a little surprised at how little talent there was out there, how much other people were paying, and he thinks that the Board hit a home run with Mr. Clifford. He will say, though, that there is a very limited talent pool out there and he thinks Dr. Grimes was a real find for Metra. He stated that the only thing that Mr. Clifford has disappointed him on this year was his inability to talk Mr. Grimes into staying with us permanently, although, he suspects that salary has something to do with, and possibly his wife. He understands both of those things. His experience, though, with working with Dr. Grimes and talking to staff and others that have worked with him has been that we have gotten our money's worth, and we would be foolish, particularly before we get these other positions filled to not continue.

Director De Graff stated that we have established at this point momentum and have an established relationship. He said that the Board needs to move forward. Director LaBelle agreed.

Vice-Chairman Huggins added that he would like to know if the Board should call him "Avery" or "George". He said that he was really kind of shocked with he found out that his real name is "George", although he has been calling him Dr. Avery Grimes.

Director Darley stated that he shares the sentiments of the other Board members, and applauds Mr. Clifford on his selection and the great job that has been done by Mr. Clifford and Dr. Grimes as a team. He continued that while the timing is difficult with fare increases and all, obviously the hole that Metra has to dig ourselves out of, it was necessary for Mr. Clifford to have help, particularly in light of vacancies. His question is relative to the end of February when this new contract extension expires. He asked if Mr. Clifford is confident at that point that this would be the end of Dr. Grimes' contract. Mr. Clifford responded that he has committed this to the Board. This is the last extension, and will meet that at the end of February.

Director O'Halloran remarked that there has been much made of this situation, and earlier there was discussion about Accenture and the audit being performed by KPMG. He continued that Dr. Grimes is a very unique type of resource. He thinks that he is probably the best resource that Metra could have found in that short period of time, and was specifically the type of tool this agency needed. He explained that if Dr. Grimes was coming out of the Accenture world or some other type of consulting situation, this would not even be an issue in his opinion. Dr.

MINUTES OF A PUBLIC MEETING OF THE BOARD OF DIRECTORS OF THE COMMUTER RAIL DIVISION OF THE REGIONAL TRANSPORTATION AUTHORITY

The Board of Directors of the Commuter Rail Division of the Regional Transportation Authority met in a public session for a Meeting of the Board on Friday, January 20, 2012 following the NIRCRC Special Meeting of the Board. The meeting was held in the Metra Board Room at 547 West Jackson Boulevard, Chicago, Illinois, pursuant to notice.

The roll was then taken.

ROLL CALL

Present: Larry A. Huggins, Vice-Chairman
Paul C. Darley
Don A. De Graff
James C. LaBelle (arrived at 9:30 a.m.)
Mike W. McCoy
Arlene J. Mulder
Brad S. O'Halloran
Jack Partelow
Willis E. Pennington, Jr.
Jack Schaffer
William A. Widmer, III

Item 2: Public Comment

Vice-Chairman Huggins asked if there was anyone signed up to provide public comment. No public comment was provided.

Item 3: Approval of the Minutes from the December 16, 2011 Board Meeting

Director Mulder moved and Director McCoy seconded to approve the minutes from the December 16, 2011 Board meeting. The motion carried with ten ayes.

AYES: Directors' Darley, De Graff, McCoy, Mulder, O'Halloran, Partelow, Pennington, Schaffer, Widmer and Vice-Chairman Huggins

Item 4: Approval of Executive Session Minutes and the Board's determination to Release Certain Minutes, or portions thereof, of Meetings held in Executive Session and Retain as Confidential, the Remaining Minutes, or portions thereof

Iain Johnston, Board Counsel, stated that under Section 2.06 of the Open Meetings Act, the Board is required to review its executive session minutes twice a year to determine what information could be released as non-confidential. He said that he has circulated those provisions of the executive session minutes that he believes can be released for the Board Member's comments and approval. He would be glad to answer any questions that the Board may have. Director Widmer moved, and Director De Graff seconded the motion. The motion carried with ten ayes.

AYES: Directors' Darley, De Graff, McCoy, Mulder, O'Halloran, Partelow, Pennington, Schaffer, Widmer and Vice-Chairman Huggins

**APPROVED BY THE
METRA BOARD OF DIRECTORS
ON FRIDAY, FEBRUARY 17, 2012**

WHEREAS, the current bidding regulations are not found in any one ordinance, but are comprised of a series of Ordinances, including: MET 94-18, MET 96-13, MET 95-27, and MET 02-33 (collectively, "Prior Ordinances");

WHEREAS, the Board desires to promote transparency, efficiency, and clarity in the execution and administration of the bidding regulations by restating, updating, and consolidating Metra's internal bidding regulations;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD AS FOLLOWS:

1. The bidding regulations attached hereto are hereby adopted, and shall become effective May 1, 2012.
2. The attached bidding regulations shall supersede the Prior Ordinances and take precedence and control over any previously enacted conflicting ordinances, regulations, rules, or policies.
3. The Executive Director/Chief Executive Officer is hereby authorized to take such actions as he deems necessary to implement and administer this Ordinance and the attached regulations.

Item 18: Chief Executive Officer's Report

Mr. Clifford stated that he would like to start off by pointing around the room and showing the Board that in 2012, Metra has become more audience friendly. In the past the audience members struggled to watch what was going on in the way of our Power Point presentations. As the Board can see, some modifications have been made to the Board Room. A screen has been added on one side of the Board Room, and a flat screen TV has been added on the other side of the room to allow audience members easier convenience to watch the Power Point presentations. He said that this was done as cheaply as possible, including, making sure that the TV was the cheapest grade, which is a plasma-type TV.

He continued that he would also ask Mr. Robert Carlton to stand. Mr. Carlton is the new Chief Communications and Marketing Officer, and he is very proud to announce his appointment. He explained that Mr. Carlton has 20-plus years of communications, marketing and operations experience with industry giants such as Intel, McDonald's Corporation, Ford Motor Company, GTE, and Owens of Illinois. He stated that at McDonald's, Mr. Carlton directed the US external communications and brand building program. He was the Director of Consumer Marketing at Intel. Mr. Carlton was the Manager, Web Strategy and Manager, Customer Relations retention at GTE, and Operations Manager at Ford Motor Company. Mr. Clifford added that Mr. Carlton also founded Zimini, Incorporated, a company that develops digital promotion and marketing software. He said that Mr. Carlton is a graduate of Missouri State University with a Bachelor of Science Degree in Marketing, and he would like to welcome him to the senior team.

Mr. Clifford explained that he would also like to take a moment and announce that earlier in the meeting the Board approved the appointment of Mr. Jeff Barton as head of the Labor Relations department. He said that he wanted to publicly announce what an outstanding leader Mr. Barton is, as he has had the pleasure of working with him in his temporary leadership capacity over the last year, and certainly knows all about Metra's labor contracts. This is a high profile for Metra, as we have two contracts up already and about 14 contracts coming up next year. Metra will be thick in negotiations over the next couple of years. Mr. Clifford added that Mr. Barton is a good leader and a good person to take us through this process.

He said that he would now like to review Metra's FY11 accomplishments and FY12 goals and objectives. For 2011, he is characterizing it as the year of achievement, a year of challenges and a year of change. In 2011, Metra provided 82,000,000 passenger trips, with 703 trains each day, and 229,000 revenue service hours. Metra is a 365 day operation, has 240 stations, 1,156 rail vehicles, and 1,155 miles of track. Metra's system on-time performance

for 2011 is 93.6%. In addition to these major accomplishments, staff has been surveyed for a list of all of the things that have been accomplished throughout the year. He pointed out that he will come back later in the presentation to talk a little about how that survey took place. First he will discuss the outcome of the review of accomplishments of the agency.

He explained that it is important to point out at the onset, this is not a "me" thing. This is not about the CEO. This is really a "we" thing. This is about the Board, about the team that is in this room behind him, and all of the folks on all of the floors in this building and scattered across the six-county region that supports this system and are part of the Metra team. He continued that in 2011, we have ethics and transparency as core principles. We received Board guidance on major policies. He said that we have corrected the structural financial deficit, increased consumer outreach and engagement, and developed employee outreach and engagement. The program has made organizational transformation and we are modernizing business practices.

He continued that breaking this down developmentally, he would start with the Metra Board. The Board addressed the financial deficit, created fare principles, structures and policies, and improved the procurement process, as exemplified by the adoption of the bidding regulations today. The Board strengthened the audit and compliance process, and took ethics and transparency to a new level. He would like to thank the Board for this.

He stated that with senior leadership, we have had a management self-assessment of senior staff. There has been an organizational transformation. The CEO and senior leadership have been involved in employee engagement. For example, Mr. Hardwidge, and his various team members, as well as himself have met with every working group within this building over the last year. He said that we have had sessions broken down by departments, until everyone in this building was in this room for meetings, and have created quality time so that he could listen to employee concerns. He thinks that it was a wonderful interactive process. He continued that they did the same thing by going out in the field. He said that he completed his objective when he came aboard, which was for him and his team to get out to all of the offsite facilities and to meet with the various team members across this agency at all levels. We have accomplished that.

Mr. Clifford said that we have instituted senior leadership bimonthly meetings. There is no longer this small inner circle. The entire team meets twice a month around the table dealing with good, cross functional interactions, and departmental updates that are a value to the team in the room, and we provide for an interactive process that welcomes debate, good debate. He continued that they do not leave any stone unturned when they make major decisions, and have begun a leadership skills development and enhancement program. He explained that Ms. Washington spoke a little about the key positions. Several key positions have been filled like General Counsel, Chief Financial Officer, Audit and Compliance Officer, which the Board appointed today, Chief Communications and Marketing Officer, the Ethics Officer, and the Capital and Strategic Planning Officer. There were a lot of positions to fill, and he is proud to say that we are almost done, with one more to go. The Apprentice Program has been strengthened and continues. We have an open recruitment process and the Classification Compensation study has been started.

He continued that in Finance and budget, we developed a new budget process, and went line by line through that budget with all the departments. This is something new in the agency, and resulted in about \$17.6 million in savings for the FY12 budget, including an FY12 fuel lock that resulted in \$7 million in savings for 2012. We accomplished the 2011 "Defeat the Deficit" program, which resulted in \$18.5 million in various operational and administrative savings that we had to find in 2011 in order to balance the budget. There was employee involvement in the cost savings by soliciting employee recommendations from across this agency, not just within this building but including outlying facilities. In the way of customer outreach, we have introduced "Cliff Notes" which is a column that he provides in the On the Bi-Level each month dealing with different subject matter. We also had a successful Make-A-Wish event, and

have more customer surveys that he believes this agency has ever done in the past. We continue to grow and emphasize the e-alerts, have introduced Twitter and enhanced the Metra website. Also, we have had senior leadership outreach. He said that this is important, and Mr. Hardwidge touched on this a little bit. When we had the Heritage Corridor incident, Mr. Hardwidge and himself, along with other senior leadership went over to Union Station and met with the customers to hear their concerns, and to explain the challenges that we were faced with. He added that they also explained to the customers what we are trying to do to resolve the issues on the CN corridor and the Heritage Corridor. In addition, the same attention was applied to all of the other major incidents. Again, this is something that is new to this agency, and we have had some good responses from the customers having the opportunity to talk to the CEO or to the Deputy Executive Director and operations staff.

He stated that the ADA outreach committee is ongoing, strengthened and doing well. The Citizens Advisory Board Committee is back up and running, meeting regularly and fully staffed. He knows that the Board is proud of this, and he thinks that this is a major accomplishment for the organization in FY2011. On the mechanical side, the Amerail 30 coaches have gone through mid-life rehabs, and this was done in house. We have completed the design phase of the highliner cars, and the rubber tire fleet management has been reorganized. The emissions have been reduced on our locomotives. The filter that the Task Force group came up with has been reducing black carbon within our vehicles by 75%. The IBM maintenance and tracking warranty system is ongoing in its implementation and moving forward, and we are introducing mechanical key performance indicators.

Mr. Clifford said that on the transportation side, we have started a new cooperative leadership program with the UP and the BNSF. Mr. Hardwidge and Mr. Orseno, and his various team members at various levels meet with their colleagues at the same levels throughout those two organizations to work on conductor appearance, policies, rules, on time performance, and any other issues that we share between these services. He continued that they have streamlined the customer complaint handling by consolidating it into a single database. The fare collection program has been enhanced, and on the transportation side, introduced new key performance indicators. Also in 2011, the quiet car was introduced.

He continued that Mr. Lorenzini spoke about the engineering side. However, when you look at the actual list, it is amazing what was accomplished in this agency over the course of the year. Something that he is very proud of, and he is sure they are as well, are the lowest number of departmental injuries in 24 years. As the Board is aware, the Union Pacific North line project has been started. He said that there were a lot of issues in the beginning, and it is something to be proud of that it is up and running. Engineering crews installed 16,200 feet of curved rail, 41,000 crossties, 1,000 switch ties and worked on 16 grade crossings. They surfaced 90 miles of track, and rebuilt 2,980 feet of platform. The Engineering department had 17 stations and parking projects, design and construction. They had 13 civil structural projects, 16 construction department projects, 11 capital signal projects, 36 electrical design and construction projects, and 15 electrical signal projects. Also, they worked on the second train warning system on the UP/West line.

He stated that on the information technology side, we established a corporate wide technology team to deal with managing and ensuring that as we introduce new technology, we have this well coordinated. He said that we don't have people going off rogue buying stand alone equipment. Whatever we purchase or do is coordinated, it is prioritized and it will interface with the systems we have in place. This is our insurance policy to make this happen. The revenue accounting system has been implemented, and the time keeping system has been expanded. In 2011, we have started the RFP process, and initiated the first year of funding in the course of the 2012 budget. Also updated, which is something very dear to his heart, was the Outlook Enterprise system. This is a big leap for Metra to finally be where everybody else has been for the last several years.

Mr. Clifford explained that in the law, ethics, real estate, claims and marketing departments, managers were trained, which is ongoing, in progressive discipline. We updated and enhanced ethics policies, and provided ethics compliance training and reinforcement. They revised Metra's bidding regulations, reduced the NIRCRC non-derailment claim payout by \$1.9 million, lowered employee practices liability insurance costs by 26%, increased real estate revenues by over \$497,000, and reduced non-contract health and benefits insurance costs. In the Marketing area, staff increased the targeted marketing programs relating to corporate relocation and new resident program. Also, we have increased the number of customer surveys in order to get value of feedback from our customers and put it to good use. He said that on the police side, we have received Department of Homeland Security grants for special operations, K-9 and police overtime. We have outreach training for railsafe and accident investigation, onboard and platform security presence, and have taken great advantage of the TSA Air Marshall partnership, which is no cost to Metra. In the Ticketing and Stations area, we have the point of sale implementation. Staff came up with a great program for avoiding the stockpiling of ten-ride tickets with the fare change program that has proven to be highly successful. Of course this is in concert with that fare change program, we had to update a lot of stuff that you don't see in the back office relating to the ticket vending machines, the ticket stock, which has been highly successful.

He explained that on the procurement and DBE side, we have updated Metra's procurement procedures, and of course this is ongoing, but it has been initiated and is well underway. He stated that we have reduced contract extensions, and have updated administrative policies. He continued that there have been new DBE criteria, and policies and procedures have been created and updated. The DBE department has held in house workshops, which Ms. Thomas has presented to the Board. Also, we have exceeded our DBE goal from 21% to 24%. Some of the accomplishments on the external relationships and outreach included spending a lot of time meeting with people across the six-county region. The outreach program will accelerate in 2012. He said that in 2011 we overcame adversity with the blizzard of last February and the CN derailment, which was a major incident for Metra to overcome.

Mr. Clifford stated that he would like to talk a little bit about how these accomplishments came from our team members. On January 11, senior management, mid-management and junior level employees were invited to a meeting in the Board room. There were approximately 50 employees, and we were able to get over 670 comments in a very tight time frame. This was a very regulated exercise, and the employees did not know they were coming until about 15 minutes before the meeting. He said that we did not give them a chance to think about it, and never put it on their calendar. Staff was tasked individually with identifying things that were accomplished, whether it be on an individual basis in your department, corporate wide, system wide, whatever it may be they were asked to write it down. Staff was then asked to put up their sticky notes on the walls in the Board room, and the walls were plastered with employee accomplishments, which they felt strongly about and took personal interest in conveying to us. He said that sitting on the Board table is the outcome of that. All 673 accomplishments are included in the report, and are unedited.

He continued that in addition to providing our core service, getting the trains out, providing on-time service, delivering the service that we have promised to the customer, this is an exercise to recognize the many, many things that go on in this organization that you just don't see on a regular basis from day-to-day. One of the things that he was very happy to see in these accomplishments was some of the comments that were conveyed of a real genuine feeling that Metra has turned the page. That things are different in this agency, that the employees are valued and respected. Some of the comments received include, failures are not punished, if you never try, you never can fail, "status quo" is a four letter word, and more transparency in dealing with employees. Metra has regained a positive name, got things done, developed a collaborative cross-functional approach to management, developed a sense of team, and gave middle managers a fair shot at proving their worth. He said that those are just a couple of highlights.

He concluded that as we turn to 2012, Metra's core mission will always be continuous improvement, safety, customer focus and fiscal responsibility. We will continue employee focus and find new initiatives throughout the year. Some

of those initiatives that will continue in 2012 are, Class and Comp Study, Senior Leadership team meetings, leadership skills, development, and training. We will refine the vision, mission, goals, and objectives for this organization, and he will come to the Board at a point soon this year to see if we can schedule a workshop to work with the Board on developing those statements of this organization. He continued that he will stay focused on state of good repair. He said that he will not stop looking for money on state of good repair. He will speak very little about new this, new that, new extensions. He will just talk a lot about state of good repair, as Metra has over a \$5 billion shortfall that we must focus on in order for this agency to continue to deliver the quality service that we want to deliver.

He stated that a strategic plan will be developed. A plan has been laid out on how we will do that in the course of this calendar year. This will be the most important document that this agency adopts and has adopted in a long time. That will be the document that will lay out every project, the universe of projects that we have to do across the six-county region. This document will be used to show what the cash or revenues are expected to be to support certain projects within it. It will be a document that will show gaping holes in the funding that Metra needs in order to get to a state of good repair. It will be a document that when anyone from the Board, or himself, goes to Springfield or Washington, D.C. we will have in our possession and be able to say that this is what Metra needs. We have priorities in this agency, and have our priorities laid out on what those capital projects will be. We will be able to show beyond question where the holes are and where Metra needs our state and federal representatives to help us find resources. In addition to all of that, we will continue to improve our business practices, performance measures, policies, procedures, budget, our GPS system, and of course ERP. He said that he will increase regional collaboration, finance and resources, and continued to look for operating efficiencies, productivity, non-revenue enhancements, asset management, and of course, directly tied into the capital plan, state and federal money. Of course, we will continue to enhance the Metra brand. He stated that it has been nothing short of an awesome year for him, and is appreciative daily of the team that he works with here at Metra. They are incredible, and he is very excited about moving the ball forward even further in 2012.

Vice-Chairman Huggins stated that based upon this report, not only have all of the employees in this room, but every employee of this organization truly earns the respect and the money that they make. The Metra team has done an excellent job. He said that this just goes back to what he has said all along, that the employees here have been here for years, and they know what they are doing. This is why we have an on-time performance of 93.6%. However, he added, that we do need to try to get that number back up to 95%, because this is really and truly what our riders want to see.

Director Mulder stated that she would like to thank Mr. Clifford for the report. She said that as he was giving it, she was wondering what the red was about, what the blue was about, but figured out that he was reading the red. She continued that there is a picture right here, from the Board's perspective, and as she sees it, it is a visual of what Mr. Clifford just reported. All of those chairs behind him are filled with people and it really does yell out "team." She thinks that it brings a commitment and a pride to people wanting to perform their jobs, and they are proud to say that they work for Metra.

Director Dadey stated that the report was well done. However, he said that one of the things that he would like to see, or maybe it didn't make this level of report, was how Metra is going to address this fuel issue going forward. He continued that when reading the newspaper this week, he noticed that analysts are anticipating record highs this summer for fuel prices, and he is not sure what our diesel fuel plan is right now. He knows that we are locked in for 12 months, but wonders if we could go longer. He pointed out that he does not need an answer right now, but he just wants to make sure that the team is addressing this issue. Mr. Clifford responded that the short of it is we are going to be seeking the hedging legislation this year. Staff is watching the prices daily, just like they did last year. However the fuel pricing for FY13 is not in place where we want to lock it in right now. We are very watchful of that, and want

this stabilization of our budget, this removal of volatility, to continue into the out years, and he thinks that the hedging is going to help us get there too.

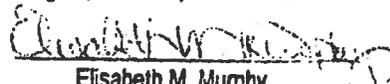
Director De Graff stated that his entry to the Board was the opening of the 35th Street facility. At the time he was asked to be on the Board, he was wondering what he was actually going to be walking into. He said that he has learned a lot since that time, and he thinks it is real important that he commends Mr. Clifford on the report, and senior management, and the staff at Metra for the accomplishments that have occurred. As he looks over this sheet of 600 plus accomplishments, and of getting people together, (he assumes in this room, to put up the notes), he wants to commend Mr. Clifford on the ownership in allowing the senior staff, and middle management to participate in this process and to celebrate what has been accomplished. Obviously he thinks from all of the Board members perspectives that this is a very important year of transition. The course is being set with the strategic plan, which is obviously something very important going forward, the state of good repair, projects and such. He continued that as we what he thinks about in 2011, is walking to the entrance of the Lou Jones 35th Street facility, and although the Lou Jones stations dedication was not mentioned in Mr. Clifford's presentation, it was mentioned in the 600-plus accomplishments paper on page five and six. This was another major accomplishment, and he was impressed with that opportunity when he first started. He said that he is even more impressed now having served on the Board for about a period of eight months or so, knowing that the turnaround is not only starting, but we are well into it. He cannot just sit here and not commend Mr. Clifford, Mr. Hardwidge and senior staff for the work that has been done here. It is remarkable. Director De Graff explained that he believes that a lot of members of the Board have been involved in preparing budgets for years, whether it be at a municipal level or a business level. He said that the method and the way that has proceeded, the ownership that has been taken by Mr. Clifford and the staff is remarkable. He commented that we can currently receive all the criticism, whether just or unjust, but the reality of the situation is based on his experience, and he thinks based on the experience of his fellow Directors, that this has been a remarkable year, an absolutely remarkable year. He stated that not to say we shouldn't celebrate, we should celebrate, as Mr. Clifford discussed. However, we should continually keep the iron to the fire so as we get into year two and three, there is even greater things to celebrate at the end of 2012.

Mr. Clifford stated that he just wants to go back to one point, because he wants to make sure that our friends in the media get this right. He said that Vice-Chairman Huggins spoke about the on-time performance. However it is important to note that we cannot compare this year's on-time performance to last year, because he changed the way we do the measurements so the data is different. It is like comparing apples to oranges. He added that Vice-Chairman Huggins point is important, and we are going to get back to that 95% on-time performance, but now we have an accurate baseline to build back to that 95%.

Item 16: Adjourn to Executive Session for Matter Relating to Executive Session Minutes (Section 2 (c) (21))

Director Schaffer moved, and Director Widmer seconded approval to adjourn to Executive Session. Vice-Chairman Huggins requested leave by the Board for the previous roll call. The motion carried with eleven ayes.

AYES: Directors' Darley, De Graff, LaBelle, McCoy, Mulder, O'Halloran, Partelow, Pennington, Schaffer, Widmer and Vice-Chairman Huggins


Elisabeth M. Murphy
Assistant Secretary to the Board

I, Arlene J. Mulder, in my capacity as Board Secretary of the Commuter Rail Board of the Regional Transportation Authority do hereby attest that the following minutes are a true and accurate reflection of the Board's meeting on the date so stated. In compliance with the Illinois Open Meetings Act, I do hereby authorize their release and publication.


Arlene J. Mulder, Secretary to the Metra Board of Directors

MINUTES OF A PUBLIC MEETING OF THE BOARD OF DIRECTORS OF THE COMMUTER RAIL DIVISION OF THE REGIONAL TRANSPORTATION AUTHORITY

The Board of Directors of the Commuter Rail Division of the Regional Transportation Authority met in a public session for a Meeting of the Board on Friday, March 16, 2012 at 9:00 a.m. The meeting was held in the Metra Board Room at 547 West Jackson Boulevard, Chicago, Illinois, pursuant to notice.

The roll was then taken.

ROLL CALL

Present: Larry A. Huggins, Acting Chairman
Paul C. Darley
Don A. De Graff (arrived at 9:20 a.m.)
James C. LaBelle
Mike W. McCoy
Arlene J. Mulder
Brad S. O'Halloran
Jack Partelow
Stan C. Rakestraw
Jack Schaffer
William A. Widmer, III

PLEDGE OF ALLEGIANCE

Acting Chairman Huggins asked Director Arlene Mulder to lead the Board, and other participants, in the Pledge of Allegiance.

PUBLIC COMMENT

Jemal Powell spoke about his concerns regarding doors on the bathroom stalls at the men's restroom at the South Water Street station. He stated that there have been absolutely no doors on the stalls for a while now, and does not understand the rationale behind not replacing those doors. His second comment concerns the conductor on train 143 on the Metra Electric. He said that when he was going home on March 7th, he observed the conductor calling a passenger who left their ticket behind on the train, and arranging a place to meet the person so that the person would not have to go all the way downtown to pick up the ticket. He would like to commend that conductor for his good actions.

Acting Chairman Huggins thanked Mr. Powell for his comments, and promised to have someone look into the issue of the men's restroom at the South Water Street Station, and for his kind comments about the conductor.

1. SPECIAL ACKNOWLEDGEMENT

Acting Chairman Huggins stated that Metra would like to recognize the efforts of the following five trackmen who worked to move a derailed car at the scene of the Canadian Pacific derailment on February 3rd, 2012. He requested that Robert Worley, Benjamin Contreras, Albino Contreras, Miguel Aguilera and Salvador Vargas come forward. He said that because of their actions in moving the rail car to clear main track one, enabled Metra to resume service for the Metra Milwaukee West Line, and North Central Service customers that evening.

**APPROVED BY THE
METRA BOARD OF DIRECTORS
ON FRIDAY, APRIL 13, 2012**

to put people to work in a very short time frame. Hence, the shovel ready concept. He said that this is a strategic approach to trying to figure out how to get all of those stations done by getting them shovel ready. Also, we have the 11 bridges out of the 22 that are being constructed, and it is very important to make sure that they are fully funded and they get competed. Lastly, there is a portion of this plan for PTC. He stressed that we must at least get a significant portion of that in order to meet the federal mandate for PTC by late 2015.

Acting Chairman Huggins asked Mr. Lorenzini how long does it take for us, once the engineering process has been started, until that station is ready for construction. Mr. Lorenzini responded that it takes 9 to 12 months for the engineering. Then it is at least a three month process to go out for public bidding and then award it, and then at least a year or more to build the station. In total, it takes about two to three years to complete the project. Acting Chairman Huggins stated that he understands why it makes sense to go ahead and start engineering those projects, because there is such a long time span from beginning to the end. He thanked Mr. Lorenzini for the explanation.

25. ORAL -- CHIEF EXECUTIVE OFFICER'S REPORT

Mr. Clifford, CEO/Executive Director thanked Acting Chairman Huggins for mentioning the article in the Progressive Railroading magazine. He said that he believes it was a good article and it was very nice for him to receive that acknowledgement. He was truly humbled by that article. He thinks of this as more of a progress report rather than anything else. There is still a lot of work to be done, but the accomplishments that have been made over the last year are many. He continued that Metra has a great team here, and they have all pulled together and have really thrived in this new environment in which their opinions are valued as well as their leadership. Acting Chairman Huggins stated that right now, Mr. Clifford is the face of Metra so they have to make him look good. The article was very impressive, and it looks as if the Board did a very good job when they hired him.

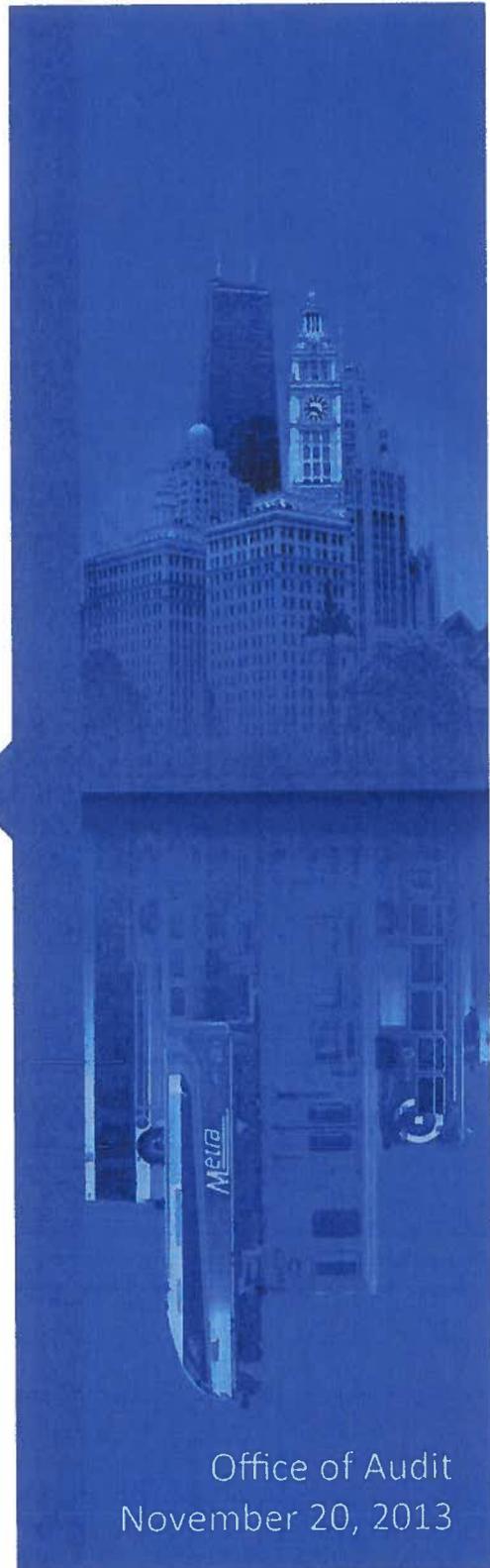
Mr. Clifford continued that there are a couple of things that he would like to cover. Last week there was an exciting event at CUS, as the three new ticket vending machines were launched. Acting Chairman Huggins was there to help with cutting the ribbon, if you will, and we are very excited about it. He said that he went to CUS yesterday to watch the transactions taking place. He is excited to see what the customers are doing and how quickly they have adapted to it. He pointed out that it will be more interesting the first of the month when the lines are really long. Anyone who is wishing to make a transaction using a credit card will be able to avoid those long lines.

He explained that in February we talked a little bit about how fantastic February was for Metra in a number of respects. As the Board knows, we have some preliminary numbers showing that ridership in February year over year is up 6% over February of last year. We do need to be careful to draw too many conclusions about that, as there may be some other things at play. It was a month in which there was one additional day, which can account to as much as 1% additional ridership related to that. It is also a month in which, compared to 2011 where there were 19 week days, there were 21 week days in 2012. Also, there was a blizzard in February of 2011 that had some impact on Metra's ridership. He stated that we also need to keep in mind that we are in an environment in which gas prices are escalating, which will help drive folks to use Metra. He believes that everyone would agree that there is some positive feeling at work about the economic outlook, and that can likely drive some customers in our direction. He added that with those caveats, there is a 6% estimated relationship increase for the month of February. He pointed out that this is not inconsistent with the reports that the Board has been seeing back to early last year. Metra's ridership has had steady small incremental increases month over month since early last year, so a lot of trends are coming together in a nice way in that respect.

He said that also celebrated through Mr. Hardwidge's report is the on-time performance. The Metra Heritage Corridor is one line that we have struggled with the most, and now has the attention of the CN. The CN has been



Review of Metra's June 2013 Separation Payment to Alexander Clifford



Office of Audit
November 20, 2013

EXECUTIVE SUMMARY

In February 2011, Alexander Clifford was awarded a three year contract to serve as the Executive Director for Metra. On June 21, 2013, Mr. Clifford's contract was cancelled and he was provided with a separation settlement that totals, potentially, \$871,000. Upon learning of this large settlement, the Chairman of the Regional Transportation Authority (RTA) Board requested the Office of Audit perform a financial review of the settlement to determine if the agreement was financially prudent.

In evaluating the prudence of the payment amount and terms, we relied extensively on documents and files provided by Metra, the Metra Board and the Board's counsel. The RTA Audit Department does not have subpoena powers and therefore cannot compel the service boards to comply with our document requests. We reviewed emails, procurement files, and public testimony. We also interviewed several Metra Directors, Metra employees, and the Metra Board's counsel as deemed appropriate. In addition, we listened to audio files of the Metra Board's Executive Sessions for 2012 and 2013 through June.

The review did not include investigating the allegations of improper and possibly illegal activities identified by Mr. Clifford in his April 3rd memorandum and subsequent public testimony, as these matters had been properly referred to the appropriate investigative agencies or were discussed at length in the media coverage of the issues and testimony regarding this matter before the RTA Board and Illinois Mass Transit Committee.

The review determined that the settlement payment was not financially prudent. The process followed for evaluating and approving the settlement was not robust and was flawed. The process did not include an evaluation of the impact of an Employment Practices insurance policy on any potential litigation. Also, there was a lack of actual documents available to support many of the key decision points, such as the results of the internal investigation conducted by an outside counsel (Heaton), or the cost/benefit analysis of the potential settlement options.

In addition, there were other factors that impacted the final settlement amount and terms that require improvement in the governance at Metra. The Executive Director did not have a formal written Performance Evaluation process for 2012 and 2013. Also, the three-person Ad Hoc committee of the Board that was created to oversee the Performance Evaluation process was perceived by Mr. Clifford as biased because it included two Directors who had publically stated, prior to formally evaluating him, they wanted the Executive Director replaced. Finally, without a formal performance evaluation process, Mr. Clifford relied upon the feedback he received by Board Members throughout the year as an indicator of his performance. He stated that since he had only received positive comments, he believed his performance warranted an extension of his contract, and was surprised to learn he might not have sufficient votes to approve an extension. Although several Directors stated that they had concerns with the way he handled some situations, these were never discussed with Mr. Clifford.

Based on our review, we developed the following recommendations:

1. Metra should develop specific policies and procedures for the use of separation agreements including: when to consider such an agreement, how to determine if the amounts are reasonable, the process for approval including required documentation, and prior notification to

the RTA if the amount is above \$100,000 in total payouts (employee, reimbursements, legal fees, etc.).

2. The Metra Board should improve its governance structure to include:
 - a. Requiring a Formal Evaluation Process for the Executive Director to be conducted on an annual basis
 - b. Guidelines on when directors should recuse themselves on employment or performance-related votes where there may be an apparent or potential conflict of interest
 - c. Guidelines on proper procedure for Employment recommendations from both elected officials and Board Members
 - d. Annual training for Board Members on issues such as insurance coverage, employment rules and procurement guidelines
 - e. Requiring Board members to obtain a Metra email address and to exclusively utilize the Metra email address for all Metra related communications
3. The Metra Board should clearly delineate the roles, duties and responsibilities of the Executive Director and the Chairman of the Board.

Ancillary Issues

In addition to the focused recommendations above, we have also identified the following recommendations for Metra to consider:

4. The Metra Board should evaluate whether the use of outside counsel specific for the Board's activities is the most effective method of operating
5. The Metra Board should develop guidelines for the use of outside Public Relations (PR) firms separate from the Metra PR firm(s).

Metra has agreed with the recommendations and has already completed corrective actions on several of the recommendations which can be completed now. Several of the other recommendations will take additional time as additional Directors are named to the Board, a Chairman is selected, and a new Executive Director is selected. These corrective actions should all be completed within 12 months.

A complete copy of Metra's response is included as Attachment I.

Introduction

On June 21, 2013 the Board of Directors of the Commuter Rail Division of the Regional Transportation Authority and Northeast Illinois Regional Commuter Railroad Corporation (hereafter collectively "Metra") approved a large (potentially \$871,000) settlement with the then Metra Chief Executive Officer (CEO) Alexander Clifford. The settlement agreement included several items in addition to the cash payments including the CEO's resignation, a release of all claims, and a mutual confidentiality agreement.

Upon learning of the settlement, the Chairman of the Regional Transportation Authority (RTA) Board requested this office to conduct an audit of the financial prudence of the settlement agreement, including but not limited to the reasonableness of the terms and amounts of the settlement, the process followed for reaching the settlement terms, and the process for approving the agreement. This report presents the results of our audit.

Background

In February 2011 Metra hired Alexander Clifford as Chief Executive Officer (CEO) after a nation-wide search. Mr. Clifford was brought in to replace the former CEO who had committed suicide on the day he was to be fired for alleged inappropriate activity. The new CEO was a transportation executive from California who was to help restore the image of the agency after the scandal created by the former CEO.

Mr. Clifford was provided with a three-year contract which detailed the base compensation, bonus/raise percentages, and benefits of the CEO position. The Employment Contract also included a calculation of the amounts which would be due if Mr. Clifford were terminated for any reason other than "Good Cause" (as defined in the contract). These payments were identified in the contract as "severance payments." The amount of the severance in the Employment Agreement includes six months of salary past the termination date and free health, dental and vision insurance for the severance period.

Mr. Clifford served in this position from February 11, 2011 until June 21, 2013, when the Metra Board of Directors approved a separation/settlement agreement with Mr. Clifford. When the Separation Agreement was announced at a public Metra meeting it raised a significant level of concern with the Regional Transportation Authority due to three factors: (1) the large dollar amount of the proposed payments to Mr. Clifford, (2) the fact that the settlement details had not been discussed with RTA officials prior to approval, and (3) the fact that Metra would make such a large payment to a departing executive at a time when the agency had recently raised commuter fares.

The RTA has the statutory authority to provide financial oversight of the transportation boards, including Metra. This includes a mandate and the authority to conduct audits of the activities of the service boards to ensure funds are expended prudently. While the RTA has the oversight responsibility, Metra is not required to notify RTA of sensitive payments such as this Separation Agreement, and in fact RTA was notified after the settlement agreement was approved by the Metra Board.

Scope and Objectives

The objective of the audit was to determine the financial prudence of the settlement agreement, including but not limited to the reasonableness of the settlement terms and dollar amounts, the sufficiency of the process followed for reaching the settlement terms, and the effectiveness of the process for approving the agreement.

This review focused on the settlement agreement between Metra and Mr. Clifford signed in June 2013, and Mr. Clifford's Employment Agreement in effect from February 11, 2011 through February 10, 2014. The audit was conducted at Metra headquarters between July 8, 2013 and October 16, 2013 and relied extensively on documents provided by Metra. It is important to note that although the RTA has audit authority pursuant to the RTA Act, it does not have subpoena powers and therefore cannot compel the service boards to comply with our document requests.

We also reviewed public testimony provided before the Regional Transportation Authority (RTA) and the Mass Transit Committee of the Illinois House of Representatives, and other publically available documents. In addition, we met with several Metra Directors and the Metra Board's counsel, listened to audio files of Metra Board Executive Sessions and interviewed Metra employees and other individuals as deemed appropriate.

In public testimony Mr. Clifford and others referenced specific actions which were either improper, unethical or a violation of state and local laws. These matters would be under the jurisdiction of various law enforcement and investigative agencies including the Office of the Executive Inspector General for the Agencies of the Governor, the Inspector General for the Illinois Legislative Branch, the Illinois Attorney General, the Illinois Executive Ethics Commission, and the US Congressional Ethics Office.

Once identified publically, these matters were not included in the scope of this review other than to ensure the matters were properly brought to the attention of the respective investigative authority. As additional matters were identified, they were evaluated for impact on this audit and if appropriate, referred to the respective agency for investigation.

Summary of Results

In evaluating the financial prudence of the settlement payment amount, we evaluated each of the subcomponents individually. We then evaluated the combined elements for an overall conclusion. Based on our analysis, we would conclude the payment was not financially prudent.

There are several main factors that drive this conclusion:

- The process followed for evaluating and approving the settlement was not sufficiently robust and was in fact flawed because it was missing key evaluation factors such as the impact of an Employment Practices insurance policy on any potential litigation
- The lack of actual documents available to support many of the decision points, such as the internal investigation conducted by an outside counsel (Heaton), or the cost/benefit analysis of the settlement options.

In addition, in evaluating the resulting settlement, we also reviewed the situations prior to the settlement. These were the issues that impacted the final settlement terms and amounts. This identified several causation factors which served to increase the resulting settlement amount:

- There was no formal written performance evaluation program for Metra's Executive Director (ED) for 2012 and 2013. When it was decided the ED should have a performance plan and evaluation, it was December 2012, when the year was significantly completed. Employees, especially CEO's, should not be told in the last month of the year how they are going to be evaluated for the year that has already passed
- The lack of a comprehensive process to provide feedback to the CEO on his performance lead him to believe he was meeting or exceeding the Board's expectations, when in fact there were issues that several Board members wished would be handled differently. While none of these were significant individually, they were not brought to the CEO's attention timely so they could be addressed. In addition, several other Board members praised the ED publically for certain of his accomplishments which led the CEO to believe his performance was meeting or exceeding expectations and he should receive a contract extension
- While an "Ad Hoc" committee was created by the Personnel and Compensation Committee to perform the initial parts of the CEO's performance review, the Ad Hoc committee consisted of three members, two of which were vocal regarding their desire for the CEO to leave the position. This set the tone for the process to be viewed as unfair by the CEO

Additional detail in each of these areas follows. A separate section identifies the associated recommendations as appropriate. We have also included several recommendations which are more general in nature or relate to overall governance of Metra.

Detailed Results

Settlement Process Missing Key Data

In evaluating the settlement process, we reviewed information (emails, documents, meeting details, etc.) to determine the steps that were followed. These steps were compared to what we would have expected to see for this type of process. There are no Policies or Procedures for employee severance payments, especially ones at the most senior level of the organization. However, similarities can be drawn with other large dollar settlements which the Metra Board does have procedures and experience. Therefore, we would have expected the Clifford settlement to generally follow the same basic process as any other settlement: determine facts; gather evidence; determine options; present options for approval; and execute agreement. The more robust the process, the more reliability you can have that the process resulted in the best option being selected. However, the result is very dependent on the information presented for decision-making being comprehensive and complete.

Our review indicated that the settlement process was not sufficiently robust and was in fact flawed because it was lacking key data at the time of the final approval. The process did not provide the full Board with all of the available options upon which to make an informed decision, and most of the information, other than the actual numbers, was presented verbally rather than in writing.

In discussing the options available to the Board upon which to make a decision, frequently the two options identified were to pay the agreed-upon settlement amount or pay between \$2 to \$3 million in legal fees and settlement amounts. As a result, several of the Board members justified their vote as the “better of two bad situations.”

However, this analysis was not accurate or complete. The Board should have been told that if the Board had agreed to terminate Mr. Clifford, and Mr. Clifford filed a lawsuit against Metra for wrongful termination or retaliation, then Metra’s Employment Practices Liability insurance would pay the legal costs after the first \$150,000 (policy deductible). While this option may not have been selected for other non-financial reasons, it should have been presented to all of the Board members for consideration before the time of the final approval.

While it is difficult to determine why this information was not shared as an option before the time of the final approval of the agreement, the information was available to all Board members as early as April 16th. The April communication to the board regarding the insurance did not describe what the policy would cover, only that the threshold for filing a claim had not been met at that time. The final approval was less than two months from the time the insurance was discussed and in addition, the Board’s counsel that discussed the insurance initially was in the Executive Session when the final approval was discussed.

In testimony before the RTA Board, insurance was discussed and the then Metra Chairman provided information that indicates he may not have understood the coverage provided by the Employment Practices Liability policy. However, with the Board’s counsel in the room, his testimony should have been corrected to provide the RTA Board with the accurate information.

In other legal settlements, the Metra Board is provided with detailed analysis, various settlement options, and counsel’s recommendation (see discussion below). In this case, the Board was provided with the one option, and very little analysis or documentation upon which to make a decision, other than the verbal recommendation from the outside Employment Counsel that the settlement amount was less than the cost of litigation.

Other Metra Board members were recently informed of the potential coverage by the insurance policy and acknowledged that while it may not have changed the final outcome of their vote, they would have expected it to be presented as a viable option to consider. While litigation may not have been the best solution, it definitely was an option that should have been considered especially given the insurance coverage for this very purpose.

Lack of Documentation to Support Key Decision Points

Overall, there was a significant lack of documents to support key decision points as the process progressed. For example, there is no written document that provides details on exactly what information was provided to the Office of Executive Inspector General when the initial allegations were referred to that office in early to mid-March. We were informed that the “matters identified in the email” were referred to the OEIG. However, a review of the subsequent Requests for Documents submitted to Metra from the OEIG focused on matters outside of Mr. Clifford’s email except for the Patrick Ward issue. Although people or organizations outside of Metra may have received document

requests relating to the OIG investigation, these requests which would not be available to us due to our lack of subpoena powers.

Also, after the April 3rd memorandum from Mr. Clifford to the Board, an outside Employment counsel was hired to represent Metra in this employment issue. Then, another outside counsel (Mr. Heaton) was retained by Metra to conduct an internal investigation of the allegations in Mr. Clifford's April 3rd memorandum. The Engagement letter for the retention of the second outside counsel to perform the internal investigation was vague and did not provide details on exactly what the scope of the internal investigation was to entail.

These initial activities were directed by the Metra Board's counsel in consultation with the Metra General Counsel. To maintain the independence of the internal investigation, an "Ad Hoc" committee of the Board was created to provide oversight to the outside counsel (Heaton) during his investigation. Although Mr. Heaton looked at thousands of pages of documents, his review was limited by the fact that he did not have subpoena power to compel witnesses to provide information.

The results of this internal investigation were referred to numerous times by several Board members as vindication of any improprieties. However, written results of Mr. Heaton's internal investigation were not provided to the Metra Board's Ad Hoc committee, and a formal written report was never produced for the full Board. The only investigation results provided to the full Board was a verbal briefing by the Metra Board's counsel (JGLaw) due to a death in Mr. Heaton's family near the day of the Board briefing.

Another key decision point was the result of the twelve-hour mediation with a well-respected former Chief Judge. This mediation was agreed-to by both sides to resolve an apparent stalemate in the settlement negotiations. In subsequent briefings of the Board members, the results of this mediation were referred to as justification as to why the settlement amount was reasonable. However, there was no document that was signed (or concurred to) by the mediator confirming what was agreed to by both sides as a result of the 12-hour mediation is in fact what was recommended. We were informed that, although the mediation cost \$17,000 for the 12 hours, it was typical for there to be no written document signed by the mediator in these situations.

Comparison to Similar Processes-Legal Settlements

In evaluating the separation agreement process we were informed that there were no specific policies and procedures for this type of employment settlement matter. Therefore we attempted to identify similar processes or common procedures we would be able to use as benchmarks. The most similar process was for the approval of legal settlements for employment-related (i.e. work injury) cases.

The Metra Legal Department has experience in preparing the documentation to support the approval of these types of payouts by the Metra Board. These cases follow a similar process: document the facts, provide a detailed analysis, validate key points with outside experts (doctors, etc.) as appropriate, provide basis for settlement options, and recommend a specific action for approval based upon an analysis of the information.

In presenting the legal settlements for approval, the General Counsel or her designee presents a summary of the case, discusses each of the key data elements and the results of the detailed analysis, provides a summary of the validation steps and results, and provides a written recommendation to the Board. The Board members can then discuss any of the data elements or key items in the case, discuss

the information provided by any outside experts, and if appropriate request additional information be obtained to help in the decision-making process.

Based on the similarity of these two processes, it is difficult to determine why the Board would approve the proposed settlement without a similar amount of preparatory documents, detailed analysis and discussion.

Reasonableness of Terms & Amounts

In evaluating the reasonableness determination by Metra, there was a significant lack of documents which supported key components of the evaluation process. The Board did receive information prior to their meetings regarding new dollar amounts or terms as the agreement process proceeded. However, the Board was provided information on decisions that appear to already have been made, rather than given options from which to choose. Also, a significant portion of the information was provided verbally during meetings with no documents to accompany the briefings. Therefore, in evaluating how Metra determined the amount was reasonable, there were very few documents to review. Of the documents that were available, there were none that showed that any benchmarking or comparisons, or cost/benefit analysis had been done. The Board was asked to rely on the verbal information provided by the outside Employment counsel and his experience.

For example, one of the primary justifications was that the independent mediator had decided that the amount was reasonable. However, it is difficult to validate because although Metra paid \$17,000 for approximately 12 hours of mediation, there was no document produced which details the actual recommendation of the mediator. The only documents available are the proposed settlement agreements sent back and forth between Mr. Clifford's counsel and Metra's outside Employment counsel after the mediation.

After the mediation it became clear that the amount of the severance was going to be much closer to Mr. Clifford's demands than Metra's proposed number, although Mr. Clifford was not going to get everything he had asked for prior to the negotiation. However, there was no justification provided other than the final number was what the mediator said was reasonable. Therefore, the mediation provided the basis for the settlement amount to increase significantly without any debate on why the amount increased by such a large number from what was originally proposed by the Directors.

At this point, even though the settlement amounts had increased significantly, there was no discussion of re-evaluating their action plan, as the amount was still "less than litigation." This misstatement was never corrected by any of the individuals who were in the Executive Session room and knew of the policy.

Although at the outset the two sides were very far apart on the proposed severance payments (the wide difference in the amount of severance was the primary basis for the mediation), most of the other issues (insurance, letters of reference, etc.) were generally agreed to early in the process. Even though several of the items appeared very generous, there was no justification given for the additional costs of the items.

For example, early in the negotiations Metra agreed to pay Mr. Clifford \$78,000 for "Relocation Expenses" even though they had only paid him \$25,000 to move to Chicago when he was hired.

Agreeing to pay three times the amount to get him to leave than they paid him to come here for the job does not seem reasonable.

Also, Metra agreed to pay for Mr. Clifford's health care benefits for the entire length of the settlement agreement. This appears excessive since he was still receiving his salary and could pay for it himself as he did when he was employed. In addition, most people are required to buy COBRA insurance when they separate which is much more expensive. Metra could have allowed him to pay the reduced employee amount rather than pay for the entire amount, which would have provided a benefit to Mr. Clifford without Metra having to cover the entire cost.

Additional Factors

As a part of our evaluation, we also reviewed the situations prior to the beginning of the settlement negotiations to determine their impact on the settlement amount. These were issues that impacted the final settlement terms and amounts. This identified several causation factors which we believe served to increase the resulting settlement amount:

- No written performance Evaluation plan for Executive Director for 2012 and 2013
- Only positive feedback from Board on Executive Director's performance (no negative comments) provided unbalanced perception of performance
- Perception of bias on the Board's Ad Hoc Performance Evaluation Committee

These areas are discussed more fully below.

Lack of Formal Written Performance Evaluation Process

There was no formal written Performance Evaluation program for the Executive Director (ED) for 2012 and 2013. When it was decided the ED should have a performance plan and evaluation, it was December 2012, when the year was significantly completed. Employees, especially CEO's, should not be told in the last month of the year how they are going to be evaluated for the year that has already passed.

In March 2012, Mr. Clifford provided the Board a presentation on his FY 2011 accomplishments. He considered this his "performance evaluation" and the Board awarded him a 3% raise. In addition, he hired, at Metra's expense, an outside group to perform a "360 evaluation" for personal development purposes of himself and his direct reports.

As 2012 progressed, he was anticipating providing the same presentation since that is what the Board accepted for the prior year. Several times in late 2012 and early 2013 he attempted to complete a 360 Evaluation process since Mr. Wiggins had now joined the senior leadership team. However, the decision had already been made that a different process would be followed including a 360 evaluation of only Mr. Clifford performed by a group hired by the Board.

As a point of note, it is unusual that the Board would operate continuously with an Acting Chairman for over a year, and there was no review process for the Executive Director. This appears to have been acceptable to the full Board as there was no discussion of developing a review process until the new Chairman was named. Shortly after the new Chairman was elected by the Board, the development of a

review process became a top priority of his, even though he had been on the Board as a Director since July 2011.

While some Board members said several times in testimony that they had issues with Mr. Clifford's performance, the lack of a formal process reduced the possibility of removing him for "cause" (poor performance). Providing a process at the end of the year only made it look worse as it gave the impression that there had been a process when one did not exist. Even if the results of the evaluation had shown that Mr. Clifford should be replaced, the process was so flawed that it would never have withstood scrutiny by an outside review group if challenged by Mr. Clifford.

Unbalanced Feedback by Board

The lack of comprehensive process to provide continuous feedback to the CEO on his performance led him to believe he was performing at a successful level, when in fact several Board members felt there were issues that they wished would have been handled differently. While none of these were significant individually, they were not brought to the CEO's attention timely so they could be addressed. In addition, several Board members praised the ED publically for certain of his accomplishments which led the ED to believe his performance was meeting or exceeding their expectations and that he should receive a contract extension.

This unbalanced feedback provided Mr. Clifford with a one-sided perception of his performance. This was also impacted by the lack of a formal review process as discussed previously. When Mr. Clifford was informed that several of the Directors had issues with his performance, he asked to be given an opportunity to address these issues in a face-to-face meeting. He was never given this opportunity.

Mr. Clifford also attempted to have one-on-one meetings with several Directors as he had done previously and was instructed to discontinue this effort as it was interfering with the Board Ad Hoc committee's evaluation process. Mr. Clifford was not informed that he might not have a sufficient number of required votes (8) to have his contract extended until early March when one of the Directors discussed it with him.. This appears to have been a surprise to Mr. Clifford and without the opportunity to address the matter face-to-face with the Board, one which he could not resolve.

Perception of "Bias" on Ad Hoc Evaluation Committee

In 2012 the Metra Board implemented a revised committee structure which included a "Employment Practices Committee." In early 2013, when the Board was deciding how to evaluate Mr. Clifford's performance, it was decided that an Ad Hoc committee of the Employment Practices Committee would be formed to provide the framework for the review process and gather the performance information which would then be provided to the full Board for approval.

While the creation of an "Ad Hoc" committee appeared to be a reasonable action taken by the Personnel and Compensation Committee to perform the initial parts of the CEO's performance review, the Ad Hoc committee consisted of three members, two of whom were vocal regarding their desire for the CEO to leave the position. This set the tone for the process to be viewed as unfair by the CEO, and that it would provide a "biased" result.

NOTE: When viewed individually, these items would not have a significant impact on any settlement. However, when viewed collectively, it presents an appearance that Mr. Clifford was being pushed out.

Had he been terminated for “cause” he would have had a basis for challenging the decision in a legal case. This would serve to increase the amount he was willing to accept during the settlement negotiations.

Recommendations

Based on our review, we developed the following recommendations:

1. Metra should develop specific policies and procedures for the use of separation agreements including: when to consider such agreement, how to determine if the amounts are reasonable, the process for approval including required documentation, and notification to the RTA if the amount is above \$100,000 in total payouts (employee, reimbursements, legal fees, etc.).

Metra Response: Separation agreements are rarely used and if so, are relatively small; only Clifford’s agreement exceeded \$100,000. As a practical matter, future separation agreements are unlikely, particularly since most personnel matters are subject to extensive personnel policies involving discipline, etc. Nonetheless, the RTA Audit report correctly observes that separation agreements are akin to claims-related settlement agreements. The RTA report further states Metra’s Law Department has experience in preparing the documentation to support the approval of these types of payouts by the Metra Board. Since the Board shifted all legal work to its in-house Law Department, we anticipate that future claims, including proposed separation agreements involving CEOs, will be handled by the Law Department in the same manner as that which is done for settlement agreements involving disputes between Metra and its employees. In the unlikely event that a separation agreement is necessary, staff will discuss with the Board developing parameters and thresholds.

2. The Metra Board should improve its governance structure to include:
 - a. Requiring a Formal Evaluation Process for the Executive Director to be conducted on an annual basis

Metra Response: Metra Human Resources staff is collecting sample reviews for presentation to the Board for further consideration in developing a formal Performance Evaluation process for the new Executive Director (ED). It is anticipated that the presentations to the Board will take place within 90-120 days following the selection of a permanent E.D.

- b. Guidelines on when a director should recuse themselves on employment or performance-related votes where there may be an apparent or potential conflict of interest

Metra Response: Staff will discuss with the Board the appropriateness of expanding the meaning of conflict of interest to include situations where Board

members are voting on settlement agreements or on termination or retention of the Executive Director where that Board member is accused of an alleged wrongdoing by the Executive Director. At minimum, staff will include this discussion point in new Board training material.

- c. Guidelines on proper procedure for employment recommendations from both elected officials and Board members

Metra Response: Metra implemented a training program for new Board members in the last few months, which includes training on the issue of political referrals. Existing Board members will also receive the same training.

- d. Annual training of Directors on issues such as insurance coverage, employment rules and procurement guidelines

Metra Response: Metra initiated training for its Directors and is issuing a new Board binder that includes information on different aspects of the organization. That training will include briefings on insurance, procurement, etc.

- e. Requiring Board members to obtain a Metra email address and to exclusively utilize the Metra email address for all Metra related communications

Metra Response: Like the RTA and CTA Boards, Metra Board members use their own email. Metra's IT department is exploring the most efficient way to extend Metra email accounts to its directors.

- 3. The Metra Board should clearly delineate the roles, duties and responsibilities of the Executive Director and the Chairman of the Board

Metra's Response: Based on prior events that involved former Executive Director Pagano, the Board passed ordinances and took on a more active oversight role to find the right balance between reasonable oversight and Pagano's unfettered discretion and authority. The RTA Act sets forth a strong Executive Director form of government. The Act also provides that (s)he shall also receive direction from the entire Board of Directors, not just the Chairman. The balance between the powers of the Board Chairman, as limited by statute, and the Executive Director is a philosophy debated by organizations and there is not necessarily one correct approach. However, the Board will continue to review existing ordinances and proposed ordinances and seek a proper balance between the roles of the Executive Director, the Board, and the Chairman, with a goal of providing the Executive Director ample authority and general guidance to allow him/her to efficiently and reliably run one of the largest commuter railroads in the most complex rail terminal in North America.

Additional Recommendations-Ancillary Issues

In addition to the focused recommendations above, we have also identified the following recommendations for Metra to consider:

4. The Metra Board should re-evaluate whether the use of outside counsel specific for the Board's activities is the most effective method of operating

Metra's Response: The Metra Board has transitioned all legal work from Board Counsel to Metra's Law Department. Metra's in-house counsel has taken the lead in advising the Board. The Law Department, at its discretion and direction, will designate outside counsel on a case-by-case basis, as necessary, when the Board is evaluating a particular, specialized matter.

5. The Metra Board should develop guidelines for the use of outside Public Relations firms separate from the Metra PR firm(s)

Metra's Response: The Board typically does not use or hire its own outside Public Relations firms or consultants. In this unique situation, the former Chair and Board Counsel, without consulting other Board members or Metra's Law Department, hired an outside public relations firm.

A complete copy of Metra's Management Response is attached as Attachment I.

Thank you for your cooperation and assistance in this matter.



Attachment I

547 W. Jackson Boulevard Chicago, IL 60661 312.322.6900 TTY: 1 312.322.6774

October 7, 2013

Mr. Michael Zumach
Deputy Executive Director, Audit
Regional Transportation Authority
175 West Jackson Boulevard
Chicago, Illinois 60604
Via ZumachM@RTACHICAGO.org

Dear Mr. Zumach:

Attached please find Metra's Response to the RTA's final audit of the 2013 Separation Payment to Alex Clifford.

If you have any questions, please call me at 312/322-2810.

Sincerely,

A handwritten signature in blue ink, appearing to read "Donald A. Orseno".

Donald A. Orseno
Interim Executive Director

DAO/kmh
Enclosure

METRA'S RESPONSE

METRA Responses

Metra is in receipt of your final RTA Audit report. It is our understanding that this final audit is consistent with your preliminary findings and there are no new findings subsequent to your preliminary findings. We strive to take appropriate action to resolve potential inadequacies and direct our efforts towards our customers and our mission. As such, we have reviewed the recommendations of the Final RTA Audit and respond as follows:

1. **RTA Finding:** Metra should develop specific policies and procedures for the use of separation agreements including: when to consider such agreement, how to determine if the amounts are reasonable, the process for approval including required documentation, and notification to the RTA if the amount is above \$100,000 in total payouts (employee, reimbursements, legal fees, etc.).

Metra Response: Separation agreements are rarely used and if so, are relatively small; only Clifford's agreement exceeded \$100,000. As a practical matter, future separation agreements are unlikely, particularly since most personnel matters are subject to extensive personnel policies involving discipline, etc. Nonetheless, the RTA Audit report correctly observes that separation agreements are akin to claims-related settlement agreements. The RTA report further states Metra's Law Department has experience in preparing the documentation to support the approval of these types of payouts by the Metra Board. Since the Board shifted all legal work to its in-house Law Department, we anticipate that future claims, including proposed separation agreements involving CEOs, will be handled by the Law Department in the same manner as that which is done for settlement agreements involving disputes between Metra and its employees. In the unlikely event that a separation agreement is necessary, staff will discuss with the Board developing parameters and thresholds.

2. **RTA Finding:** The Metra Board should improve its governance structure to include:

- a. **RTA Finding:** Requiring a Formal Evaluation Process for the Executive Director

Metra Response: Metra Human Resources staff is collecting sample reviews for presentation to the Board for further consideration in developing a formal Performance Evaluation process for the new Executive Director (ED). It is anticipated that the presentations to the Board will take place within 90-120 days following the selection of a permanent E.D.

- b. **RTA Finding:** Guidelines on when a director should recuse themselves on employment or performance-related votes where there may be an apparent or potential conflict of interest

Metra Response: Staff will discuss with the Board the appropriateness of expanding the meaning of conflict of interest to include situations where Board members are voting on settlement agreements or on termination or retention of the Executive Director where that Board member is accused of an alleged wrongdoing by the Executive Director. At minimum, staff will include this discussion point in new Board training material.

METRA'S RESPONSE

- c. **RTA Finding:** Guidelines on proper procedure for Employment recommendations from both elected officials and Board Members

Metra Response: Metra implemented a training program for new Board members in the last few months, which includes training on the issue of political referrals. Existing Board members will also receive the same training.

- d. **RTA Finding:** Annual training of Directors on issues such as insurance coverage, employment rules and procurement guidelines

Metra Response: Metra initiated training for its Directors and is issuing a new Board binder that includes information on different aspects of the organization. That training will include briefings on insurance, procurement, etc.

- e. **RTA Finding:** Requiring Board members to obtain a Metra email address and to exclusively utilize the Metra email address for all Metra related communications

Metra Response: Like the RTA and CTA Boards, Metra Board members use their own email. Metra's IT department is exploring the most efficient way to extend Metra email accounts to its directors.

3. **RTA Finding:** The Metra Board should clearly delineate the roles, duties and responsibilities of the Executive Director and the Chairman of the Board

Metra's Response: Based on prior events that involved former Executive Director Pagano, the Board passed ordinances and took on a more active oversight role to find the right balance between reasonable oversight and Pagano's unfettered discretion and authority. The RTA Act sets forth a strong Executive Director form of government. The Act also provides that (s)he shall also receive direction from the entire Board of Directors, not just the Chairman. The balance between the powers of the Board Chairman, as limited by statute, and the Executive Director is a philosophy debated by organizations and there is not necessarily one correct approach. However, the Board will continue to review existing ordinances and proposed ordinances and seek a proper balance between the roles of the Executive Director, the Board, and the Chairman, with a goal of providing the Executive Director ample authority and general guidance to allow him/her to efficiently and reliably run one of the largest commuter railroads in the most complex rail terminal in North America.

Additional Recommendations-Ancillary Issues

In addition to the focused recommendations above, we have also identified the following recommendations for Metra to consider:

4. **RTA Finding:** The Metra Board should re-evaluate whether the use of outside counsel specific for the Board's activities is the most effective method of operating

Metra's Response: The Metra Board has transitioned all legal work from Board Counsel to Metra's Law Department. Metra's in-house counsel has taken the lead in advising the Board. The Law Department, at its discretion and direction, will designate outside

METRA'S RESPONSE

counsel on a case-by-case basis, as necessary, when the Board is evaluating a particular, specialized matter.

5. **RTA Finding:** The Metra Board should develop guidelines for the use of outside Public Relations firms separate from the Metra PR firm(s)

Metra's Response: The Board typically does not use or hire its own outside Public Relations firms or consultants. In this unique situation, the former Chair and Board Counsel, without consulting other Board members or Metra's Law Department, hired an outside public relations firm.

Jam: h:\docs\rtar\rtar audit\metra responses 100413pm.docx

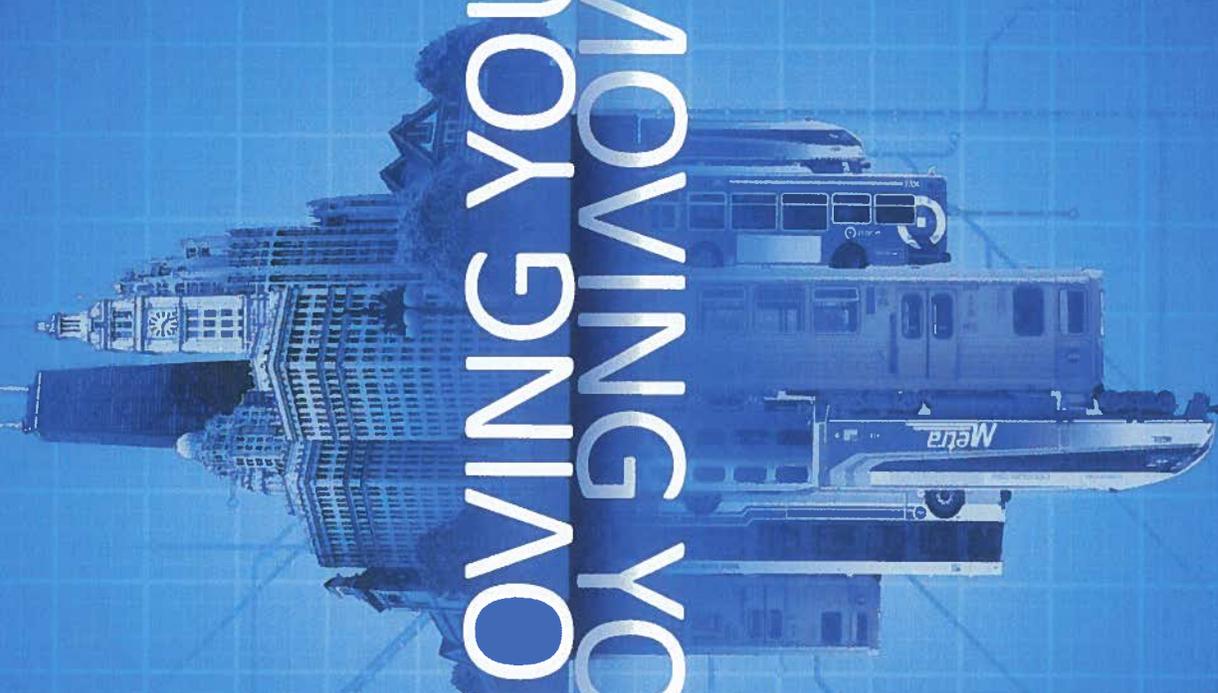
39

www.RTAchicago.org

**OFFICE OF AUDIT
 AUDIT OF CLIFFORD
 SEPARATION AGREEMENT
 FINAL REPORT
 NOVEMBER 20, 2013**



**MOVING YOU
 NOT ENGINEAOW**



AUDIT OBJECTIVE & SCOPE

The objective of the audit is to determine the financial prudence of the settlement agreement, including the reasonableness of terms and amounts, and the process followed for approval

Reviewed thousands of pages of emails, listened to hours of public testimony, listened to audio files of Executive Sessions of the Metra board, and interviewed Metra Directors and, employees as deemed appropriate

We relied on Metra to provide all documents-RTA has no Subpoena powers to compel service boards to produce documents

Other Investigative groups are continuing their investigations



AUDIT RESULTS

- Settlement was not financially prudent
 - Process was inadequate because it did not include all of the options available and
 - The process was not sufficiently documented
- The process was not sufficiently robust and did not include consideration of an insurance policy to cover litigation costs
- There was a lack of documentation to support key decision points in the process



APPROVAL PROCESS

Metra Board determined financial reasonableness based on advice of outside counsel and the mediation results:

- Mostly verbal-no benchmarks and very little documentation
- Employment Practices Insurance policy not discussed in June meeting as an option (Not saying it was best option, but should have been considered)



ADDITIONAL ISSUES

- Executive Director did not have a formal performance evaluation plan
- Board needs to decide on roles & responsibilities of Chairman and Executive Director
- Board's reliance on outside counsel creates confusion, and increases costs
- Board also retains its own Public Relations firm which is duplicative and creates confusion because it is retained through outside counsel

RECOMMENDATIONS

- Metra should develop specific policies and procedures for the use of separation agreements including:
 - when to consider such an agreement,
 - how to determine if the amounts are reasonable,
 - the process for approval including required documentation, and
 - prior notification to the RTA if the amount is above \$100,000 in total payouts (employee, reimbursements, legal fees, etc.).
- The Metra Board should improve its governance structure to include:
 - Requiring an annual Formal Evaluation Process for the Executive Director
 - Guidelines on when directors should recuse themselves on employment or performance-related votes where there may be an apparent or potential conflict of interest
 - Guidelines on proper procedure for Employment recommendations from both elected officials and Board Members
 - Annual training for Board Members on issues such as insurance coverage, employment rules and procurement guidelines
 - Requiring Board members to obtain a Metra email address



RECOMMENDATIONS (CON'T)

- The Metra Board should clearly delineate the roles, duties and responsibilities of the Executive Director and the Chairman of the Board.
- The Metra Board should evaluate whether the use of outside counsel specific for the Board's activities is the most effective method of operating
- The Metra Board should develop guidelines for the use of outside Public Relations (PR) firms separate from the Metra PR firm(s).



NEXT STEPS

- Metra has accepted the recommendations and either has developed or will develop action plans to correct the issues identified
- In several of the issues, Metra has already completed the action steps/corrective actions
- Other steps will require additional time based on factors such as selection of a new Chairman and a new permanent Executive Director
- We will monitor progress of the corrective actions and report back to the Board periodically

