

For example, a transit agency obligated to buy buses under a current contract for two more years may wish to join the project for purchases effective in year three (assuming a five-year contract duration under a project). If a transit agency holds an existing option or other right to purchase buses in the future, participation in the CPPP might provide better pricing that would warrant a decision not to exercise the option. A proposal including participants facing this situation should explain how it will address this issue, *e.g.*, forego or assign the option to other non-participants.

- Similarly, current practice allows transit agencies to assign rights to purchase buses to other transit agencies not parties to the original contract, a practice known in the industry as “piggybacking.” This practice may be inconsistent with the concept of joint procurement, a potential threat to the market, or otherwise inappropriate in this program. Proposals should address this issue in terms of the intent to allow or not allow assignments.

- One joint procurement model involves designating a lead transit agency to act as the “contracting officer” for all project participants, with other participants limited to the role of “authorized purchaser” without authority to change, curtail, or extend the single contract. Another model could have all participants in a project cooperate in issuing specifications but independently contract with the supplier(s) selected according to each transit agency’s independent analysis of the suppliers’ proposals. CPPP proposals should explain how this, or other methods they propose to use, would serve the program’s goals and the intent of the individual project.

- Bonding and payment terms, as well as overall risk management and mitigation, are concerns for both transit agencies and suppliers. This program offers an opportunity to foster innovative approaches to these issues that fairly and economically allocate risks.

- The voluntary industry bus specification (the Standard Bus Procurement Guidelines) funded by FTA and issued by the American Public Transportation Association may serve as a baseline for one or more project specifications.

Submission of Proposals

FTA solicits proposals for three pilot CPPP projects. Proposals should present an overview of the proposed project, a preliminary list of the participants, the objectives of the procurement, technological aspects of the proposed project, anticipated costs (not including

the purchase price of the equipment to be procured), and a description of how the project meets the selection criteria below and approaches the issues described above. Not all project participants need be identified at the time of the proposal; they may be added to the project once the selection is made.

Selection Criteria

In selecting the pilot CPPP projects, FTA will give preference to proposals aimed primarily at procurements of rolling stock, but will consider cooperative procurement proposals of other major capital equipment as well. FTA’s selection will be based on a determination of how to best test different methods of joint procurement, so that FTA can compare and contrast those methods and report the results to Congress and the industry as a guide for future procurement actions. FTA will select the three pilot projects after consideration of:

- *Sound business planning.* Proposals should demonstrate a clear, concise procurement plan, ordering procedures, financial and contractual aspects of their approach, and contract administration techniques.

- *Identification, mitigation, management, and sharing of risk.* This includes approaches to bonding, payment terms, warranties, and other elements of risk that affect pricing.

- *Amount and likelihood of economic benefits.* Proposals should present, to the extent possible, projected costs savings to be garnered through administrative efficiencies, as well as potential savings predicated on volume buying.

- *Administrative efficiency.* This includes streamlining efforts that assist buyers and sellers alike.

- *Innovative techniques.* This includes the use of technology to promote efficiency and/or reduce costs for buyers and sellers, novel approaches to financing, maintenance, parts supplies, or other aspects of total costs of ownership.

- *Approach to the initial issues.* Proposals should explain how they will approach FTA’s systemic concerns explained above.

- *Technical capacity.* This refers to the capacity of the proposers to undertake and manage a joint procurement of this nature.

Evaluation Process

FTA staff will evaluate all proposals based on the selection criteria listed above. We may engage in discussions with individual proposers to further define the pilot projects, but reserve the

right to select one or more pilot projects based on the original submissions and without discussions. FTA expects to select the three pilot CPPP projects within 90 days of the deadline for submission of proposals provided in this notice.

Program Evaluation and Reporting

Following the award of the procurement contract(s) in each pilot project, FTA will evaluate the procurement process used and the results achieved in each project, and report the findings to Congress. FTA’s evaluation will be based on the cost savings compared to a standard procurement; the improvement in the efficiency of the procurement process; the ease of implementing the procurement methods; the decrease in managerial burden on the organizations involved; and the use of Internet-based software technology in developing specifications, aggregating equipment requirements with other transit agencies, and generating cooperative requests for proposal packages. FTA will use the results of this evaluation to formulate guidance for grantees on the use of cooperative procurement methods. Participating entities will be required to cooperate in the information gathering, reporting, and outreach processes.

Issued on: June 18, 2004.

Jennifer L. Dorn,

Administrator.

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 290 (Sub No. 5) (2004–3)]

Quarterly Rail Cost Adjustment Factor

AGENCY: Surface Transportation Board.

ACTION: Approval of rail cost adjustment factor.

SUMMARY: The Board has approved the third quarter 2004 rail cost adjustment factor (RCAF) and cost index filed by the Association of American Railroads. The third quarter 2004 RCAF (Unadjusted) is 1.071. The third quarter 2004 RCAF (Adjusted) is 0.534. The third quarter 2004 RCAF–5 is 0.509.

EFFECTIVE DATE: July 1, 2004.

FOR FURTHER INFORMATION CONTACT: Mac Frampton, (202) 565–1541. Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Additional information is contained in the Board's decision. To purchase a copy of the full decision, call ASAP Document Solutions at (301) 577-2600. [Assistance for the hearing impaired is available through FIRS: 1-800-877-8339.]

This action will not significantly affect either the quality of the human environment or energy conservation.

Pursuant to 5 U.S.C. 605(b), we conclude that our action will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Decided: June 17, 2004.

By the Board, Chairman Nober, Commissioner Mulvey, and Commissioner Buttrely.

Vernon A. Williams,
Secretary.

[FR Doc. 04-14236 Filed 6-22-04; 8:45 am]

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DEPARTMENT OF TRANSPORTATION**Surface Transportation Board**

[STB Finance Docket No. 34502]

American Orient Express Railway Company LLC—Petition for Declaratory Order

AGENCY: Surface Transportation Board.

ACTION: Institution of declaratory order proceeding; request for comments.

SUMMARY: The Surface Transportation Board is instituting a declaratory order proceeding and requesting comments on the petition of American Orient Express Railway Company LLC's (AOERC) for an order declaring that AOERC is not a common carrier by rail subject to the Board's jurisdiction.

DATES: Any interested person may file with the Board written comments concerning this issue by July 13, 2004.

ADDRESSES: Send an original and 10 copies of any comments referring to STB Finance Docket No. 34502 to: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423-0001. In addition, send one copy of any comments to: Robert Bergen, Holland & Knight LLP, 195 Broadway, New York, NY 10007.

FOR FURTHER INFORMATION CONTACT: Eric S. Davis, (202) 565-1608. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at: (800) 877-8339.]

SUPPLEMENTARY INFORMATION: By petition filed on April 30, 2004, AOERC asks the Board to issue an order

declaring that it is not a common carrier by rail subject to the Board's jurisdiction.

On February 9, 2001, the Railroad Retirement Board (RRB) issued a decision concluding that AOERC is a covered employer for purposes of the Railroad Retirement Act, 45 U.S.C. 231 *et seq.* (2004), and Railroad Unemployment Insurance Act, 45 U.S.C. 351 *et seq.* (2004) (collectively Railroad Retirement Acts) because it determined that AOERC was a "reincarnation" of a previously covered sleeper car carrier. AOERC sought a reconsideration of that decision. The RRB appointed a Hearing Examiner, who, on May 21, 2002, held a hearing on the petition for reconsideration. On May 16, 2003, the Hearing Examiner issued a recommendation to the RRB suggesting that AOERC is a covered employer not because it was a "reincarnation" of a covered sleeper car carrier but because it provides common carrier rail transportation and, therefore, is under the Board's jurisdiction. The RRB has not acted on the petition for a reconsideration or on the Hearing Examiner's recommendation because the scope of the Board's jurisdiction over AOERC is the only issue on which the questions of coverage depends. The RRB has stayed its reconsideration proceeding until July 1, 2004, to allow the Board to rule on the question of jurisdiction.

AOERC is a land excursion company that uses restored vintage railroad coaches, diners and sleepers as the central feature of its vacation packages. It does not own or operate any locomotives or railroad track. Rather, it contracts with the National Passenger Railroad Corporation (Amtrak) to provide all railroad related services including locomotive power and train and engine crews (Amtrak Contract). As part of the vacation packages, specially tailored meals, luxury accommodations, on and off the train, and various excursions, including walking tours of historic and natural sites, lectures and live music are included. AOERC operates seasonally and does not have set routes. AOERC's trips and itineraries change annually depending on its negotiations with Amtrak. Additionally, AOERC may cancel a planned excursion if there are not enough customers or it may add a charter trip on a different route. Most of AOERC's employees are part-time seasonal employees, and AOERC states that it does not employ traditional rail workers because it provides only non-railroad amenities and services.

Amtrak does not own most of the track over which it operates; it obtains

trackage rights from other railroads to provide service to AOERC. Amtrak pulls AOERC's vintage rail cars pursuant to a schedule for each excursion that meets Amtrak's and the host railroad's (the track owner or operator) availability. AOERC proposes itineraries to Amtrak, usually 2 years in advance, so that Amtrak can determine, based on its own schedule and the availability of the track routes requested, whether they are possible. AOERC cannot offer itineraries that have not been approved by Amtrak. Even if an itinerary has been approved, the Amtrak Contract does not guarantee that the chosen route will be served. Amtrak has the right to cancel or change scheduled routes, stops or entire trips. According to AOERC, Amtrak has exercised this right on more than one occasion.

Under the Amtrak Contract, AOERC is responsible for providing its car consists in good order and on time to meet Amtrak's and host railroads' schedules. Additionally, the train consists must be submitted to Amtrak for inspection at the beginning of each touring season and before each trip. Amtrak may refuse to pull cars that do not pass its inspections.

Under 49 U.S.C. 10501(b), the Board has exclusive jurisdiction over transportation by rail carriers. The term "rail carrier" is defined as "a person providing common carrier railroad transportation for compensation" under 49 U.S.C. 10102(5). AOERC asserts that it does not meet the definition of a "railroad" under 49 U.S.C. 10102(6) because it does not own or operate any of the listed equipment; it does not own or operate any road or railroad right-of-way; and it does not own or operate any of the listed facilities or equipment. AOERC maintains that it cannot be considered a "rail carrier" subject to the Board's jurisdiction because it does not meet the definition of a "railroad."

Moreover, AOERC argues that it does not fit the definition of a common carrier because it does not hold itself out to the general public as a company engaged in the business of transporting persons or property from place to place for compensation. AOERC maintains that it does not provide scheduled transportation service on a regular basis between points. It claims that, in order to move its cars, it must rely entirely on Amtrak and the railroad owners of the track it uses for permission to travel. Additionally, AOERC asserts that its schedules are based entirely on the availability of Amtrak locomotives and crews and railroad trackage, all of which is determined by Amtrak and the owners of the track.