

**SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT**  
300 Lakeside Drive, P. O. Box 12688, Oakland, CA 94604-2688

BOARD MEETING AGENDA

August 8, 2013

9:00 a.m.

A regular meeting of the Board of Directors will be held at 9:00 a.m. on Thursday, August 8, 2013, in the BART Board Room, Kaiser Center 20<sup>th</sup> Street Mall – Third Floor, 344 – 20<sup>th</sup> Street, Oakland, California.

Members of the public may address the Board of Directors regarding any matter on this agenda. Please complete a “Request to Address the Board” form (available at the entrance to the Board Room) and hand it to the Secretary before the item is considered by the Board. If you wish to discuss a matter that is not on the agenda during a regular meeting, you may do so under Public Comment.

Any action requiring more than a majority vote for passage will be so noted.

Items placed under “consent calendar” are considered routine and will be received, enacted, approved, or adopted by one motion unless a request for removal for discussion or explanation is received from a Director or from a member of the audience.

Please refrain from wearing scented products (perfume, cologne, after-shave, etc.) to these meetings, as there may be people in attendance susceptible to environmental illnesses.

BART provides service/accommodations upon request to persons with disabilities and individuals who are limited English proficient who wish to address BART Board matters. A request must be made within one and five days in advance of Board meetings, depending on the service requested. Please contact the Office of the District Secretary at 510-464-6083 for information.

Rules governing the participation of the public at meetings of the Board of Directors and Standing Committees are available for review on the District's website (<http://www.bart.gov/about/bod>), in the BART Board Room, and upon request, in person or via mail.

Meeting notices and agendas are available for review on the District's website (<http://www.bart.gov/about/bod/meetings.aspx>), and via email or via regular mail upon request. Complete agenda packets (in PDF format) are available for review on the District's website no later than 48 hours in advance of the meeting. Those interested in being on the mailing list for meeting notices (email or regular mail) can do so by providing the District Secretary with the appropriate address.

Please submit your requests to the District Secretary via email to [BoardofDirectors@bart.gov](mailto:BoardofDirectors@bart.gov); in person or U.S. mail at 300 Lakeside Drive, 23<sup>rd</sup> Floor, Oakland, CA 94612; fax 510-464-6011; or telephone 510-464-6083.

Kenneth A. Duron  
District Secretary



Regular Meeting of the  
BOARD OF DIRECTORS

The purpose of the Board Meeting is to consider and take such action as the Board may desire in connection with:

1. CALL TO ORDER

- A. Roll Call.
- B. Pledge of Allegiance.
- C. Introduction of Special Guests.

2. CONSENT CALENDAR

- A. Approval of Minutes of the Meeting of July 11, 2013.\* Board requested to authorize.

3. ADMINISTRATION ITEMS

Director Murray, Chairperson

- A. Agreements for the District's Self-Insured Workers' Compensation Program: Agreement with Athens Administrators for Third Party Administration Services (Agreement No. 6M4257); Agreement with GENEX Services, Inc., for Utilization and Bill Review Services (Agreement No. 6M4280); and Agreement with Professional Dynamics, Inc. (PDI), for Medical Case Management (Agreement No. 6G4281).\* Board requested to authorize.
- B. Amendment to the District's Code of Conduct Policy.\* Board requested to adopt.
- C. District Whistleblower Policy.\* Board requested to adopt.

4. ENGINEERING AND OPERATIONS ITEMS

Director Fang, Chairperson

- A. Award of Contract No. 01VM-110A, Union City Intermodal Station Phase 2 – BART Station Improvements.\* Board requested to authorize.
- B. Award of Contract No. 04SF-150, Procurement of Running Rail, Crossties, Resilient Ties and Special Trackwork.\* Board requested to authorize.
- C. Award of Contract No. 6M3235, Reconditioning Transit Vehicle Wheels.\* Board requested to authorize.
- D. Agreement with King-American Ambulance Company, for Stand-by Emergency and Advance Life Support Services at the Four Downtown San Francisco Stations (Agreement No. 6M3240).\* Board requested to authorize.

5. PLANNING, PUBLIC AFFAIRS, ACCESS, AND LEGISLATION ITEMS

Director Blalock, Chairperson

- A. Update on East Contra Costa County Extension (eBART) Next Segment Study.\* For information.

6. GENERAL MANAGER'S REPORT

7. BOARD MATTERS

- A. Board Member Reports. For information.  
(Board members provide brief reports on meetings attended at District expense, as required by Government Code Section 53232.3(d).)
- B. Roll Call for Introductions.  
(An opportunity for Board members to introduce a matter for consideration at a future Committee or Board Meeting or to request District staff to prepare items or reports.)

8. PUBLIC COMMENT

(An opportunity for members of the public to address the Board of Directors on matters under their jurisdiction and not on the agenda.)

9. CLOSED SESSION (Room 303, Board Conference Room)

- A. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION  
Significant exposure to litigation pursuant to subdivision (b) of Government Code Section 54956.9: one potential case.
- B. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION  
Name of Case: Cedric Winters v. BART, Case No. 2010-NTS-001  
Government Code Section: 54956.9(a)

10. OPEN SESSION



**SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT**  
300 Lakeside Drive, P.O. Box 12688, Oakland, CA 94604-2688

Board of Directors  
Minutes of the 1,682nd Meeting  
July 11, 2013

A regular meeting of the Board of Directors was held July 11, 2013, convening at 9:07 a.m. in the Board Room, 344 20<sup>th</sup> Street, Oakland, California. President Radulovich presided; Kenneth A. Duron, District Secretary.

Directors present: Directors Blalock, Fang, Keller, Mallett, McPartland, Murray, Raburn, Saltzman, and Radulovich.

Absent: None.

President Radulovich announced that the Meeting would be adjourned in honor of former Director Willie B. Kennedy.

President Radulovich announced that the item on Agreement with Athens Administrators for Workers' Compensation Third Party Administration Service for the District's Workers' Compensation Program (Agreement No. 6M4257) would be continued to a future meeting.

Consent Calendar items brought before the Board were:

1. Approval of Minutes of the Meetings of June 13, 2013 (Regular), June 18, 2013 (Special), and June 28, 2013 (Special).
2. Agreement with MuniServices, LLC, for Sales and Use Tax (Sales Tax) Revenue Collection Services (Agreement No. 6M5059).

Director Murray made the following motions as a unit. Director Blalock seconded the motions, which carried by unanimous electronic vote. Ayes - 9: Directors Blalock, Fang, Keller, Mallett, McPartland, Murray, Raburn, Saltzman, and Radulovich. Noes - 0.

1. That the Minutes of the Meetings of June 13, 2013 (Regular), June 18, 2013 (Special), and June 28, 2013 (Special), be approved.
2. That the General Manager be authorized to award Agreement No. 6M5059, to MuniServices, LLC, to provide sales tax revenue collection services, pursuant to the notice to be issued by the General Manager, and subject to the District's protest procedures; the Agreement covers an initial term of three years with options for two additional one-year terms; and a contingency fee of 20 percent will be paid to MuniServices, LLC, based upon the amount of tax revenue recovered.

Director Murray, Chairperson of the Administration Committee, brought the matter of Agreement with San Francisco Municipal Transportation Agency for Fast Pass Payments for the



Period January 1, 2010, through June 30, 2014, before the Board. Ms. Pamela Herhold, Financial Planning, presented the item. The item was discussed. Director Saltzman moved that the General Manager be authorized to execute the Special Transit Fare (Fast Pass®) Agreement between the City and County of San Francisco and the San Francisco Bay Area Rapid Transit District for the period January 1, 2010, through June 30, 2014. Director Blalock seconded the motion. Director Mallett requested that the motion be amended to include direction previously given to staff to perform additional analysis and bring the results back to the Board. Directors Saltzman and Blalock accepted the amendment. The motion, as amended, carried by unanimous electronic vote. Ayes - 9: Directors Blalock, Fang, Keller, Mallett, McPartland, Murray, Raburn, Saltzman, and Radulovich. Noes – 0.

Director Murray brought the matter of Title VI Policies: Major Service Change Policy and Disparate Impact and Disproportionate Burden Policy, before the Board. Mr. Wayne Wong, Department Manager, Office of Civil Rights, Mr. Robert Mitroff, Manager of Fleet and Capacity Planning, and Ms. Herhold presented the item. The item was discussed.

Mr. Guillermo Mayer addressed the Board.

Director Raburn moved that the Board approve the Major Service Change Policy and Disparate Impact and Disproportionate Burden Policy. Directors Saltzman and Mallett seconded the motion.

Discussion continued. The motion carried by unanimous electronic vote. Ayes - 9: Directors Blalock, Fang, Keller, Mallett, McPartland, Murray, Raburn, Saltzman, and Radulovich. Noes - 0.

Director Murray brought the matter of Draft Amendment to the District's Code of Conduct Policies before the Board. Ms. Marcia deVaughn, Deputy General Manager, and Mr. Benson Fairow, Deputy Chief of Police, presented the item. The item was discussed.

Director Murray brought the matter of Draft District Whistleblower Policy before the Board. Ms. deVaughn and Ms. Darlene Cummins, Department Manager of Internal Audit, presented the item. The item was discussed.

Director Fang, Chairperson of the Engineering and Operations Committee, brought the matter of Award of Contract No. 15EK-110, Traction Power Substation Replacement ACO/KOW Installation before the Board. Mr. Paul Oversier, Assistant General Manager, Operations, presented the item. Director Mallett moved that the General Manager be authorized to award Contract No. 15EK-110, Traction Power Substation Replacement ACO/KOW Installation, to Shimmick Construction Company, Inc., for the Bid amount of \$2,761,000.00, pursuant to notification to be issued by the General Manager, subject to compliance with the District's protest procedures and Federal Transit Administration's requirements related to protest procedures. Director Blalock seconded the motion. Discussion continued.

Director McPartland exited the Meeting.

The motion carried by unanimous electronic vote. Ayes - 8: Directors Blalock, Fang, Keller, Mallett, Murray, Raburn, Saltzman, and Radulovich. Noes - 0. Absent – 1: Director McPartland.



Director Fang brought the matter of Change Order to Contract No. 15PJ-110B, Earthquake Safety Program Four Station Structures – A Line, with Robert A. Bothman, for Seismic Retrofit of Pier P-238 (C.O. No. 2), before the Board. Mr. Thomas Horton, Manager of Earthquake Safety Programs, presented the item.

Director Keller exited the Meeting.

The item was discussed. Director Murray moved that the General Manager be authorized to execute Change Order No. 2 to Contract No. 15PJ-110B, BART Earthquake Safety Program Station Structures – A Line, for the retrofit of Pier P-238, in an amount not to exceed \$1,300,000.00. Director Blalock seconded the motion, which carried by unanimous electronic vote. Ayes - 7: Directors Blalock, Fang, Mallett, Murray, Raburn, Saltzman, and Radulovich. Noes - 0. Absent – 2: Directors Keller and McPartland.

Director Fang brought the matter of Response to Request for Proposals for Management and Administrative Services for the San Joaquin Joint Powers Authority before the Board. Director Blalock recused himself from the discussion, stating that he sat on the San Joaquin Joint Powers Authority, the awarding body.

Mr. David Kutrosky, Managing Director, Capitol Corridor, presented the item.

Director Keller re-entered the Meeting.

The item was discussed. Director Raburn moved that the General Manager be authorized to submit a response to the Request for Proposals for Management and Administrative Services for the San Joaquin intercity passenger trains, on behalf of the District, to the San Joaquin Joint Powers Authority. Director Murray seconded the motion, which carried by unanimous electronic vote. Ayes - 7: Directors Fang, Keller, Mallett, Murray, Raburn, Saltzman, and Radulovich. Noes - 0. Absent – 2: Directors Blalock and McPartland.

Director Blalock re-entered the Meeting.

Director Blalock, Chairperson of the Planning, Public Affairs, Access, and Legislation Committee, had no report.

President Radulovich called for the General Manager's report. General Manager Grace Crunican reported on steps she had taken and activities and meetings she had participated in.

President Radulovich called for Board Member Reports.

Director Mallett reported he had attended Hercules Planning Commission meetings, a Democratic Central Committee meeting, the opening of the Richmond Station parking garage, meetings with staff and Directors, West Contra Costa Transportation Advisory Committee meetings, a meeting with a prospective developer, and a Richmond neighborhood council meeting.



Director Blalock reported he had attended a meeting of the South Hayward BART Station Access Authority and had visited the Fremont Station to speak with employees and riders.

Director Murray reported she had attended a small business presentation for the Hispanic Chamber of Commerce and had met with a constituent about Capitol Corridor.

Director Keller reported he had visited three stations to speak with employees and riders.

Director Raburn reported he had attended a briefing with police leadership on crime reduction strategies in the Coliseum parking area and the Citizens Review Board meeting.

Director Saltzman reported she had attended the South Hayward BART Station Access Authority meeting and had visited the Rockridge Station to speak with employees and riders.

President Radulovich called for Roll Call for Introductions.

Director Saltzman requested a discussion of evening Board Meetings be agendaized.

Director Saltzman requested the verbal announcement of Board votes when there is other than unanimity, to include at a minimum identification of those voting in the minority, in order to better inform those in the overflow room and those monitoring meetings via streaming or on demand.

Director Blalock requested the District evaluate the feasibility of installing windmills at stations for power generation, with the report to include costs and potential revenue sources for acquisition/installation/operation.

President Radulovich called for Public Comment. The following individuals addressed the Board.

Mr. Saul Almanza  
Mr. Anthony Zielonka  
Mr. Oscar David  
Mr. Kewal Singh  
Ms. Rose Sandoval  
Mr. Andrew Shaifer  
Ms. Gailene Gaines  
Ms. Carmen Williams  
Mr. Joe Bomberger  
Mr. Robert Fernandez  
Ms. Rhea Davis  
Mr. John Arantes  
Mr. James Riddle  
Ms. C. J. Hirschfield  
Ms. Jean Gomez  
Mr. Michael Parker  
Mr. Steve Arhontes  
Mr. Chris Daly  
Mr. Rickey Rideout



Ms. Jennifer Smith-Camejo  
Mr. Maurie Peaslee  
Mr. Paul Junge  
Ms. Roxanne Sanchez  
Ms. Sarah Bump  
Mr. Ken Hargreaves  
Mr. Alan Hollie  
Mr. Chris Finn  
Ms. Antonette Bryant  
Ms. Yuri Hollie

The Board Meeting was adjourned at 12:27 p.m. in honor of Willie B. Kennedy.

Kenneth A. Duron  
District Secretary





## EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>[Signature]</i>		GENERAL MANAGER ACTION REQ'D: Approve and forward to the Board		
DATE: c <i>8/2/13</i>		BOARD INITIATED ITEM: No		
Originator/Prepared by: Elaine M. Kurtz Dept: Human Resources <i>[Signature]</i> Signature/Date:	General Counsel <i>[Signature]</i> 8/2/13	Controller/Treasurer <i>[Signature]</i> [ ]	District Secretary [ ]	BARC <i>[Signature]</i> 8-2-13 [ ]

TITLE:  
**AUTHORIZE CONTRACTS FOR WORKERS' COMPENSATION SERVICES: THIRD PARTY ADMINISTRATION, UTILIZATION AND BILL REVIEW AND MEDICAL CASE MANAGEMENT**

NARRATIVE:

**PURPOSE:** To obtain Board authorization for the General Manager to award three agreements in support of the District's Workers' Compensation program: Agreement No. 6M4257 for Third Party Administration (TPA) to Athens Administrators; Agreement No. 6M4280 for Utilization and Bill Review Services to GENEX Services, Inc.; and Agreement No. 6M4281 for Medical Case Management Services to Professional Dynamics Incorporated (PDI).

**DISCUSSION:** These agreements are three of four related agreements for services in support of Workers' Compensation administration. Previously, all services related to Workers' Compensation have been provided by or through a Third Party Administrator (TPA) in consultation with District staff charged with overseeing the Workers' Compensation program. In response to the Board's stated interest in 'unbundling' contracts in order to open up opportunities to a larger field of providers to do business with the District, the Board extended the existing TPA Agreement in September, 2012 in order to provide an opportunity for staff to separately advertise certain of the services associated with Workers' Compensation administration.

Separate Requests for Proposals for Third Party Administration, Utilization and Bill Review, Medical Case Management, and Investigative Services have been advertised, three of which are presented for Board consideration at this time. The fourth Agreement, for Investigative Services, will be presented to the Board in the coming weeks.

**Third Party Administration, Agreement No. 6M4257.** The TPA assumes overall responsibility for the administration of the Workers' Compensation program, processing Workers' Compensation claims in accordance with State laws and legislation, providing procedural oversight, recordkeeping, administrative functions, and coordinating all ancillary services and service providers necessary to effectively address an injured worker's claim. These ancillary services include, among others, utilization review, bill review, medical case management, and investigative services, as warranted.

Advance Notices were mailed on March 27, 2013 to 121 providers. A Request for Proposals (RFP) utilizing the District's Small Business Program provisions was advertised in eleven



newspapers on March 29, 2013 and issued to 121 prospective proposers throughout the State of California. A Pre-Proposal Meeting was held on April 16, 2013 and was attended by 17 firms. Five proposals were received on May 7, 2013 from the following firms:

1. Athens Administrators, Concord, California
2. TRISTAR Risk Management, Concord, California
3. JT2 Integrated Resources, Pleasanton, California
4. Keenan Associates, Oakland, California
5. Intercare Holdings Insurance Services, Inc., Rocklin, California

The District's Selection Committee, chaired by Contract Administration, consisted of representatives from the Human Resources, System Safety, Risk and Insurance Management Departments and the Office of Civil Rights. The Selection Committee evaluated the proposals based on the best value method. The Selection Committee initially reviewed all proposals to determine which had satisfied the nine (9) minimum technical requirements. The Selection Committee determined that two proposers, Keenan Associates and Intercare Holdings Insurance Services, Inc. had failed to satisfy the minimum technical requirements. The Committee scored the remaining three (3) responsive proposals submitted by Athens Administrators, TRISTAR Risk Management, and JT2 Integrated Resources based on the experience and qualifications of the firms and their proposed key personnel in providing TPA services, ability to perform the RFP Scope of Services, and the ability to oversee and coordinate the ancillary services and providers.

Price proposals for the three responsive proposers were subsequently opened and evaluated. The Total Proposal Price for the base 3 years plus two additional option years are as follows:

- |                             |                |
|-----------------------------|----------------|
| 1. Athens Administrators    | \$5,118,427.00 |
| 2. JT2 Integrated Resources | \$5,132,300.00 |
| 3. TRISTAR Risk Management  | \$6,262,681.80 |

Pursuant to the District's Non-Federal Small Business Program, the Office of Civil Rights set a 5% prime preference for this Agreement for certified small businesses. The apparent low Proposer, Athens Administrators, is not a certified small business. The apparent second low Proposer, JT2 Integrated Resources, is a certified small business, making it eligible for the 5% reduction in its proposal price for evaluation purposes. After review by the Office of Civil Rights, and application of the 5% prime preference, the price proposal submitted by JT2 Integrated Resources was calculated to be \$4,882,300 for evaluation purposes.

Subsequent to review of pricing, the Selection Committee determined that the competitive range included all three responsive proposers. Oral Interviews were conducted with the three proposers and were subsequently scored. Scores for the written statement of qualifications (firm and proposed key personnel) and oral interview scores were combined, and the ranking is shown as follows:

Proposer	Qualifications/ Experience Average Score	Oral Interview Average Score	Combined Average Score	Technical Proposal Ranking
Athens Administrators	550.33	384	934.33	1
TRISTAR Risk Management				2



	487.66	277.17	764.83	
JT2 Integrated Resources	430.17	284.17	714.34	3

Athens Administrators ranked the highest in the technical evaluation phase but had the second lowest price after the 5% prime preference was applied for evaluation purposes to JT2 Integrated Resources.

The Selection Committee then conducted a best value analysis and determined that the proposal submitted by Athens Administrators represents the best value to the District. Specifically, the Committee considered Athens' responses to hypothetical problem-solving questions, which were available to all proposers in advance of the interview, to show a high degree of creativity as well as a strong culture of collaborative engagement among members of the team. In addition, the Athens team had stronger experience and, particularly in the core occupation of claims examiner, the greater experience was evident in the quality of performance exhibited in the interviews. The team members play a dominant role in the decisions concerning the processing and management of each claim in a manner that best meets the goal of providing timely and appropriate medical care to the employee while avoiding excessive costs and prolonged periods of disability. Athens Administrators is a State licensed Third Party Administrator with 37 years' experience managing Workers' Compensation claims in California. As noted, the staff proposed by Athens to work with the District are highly qualified, and its online claims management system is state-of-the art.

It is important to note that while for evaluation purposes Athens Administrators' price of \$5,118,427 is \$236,127 or 5% higher than JT2 Integrated Resources' evaluated price of \$4,882,300, the Agreement is awarded for the original price proposal. In this case, because Athens Administrators proposed the lowest price, there is no additional expenditure in awarding to Athens Administrators.

Pursuant to the District's Non-Discrimination in Subcontracting Program, the availability percentages for this Agreement are 16% for MBEs and 20% for WBEs. Athens Administrators will not be subcontracting any work and will do all work with its own forces. Therefore, the District's Non-Discrimination in Subcontracting Program does not apply.

**Utilization and Bill Review Services: Agreement No. 6M4280.** Utilization Review and Bill Review Services assure that procedures and treatments ordered are in accordance with acceptable medical parameters and provider agreements, and that billing is for services actually rendered, at rates that are appropriate and consistent with program and provider protocols. These two services are critical to assuring the District's Workers' Compensation program is managed in accordance with all relevant District and State Department of Workers' Compensation requirements, and that the District's program is efficient and cost effective.

Advance Notices were mailed on April 3, 2013. A Request for Proposals (RFP) utilizing the District's Small Business Program provisions was advertised in eleven newspapers on April 6, 2013 and issued to eighty-nine prospective proposers throughout the State of California. A Pre-Proposal Meeting was held on April 18, 2013 and was attended by 14 firms. Seven proposals were received on May 21, 2013 from the following firms:

1. Athens Administrators, Concord, California
2. TRISTAR Risk Management, Concord, California



3. JT2 Integrated Resources, Pleasanton, California
4. GENEX Services, Inc., Anaheim, California
5. InterMed Cost Containment Services, Inc., Rocklin, California
6. Allied Managed Care, Inc., Sacramento, California
7. CorVel Healthcare Corporation, Folsom, California

The District's Selection Committee chaired by Contract Administration consisted of representatives from the Human Resources, Risk and Insurance Management Departments and the Office of Civil Rights. The Committee evaluated the proposals using the best value method. The Selection Committee initially reviewed all proposals to determine which had satisfied the seven minimum technical requirements. After clarifying the technical proposals, it was determined that all seven proposals satisfied the minimum technical requirements. The Committee scored the seven proposals based on the experience and qualifications of the firms and their proposed key personnel, and as to their ability to perform the RFP Scope of Services, and to electronically interface and coordinate with other providers of medical cost containment services and with the District's designated TPA. Price proposals were subsequently opened and evaluated, following which, the Selection Committee determined that all proposers were in the competitive range and decided to request Best and Final Offers (BAFOs) at the conclusion of oral interviews. Scores for the written statement of qualifications (firm and proposed key personnel) and oral interview scores were combined, and the ranking is shown as follows:

Proposer	Qualifications Experience Average Score	Oral Interview Average Score	Combined Average Score	Technical Proposal Ranking
Athens Administrators	481.00	343.33	824.33	1
GENEX Services, Inc.	398.00	374.33	772.33	2
Allied Managed Care, Inc.	409.00	294.34	703.34	3
TRISTAR Risk Management	442.00	195.00	637.00	4
CorVel Healthcare Corporation	324.00	265.00	589.00	5
InterMed Cost Containment Services, Inc.	324.00	236.67	560.67	6



JT2 Integrated Resources	353.00	186.67	539.67	7
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Best and Final Offer (BAFO) price proposals received from the seven proposers are as follows:

1.	CorVel Healthcare Corporation	\$1,510,987.50
2.	GENEX Services, Inc.	\$1,576,744.50
3.	TRISTAR Risk Management	\$1,665,557.50
4.	Athens Administrators	\$2,031,870.00
5.	InterMed Cost Containment Services, Inc.	\$1,962,288.00
6.	JT2 Integrated Resources	\$2,354,083.05
7.	Allied Managed Care, Inc.	\$3,482,877.50

Pursuant to the District's Non-Federal Small Business Program, the Office of Civil Rights set a 5% prime preference for this Agreement for certified small businesses. The apparent low Proposer, CorVel Healthcare Corporation, is not a certified small business. The apparent sixth Proposer, JT2 Integrated Resources, is a certified small business, making it eligible for the 5% reduction in its proposal price for evaluation purposes. After review by the Office of Civil Rights, and application of the 5% prime preference, the price proposal submitted by JT2 Integrated Resources was calculated to be \$2,278,533.63 for evaluation purposes. If JT2 Integrated Resources had been selected, the award would have been based on the contract's BAFO price of \$2,354,083.05.

The Selection Committee conducted a best value analysis and determined that the proposal submitted by GENEX Services, Inc. represents the best value to the District. GENEX Services, Inc. demonstrated its superior level of expertise as well as a collaborative and efficient approach to utilization review and bill review services. The firm is a California licensed Workers' Compensation Administrator with 35 years' experience managing utilization review and bill review services for numerous clients including AC Transit and Santa Clara Valley Transportation Authority. Staff assigned by GENEX Services, Inc. to work with the District are highly qualified, and its online system is state-of-the art. During the oral interview, GENEX Services, Inc. provided several examples of how staff assigned to the two functions apply cross-training to spot issues and improve coordination with each other.

Although GENEX Services' BAFO price of \$1,576,744.50 is \$65,757 or 4% higher than CorVel Healthcare Corporation's BAFO price of \$1,510,987.50, the higher price is justified based on the greater experience of the firm and greater capability of the team to more efficiently process utilization reviews and bill reviews with the District's designated Third Party Administrator, as exhibited in the interview process. During the oral interview process, GENEX Services described several programs that would not only improve current processes but also reduce costs, such as a proprietary benchmarking of services and costs by facility program, and predictive modeling tools to provide early case management in appropriate cases.

Pursuant to the District's Non-Discrimination in Subcontracting Program, the availability percentages for this Agreement are 16% for MBEs and 20% for WBEs. GENEX Services will



not be subcontracting any work and will do all work with its own forces. Therefore, the District's Non-Discrimination in Subcontracting Program does not apply.

**Medical Case Management: Agreement No. 6M4281.** Medical case management services provide oversight and proactive management of medical treatment with the objective of assuring timely and appropriate treatment for employees that also remains focused on their return to work. Specifically, these services include recommending and coordinating treatment plans that are medically appropriate, defensible, improve the quality of care, control long term costs, and facilitate a prompt return to work. The District recognizes that these goals are not necessarily consistent with the lowest short-term expenses, and has encouraged the establishment of treatment protocols that bring about a desirable long term outcome even when additional expenses are indicated.

Advance Notices were sent on June 4, 2013. A Request for Proposals (RFP) utilizing the District's Small Business Program provisions was advertised in eleven newspapers on June 5, 2013, and issued to 89 prospective proposers throughout the State of California. A Pre-Proposal Meeting was held on June 20, 2013, and was attended by 4 firms. Proposals were received on July 9, 2013 from the following four firms:

1. Excel Managed Care and Disability Services, Sacramento, California
2. GENEX Services, Inc., Anaheim, California
3. Professional Dynamics, Inc., Folsom, California
4. TRISTAR Managed Care, Concord, California

The District's Selection Committee chaired by Contract Administration consisted of representatives from the Departments of Human Resources and Risk and Insurance Management and the Office of Civil Rights. The Selection Committee evaluated the proposals based on the best value method. The Selection Committee conducted a responsiveness review of all proposals against the six (6) minimum technical requirements. After clarifying the technical proposals, it was determined that three of the four were responsive to the minimum technical requirements. The Committee scored the three proposals based on the experience and qualifications of the firms and their proposed key personnel in providing medical case management services, and ability to perform the RFP Scope of Services.

Price proposals were subsequently opened and evaluated, following which, the Selection Committee determined that all proposers were in the competitive range and decided to request BAFO's at the conclusion of oral interviews. Scores for the written statement of qualifications (firm and proposed key personnel) and oral interview scores were combined, and the ranking is shown as follows:

Proposer	Qualifications/ Experience Average Score	Oral Interview Average Score	Combined Average Score	Technical Proposal Ranking
Professional Dynamics, Inc	474.00	385.50	859.50	1
GENEX Services, Inc	447.25	315.75	763.00	2
TRISTAR Managed Care	420.25	151.25	571.50	3



BAFO price proposals received from the three proposers are as follows:

- |                                |              |
|--------------------------------|--------------|
| 1. TRISTAR Managed Care        | \$ 2,995,000 |
| 2. Professional Dynamics, Inc. | \$ 3,321,360 |
| 3. GENEX Services, Inc.        | \$ 3,351,280 |

Pursuant to the District's Non-Federal Small Business Program, the Office of Civil Rights set a 5% prime preference for this Agreement for certified small businesses. The apparent low Proposer, TRISTAR Managed Care, is not a certified small business. The apparent second low proposer, Professional Dynamics, Inc. is a certified small business, making it eligible for the 5% reduction in its proposal price for evaluation purposes. After review by the Office of Civil Rights, and application of the 5% prime preference, the price proposal submitted by Professional Dynamics, Inc. was calculated to be \$3,171,610 for evaluation purposes. However Professional Dynamics, Inc. is selected the award will be based on the contract's BAFO price of \$3,321,360.

The Selection Committee conducted a best value analysis and determined that the proposal submitted by Professional Dynamics, Inc. represents the best value to the District. Professional Dynamics, Inc. demonstrated its superior level of expertise as well as a collaborative and efficient approach to medical case management services. Professional Dynamics, Inc. is a California licensed Workers' Compensation Administrator with 32 years' experience providing medical managed care services. Professional Dynamics, Inc. is also a small business as well as a woman owned business. Professional Dynamics, Inc. provides medical management services to a variety of public sector agencies through partnerships with Workers' Compensation Third Party Administrators (TPA) and directly to cities and counties. Professional Dynamics, Inc. has been working with the District for several months through the TPA. During the oral interview process, Professional Dynamics Inc. provided examples of several cost saving strategies, including negotiating for more effective medical interventions and cost effective services to potentially minimize future medical costs and reduce permanent disability ratings. In addition, Professional Dynamics, Inc. presented in its proposal a 24-hour first notification program that closely matches the needs of the scope of services outlined in the RFP. All members of the Professional Dynamics, Inc. who would be involved in care recommendations are registered nurses and employees of their organization. Professional Dynamics, Inc. also demonstrated a sophisticated knowledge of handling opioid dependency issues and catastrophic cases. Accordingly, although Professional Dynamics, Inc.'s Final BAFO evaluated price of \$3,171,610 is \$176,610 or 6% higher than TRISTAR Managed Care's Final BAFO price of \$2,995,000, the higher price is justified.

Pursuant to the District's Non-Discrimination in Subcontracting Program, the availability percentages for this Agreement are 16% for MBEs and 20% for WBEs. Professional Dynamics, Inc. will not be subcontracting any work and will do all work with its own forces. Therefore, the District's Non-Discrimination in Subcontracting Program does not apply.

The Office of the General Counsel will approve all Agreements as to form.

**FISCAL IMPACT:** The annual cost breakdown for each Agreement is as follows:



Third Party Administration: Agreement No. 6M4257

Athens Administrators

Year 1:	\$ 945,000	(FY14)
Year 2:	\$ 982,800	(FY15)
Year 3:	\$1,022,111	(FY16)
Option Year 1:	\$1,063,000	(FY17)
Option Year 2:	\$1,105,516	(FY18)

Total for three years plus two option years:

\$5,118,427

The FY14 Adopted Budget includes funding in the amount of \$868,801 and therefore largely includes, the first year cost of \$945,000 for this Agreement. Funding in out years will be requested in future operating budget cycles.

Utilization and Bill Review Services: Agreement No. 6M4280

GENEX Services, Inc.

Year 1:	\$239,422.50	(FY14)
Year 2:	\$269,000.00	(FY15)
Year 3:	\$317,766.00	(FY16)
Option Year 1:	\$353,748.50	(FY17)
Option Year 2:	\$396,807.50	(FY18)

Total for three years plus two option years:

\$1,576,744.50

The costs for this agreement will be funded from the Workers' Compensation reserve account in the general fund.

Medical Case Management: Agreement No. 6M4281

Professional Dynamics, Inc.

Year 1:	\$658,340	(FY14)
Year 2:	\$659,720	(FY15)
Year 3:	\$666,400	(FY16)
Option Year 1:	\$666,960	(FY17)
Option Year 2:	\$669,940	(FY18)

Total for three years plus two option years:

\$3,321,360

The costs for this agreement will be funded from the Workers' Compensation reserve account



in the general fund.

**ALTERNATIVE:** The Board may elect to re-advertise one or more of the RFPs, recommend a further extension of the existing TPA agreement, or cancel one or more of the RFPs. Cancellation of the TPA RFP would, absent a further extension, leave the District without the ability to meet its statutory obligations with respect to Workers' Compensation.

**RECOMMENDATION:** Adoption of the following motion:

**MOTIONS:**

1. The General Manager is authorized to award Agreement No. 6M4257, Third Party Administration Services for the District's self-insured Workers' Compensation Program, to Athens Administrators for an amount not to exceed the base Proposal Price of \$2,949,911.00 for the base three-year period, and is authorized to exercise Option Year 1 for an amount not to exceed \$1,063,000.00 and Option Year 2 for an amount not to exceed \$1,105,516.00, pursuant to notification to be issued by the General Manager and subject to compliance with the District's protest procedures. The Agreement authorizes Athens Administrators to pay self-insured workers' compensation claims and losses out of a fund provided by the District to the amount required by law.
2. The General Manager is authorized to award Agreement No. 6M4280, Utilization and Bill Review Services, for the District's self-insured Workers' Compensation Program, to GENEX Services, Inc. for an amount not to exceed the base Proposal Price of \$826,188.50 for the base three-year period, and is authorized to exercise Option Year 1 for an amount not to exceed \$353,748.50 and Option Year 2 for an amount not to exceed \$396,807.50, pursuant to notification to be issued by the General Manager and subject to compliance with the District's protest procedures.
3. The General Manager is authorized to award Agreement No. 6G4281, Medical Case Management, for the District's self-insured Workers' Compensation Program, to Professional Dynamics, Inc. (PDI) for an amount not to exceed the base Proposal Price of \$1,984,460.00 for the base three-year period, and is authorized to exercise Option Year 1 for an amount not to exceed \$666,960.00 and Option Year 2 for an amount not to exceed \$669,940.00, pursuant to notification to be issued by the General Manager and subject to compliance with the District's protest procedures.





EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Marcia E. deVaughn</i>		GENERAL MANAGER ACTION REQ'D:			
DATE: 8/2/13		BOARD INITIATED ITEM: No			
Originator/Prepared by: Marcia E. deVaughn	General Counsel	Controller/Treasurer	District Secretary	BARC	
Dept: <i>HR</i>	<i>[Signature]</i> 8/2/13 [ ]	<i>[Signature]</i> [ ]	[ ]	<i>[Signature]</i> 8-2-13 [ ]	
Signature/Date:					
Status: Routed			Date Created: 06/27/2013		

TITLE:

**Amendment of District Code of Conduct Policy**

NARRATIVE:

**PURPOSE:**

To update the District Code of Conduct Policy and incorporate guidelines for BART Advisory Committee members, contractors and customers.

**DISCUSSION:**

The District has had an Employee Code of Conduct since 1993. It was amended by the Board in July 2010 as a District Code of Conduct Policy applicable to District officers, employees and Board members. Staff recently undertook a best practice review of ethics and code of conduct policies that have been implemented at jurisdictions and transit agencies throughout California and other states. As a result, staff has revised the policies pertaining to Directors, officers and employees. In addition, three new Code of Conduct policies were created to apply to District Advisory Committee members, District contractors, and our customers, respectively. Since each Code of Conduct is directed at a different audience, each Code was drafted to be a stand alone document.

The General Manager has designated the Department Manager of Internal Audit as the District Ethics Officer. The Ethics Officer is charged, in consultation with the Office of the General Counsel, with advising District managers, Advisory Committee members, and consultants regarding ethical issues and questions involving the interpretation and application of District Code of Conduct Policies.

**FISCAL IMPACT:**

None

**ALTERNATIVE:**

Do not adopt the amended District Code of Conduct Policies.

**RECOMMENDATION:**

Staff recommends adoption of the amended Code of Conduct Policies that provides clear guidelines to help establish and maintain high standards of professional and personal conduct for District officers, employees, Board members, and others who interact with or conduct business



with the District.

MOTION:

The Board adopts the attached amended District Code of Conduct Policies.



# **Advisory Committee Member Code of Conduct**

## **I. Application of the Advisory Committee Members Code of Conduct**

District Advisory Committees provide input and advice to assist the Board and staff deliberations in the conduct of District business. Since these committees are advisory only, the actions and statements of Advisory Committee members do not necessarily reflect the official positions or policies of the San Francisco Bay Area Rapid Transit District or its Board of Directors. This Code of Conduct applies to all members of District Advisory Committees.

Currently, the District's Advisory Committees are the BART Accessibility Task Force, the Bicycle Advisory Task Force, the Business Advisory Council, the Citizen Review Board, the Earthquake Safety Program Citizens' Oversight Committee, the Title VI/Environmental Justice Advisory Committee, the Limited English Proficiency Advisory Committee and the Transit Security Advisory Committee. This Code applies to these Advisory Committees as well as to any Advisory Committees which are created subsequent to the adoption hereof.

## **II. Professional Conduct**

Members of District Advisory Committees shall conduct themselves in a manner consistent with the law, this Code of Conduct, District policies, and good judgment. Members shall not commit any act which may bring reproach or discredit upon the District. Speech or behavior that is likely to create an appearance of impropriety is to be avoided. Members shall not involve themselves in altercations or any other act of hostility with District employees, other Committee members, or the public. Neither shall they engage in acts which will subject the District to criticism or adversely affect the interests of the District. It is up to each member to maintain a professional, safe and productive environment.

## **III. Conflicts of Interest**

Advisory Committee members shall not participate in providing advice or comments to the District's Board, staff or other Committee members on any matter in which they know or have reason to know that they have a financial interest. Additionally, Advisory Committee members shall not participate in the making of any District contract in which they have a financial interest. If an Advisory Committee member has a conflict of interest he/she shall disclose such conflict to the other members of the Committee and file a written statement disclosing the conflict with the District Ethics Officer.

## **IV. Confidential Information**

Advisory Committee members shall not use or disclose, other than in the performance of their official duties and responsibilities (or as may be required by law), confidential District information gained in the course of or by reason of their position.



## **V. Use of District Resources**

Advisory Committee members shall not use or permit the use of District resources, including but not limited to facilities, materials, equipment, information, intellectual property such as trademarks and copyrighted material, and District staff time, for activities other than the performance of their duties as Advisory Committee members.

## **VI. Official District Communications**

Advisory Committee Members shall not claim or imply that they are speaking on behalf of the District unless they have been specifically approved to do so by the District's Communications Department.

## **VII. Non-Discrimination/Sexual Harassment**

Advisory Committee members shall not, in the performance of their responsibilities as Committee members, engage in unlawful discrimination of any sort, including discrimination against any person on the basis of race, sex, color, national origin, religion, handicap, age, marital status, sexual orientation, or veteran status. Advisory Committee members shall not engage in sexual harassment.

## **VIII. Discussion of Future Employment**

Advisory Committee members shall not use their position to influence any District decision regarding prospective employment with the District.

## **IX. Penalties for Non-Compliance**

In addition to any other penalty as provided by law, Advisory Committee members who violate this Code are subject to removal from the Committee.

## **X. Interpretation**

The District Ethics Officer, in consultation with the Office of the General Counsel, is charged with advising District management regarding ethical issues and questions involving the interpretation and application of this Code of Conduct. Advisory Committee members and District managers may contact the Ethics Officer with questions regarding this Code of Conduct.



# Board of Directors Code of Conduct

The San Francisco Bay Area Rapid Transit District (BART) is a Special District created by the State of California. The Board of Directors is the legislative body of the District representing Alameda County, Contra Costa County, and the City and County of San Francisco. The Board of Directors determines all matters of District policy. The Board also provides counsel and direction to management without exerting individual power or authority over BART. Board action requires either a majority or two-thirds vote of the Board, depending on the action under consideration. The Board of Directors Code of Conduct guides the Board in exercising its duties responsibly.

- I. Board members shall treat the public, staff members and each other with respect and courtesy.
- II. Board members shall refrain from conduct that they know or reasonably should know is likely to create in the minds of reasonable observers the perception that the Board member used his or her public position improperly. They shall not commit any act which may bring reproach or discredit upon the District.
- III. The Political Reform Act (Government Code Sections 81000-91014) requires Board members to publicly disclose their financial interests by filing a disclosure form (Form 700) with the District. Additionally, the Political Reform Act provides that Board members shall not make, participate in, or use their position to influence a governmental decision in which they know or have reason to know that they have a financial interest.
- IV. California Government Code Section 1090 prohibits Board members from being financially interested in any contract made by them in their official capacity. This prohibition applies to all contracts regardless of funding source. The financial interest of an individual Board member in a District contract may prevent the entire Board from authorizing the award, execution, or amendment of the contract.
- V. Board members shall not make, participate in, or use their position to influence any governmental decision relating to any person or entity with whom the Board member is negotiating, or has any arrangement concerning prospective employment.<sup>1</sup> Board members shall not use their position to influence any District decision regarding prospective employment with the District.
- VI. Board members shall not participate in the selection, award, or administration of contracts supported by federal funds where the Board member has a real or apparent conflict of interest as defined by FTA Third-Party Contracting Guidance.<sup>2</sup> Such a conflict would arise when any of the following parties has a financial or other interest in an entity selected for award of a contract supported by federal funds: the Board member, or any immediate family member, partner, employer, or organization that intends to employ the Board member.

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<sup>1</sup> Cal. Gov. Code 87407

<sup>2</sup> FTA Circular 4220.1F



**VII.** Board members shall not participate in the making of a decision to hire, appoint, employ, promote, or terminate the employment of a person who is a relative of the Board member. Board members shall not take any action that has the potential to affect the employment status at the District of a person who is a relative of the Board member, including attempting to persuade a District officer or employee to make a decision or take an action affecting a relative of the Board member.

For the purposes of this Code, the term “relative” means the following: husband, wife, domestic partner, father, mother, grandfather, grandmother, son, daughter, stepson, stepdaughter, granddaughter, grandson, brother, sister, uncle, aunt, nephew, niece, father-in-law, mother-in-law, daughter-in-law, son-in-law, sister-in-law, and brother-in-law.

- VIII.** Board members shall not publicly engage in personal attacks on BART employees or members of the public, or attempt to discipline or disparage any employee in any manner. They shall not involve themselves in altercations or any other act of hostility with others, nor will they engage in acts which will subject the District to criticism or adversely affect the interests of the District. Any concerns regarding an employee's performance shall be communicated to the General Manager or other Board Appointed Officer with supervisory responsibility for the employee. The foregoing shall not preclude Board members from making comments which are critical of District policies, practices, operations or performance in the discharge of their official duties.
- IX.** Board members shall not solicit or accept gifts of any value from persons or entities with which the District contracts or may contract. Gifts or favors received by or promised to an individual Board member may prevent the entire Board from authorizing the award or execution of a contract.<sup>3</sup>
- X.** Before the staff recommendation for an award of a contract is made public, Board members shall not communicate regarding the procurement with any District employee except the General Manager or his or her designee. The General Manager shall keep a log of those communications and shall report those communications and responses in writing at the Board meeting where action on the procurement is scheduled.<sup>4</sup>
- XI.** Board members shall comply with the terms of Section IX of the District’s Contractor Code of Conduct related to communications with outside parties during pendency of a bid or proposal.
- XII.** Candidates for the Board shall not, directly or indirectly, solicit political contributions from officers or employees of the District.<sup>5</sup>
- XIII.** Board members shall not use or disclose, other than in the performance of their official duties and responsibilities (or as may be required by law), confidential District

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<sup>3</sup> Cal. Gov. Code 1090

<sup>4</sup> Adapted from the Los Angeles County Metropolitan Transportation Authority Board of Directors Code of Conduct, Section 130680(e)

<sup>5</sup> Cal. Gov. Code 3205



information gained in the course of or by reason of their position, nor shall any Board member permit such use or disclosure.<sup>6</sup> Board members shall not disclose confidential information that has been acquired by being present in a closed session to a person not entitled to receive it, unless the Board has authorized disclosure of that confidential information. However, it shall not be a violation of this Code for a Board member to make a confidential inquiry or complaint to a district attorney or grand jury regarding the illegality or potential illegality of an action that has been the subject of deliberation at a closed session, to express an opinion concerning the propriety or legality of actions taken in closed session, or to disclose information acquired during a closed session that is not confidential information.<sup>7</sup>

**XIV.** A former Board member is prohibited from representing any other person by appearing before the District's Board or communicating with any District Director, officer or employee in an attempt to influence a District decision for a period of one year after the Board member leaves office.

**XV.** Board members shall not use or permit the use of District resources, including but not limited to facilities, materials, equipment, information, intellectual property such as trademarks and copyrighted material, and District staff time, for activities other than District business. This Code of Conduct incorporates the prohibitions of California law concerning use of public agency resources for campaign activity.<sup>8</sup>

**XVI.** Sanctions imposed for violations of this Code of Conduct may include, but are not limited to, any of the following:

- A. Public censure by the Board at a regularly scheduled meeting;
- B. Disqualification from participating in any discussion or vote on any matter related to the violation; and/or
- C. Removal of the Board member from one or more committees.<sup>9</sup>

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<sup>6</sup> Cal. Gov. Code 1098 makes use of confidential info for pecuniary gain a misdemeanor, but this is broader

<sup>7</sup> Cal. Gov Code 54963

<sup>8</sup> Cal. Gov. Code 8314 and others.

<sup>9</sup> Adapted from the Los Angeles County Metropolitan Transportation Authority Board of Directors Code of Conduct, Section 130620(c)(1-6)



# Customer Code of Conduct

It is the policy of the San Francisco Bay Area Rapid Transit District to help ensure the safety, security, comfort and convenience of all those who use its services. BART has established the following passenger conduct regulations to ensure that any one person may not adversely affect others using the system or operating the BART system. Customers shall use the BART system in a responsible manner to preserve and protect the aesthetics, and promote the longevity of this essential public resource for greater mobility in the San Francisco Bay Area. Customers shall treat other patrons and BART representatives with consideration, patience, respect and civility to allow use, operation and enjoyment of the BART system in a safe and gratifying manner for all persons.

A person is prohibited from committing the following acts on a BART vehicle, BART facility, or BART property unless otherwise specified in this Section:

- I. Smoke or expel the residue of any tobacco product including chewing tobacco.
- II. Consume any alcoholic beverage or possess an open container of any alcoholic beverage.
- III. Eat or drink in the paid areas of the stations or on the trains.
- IV. Engage in disruptive, disturbing behavior including: loud conversation, profanity or rude insults, or operating any electronic device used for sound without an earphone(s).
- V. Take any animal into the paid area of the BART system unless the animal is secured in a container sufficient to contain the animal. Exceptions will be made for service animals or service dogs in training.
- VI. Carry or possess any weapon in violation of the law.
- VII. Possess or transport any flammable liquid, combustible material or other dangerous substance such as gasoline, kerosene or propane.
- VIII. Litter.
- IX. Vandalize a BART vehicle or BART property by writing, marking, scribbling, defacing or causing destruction to the vehicle or property in any manner.
- X. Beg or solicit by accosting another person.
- XI. Spit, urinate, defecate or inappropriately expose oneself.
- XII. Possess, use or sell any illicit substance.
- XIII. Enter a paid area without proper fare payment.



- XIV.** Be present after hours of operation without authorization.
- XV.** Use a BART facility or BART property for non-transportation related purposes without authorization.
- XVI.** Interfere with the operation of a BART vehicle.
- XVII.** Threaten, harm or assault a BART employee or passenger.

Any person who violates one or more of these regulations may be warned and/or ordered to immediately leave a BART vehicle, BART facility, or BART property by a BART employee. Situations where a person refuses to leave a BART vehicle, BART facility or BART property after being ordered to do so may be handled by the BART Police Department or other appropriate law enforcement agencies.

This policy does not seek to limit or conflict with any federal, state, or local law or ordinance; or to prevent any law enforcement agency or entity from taking any lawful action against any person on a BART vehicle, BART facility, or BART property.



# District Contractor Code of Conduct

## I. Definitions

The following definitions shall apply to this Contractor Code of Conduct:

- A. District Official. The term “District Official” shall mean any Board member, officer, or employee of the District.
- B. Contractor. The term “Contractor” shall mean any contractor, supplier, real property developer, or consultant of the District.

## II. Application of the Contractor Code of Conduct

This section shall govern the conduct of all Contractors of the District. These standards supersede all prior written ethics policies adopted by the District which are in conflict with these standards. These standards are to be read in conjunction with applicable provisions of the District’s Procurement Manual and other applicable Board Rules, policies and procedures. All Contractors shall ensure that their subcontractors comply with this section.

## III. Conflict with Contract Terms

The terms of this Contractor Code of Conduct are not intended to limit or otherwise modify other terms contained in a contract between the District and any Contractor. In the event there is a conflict between this Contractor Code of Conduct and the terms of a contract between the District and a Contractor, the terms of the contract shall govern.

## IV. Purpose

The purpose of this section is to protect the integrity of the procurement process, and to provide a comprehensive statement of pertinent regulations and obligations governing the conduct of Contractors doing business with the District so they will be able to compete fairly and perform their work and services in an ethical manner.

This document does not purport to respond to all ethical issues which may arise in the course of doing business with the District. Each person and entity doing business with the District is expected at all times to conduct himself or herself in the manner of an ethical, reasonable person.

## V. Professional Conduct

- A. District Contractors shall conduct themselves in a manner consistent with the law, this Code of Conduct, District policies, and good judgment.



- B. They shall not commit any act which may bring reproach or discredit upon the District.
- C. Speech or behavior that is likely to create an appearance of impropriety is to be avoided.
- D. Contractors shall not involve themselves in altercations or any other act of hostility with the District employees, other contractors, or the public. Neither shall they engage in acts which will subject the District to criticism or adversely affect the interests of the District.
- E. It is up to each Contractor to maintain a professional, safe, and productive environment.

## **VI. Interpretation**

The District Ethics Officer, in consultation with the Office of the General Counsel, is charged with advising District management regarding ethical issues. Contractors and District managers may contact the Ethics Officer with questions regarding this Code of Conduct.

## **VII. Enforcement**

Violations of law or of this Code by a Contractor should be reported to the District Ethics Officer.

## **VIII. Contacts by Staff Prior to the Issuance of a Solicitation**

While informational and market research contacts by District employees with prospective Contractors can be a valuable source of data to the District, such contacts can sometimes provide an unfair advantage in a future procurement to persons contacted as part of the market research. All parties must exercise sound judgment and caution to ensure that there is no preferential treatment of any prospective Contractor and to avoid even the appearance of such preferential treatment. The District may be prohibited by law from awarding a contract to a Contractor who has received such preferential treatment or where there is an appearance of preferential treatment.

## **IX. Communication During Pendency of Bid or Proposal**

- A. "District Official". For the purpose of this section only, the term "District Official" shall mean any Board member, officer, or employee of the District, or any other person who is serving on a District selection committee for the review of bids or proposals.
- B. Requirement to Log Communications. During the period of time commencing with the submittal of a bid or proposal in response to a Request for Proposals (RFP), Request for Qualifications (RFQ), Invitation for Bid (IFB), or other



District procurement solicitation, and ending with the award of the contract, District Officials shall keep a log of all communications, whether oral or written, from any person who is not a District Official, regarding a pending bid or proposal. The log shall contain the following information for each communication:

- i. the date of the communication;
  - ii. the name of the person making the communication; and
  - iii. a brief statement of the topic of the communication, including the name of any bidder or proposer that is a subject of the communication.
- C. Submission and Posting of Logs. The logs shall be submitted on a weekly basis to the District Ethics Officer, together with any written communications received from any person who is not a District Official regarding pending bids or proposals. The logs and any such written communications shall be maintained by the Ethics Officer and shall be subject to public inspection and copying pursuant to California Government Code Section 6250 *et seq.* Additionally, the Ethics Officer shall on a weekly basis post the logs on the District's website.
- D. Exceptions. The requirement to keep a log of communications described in subsection B. above shall not apply where:
- i. The communication is required by the terms of the solicitation, such as a document submitted as part of a proposal, or the oral interview of a proposer or bidder;
  - ii. The communication is made publicly at a meeting of the Board; or
  - iii. In the case of negotiated procurements, the communication is initiated by a member of the District's selection committee for the purpose of negotiating the contract in accordance with the terms of the solicitation.

#### **X. Prohibition Regarding Gifts**

No bidder, proposer or Contractor, or any of their consultants or proposed subcontractors shall offer, give, or promise to offer or give, directly or indirectly, any gift or favor of any value to any District Official.

#### **XI. Financial Contribution Limitation**

All Contractors and prospective Contractors, and each of their subcontractors and proposed subcontractors, are charged with full knowledge of the requirements of Section 5 of the Rules of the Board of Directors limiting the making of campaign contributions to Board members or candidates for Director, and shall not violate or conspire with any other person to violate said Section.



## **XII. Prohibition Regarding Offers of Employment**

No bidder, proposer, or Contractor shall offer, or promise to offer, either directly or indirectly, any future employment or business opportunity to any District Official, or member of his or her immediate family, significant other or business associates of such persons if such offer of employment is conditioned expressly or impliedly on the awarding of a present or future contract or preference in the awarding of a contract to anyone at any time by the District. In addition, District officers and employees may be disqualified from working on District matters involving a person or entity with whom the officer or employee is negotiating, or has any arrangement concerning, prospective employment, whether or not the prospective employer has conditioned an offer of employment on the awarding of a present or future contract or preference in the awarding of a contract.

## **XIII. Prohibition Regarding Information**

Prior to a contract award, no bidder, proposer or Contractor shall solicit or obtain, directly or indirectly, from any District Official, any information relating to current or future contracts, or a specific pending procurement, unless such information is at the time a public record required to be disclosed under the California Public Records Act, or has otherwise been made available at the same time in the same form to all other bidders, proposers and Contractors.

## **XIV. Prohibitions on Use and Disclosure of Confidential Information**

At no time shall any Contractor who obtains confidential or proprietary District information in the course of doing or seeking to do business with the District disclose any such information to any person not authorized by the District to receive such information or use such information for any personal gain except as necessary to fulfill its contractual obligations to the District.

## **XV. Prohibition Regarding Participation in Procurement Development**

No Contractor who participates in the development of a scope of work, solicitation documents, contract documents or technical specifications may participate as a bidder, proposer or sub-proposer on that particular procurement or perform any work on that particular procurement or any other procurement that would constitute an organizational conflict of interest or would give that Contractor an unfair advantage over other bidders or proposers on that procurement.

## **XVI. Duty to Disclose Conflicts of Interest**

- A. Each bidder, proposer and Contractor, and each of their consultants and subcontractors, seeking to do business, or doing business with the District has an obligation to promptly disclose in writing to the Department Manager of Procurement for the District, or in the case of property development projects to



the Department Manager of Real Estate and Property Development for the District, any of the following potential conflicts of interest which become known to the management of the bidder, proposer or Contractor:

- i. Any financial relationship between the bidder, proposer or Contractor and a District Official;
  - ii. Any financial or close personal relationship between any officers, directors or employees of the bidder, proposer or Contractor and a District Official;
  - iii. Any negotiations concerning employment with or outstanding offer of employment to, or the current or former employment of, any District Official or former District Official, by the bidder, proposer or Contractor; or
  - iv. Any campaign contributions to a Board member or candidate for the Board, whether monetary or in-kind, exceeding \$1000, made during the time period from receipt of the bidder or proposer's bid through award. The duty to disclose campaign contributions shall apply to all bidders and proposers and to all first tier subcontractors and sub-suppliers whose subcontracts exceed \$100,000.
- B. The duty to disclose potential conflicts of interest as described above exists prior to and during any employment or contract and regardless of whether the facts actually constitute a conflict of interest under any law. The District Ethics Officer shall provide advice to either the Department Manager of Procurement or the Department Manager of Real Estate and Property Development for the District and to the Board of Directors as to whether any facts disclosed under this section constitute a prohibited conflict of interest, and of the impact, if any, of that conflict on the relationship between the bidder, proposer or Contractor and the District.
- C. The District encourages good faith reporting of all suspected violations of this section. The identity of any person reporting a violation of this section shall not be disclosed except as necessary to carry out the purposes and requirements of this section or as otherwise required by law.
- D. Suspected violations of this section shall be reported immediately to either the Department Manager of Procurement or the Department Manager of Real Estate and Property Development for investigation. The Department Manager of Procurement or the Department Manager of Real Estate and Property Development shall investigate the allegations in consultation with the District Ethics Officer.
- E. In any instance where the District has determined that an allegation of a violation of this section has merit, the Department Manager of Procurement or the Department Manager of Real Estate and Property Development, or his or her



designee, may take one or more of the following actions:

- i. Meet with the Contractor to obtain an explanation of the violation;
- ii. Direct the prime Contractor to remove the offending subcontractor from the project;
- iii. Rescind, void, or terminate the contract; and/or
- iv. Any other reasonable and appropriate action.

- F. In any instance where the Department Manager of Procurement or the Department Manager of Real Estate and Property Development propose a sanction under this section, he or she shall notify the Contractor in writing of the recommended action. The Contractor may request an informal hearing with the Department Manager of Procurement or the Department Manager of Real Estate and Property Development, or his or her designee, to explain the Contractor's position regarding the alleged violation and/or the proposed sanction. Any such request must be made in writing and received by the Department Manager of Procurement or the Department Manager of Real Estate and Property Development within ten (10) working days of the issuance of the notice of the recommended sanction. If no request is received within the ten (10) working day period, the sanction may be imposed forthwith. If a timely request for an informal hearing is received, the informal hearing shall take place within ten (10) working days after the Department Manager of Procurement or the Department Manager of Real Estate and Property Development receives the request. The Contractor may be represented by legal counsel at its own expense at the hearing. Within ten (10) working days after the informal hearing, the Department Manager of Procurement or the Department Manager of Real Estate and Property Development, or his or her designee, shall advise the Contractor in writing of the outcome of the hearing.
- G. Notwithstanding any other provision of these sections, in any procurement where a violation of this section has been established prior to the award of the contract, the District, at its sole discretion, shall determine whether to terminate the procurement or to proceed to award a contract with or without disqualifying the offending bidder or proposer.

## **XVII. Important Notice – Related Laws**

Also note that in addition to the District Code of Conduct, Contractors are required to comply with all applicable laws in connection with the District procurement process and the work performed pursuant to any agreement with the District.



# Employee Code of Conduct

## **I. Declaration of Policy**

District officers and employees are public servants and, as such, are expected to be impartial and responsible in fulfilling the public trust placed in them. The public expects and must receive the highest standard of ethical conduct from all those in public service, regardless of personal considerations. District officers and employees are expected to demonstrate the highest standards of personal integrity, honesty, and truthfulness in all their public activities in order to inspire public confidence and trust in the District.

## **II. Scope**

This policy is for use by and applicable to all District officers and employees.

## **III. Responsibilities of Public Service**

District officers and employees are bound to observe, in their official acts, the highest standards of integrity and to discharge faithfully the duties of their offices, recognizing that the lives, safety, health, and welfare of the general public must be their primary concern. Their conduct in both their official and private affairs should be above reproach to assure that their public office is not used for personal gain.

## **IV. Professional Conduct**

District employees shall conduct the District's business in compliance with the law, this Code of Conduct, District policies, and good judgment.

- A. They shall not commit any act which may bring reproach or discredit upon the District.
- B. Speech or behavior that is likely to create an appearance of impropriety is to be avoided.
- C. Employees shall not involve themselves in altercations or any other act of hostility with the public or other employees, nor will they engage in acts which will subject the District to criticism or adversely affect the interests of the District.
- D. It is up to each employee to maintain a professional, safe, and productive environment.
- E. Employees shall treat each other and the public professionally and with courtesy at all times.



- F. At the direction of the General Manager, employees shall provide relevant and necessary information, in a timely manner, to members of the Board of Directors to assist them in the performance of their duties.

## **V. Conflict of Interest**

This Code of Conduct incorporates the prohibitions of California law concerning conflicts of interest. Among them is the prohibition against officers and employees being “financially interested in any contract made by them in their official capacity” (Government Code Section 1090, *et seq.*) and the prohibitions and reporting requirements of the Political Reform Act of 1974. This includes the prohibition against officers and employees making, participating in, or using their position to influence governmental decisions in which they have a reason to know they have a financial interest. This Code of Conduct also incorporates the Federal Transit Administration’s (FTA) prohibitions concerning real or apparent conflicts of interest on the part of officers and employees who participate in the selection, award, or administration of contracts supported by federal funds. Such a conflict would arise when any of the following parties has a financial or other interest in an entity selected for award of a contract supported by federal funds: the officer or employee, or any immediate family member, partner, employer, or organization that intends to employ the officer or employee.

Further, this Code of Conduct requires that department managers, as well as officers and employees involved in the award and administration of contracts, review the proposed scope of work of their contracts and bring any potential “organizational conflicts of interest” to the attention of the Contract Management Division. An organizational conflict of interest occurs when any of the following circumstances arise:

- A. The contractor is unable, or potentially unable, to provide impartial and objective assistance or advice to the District due to other activities, relationships, contracts, or circumstances;
- B. The contractor has an unfair competitive advantage through obtaining access to non-public information during the performance of an earlier contract; and/or
- C. During the conduct of an earlier procurement, the contractor has established the ground rules for a future procurement by developing specifications, evaluation factors, or similar documents.

Lastly, employees shall not communicate with Board members regarding a procurement before the staff recommendation for award of the contract, agreement, or vendor selection is made public, unless the General Manager has designated the employee to speak with the Board member before the staff recommendation for award is made public. If the procurement involves property development, the Department Manager of Real Estate and Property Development shall serve as the General Manager’s designee in relation to matters with the Board.



## **VI. Communications During Pendency of Bid or Proposal**

District employees shall comply with the terms of Section IX of the District's Contractor Code of Conduct related to communications with outside parties during pendency of a bid or proposal.

## **VII. Political Activity**

The prohibitions of California law pertaining to political activity applicable to public employees, and officers, including the prohibitions of California Government Code Section 3201, *et seq.*, apply to all District employees, and officers. Officers and employees shall not, directly or indirectly, solicit a political contribution from another officer or employee of the District, with knowledge that the person from whom the contribution is solicited is an officer or employee of the District. In addition, officers and employees shall not engage in political activities during working hours, while on District premises, or while in uniform.

California law prohibits the use of public agency resources for campaign activity. Accordingly, the District does not permit the posting of campaign materials on workplace bulletin boards, nor any campaign activities on District property, except for activities related to union elections and the posting of materials related to union elections on bulletin boards designated for union-related materials.

## **VIII. Solicitation or Acceptance of Gratuities and Favors**

This section exists to assure the public that District officers and employees are not influenced in their actions by the receipt of gifts or favors.

Officers and employees shall not solicit or accept gifts or favors of any value from persons or entities with which the District contracts or may reasonably be expected to contract. Gifts or favors include, but are not limited to, free or discounted meals, tickets, transportation, and accommodations.

Notwithstanding the above prohibition, any gifts or favors received by or promised to District officers and employees may trigger the reporting, disclosure, and abstention requirements of this Code (see the Conflict of Interest provisions). In addition, the prohibitions contained in the FTA's third party contracting guidance (FTA Circular 4220.1F) concerning receipt by officers and employees of favors and gratuities from contractors, potential contractors, or parties to sub agreements are incorporated herein and by this reference made part of this Code of Conduct.

## **IX. Use of Confidential Information**

No current or former employee or officer shall use or disclose, other than in the performance of his or her official duties and responsibilities (or as may be required by law), confidential information gained in the course of or by reason of his or her position or employment, nor shall any current or former employee or officer permit such use or disclosure.



## **X. Use of District Employment and Facilities for Private Gain**

District employees and officers shall not use District time for activities other than District business which is within their scope of duties, unless, in the case of employees, such activities have the prior approval of their supervisor or higher supervision in their department or are otherwise authorized under a collective bargaining agreement, or written rule or procedure of the District.

No employee or officer shall engage in or permit the unauthorized use of District property or resources, including but not limited to facilities, materials, equipment, information, intellectual property such as trademarks and copyrighted material, and District staff time. Use of District property or resources for purposes other than District business shall be considered an unauthorized use unless an employee has received prior approval for such use by his or her supervisor or higher supervision in his/her department. Use of District property for non-District business will only be authorized when District management determines it is in the best interest of the District to do so. The prohibition on use of District intellectual property for purposes other than District business includes, but is not limited to, a prohibition on the use of District trademarks or copyrighted BART material as an element in any online identity.

This Code of Conduct incorporates the prohibitions of California law concerning use of public agency resources for campaign activity. The District does not permit the posting of campaign materials on or in District facilities, including but not limited to, workplace bulletin boards.

## **XI. Nepotism**

District Officers and employees shall not participate in the making of a decision to hire, appoint, employ, promote, or terminate a person who is a relative of the officer or employee. Officers and employees shall not take any action that has the potential to affect the employment status at the District of a person who is a relative of the officer or employee, including attempting to persuade another District officer or employee to make a decision or take an action affecting a relative of the officer or employee.

An officer or employee may not work in or be assigned to a position which will result in a situation where: (i) a relative of the officer or employee may supervise or control the work or employment status of the officer or employee; (ii) the officer or employee may supervise or control the work or employment status of a relative; or (iii) the officer, employee or relative may supervise or control the organizational unit in which the other works.

For the purposes of this Code, the term "relative" means the following: husband, wife, domestic partner, father, mother, grandfather, grandmother, son, daughter, stepson, stepdaughter, granddaughter, grandson, brother, sister, uncle, aunt, nephew, niece, father-in-law, mother-in-law, daughter-in-law, sister-in-law, and brother-in-law.



## **XII. Official District Communications**

Officers and employees shall not claim or imply that they are speaking on behalf of the District unless approved to do so by the BART Communications Department. Officers and employees shall not publicly comment on legal matters involving the District unless they have received prior written approval from the BART Office of the General Counsel.

## **XIII. Affirmative Action/Sexual Harassment**

District employees and officers shall not, in the performance of their District responsibilities, engage in unlawful discrimination of any sort, including discrimination against any person on the basis of race, sex, color, national origin, religion, handicap, age, marital status, sexual orientation, or veteran status, and they shall make good faith efforts to support and comply with the District's equal opportunity and affirmative action goals and objectives. The engagement of sexual harassment in conducting District business is prohibited.

## **XIV. Incompatible Employment, Activities, and Enterprises**

District employees shall not engage in employment, activities, or enterprises for compensation which are inconsistent with, incompatible to, or in conflict with their duties as employees. The outside activities inconsistent with, incompatible to, or in conflict with an employee's duties include those which:

- A. Involve the use for private gain or advantage of an employee's District time, facilities, equipment and supplies; or the badge, uniform, prestige, or influence of his or her District office or employment; or
- B. Involve receipt or acceptance by the employee of any money or other consideration from anyone other than the District for the performance of an act which the employee, if not performing such an act, would be required or expected to render in the regular course or hours of his or her District employment or as a part of his or her duties as a District employee; or
- C. Involve the performance of an act in other than his or her capacity as a District employee which act may later be subject directly or indirectly to the control, inspection, review, audit, or enforcement of any other District employee; or
- D. Involve the time demands as would render performance of his or her duties as a District employee less efficient.

An employee's supervisor or higher level supervisor will notify him or her of disciplinary actions arising from a violation of these procedures, and existing grievance procedures will be utilized to resolve all grievances.

## **XV. Discussion of Future Employment**

Officers and employees shall not make, participate in, or use their position to influence



any government decision relating to any person or entity with whom the officer or employee is negotiating, or has any arrangement concerning, prospective employment. Employees shall immediately report to their supervisor all interviews, discussions, offers, or negotiations concerning future employment where the employee's job duties involve making, participating in, or influencing government decisions related to the prospective employer.

**XVI. Penalties for Non-Compliance**

In addition to any other penalty as provided by law, employees who violate this Code are subject to discipline, up to and including discharge.

**XVII. Compliance with other Policies and Procedures**

In addition to this Code, officers and employees may be subject to other District policies, procedures, rules, and guidelines, including but not limited to the Operations Rules & Procedures Manual, Management Procedures, employee handbook, and collective bargaining agreements. Officers and employees are required to comply with all such applicable policies, procedures, rules and guidelines in addition to this Code.

**XVIII. Whistleblower Protection**

The District is committed to fair treatment of all its employees and recognizes its responsibility under state and federal law to protect from punishment and harassment any person who reports misconduct. Employees should refer to the District's Whistleblower Policy which governs reporting of charges of misconduct.

**XIX. Questions and Advice**

This Code is not intended to address specific situations which may be unique to individual employees. Employees who have questions or need further guidance should contact their assigned supervisor or manager.





EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Marcia E deVaughn</i>		GENERAL MANAGER ACTION REQ'D:		
DATE: 8/2/13		BOARD INITIATED ITEM: No		
Originator/Prepared by: Marcia E deVaughn	General Counsel	Controller/Treasurer	District Secretary	BARC
Dept: <i>WdV</i>	<i>Audrey Adams</i>	<i>[Signature]</i>	[ ]	<i>[Signature]</i>
Signature/Date:	<i>8/2/13</i> [ ]	[ ]	[ ]	<i>8/2-13</i> [ ]
Status: <b>Approved</b>		Date Created: 06/27/2013		

TITLE:

**Adopt District Whistleblower Policy**

NARRATIVE:

PURPOSE:

To establish a Whistleblower Policy that encourages employees and others to report serious issues that impact the integrity and effective operation of the District without fear of retaliation.

DISCUSSION:

The San Francisco Bay Area Rapid Transit District requires its officers, employees, and Board members to observe high standards of professional and personal ethics in the conduct of their duties and responsibilities. The purpose of the Whistleblower Policy is to encourage and enable employees and others to report any action or suspected action that is illegal, fraudulent or in violation of District policy or any applicable laws or regulations.

Supervisors, managers and the District Ethics Officer are required to promptly report alleged violations of law to the District's Chief of Police and General Counsel. The Chief of Police will coordinate, as appropriate, with the District Attorney who has jurisdiction.

FISCAL IMPACT:

None

ALTERNATIVE:

Do not adopt a District Whistleblower Policy.

RECOMMENDATIONS:

Staff recommends that the Board of Directors adopt the proposed District Whistleblower Policy.

MOTION:

The Board adopts the attached Whistleblower Policy.



# San Francisco Bay Area Rapid Transit District

## Whistleblower Policy

### I. Declaration of Policy

The San Francisco Bay Area Rapid Transit District (“District”) is committed to high standards of ethical, moral and legal professional conduct. The District expects its Directors, officers, and employees to observe high standards of professional and personal ethics in the conduct of their duties and responsibilities. Employees and representatives of the District must practice honesty and integrity in fulfilling their responsibilities and comply with all applicable laws and regulations.

### II. Reporting Responsibility

It is the responsibility of all Directors, officers and employees to report Misconduct in accordance with this Whistleblower Policy.

### III. Misconduct

“Misconduct” is defined in this Whistleblower Policy as any activity by a District officer, employee, or Board member, or a District consultant or contractor that jeopardizes the safety of passengers or District employees, violates a state or federal law or regulation or involves corruption, fraud, bribery, theft or misuse of District property, gross incompetence, or otherwise violates any applicable District Code of Conduct or District policy.

This definition of Misconduct is not intended to be an exclusive listing of the illegal or improper activity covered by the Whistleblower Policy, but is intended to serve as a guide to reporting all serious improprieties that impact the integrity and effective operation of the District.

### IV. No Retaliation

This Whistleblower Policy is intended to encourage and enable employees and others to raise serious concerns within the District before seeking resolution outside the District.

Accordingly, no Director, officer or employee who in good faith reports suspected Misconduct under this Whistleblower Policy or who cooperates in the investigation of Misconduct shall suffer harassment, retaliation or adverse employment consequence as a result of making such a report or cooperating in an investigation. An employee who retaliates against someone who has reported Misconduct in good faith or who has cooperated in the investigation of Misconduct is subject to discipline, up to and including termination of employment.

### V. Reporting Misconduct

The District encourages its Directors, officers and employees to share their questions, concerns, suggestions, or complaints with someone who can address them properly. In



most cases, an employee's supervisor is in the best position to address areas of concern. However, if an employee is not comfortable speaking with his or her supervisor or is not satisfied with the supervisor's response, the employee is encouraged to contact the District Ethics Officer. Supervisors, Managers and the District Ethics Officer are required to report alleged violations of law to the District's Chief of Police and General Counsel. The Chief of Police will coordinate as appropriate with the District Attorney who has jurisdiction.

**VI. Acting in Good Faith**

Anyone who reports Misconduct must be acting in good faith and have reasonable grounds for alleging the Misconduct. Any allegations that prove not to be substantiated and which were known to be false when made or were made with willful disregard for their truth or falsity will be viewed as a serious disciplinary offense.

**VII. Confidentiality**

Reports of Misconduct or suspected Misconduct may be submitted on a confidential basis by the complainant or may be submitted anonymously. Reports of Misconduct or suspected Misconduct will be kept confidential to the extent possible and to the extent permitted by law. Reports of Misconduct or suspected Misconduct will be shared with other individuals, including individuals outside the District's organization, as necessary to conduct an adequate investigation.

**VIII. Anonymous Allegations**

This Whistleblower Policy encourages individuals to put their names to allegations of Misconduct because appropriate follow-up questions and investigation may not be possible unless the source of the information is identified. Concerns expressed anonymously will be looked into appropriately, but consideration will be given to: the seriousness of the issue raised, the credibility of the concern, and the likelihood of confirming the allegation from attributable sources.

**IX. Handling of Reported Misconduct**

The employee's supervisor or other District representative will acknowledge receipt of the reported Misconduct within five business days, unless the report was submitted anonymously. All reports will be promptly investigated and appropriate corrective action will be taken if warranted by the investigation. The Ethics Officer may employ the services of an independent investigator in cases where the alleged Misconduct involves an expenditure or loss to the District in excess of \$250,000.00, or creates a significant exposure to liability to the District or in other special circumstances that justify independent investigation.





## EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>James Gravesande</i>		GENERAL MANAGER ACTION REQ'D:		
DATE: c 7/18/13		BOARD INITIATED ITEM: No		
Originator/Prepared by: James Gravesande Dept:	General Counsel <i>Andrew Rains</i> 7/13/13	Controller/Treasurer <i>[Signature]</i>	District Secretary	BARG <i>Paul Cramer</i> 7/18/13
Signature/Date: <i>[Signature]</i> 7/18/2013	[ ]	[ ]	[ ]	[ ]

### Award of Contract No. 01VM-110A For Union City Intermodal Station Phase 2 - BART Station Improvements

NARRATIVE:

**PURPOSE:** To obtain Board authorization for the General Manager to award Contract No. 01VM-110A for station improvements at the Union City BART Station to West Bay Builders, Inc. of Novato, Ca.

**DISCUSSION:** Improvements to the Union City BART Station are part of a long-range architectural master plan for a 50-acre transit-oriented mixed-use district centered on the BART station, encompassing both sides of the BART and Union Pacific Railroad (UPRR) tracks. Union City's Station District Master Plan of June 2001 envisions urban density housing, office, and retail, as well as community facilities and open spaces. Concepts being developed include a new double-sided intermodal facility that will establish a strong identity and focus for Union City's emerging mixed-use downtown; a flexible framework of amenable streets and city blocks that support development integrated with transit; the close proximity between transit modes to facilitate transfer; and the creation of new pedestrian and bicycle improvements, new development, open space and community facilities that can become a positive front to transit.

Recently completed Phase 1 station improvements consisted of remodeling and expanding Union City BART Station, increasing the platform area and adding new vertical circulation (stairs and escalators) at the Fremont bound platform, the addition of a new plaza/pedestrian promenade fronting the renovated station with new exterior lighting and landscaping, and new transit canopies. The new canopies include a "green" feature in the form of a roof of solar panels, using photovoltaic glass, generating enough power to satisfy the station's electrical needs.

On March 8, 2007, the Board authorized the award of a separate site improvements contract that reconfigured parking areas and loop roads, improving traffic circulation and access for pedestrians, bicyclists and bus riders in anticipation of a regional intermodal transit station.

Bidders for this Contract No. 01VM-110A were asked to bid on remodeling and expanding the station, including two new elevators to replace the existing elevators, and a new relocated Station Agent's Booth, as well as providing unrestricted passage through the station in the east/west direction.

On October 12, 2012, Advance Notice to Bidders were mailed to 198 prospective Bidders.



Contract Documents were sent to 24 plan rooms. The Contract was advertised on October 15, 2012 in local publications. A total of 11 firms purchased copies of the Contract Documents. A pre-Bid meeting and site visit were conducted on November 8, 2012, with 8 prospective Bidders attending. On November 20, 2012, a matchmaking session was held. Bids were publically opened on December 11, 2012.

Tabulation of the received Bids, including the Engineer's Estimate, is as follows:

<u>Bidder</u>	<u>Location</u>	<u>Base Bid</u>	<u>Option Bid</u>	<u>Total Bid Price</u>
C. Overaa & Co.	Richmond, Ca.	\$12,760,000	\$1,280,000	\$14,040,000
Arntz Builders, Inc.	Novato, Ca.	\$13,025,574	\$1,233,828	\$14,259,403
West Bay Builders, Inc.	Novato, Ca.	\$13,543,600	\$1,300,000	\$14,843,600
Engineer's Estimate		\$11,652,027	\$1,252,328	\$12,904,355

The apparent low Bidder, C. Overaa & Co., was deemed to be non-responsive because it did not acknowledge an addendum, as required. The second apparent low Bid submitted by Arntz Builders, Inc. contained irregularities on the Price Proposal Form rendering it's bid ambiguous and non-responsive.

West Bay Builders, Inc. submitted a total Bid Price of \$14,843,600 and, after review by District staff, the Bid was deemed to be the lowest responsive Bid. Furthermore, a review of this Bidder's license, business experience and financial capabilities has resulted in a determination that the Bidder is responsible. Staff has also determined that its total Bid of \$14,843,600 is fair and reasonable.

This Contract was advertised pursuant to the revised District DBE Program requirements. The Office of Civil Rights reviewed the scope of work for this Contract and determined that there were subcontracting opportunities. Therefore, a DBE participation goal of 15% was set for this Contract. The low responsive Bidder, West Bay Builders, Inc., committed to subcontracting 15.5% to DBEs.

In accordance with the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA), environmental review for the Intermodal Station Phase 2 Project was conducted by the respective federal and state lead agencies, FTA and Union City, in 2002 and 2003. As a result of some project modifications in 2005, an evaluation of potential project impacts was conducted by Union City to document that the project changes would not cause significant environmental impacts. The City submitted a letter to FTA summarizing the project changes and the evaluation of potential impacts. FTA concluded there were no significant environmental impacts related to the project modifications and no review under NEPA was required. BART staff reviewed the documentation and concurred with these findings.

**FISCAL IMPACT:** Funding of \$14,843,600 for award of Contract No. 01VM-110A is



included in the total project budget for Contract No. 01VM-11A, Union City Intermodal - Phase 2. The Office of the Controller/Treasurer certifies that funds are currently available to meet this obligation.

As of 7/10/13, \$20,414,204 is either available for commitment or pending commitment for this project from the following sources:

F/G 5905 - State HCD IIG Grant	\$ 6,688,240
F/G 663Q - Local City	\$ 709,010
F/G 3849 - FTA CA-95-X185	\$ 3,000,000
F/G 3848 - FTA CA 04-0169	\$ 867,000
Alameda CAC VRF - *Pending	\$ 5,730,000
MTC OBAG - *Pending	\$ 3,419,954
Total	\$ 20,414,204

BART has expended \$712,661 and has committed \$12,530.00, and reserved \$0.00 to date for other actions. This action will commit \$14,843,600, leaving an available fund balance of \$4,845,413.

\*The Alameda CAC Vehicle Registration Fee (VRF) funding appropriation of \$5,730,000 and MTC OBAG of \$3,419,954 are in line for approval by MTC (OBAG) and ACTC (CAC VRF). At this time, Union City has secured all of the \$20,414,204 necessary to cover the Phase 2 Station Improvement Project except BART's construction management and design review costs for \$3,950,100. It is anticipated that approval of the unsecured portion will be obtained and funding would be fully secured by December 31, 2013. However, if these fund sources fail to materialize Union City has agreed to cover all the amounts due to BART for the Phase 2 Project pursuant to the BART/Union City Operating Memorandum No. 1, dated July 15, 2013.

There is no fiscal impact on available unprogrammed District Reserves.

**ALTERNATIVES:** The alternatives are either to not award the Contract or rebid the Contract. Not awarding the Contract is not recommended as this is the second phase of a master plan vision of future development for the City of Union City and the improvements are in preparation for a regional intermodal transit station. Rebidding is not recommended due to the project completion deadline date, as timing will negatively impact the proposed funding, leaving no other money available.

**RECOMMENDATION:** Adoption of the following motion:

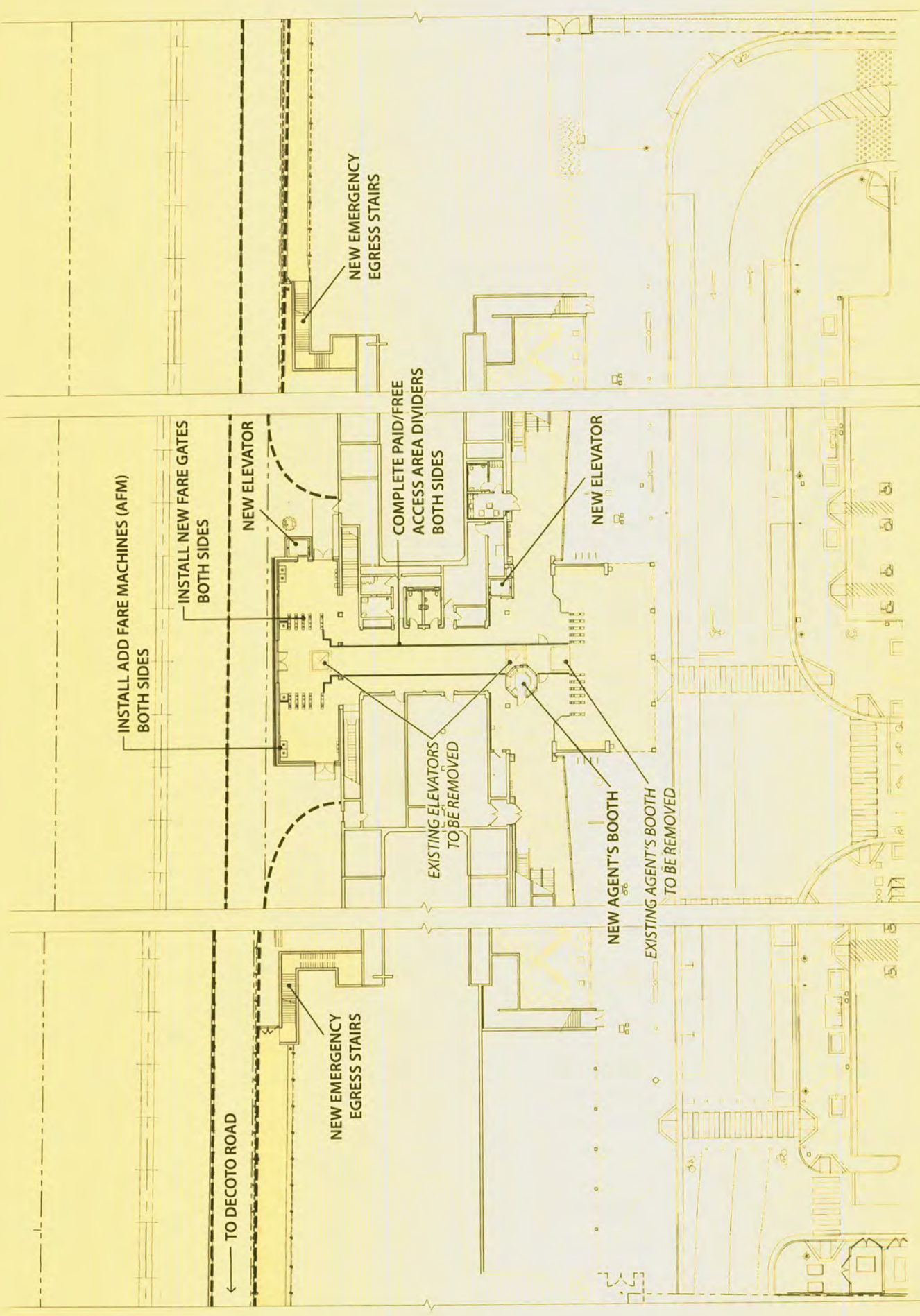
**MOTION:** The General Manager is authorized to award Contract No. 01VM-110A for the Union City Intermodal Station, Phase 2 - BART Site Improvements to West Bay Builders, Inc. for the Base Bid amount of \$13,543,600.00, pursuant to notification to be issued by the General



Award of Contract No. 01VM-110A For Union City Intermodal Station Phase 2 - BART Station Improvements

Manager, subject to the District's protest procedures and FTA requirements related to protest procedures. The General Manager is also authorized to exercise the Option Bid amount of \$1,300,000 subject to availability of funds.





**UNION CITY STATION: FUTURE CONFIGURATION**

CONTRACT NO. 01VM-110A





EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Walter DeVaughn</i>		GENERAL MANAGER ACTION REQ'D: Approve and Forward to the Board		
DATE: 7/18/13		BOARD INITIATED ITEM: No		
Originator/Prepared by: Olga Perez Dept: PD	General Counsel <i>Andrew Rawas</i> 7/17/13	Controller/Treasurer <i>[Signature]</i>	District Secretary <i>[Signature]</i>	BARC <i>Paul Cerven</i> 7/18/13
Signature/Date:	[ ]	[ ]	[ ]	[ ]
Status: Routed		Date Created: 07/02/2013		

TITLE:  
**Award of Contract No. 04SF-150 for Procurement of Running Rail, Crossties, Resilient Ties and Special Trackwork**

NARRATIVE:  
**PURPOSE**

To obtain Board authorization for the General Manager to Award Contract No. 04SF-150, Procurement of Running Rail, Crossties, Resilient Ties and Special Trackwork to L.B. Foster Company.

**DISCUSSION**

Contract No. 04SF-150 provides for the procurement of running rail, crossties, and special trackwork for the District projects described below.

1. The East Contra Costa BART Extension (eBART Project), a 10-mile passenger service between the existing Pittsburg/Bay Point BART Station and a new station in the City of Antioch.
2. The Hayward Maintenance Complex (HMC Project), a new BART facility building complex, yard and track, including the Hayward Shop Modifications.
3. BART Operation and Maintenance inventory replenishment for BART operations.

An Advance Notice to Bidders for Contract No. 04SF-150 was mailed on March 5, 2013 to 25 potential Bidders. The Contract was advertised on March 15, 2013 in various publications and newspapers. A total of five firms purchased copies of the Contract Documents. The pre-Bid meeting and site tour was held on April 9, 2013 with a total of 12 individuals in attendance. The site tour included the HMC and eBART Project delivery locations. The following Bids were opened and publicly announced on June 25, 2013.

**BIDDER**

**TOTAL BID PRICE**

L.B. Foster Company, Pittsburgh, Pennsylvania	\$23,646,694.63
Progress Rail Services Corp., Albertville, Alabama	\$25,296,096.80



**Engineer's Estimate****\$21,248,209.55**

The engineer's estimate, excluding applicable taxes was based on historic bid prices received for rail transit projects on the West Coast. The variance between the engineer's estimate and the lowest Bid price is attributed to industry-wide price changes, due to ongoing increases in the costs of materials and manufacturing processes for steel. Other differences are based on projected inflation rates and risk factors regarding BART's requirements relative to the manufacture of concrete ties. Staff has determined that the low Bid submitted by L.B. Foster Co. is fair and reasonable based upon adequate price competition and is responsive to the solicitation. A review of the business experience and financial capabilities resulted in a determination that L.B. Foster Co. is responsible.

This Contract was advertised pursuant to the District's Disadvantaged Business Enterprise (DBE) Program. The Office of Civil Rights reviewed the scope of work for this Contract and determined that there were no subcontracting opportunities, therefore, no DBE participation goal was established for this Contract.

**FISCAL IMPACT**

Staff is seeking authority for an award amount of \$23,646,694.63 to which applicable taxes will be applied for a total of \$25,668,949.30. Funding for this \$25,668,949.30 Contract Award is included in the project budget for the following projects:

04SF150 - eBART Rail Procurement	\$17,431,683.93
01RQ000 - Hayward Maintenance Complex (HMC)	\$ 4,241,033.75
15CQ000 - Rail, Ties & Fastener Replacement	\$ 3,996,231.62
	<u>\$25,668,949.30</u>

The Office of the Controller/Treasurer certifies that funds are currently available to meet this obligation. The total cost of \$23,646,694.63, plus applicable taxes, will be funded by Federal, State and local sources. As of the month ending July 9, 2013, the following funding is available for commitment from these sources:

Project	Fund Grant	Funds Available	Committed/ Expended	Pending Commitments	Funds for this EDD	Funds Remaining
04SF150	6639 - CCTA Measure J Resol 12-15P 15P8523-BART	\$17,000,000 \$432,000	\$0	\$0	\$17,431,683.93	\$316
01RQ000	656E - VTA Traffic Congestion Relief 8524 - BART Allocation	\$11,600,000 \$7,301,042	\$10,158,158	\$2,500,000	\$4,241,033.75	\$2,001,850.25
15CQ000	3401 - Federal FTA CA-05-0263-00	\$5,107,690	\$0	\$0	\$3,996,231.62	\$1,111,459.38



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Note (1) 04SF150 includes a loan from BART's Programwide Contingency Fund which will be swapped with future CCTA allocations.

Note (2) 15CQ000 has 19 different funds. Only the one listed is pertinent to this decision.

There is no fiscal impact on available un-programmed District Reserves.

**ALTERNATIVE**

The Board may decline to authorize award of the Contract. If the Contract is not awarded, BART will be unable to construct the eBART Project extension at this time. Further, the HMC Project will not be completed within the agreed schedule.

**RECOMMENDATION**

It is recommended that the Board adopt the following motion:

**MOTION**

The General Manager is authorized to award Contract No. 04SF-150, for the Procurement of Running Rail, Crossties, Resilient Ties and Special Trackwork to L.B. Foster Company, for the amount of \$23,646,694.63, plus applicable taxes, pursuant to notification to be issued by the General Manager and subject to the District's protest procedures and FTA's requirements related to protests.





## EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Barbara de Vauxton</i>		GENERAL MANAGER ACTION REQ'D:		
DATE: c <i>7/31/13</i>		BOARD INITIATED ITEM: <i>NO</i>		
Originator/Prepared by: Kirtland Smith <i>Kirtland Smith</i> <i>7/10/13</i>	General Counsel <i>Andrew Rawns</i> <i>7/11/13</i>	Controller/Treasurer <i>[Signature]</i>	District Secretary <i>[Signature]</i>	BARG <i>Paul [Signature]</i> <i>7/30/13</i>
Signature/Date:	[ ]	[ ]	[ ]	[ ]

TITLE:

### Award of Contract No. 6M3235 - Reconditioning Transit Vehicle Wheels

NARRATIVE:

#### PURPOSE:

To obtain authorization for the General Manager to award Contract No. 6M3235 for the Reconditioning of Transit Vehicle Wheels to Penn Machine Company, LLC, Blairsville, PA.

#### DISCUSSION:

The BART revenue vehicle uses a lightweight wheel consisting of a steel tire that is mounted on an aluminum center. Each of the District's 669 revenue vehicles has eight wheels, two per each of the four axles. New wheels are 30 inches in diameter. Over time, the wheel surface wears and once it reaches 28 inches in diameter it is no longer serviceable and must be removed. To do this, the wheels are sent to a supplier where the worn steel tire is cut away and a new 30 inch diameter tire and related components are installed in a process called reconditioning. In addition, the aluminum wheel centers also wear after many pressings on and off axles and are periodically replaced during the reconditioning process.

This Contract includes a Base one year term plus two additional Option years. The Base Contract includes an estimated quantity of 1920 reconditioned wheels, 8 sample reconditioned wheels, and 1600 new aluminum wheel centers. Each of the two additional Option years has an estimated quantity of 1920 reconditioned wheels. Pursuant to the terms of the Contract, the District can procure services for up to 150 percent of the estimated quantities of the Base and Option Bid Items at the original Bid unit prices.

Contract No. 6M3235 was advertised on April 12, 2013. Advance Notice to Bidders was sent to seven (7) prospective Bidders. A pre-Bid meeting was held on April 30, 2013 which was attended by one (1) prospective Bidder. Bid opening was May 21, 2013. Pursuant to the Instructions to Bidders, Bids were evaluated based on the Total Bid Price including the Base Bid Price plus Option A and Option B Bid Price. Two (2) Bids were received as follows:



	<b>Base Bid Year (Items 1,2&amp;3)</b>	<b>Option Year A (Bid Item 1)</b>	<b>Option Year B (Bid Item 1)</b>	<b>Total Bid Base Price Plus Options</b>	<b>Total Including 9.00% Tax</b>
Penn Machine Co. Blairsville, PA	\$4,940,552	\$2,841,600	\$2,983,680	\$10,765,832	\$11,734,757
ORX Tipton, PA	\$4,862,376	\$3,102,720	\$3,350,400	\$11,315,496	\$12,333,891

Independent cost estimate by BART staff: \$10,720,368.00 including applicable sales tax.

Staff has determined that the Bid submitted by Penn Machine Company, LLC is responsive and that the Bid amount of \$11,734,757.00 (including sales tax) is fair and reasonable based on recent purchases.

Pursuant to the District's Non-Discrimination in Subcontracting Program, the availability percentages for this Contract are 10% for MBEs and 12% for WBEs. The Bidder will not be subcontracting any work and will do all work with its own forces. Therefore, the District's Non-Discrimination in Subcontracting Program does not apply.

**FISCAL IMPACT:**

Funding for this Contract will be provided from the Rolling Stock & Shops (RS&S) Maintenance, Repair, and Other, Account 680230, estimated as follows:

Fiscal Year 2014,	\$5,385,202.00
Fiscal Year 2015,	\$3,097,344.00
Fiscal Year 2016,	\$3,252,211.00
Total (including 9.00% Sales Tax)	\$11,734,757.00

Expenditures for FY2014 are included in the RS&S operating budget for FY2014. The expenditures for FY2015 and FY2016 will be included in future RS&S operating budgets and are subject to future budget adoption. The Options will only be exercised upon certification by the Controller-Treasurer that funds are available.

**ALTERNATIVE:**

The alternative to awarding the Contract would be to reject all Bids and re-advertise the Contract which Staff believes is not likely to lead to better prices or more competition.

**RECOMMENDATION:**

Adoption of the following Motion.



**MOTION:**

The General Manager is authorized to award Contract No. 6M3235 for the Reconditioning of Transit Vehicle Wheels to Penn Machine Company, LLC, for a Total Base Bid Price of \$4,940,552, plus applicable sales tax, pursuant to notification to be issued by the General Manager, and subject to the District's Protest Procedures. The General Manager is also authorized to exercise Options A and B in the amounts of \$2,841,600 and \$2,983,680 respectively, plus applicable sales taxes, subject to the availability of funds. The General Manager is also authorized to procure services for up to 150 percent of the estimated quantities of the Base and Option Bid Items at the original Bid unit prices for a total not-to-exceed value of \$16,148,748 plus applicable sales taxes, subject to the availability of funds.





## EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Marisa del Bruden</i>		GENERAL MANAGER ACTION REQ'D:		
DATE: c <i>7/31/13</i>		BOARD INITIATED ITEM: No		
Originator/Prepared by: Shawn J Jackson Dept: Transportation	General Counsel	Controller/Treasurer	District Secretary	BARC
Signature/Date: <i>[Signature]</i> <i>7/12/2013</i>	<i>MB</i> <i>7/15/13</i>	<i>[Signature]</i> <i>[ ]</i>	<i>[ ]</i>	<i>Paul</i> <i>Green</i> <i>7/30/13</i>

TITLE:  
**Agreement to Provide Stand-by Emergency and Advance Life Support Services at the Four (4) Downtown San Francisco BART Stations**

NARRATIVE:

**PURPOSE:** To request the Board to authorize the General Manager to execute Agreement No. 6M3240 to provide Stand-by Emergency and Advance Life Support (ALS) services at the four (4) downtown San Francisco stations with King-American Ambulance Company for a term of three years with two (2) additional one-year options.

**DISCUSSION:** Since FY 2008 the Transportation and System Service Department has secured stand-by paramedic services at both ends of the Transbay tube to reduce train delays caused by passenger illness. These services facilitate the District's ability to meet its Train-On-Time performance standard. At the downtown San Francisco stations paramedic support is provided on non-holiday weekdays during the peak travel times of 6:00-9:00 a.m. and 3:00-7:00 p.m. The Board previously approved an Agreement with King-American Ambulance Company which expired on June 30, 2013. An interim Agreement, approved to avoid interruption of services, will expire on August 31, 2013.

In keeping with the State Legislature adopted system of regulating ALS and emergency medical services, each County designates which ambulance companies can provide ALS services in its area. In San Francisco, the four eligible companies, King-American Ambulance Company, San Francisco Fire Department, ProTransport-1 and American Medical Response, were requested to submit a cost proposal to provide services on May 10, 2013.

Three proposals were received: King-American Ambulance Company had the lowest cost proposal of \$710,192. American Medical Response's proposal was \$1,049,219 while ProTransport-1's proposal totaled \$1,354,082. The San Francisco Fire Department did not respond. Staff has reviewed the cost proposal submitted by King-American Ambulance Company and has made a determination that it is responsive, the proposed price is fair and reasonable and that the firm is capable of performing services based upon past performance, business history and financial status.

King-American Ambulance Company has indicated that it will undertake all work under this Agreement with its own forces. Therefore, in the absence of any subcontracting, the District's Non-Discrimination in Subcontracting Program does not apply. Pursuant to the District's Non-Federal Small Business Program, the Office of Civil Rights determined that there were no



small business opportunities available for the work required, therefore, no small business preference was set for this Agreement.

The Office of the General Counsel will approve the Agreement as to form.

**FISCAL IMPACT:** Assuming all options are exercised, the estimated expenditures by fiscal year are as followed:

FY 14 - \$ 142,038

FY 15 - \$ 142,038

FY 16 - \$ 142,592

FY 17 - \$ 142,038

FY 18 - \$ 141,486

The funding for FY 14 expenditures of \$142,038.00 is available in the FY 14 Operating Budget of the Transportation Department, Professional & Technical Services account 681300. Funding for subsequent years will be requested in future operating budget cycles.

**ALTERNATIVE:** Do not authorize the proposed Agreement with King-American Ambulance Company and end the Stand-by Emergency and Advance Life Support Services currently being provided at the four (4) downtown San Francisco stations.

**RECOMMENDATIONS:** Adoption of the following motion.

**MOTION:** The General Manager is authorized to enter into Agreement No. 6M3240 with King-American Ambulance Company to provide Stand-by Emergency and Advance Life Support Services at the four (4) downtown San Francisco stations for a term of three (3) years for a cost of \$426,668.00 with the option to renew the Agreement for up to two (2) additional one-year terms, for a total cost not to exceed \$142,038 for option year one and \$141,486 for option year two, subject to certification by the Controller-Treasurer that funds are available.



# SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

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## MEMORANDUM

**TO:** Board of Directors

**DATE:** July 30, 2013

**FROM:** General Manager

**SUBJECT:** eBART Next Segment Study Briefing Materials

At the August 8, 2013 Board of Directors meeting, staff will present the attached overview of the eBART Next Segment study. Staff undertook this pre-planning feasibility study at the direction of the Board in 2011. The presentation summarizes findings on possible future eBART station sites along the Highway 4 alignment in east Contra Costa County.

If you have questions about this presentation, please contact Ellen Smith, Planning and Development, at 510.287.4758.



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Grace Crunican

### Attachment

cc: Board Appointed Officers  
Deputy General Manager  
Executive Staff