

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

BOARD MEETING AGENDA

September 8, 2011

9:00 a.m.

A regular meeting of the Board of Directors will be held at 9:00 a.m. on Thursday, September 8, 2011, in the BART Board Room, Kaiser Center 20th Street Mall – Third Floor, 344 – 20th 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 General Discussion and 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; in person or U.S. mail at 300 Lakeside Drive, 23rd 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 Meetings of August 24, 2011 (Special), and August 31, 2011 (Special).* Board requested to authorize.
- B. Resolution Concurring with Contra Costa Transportation Authority's Request for AB1171 Bridge Toll Funds for the eBART/State Route 4 Project.* Board requested to adopt.
- C. Resolution to Continue Reporting Employee Pension Contributions as Tax Deferred.* Board requested to adopt.

3. ADMINISTRATION ITEMS

Director Blalock, Chairperson

- A. Small Business Program for Non-Federally Funded Contracts.* Board requested to authorize.

4. ENGINEERING AND OPERATIONS ITEMS

Director Fang, Chairperson

NO REPORT.

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

Director Murray, Chairperson

- A. Solicitation for Private Developer at Lake Merritt BART Station.* Board requested to authorize.

6. GENERAL MANAGER'S REPORT

- A. Review of the Agenda for the Capitol Corridor Joint Powers Board Meeting of September 21, 2011.* For information.

7. BOARD MATTERS

- A. Board Member Reports. For information.
- 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. GENERAL DISCUSSION AND PUBLIC COMMENT



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Marcia DeBenedictis</i>		GENERAL MANAGER ACTION REQ'D: Approve and Forward to the Board of Directors		
DATE: 8/31/11		BOARD INITIATED ITEM: No		
Originator/Prepared by: Stacey Perkins Dept: Capital Development & Control <i>Stacey Perkins</i> Signature/Date: 8/30/11	General Counsel <i>Andrew Rawns</i> 8/30/11	Controller/Treasurer <i>[Signature]</i> 8/30/11	District Secretary []	BARC <i>Christina</i> 8-31-11 []
Status: Approved		Date Created: 08/01/2011		

TITLE:
Approval of a Resolution Concurring with Contra Costa Transportation Authority's Request for AB1171 Bridge Toll Funds for the eBART Project

NARRATIVE:

Purpose:

To obtain BART Board approval of a Resolution that concurs with an application by the Contra Costa Transportation Authority (CCTA) for \$27.1 million of AB1171 bridge toll funds for construction and construction management necessary to widen the median of State Route 4 (SR4) between Somersville Road and State Route 160 to accommodate the eBART Project.

Discussion:

The eBART Project has received all necessary environmental clearances. On April 23, 2009, the Board of Directors adopted the eBART Project and authorized the General Manager to proceed with implementation actions. Previous allocations of bridge toll funds have been of RM2, RM1 and AB1171 bridge toll funds for the planning and environmental phase, final design, right of way acquisition and construction to widen the SR4 median, right of way acquisition at the Hillcrest Station site, guideway preparation, construction of the transfer station at the Pittsburg Bay Point BART Station, and procurement of vehicles.

On July 20, 2011, CCTA approved an application, consisting of a Resolution of Project Compliance and an Initial Project Report, seeking an allocation of \$27.1 million of AB1171 bridge toll funds for construction and construction management necessary to widen the median of SR4 between Somersville Road and State Route 160 to accommodate the eBART Project. MTC does not have guidelines for allocating AB1171 bridge toll funds; however it does have guidelines for allocating RM2 funds and MTC is applying those guidelines in connection with AB1171 bridge toll funds. Because BART is a co-sponsor with CCTA in securing funds for the eBART Project, MTC is requiring that BART approve CCTA's application. It is expected that MTC will approve CCTA's application on September 23, 2011.

Fiscal Impacts:

Approval of the attached Resolution Concurring with CCTA's Resolution of Project Compliance and Initial Project Report for AB1171 Bridge Toll funds for the eBART Project is a requirement for CCTA to apply for and receive an allocation of \$27.1 million of AB1171 bridge toll funds

from MTC.

Alternatives:

Do not approve the attached Resolution. Failure to approve the Resolution could result in schedule delays and cost increases for the eBART Project.

Motion:

The Board of Directors approves the attached Resolution Concurring with Contra Costa Transportation Authority's Resolution of Project Compliance and Initial Project Report for AB1171 Bridge Toll Funds for the East Contra Costa County Rail Extension/eBART Project, CCTA Resolution No. 11-29-P.

**BEFORE THE BOARD OF DIRECTORS OF THE SAN FRANCISCO BAY
AREA RAPID TRANSIT DISTRICT**

**In the Matter of the Approval of a
Resolution Concurring with
Contra Costa Transportation
Authority's Resolution of Project
Compliance and Initial Project
Report for AB1171 Bridge Toll
Funds for the East Contra Costa
County Rail Extension/eBART
Project**

Resolution No.

Whereas, the Metropolitan Transportation Commission ("MTC") is the regional transportation planning agency for the San Francisco Bay Area pursuant to Government Code Sections 66500 et seq.; and

Whereas, Streets and Highways Code Sections 30950 *et seq.* created the Bay Area Toll Authority ("BATA") which is a public instrumentality governed by the same board as that governing MTC; and

Whereas, pursuant to Streets & Highways Code ("SHC") Section 31010 (b), funds (generally referred to as "AB1171 funds") generated in excess of those needed to meet the toll commitments as specified in paragraph (4) of subdivision (b) of Section 188.5 of the SHC shall be available to BATA for funding projects consistent with SHC Code Sections 30913 and 30914; and

Whereas, SB 916 (Chapter 715, Statutes 2004), commonly referred to as Regional Measure 2 ("RM2") identified projects eligible to receive funding under the Regional Traffic Relief Plan; and

Whereas, MTC is responsible for funding projects eligible for RM2 funds pursuant to Streets and Highways Code Section 30914(c) and (d); and

Whereas, MTC has established a process whereby eligible transportation project sponsors may submit allocation requests for AB1171 bridge toll funding; and

Whereas, allocation requests to MTC must be submitted consistent with such procedures and conditions; and

Whereas, MTC adopted Resolution 3434, Revised, which establishes commitments of AB1171 bridge toll funds to specific projects and corridors; and

Whereas, BART and the Contra Costa Transportation Authority ("CCTA") are sponsors of the East Contra Costa County Rail Extension /eBART project (the "PROJECT"), which is eligible for consideration of RM2 Regional Traffic Relief Plan funds; and

Whereas, the PROJECT is also eligible for consideration of AB1171 funds, and;

Whereas, the AB1171 allocation request, sponsored by CCTA, in the Initial Project Report ("IPR") dated July 20, 2011 and incorporated herein as though set forth at length, lists the purpose, schedule, budget, expenditure and cash flow plans for which CCTA is requesting that MTC allocate AB1171 bridge toll funds for the PROJECT; and

Whereas, in its Resolution No. 11-29-P, dated July 20, 2011, and incorporated herein, CCTA and its agents agree to comply with the provisions of the MTC's Regional Measure 2 Policy Guidance (MTC Resolution No. 3636);

NOW, THEREFORE, BE IT RESOLVED that:

1. Pursuant to Resolution No. 11-29-P, CCTA has certified that the PROJECT is consistent with the Regional Transportation Plan ("RTP").
2. Pursuant to Resolution No. 11-29-P, CCTA has certified that all environmental clearances necessary for the PROJECT have been obtained and that the year of funding for the construction phase has taken into consideration the time necessary to obtain permitting approval for such construction.
3. Pursuant to Resolution No. 11-29-P, CCTA has certified that the PROJECT phase or segment to be funded with AB1171 funds is fully funded and results in an operable and useable segment.
4. Pursuant to Resolution No. 11-29-P, CCTA has approved the updated IPR dated July 20, 2011.
5. Pursuant to Resolution No. 11-29-P, CCTA has approved the cash flow plan described in the IPR dated July 20, 2011.
6. Pursuant to Resolution No. 11-29-P, CCTA has reviewed the PROJECT'S needs and has adequate staffing resources to deliver and complete the PROJECT within the schedule set forth in the IPR dated July 20, 2011.
7. CCTA is an eligible sponsor of projects in the RM2 Regional Traffic Relief Plan, Capital Program, in accordance with California Streets and Highways Code Section 30914(c).
8. The PROJECT is eligible for receipt of AB1171 funds consistent with California Streets and Highway Code section 31010 (b).
9. CCTA is authorized to submit an application for AB1171 funds for the PROJECT in accordance with the provisions of the California Streets and Highways Code Sections 30913 and 30914, as applicable.

10. BART concurs that CCTA has certified that the PROJECT and purposes for which AB1171 funds are being requested are in compliance with the requirements of the California Environmental Quality Act (Public Resources Code Section 21000 et seq.), and with the State CEQA Guidelines (14 California Code of Regulations Section 15000 et seq.) and, if relevant, the National Environmental Policy Act (NEPA), 42 USC Section 4321 et. seq. and the applicable regulations thereunder.

11. There is no legal impediment to BART's concurrence in CCTA's allocation request for AB1171 funds.

12. There is no pending or threatened litigation, which might in any way adversely affect the PROJECT, or the ability of CCTA, with support by BART, to deliver the PROJECT.

13. Pursuant to Resolution No. 11-29-P, CCTA has agreed to indemnify and hold harmless MTC, its Commissioners, representatives, agents, and employees from and against all claims, injury, suits, demands, liability, losses, damages, and expenses, whether direct or indirect (including any and all costs and expenses in connection therewith), incurred by reason of any act or failure to act of CCTA, its officers, employees or agents, or subcontractors or any of them in connection with its performance of services under this allocation of AB1171 funds. In addition to any other remedy authorized by law, so much of the funding due under this allocation of AB1171 funds as shall reasonably be considered necessary by MTC may be retained until disposition has been made of any claim for damages.

14. Pursuant to Resolution No. 11-29-P, CCTA has agreed that, if any revenues or profits from any non-governmental use of property (or PROJECT) are collected, that those revenues or profits shall be used exclusively for the public transportation services for which the PROJECT was initially approved, either for capital improvements or maintenance and operational costs; otherwise, the MTC is entitled to a proportionate share equal to MTC's percentage participation in the PROJECT.

15. Pursuant to Resolution No. 11-29-P, CCTA agreed that assets purchased with AB1171 funds including facilities and equipment shall be used for the public transportation uses intended, and should said facilities and equipment cease to be operated or maintained for their intended public transportation purposes for its useful life, that the MTC shall be entitled to a present day value refund or credit (at MTC's option) based on MTC's share of the Fair Market Value of the said facilities and equipment at the time the public transportation uses ceased, which shall be paid back to MTC in the same proportion that AB1171 funds were originally used.

16. Pursuant to Resolution No. 11-29-P, CCTA has authorized its Executive Director or his/her designee, to execute and submit an allocation request for the construction phase for the PROJECT to MTC for AB1171 Bridge Toll Funds in the amount of \$27.1 million for the PROJECT, purposes and amounts included in the IPR dated July 20, 2011.

17. Pursuant to Resolution No. 11-29-P, CCTA's Executive Director or his/her designee has been delegated the authority to make non-substantive changes or minor amendments to the IPR as s/he deems appropriate.

18. A copy of this Resolution shall be transmitted to MTC in conjunction with the filing of the IPR dated July 20, 2011 referenced herein.

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EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Walter DeBenedictis</i>		GENERAL MANAGER ACTION REQ'D:		
DATE: c 8/30/11		BOARD INITIATED ITEM: No		
Originator/Prepared by: Peter Y Horikoshi Dept: Human Resources <i>Peter Y. Horikoshi</i> 8/29/11	General Counsel <i>Andrew Kaeppel</i> 8/29/11	Controller/Treasurer <i>[Signature]</i> 8/29/11	District Secretary []	BARC <i>Carl Mann</i> 8-29-11
TITLE:				

Resolution to Continue Reporting Employee Pension Contributions as Tax Deferred

NARRATIVE:

To obtain Board approval of a Resolution authorizing the District to continue reporting the District's "pick-up" of employee retirement contributions to the California Public Employees' Retirement System (CalPERS) on a tax-deferred basis.

DISCUSSION:

This is a technical Resolution required to confirm existing practice with respect to the tax treatment of employee retirement contributions. Passage of the Resolution does not impair the District's ability to amend its employee retirement contribution practice in the future.

This issue has arisen because CalPERS is implementing a major conversion of their computer systems. In conjunction with that system conversion, CalPERS has determined that the additional Resolution is required in order for all of CalPERS' member agencies to continue to report employee retirement contributions as tax-deferred.

As permitted by California Government Code Section 20691, and as required under existing collective bargaining agreements and District policy applicable to non-represented employees, the District has picked up employee contributions to CalPERS since 1982. The employee contribution is seven percent (7%) of eligible earnings for miscellaneous employees and nine percent (9%) of eligible earnings for safety employees. The contributions are exempt from income tax and Medicare (FICA) tax and are reported to CalPERS as non-taxable. Board Resolution No. 4850, dated August 8, 2002, formally authorized this practice and has been kept on file with CalPERS as evidence of the District's implementation of Section 20691. In 2008, CalPERS advised District staff that Resolution No. 4850 was sufficient to satisfy both state and federal requirements pertaining to authorization of the pick-ups. CalPERS recently informed the District that it now requires the attached Resolution which expressly refers to Section 414(h)(2) of the Internal Revenue Code.

The Office of the General Counsel has researched federal and state statutes and regulations and has approved the Resolution as to form.

FISCAL IMPACT:

Resolution to Continue Reporting Employee Pension Contributions as Tax Deferred

There is no fiscal impact to filing this Resolution. There will be no changes in amounts paid to CalPERS, and no changes to employee pay.

ALTERNATIVES:

Not approving the Resolution could jeopardize the processing of the District's contributions by the CalPERS system.

RECOMMENDATION:

Adopt the attached "Resolution for Employer Pick-Up – IRC 414(h)(2)."

MOTION:

To adopt the attached "Resolution for Employer Pick-Up – IRC 414(h)(2)."

Resolution to Tax Defer Member Paid Contributions – IRC 414(h)(2) Employer Pick-Up

WHEREAS, the governing body of the San Francisco Bay Area Rapid Transit District (BART) has the authority to implement the provisions of section 414(h)(2) of the Internal Revenue Code (IRC); and

WHEREAS, the San Francisco Bay Area Rapid Transit District has determined that even though the implementation of the provisions of section 414(h)(2) IRC is not required by law, the tax benefit offered by section 414(h)(2) IRC should be provided to ALL BART EMPLOYEES who are members of the California Public Employees' Retirement System:

NOW, THEREFORE, BE IT RESOLVED:

- I. That the San Francisco Bay Area Rapid Transit District will implement the provisions of section 414(h)(2) Internal Revenue Code by making employee contributions pursuant to California Government Code Section 20691 to the California Public Employees' Retirement System on behalf of all its employees or all its employees in a recognized group or class of employment who are members of the California Public Employees Retirement System. "Employee contributions" shall mean those contributions to the Public Employees' Retirement System which are deducted from the salary of employees and are credited to individual employee's accounts pursuant to California Government Code section 20691.
- II. That the contributions made by the San Francisco Bay Area Rapid Transit District to the California Public Employees' Retirement System, although designated as employee contributions, are being paid by the San Francisco Bay Area Rapid Transit District in lieu of contributions by the employees who are members of the California Public Employees' Retirement System.
- III. That employees shall not have the option of choosing to receive the contributed amounts directly instead of having them paid by the San Francisco Bay Area Rapid Transit District to the California Public Employees' Retirement System.
- IV. That the San Francisco Bay Area Rapid Transit District shall pay to the California Public Employees' Retirement System the contributions designated as employee contributions from the same source of funds as used in paying salary.
- V. That the amount of the contributions designated as employee contributions and paid by the San Francisco Bay Area Rapid Transit District to the California Public Employees' Retirement System on behalf of an employee shall be the entire contribution required of the employee by the California Public Employees' Retirement Law (California Government Code Sections 20000, et seq.).
- VI. That the contributions designated as employee contributions made by San Francisco Bay Area Rapid Transit District to the California Public Employees' Retirement System shall be treated for all purposes, other than taxation, in the same way that member contributions are treated by the California Public Employees' Retirement System.

PASSED AND ADOPTED by the governing body of the San Francisco Bay Area Rapid Transit District this ____ day of September 2011.

BY _____
(Signature of Official)

(Title of Official)

RETURN ADDRESS:

San Francisco Bay Area Rapid Transit District
Human Resources Department - Benefits
300 Lakeside Drive, 20th Floor
Oakland, CA 94612

FOR CALPERS USE ONLY

RESOLUTION TO TAX DEFER MEMBER PAID CONTRIBUTIONS - IRC 414(h)(2)

Approved by: _____

Title: _____



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Marcia DeLuca</i>		GENERAL MANAGER ACTION REQ'D: Approve and Forward to the Board		
DATE: 9/1/11		BOARD INITIATED ITEM: No		
Originator/Prepared by: Ron Granada Dept. Office of Civil Rights <i>Ron Granada 9/1/11</i>	General Counsel <i>Andrew...</i>	Controller/Treasurer <i>[Signature]</i>	District Secretary <i>[Signature]</i>	BARC <i>Carl...</i>
Signature/Date: []	[]	[]	[]	[]
Status: Routed		Date Created: 08/29/2011		
TITLE:				

SMALL BUSINESS PROGRAM FOR NON-FEDERALLY FUNDED CONTRACTS

NARRATIVE:

PURPOSE: To request that the BART Board adopt the proposed BART Small Business Program ("SB Program") as authorized by the California Public Contract Code Section 2002 for non-federally assisted contracts to facilitate the award of contracts to small businesses.

DISCUSSION: California Public Contract Code Section 2002 authorizes local agencies to adopt preferences for small businesses in order to facilitate the award of contracts to small businesses (SBs). It allows agencies to establish preferences for SBs in construction, the procurement of goods and the delivery of services. The proposed SB Program will address and mitigate the difficulties SBs may encounter when competing against larger more established businesses. Additionally, the SB Program is expected to help to generate jobs, provide economic opportunity, and boost economic output throughout California and, in particular, in the counties in which BART operates and does business – Alameda County, Contra Costa County, San Francisco City and County, and San Mateo County.

The SB Program seeks to achieve these objectives on three levels: (1) BART's award of Contracts and Agreements to SBs, (2) the award of first-tier subcontracts to SBs by prime Contractors, suppliers, and consultants, and (3) the award to second-tier SB subcontractors by first-tier subcontractors. Following adoption of the SB Program, staff will designate specific BART contracts and agreements that will be subject to the SB Program.

Among other things, Section 2002 allows an agency to include a preference for SB prime contractors in making award of contracts of up to 5% of the lowest responsible bid and to establish SB subcontracting participation goals. In contracts where SB subcontracting participation goals are established, those Bidders that meet the SB goals will be granted a preference in the award of contracts of up to 5% of the lowest responsible bid. Under the SB Program, firms that are certified with the California Department of General Services as Small Businesses will be recognized SBs for purposes of the proposed SB Program.

The SB Program will be applicable to non-federal construction, procurement, and services contracts, agreements such as repair services, technical support services, real estate support

services, professional services agreements and design-build contracts issued pursuant to Public Contract Code Section 20209.5, awarded through a competitive process where price and other factors are considered.

After extensive discussions with BART Departments and the contracting communities, staff has developed the SB Program to include an SB subcontracting participation goal on designated contracts or agreements such as those described above with a value above \$10,000,000. This SB participation goal shall be expressed as a percentage of the total Bid or Proposal price for a contract or agreement. The Bidder or Proposer that meets the SB participation goal will be eligible for a preference of up to 5% of the lowest responsible Bid or Proposal price, up to a maximum of \$1,000,000, for purposes of determining the award of the contract or agreement. Bidders that do not meet the SB participation goal would not be eligible for the preference. However, the actual Contract or Agreement awarded will be for the amount of the original Bid or Proposal. BART's Office of Civil Rights, in conjunction with the project sponsor, will determine on a contract-by-contract basis whether the SB Program will apply and if so, any applicable limits to the total dollar preference.

In addition, for contracts below \$10,000,000, BART will establish an SB preference in the award for the prime contractors that qualify as small businesses. SB prime bidders will be granted a preference of up to 5% of the lowest responsible bid up to a maximum of \$250,000. An annual limit of \$2,000,000 will be available for the total dollar preferences allowed under the SB Program for each fiscal year for Contracts below \$10,000,000.

The SB Program will be implemented concurrently with the Non-Discrimination in Subcontracting Program. Bidders must comply with the Non-Discrimination in Subcontracting Program requirement before being evaluated for SB preferences.

The Department Manager of the Office of Civil Rights will be designated as the SB Liaison Officer. The SB Liaison Officer will be charged with overseeing the implementation of the SB Program, developing and implementing contract specific terms for the SB Program, and managing internal and external communications and outreach related to the SB Program.

In implementing the SB Program, the SB Liaison Officer will work closely with operating divisions and other departments and consultants of the District, including the Office of the General Counsel, the Department of Procurement and Materials Management, the Department of Maintenance and Engineering, and other BART departments which are responsible for making decisions relative to the District's contracts and agreements.

FISCAL IMPACT: The fiscal impact is measured by the difference between the low bidders' price and the price of the firm that was given the 5% SB preference. Staff's review of non-federally funded contracts over the past three fiscal years finds that, if the SB Program had been in place, and if the preference would have been applied to the bidders on those contracts, the fiscal impact to the District could have been additional expenditures as follows: In FY09 the estimated fiscal impact could have been \$111,418; in FY10 the estimated fiscal impact could have been \$1,345,107; and in FY11 the estimated fiscal impact could have been \$980,250.

ALTERNATIVES: The alternative is not to adopt the SB Program thus maintaining the status quo. Staff would not have the SB preferences that help address the difficulties SBs may encounter when competing against larger more established businesses for BART's construction contracts, procurement of goods, or the delivery of service.

RECOMMENDATION: It is recommended that the Board adopt the following motion:

MOTION: The Board hereby adopts the attached BART Small Business Program as authorized by California Public Contract Code Section 2002 for non-federally assisted construction contracts, contracts for procurement of goods, and services agreements awarded through a competitive process where price and other factors are considered.

SMALL BUSINESS PROGRAM

Policy Description

(V09-01-11)

1. SMALL BUSINESS PROGRAM POLICY

It is the Policy of the San Francisco Bay Area Rapid Transit District (“BART”) to encourage the participation of Small Businesses in BART contracts. Accordingly, BART hereby adopts this Small Business (“SB”) Program pursuant to California Public Contract Code Section 2002. The purpose of the SB Program is to encourage and facilitate full and equitable participation by Small Businesses in BART construction, procurement, and services contracts and agreements that are awarded through a competitive process and are financed solely with local and state funds (“non-federal contracts”). As appropriate, the SB Program seeks to achieve these objectives on three levels: (1) BART’s award of Contracts and Agreements to SBs, (2) the award of First Tier Subcontracts to SBs by Prime Contractors, Suppliers, and Consultants, and (3) the award to Second Tier SB Subcontractors by First Tier Subcontractors.

2. FINDINGS

- **BART** enters into non-federal contracts and agreements for construction, procurement, and services. Many of the contracts and agreements in each of these areas afford opportunities for SBs to perform work as Contractors, Suppliers, Consultants, and as Subcontractors, Subsuppliers, and Subconsultants.

- *SBs* generate jobs, provide economic opportunity, and boost economic output throughout California and, in particular, in the counties in which BART operates and does business – Alameda County, Contra Costa County, City and County of San Francisco, and San Mateo County.
- *BART* desires to contribute to the growth and stability of the small business community.
- *BART* recognizes, and through the SB Program, works to address and mitigate the difficulties SBs may encounter when competing against larger more established businesses for BART contracts and agreements.
- *BART* recognizes that this SB Program is only applicable to non-federal construction, procurement, and services contracts, agreements such as repair services, technical support services, real estate support services, professional services agreements, and design-build contracts issued pursuant to Public Contract Code Section 20209.5, to be awarded through a competitive process where price and other factors are considered in the award.

3. DEFINITIONS

- **“Agreement”** means an agreement between BART and a Consultant for services.
- **“Bid”** means the proposal or offer of the Bidder for the Construction or Procurement Contract when completed and submitted on the prescribed Bid Form.
- **“Bidder”** or **“Proposer”** means any individual, firm, partnership, joint venture, corporation, or combination thereof (collectively **“firm”**), submitting a Bid or

Proposal for a contract or services agreement, acting directly or through a duly authorized representative.

- **“Consultant”** means a firm that has entered into an Agreement with BART.
- **“Contract”** refers collectively to Prime Construction Contracts, First Tier Subcontracts, and Procurement Contracts.
- **“Contractor”** means a Prime Construction Contractor awarded a construction contract by BART.
- **“First Tier Subcontract”** means a contract between a Prime Contractor and First Tier Subcontractor or Subsupplier.
- **“First Tier Subcontractor”, “Subcontractor”, or “Subsupplier”** means a firm that has been awarded a First Tier Contract by a Prime Contractor or a Supplier.
- **“Prime Construction Contract”** means a construction contract between BART and a Prime Contractor.
- **“Prime Construction Contractor” or “Contractor”** means a firm that has been awarded a Prime Construction Contract by BART.
- **“Procurement Contract”** means a contract between BART and a Supplier.
- **“Proposal”** means the offer of the Proposer for the Services Agreement, in response to BART’s request when completed and submitted on the prescribed Proposal Form.
- **“Second Tier Subcontractor”** means a firm that has been awarded a Subcontract by a First Tier Subcontractor.

- **“Small Business Enterprise”** or “SB” means a firm that is listed as an SB by the State of California, Department of General Services in its database for SBs found at www.dgs.ca.gov.
- **“Subconsultant”** means a firm that has entered into a subcontract with a Consultant.
- **“Subcontract”** means a Contract entered into between a Contractor, Supplier, or Consultant with a Subcontractor, Subsupplier, or Subconsultant, respectively.
- **“Subsupplier”** means a firm that has entered into a Contract with a Supplier.
- **“Supplier”** means a firm that has been awarded a Procurement Contract by BART.

4. RESPONSIBILITIES AND DUTIES OF THE OFFICE OF CIVIL RIGHTS

(a) BART’s General Manager has designated the Department Manager of the Office of Civil Rights as the SB Liaison Officer. As SB Liaison Officer, the Department Manager is responsible for implementing and monitoring the SB Program, coordinating with the District staff in implementing the SB Program, establishing participation goals in Contracts and Agreements where there are subcontracting opportunities for SBs, and making amendments to the SB Program, including alternative SB certification requirements, as needed, with the approval of the Executive Manager.

(b) Where Prime Construction Contractors, Suppliers, Consultants, or First Tier Subcontractors, where applicable, commit in their Bid or Proposal to utilize SB First or Second Tier Subcontractors in order to meet the applicable SB goal, the Office of Civil Rights shall monitor their performance to confirm that the SB utilization level

presented in the Bid or Proposal is met throughout the life of the Contract or Agreement, including the substitution of SB Subcontractors and change orders, where appropriate.

5. QUALIFICATION AS AN SB

A Bidder or Proposer seeking an SB preference Contract or Agreement with BART, or a firm seeking to be recognized as an SB Subcontractor, Subsupplier, or Subconsultant, shall be qualified as an SB and be listed in the State of California, Department of General Services database for SBs at www.dgs.ca.gov prior to the submission of the Bid or Proposal.

6. SB PROGRAM ANNUAL LIMIT

An annual limit of \$2,000,000 will be available for the total dollar preferences allowed under the SB Program for each fiscal year for Contracts up to a maximum value of \$10,000,000. For Contracts over \$10,000,000, BART's Office of Civil Rights, in conjunction with the project sponsor, will determine on a Contract-by-Contract basis whether the Program will apply and if so, any applicable limits to the total dollar preference.

7. PRIME CONTRACTS AND AGREEMENTS ELIGIBLE FOR SB PREFERENCE

BART, may, at its sole discretion, designate specific Prime Construction Contracts, Procurement Contracts or Agreements with a maximum value of \$10,000,000, as eligible for an SB preference of up to 5% of the lowest responsible Bidder's or Proposer's Bid or Proposal price, up to a maximum of \$250,000, with the exact

percentage applicable to a particular Contract or Agreement determined by BART. SB Prime Construction Contractors, Suppliers, or Consultants who bid on such Contracts or Agreements will be granted the percentage preference set by BART on their Bid or Proposal price only during evaluation for determining the award of the Contract or Agreement. However the actual Contract or Agreement awarded will be for the amount of the original bid or proposal.

8. CONTRACT-SPECIFIC SB FIRST TIER SUBCONTRACTOR PARTICIPATION GOALS

BART, in its sole discretion, may establish, for a particular Prime Construction Contract, Procurement Contract, or Agreement, with a value above \$10,000,000, an SB Participation Goal. This SB Participation Goal shall be expressed as a percentage of the total Bid or Proposal price for a Contract or Agreement. The Bidder or Proposer that meets the SB Participation Goal will be eligible for a preference of up to 5% of the lowest responsible Bidder's or Proposer's Bid or Proposal price, up to a maximum of \$1,000,000, only during evaluation for determining the award of the Contract or Agreement. Bidders that do not meet the SB Participation Goal would not be eligible for the preference. However, the actual Contract or Agreement awarded will be for the amount of the original Bid or Proposal.

9. CONTRACT-SPECIFIC SB SECOND TIER SUBCONTRACTOR PARTICIPATION

BART, in its sole discretion, may recognize Second Tier SB firms towards meeting the Contract SB Participation Goal on designated prime construction contracts subject

to subsections (a) through (c), below. The Prime Contractor shall include provisions in its First Tier Subcontracts providing for the following:

(a) A provision requiring that the First Tier Subcontractor provide copies of the SB Second Tier subcontracts to BART, and provide other documentation deemed needed by BART to confirm the SB participation.

(b) A provision requiring that the First Tier Subcontractor provide BART with the information designated by BART which BART deems necessary for determining whether the SB Second Tier Subcontractor is performing work on the Contract, including reports on payments made to SB Second Tier Subcontractors.

(c) A provision requiring the First Tier Subcontractor to make good faith efforts to replace an SB Second Tier Subcontractor with another SB firm if a substitution is deemed necessary.

10. SB SUBCONTRACTING PARTICIPATION GOALS IN DESIGN-BUILD CONTRACTS

For design-build contracts issued pursuant to Public Contract Code Section 20209.5, BART may establish three SB Participation Goals for services, procurement, and construction respectively.

The Proposers for the design-build contracts may be required to meet the SB Participation Goal for services and commit to meeting the SB Participation Goals for procurement and construction in order to be eligible for a preference of up to 5%,

which will be credited in the price portion of the Proposal. BART staff will monitor the Contractor's performance of the Contract following award to ensure that the Contractor meets the SB Participation Goals for services, procurement and construction.

11. THE CONTRACTOR'S SB OBLIGATIONS AFTER THE AWARD OF THE CONTRACT

In Contracts and Agreements with an SB Participation Goal, the Contractor shall take all reasonable steps to ensure that its SB Subcontractors or Subconsultants are able to successfully perform their subcontract responsibilities.

12. SUBSTITUTION OF SBs

Should the Contractor, Supplier, Consultant or First Tier Subcontractor, where applicable, establish that the substitution of any SB Subcontractor, Subsupplier, Subconsultant or, where applicable, Second Tier Subcontractor, is necessary, the Contractor, Supplier, Consultant or First Tier Subcontractor, shall, subject to the approval of BART, replace the affected SB Subcontractor, Subsupplier or Subconsultant with another SB Subcontractor, Subsupplier or Subconsultant or demonstrate that it made good faith efforts to do so consistent with the following terms:

- ***In determining whether*** good faith efforts have been made, BART will consider the steps taken by the Contractor, Supplier, Consultant, or First Tier Subcontractor, where applicable, on the actions listed below. These steps are reflective of good faith efforts taken by a Contractor, Supplier, Consultant, or First Tier Subcontractor

seeking to replace an SB with another SB in order to maintain its commitment to meet the SB Participation Goal.

- **Identify and select** specific subcontracting areas of the Contract or Agreement to be performed by SB Subcontractors, Subsuppliers or Subconsultants.
- **Advertise** the subcontracting opportunity in one or more daily or weekly newspapers, small business association publications, trade-oriented journals or other media specified by BART. The required advertising shall be completed sufficiently in advance of the selection decision to allow potential SB Subcontractors, Subsuppliers or Subconsultants a reasonable time in which to bid for or otherwise seek the Subcontract;
- **Provide** written solicitation notice of subcontracting opportunities to a reasonable number of SB Subcontractors, Subsuppliers or Subconsultants with enough time prior to the selection decision to allow the SBs to offer a proposal.
- **Follow up** initial solicitations to SB Subcontractors, Subsuppliers or Subconsultants to confirm whether the potential SB Subcontractors are interested in performing the Subcontracts;
- **Provide** interested SB Subcontractors, Subsuppliers or Subconsultants with information about the proposal, plans, specifications, and/or requirements for the subcontracting work to be performed.
- **Request** assistance in identifying potential SB Subcontractors, Subsuppliers, or Subconsultants from community organizations, contractor groups, or BART's Office of Civil Rights;
- **Offer** assistance with regard to bond or insurance requirements for SBs;

- *Negotiate* in good faith with SB Subcontractors, Subsuppliers or Subconsultants who express an interest in subcontracting, as appropriate.

13. SB PARTICIPATION REPORTS

Contractors, Suppliers and Consultants shall submit on a form provided by BART a monthly SB Subcontractor Utilization Report to the Office of Civil Rights showing the total amount paid to date to each SB.

14. FAILURE TO ADHERE TO SB REQUIREMENTS

The failure of a Contractor, Supplier, or Consultant, or First Tier Subcontractor, where applicable, to adhere to any of the requirements of the SB Program shall constitute a material breach of the Contract or Agreement and may result in BART terminating the Contract or Agreement or imposing appropriate sanctions. Among other things, BART may withhold payments or portions of payments to the Contractor, Supplier, or Consultant or undertake other enforcement measures due to the failure of the Contractor, Supplier, or Consultant or where applicable, the First Tier Subcontractors, to comply with the SB participation requirements. Such payments withheld will be released once the Contractor, Supplier, or Consultant or its First Tier Subcontractors, conform with the SB participation requirements.



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Marisa Selber Lee</i>		GENERAL MANAGER ACTION REQ'D: Approve and Forward to Board		
DATE: c <i>8/31/11</i>		BOARD INITIATED ITEM: No		
Originator/Prepared by: Jeffrey P Ordway Dept: Real Estate and Property Development <i>Jeffrey P Ordway</i>	General Counsel <i>Rudolph Kowalski</i> <i>8/31/11</i>	Controller/Treasurer <i>[Signature]</i>	District Secretary <input type="checkbox"/>	BARC <i>[Signature]</i> <input type="checkbox"/>

TITLE:

Solicitation for Private Developer at Lake Merritt BART Station

NARRATIVE:

PURPOSE: To obtain Board authorization to release a Request for Qualifications (RFQ) for private development of BART property at the Lake Merritt BART Station.

DISCUSSION: In July 2008, the City of Oakland received a \$720,000 grant from the Metropolitan Transportation Commission (MTC) to conduct an interactive community planning process and environmental document for the Lake Merritt BART Station area. On November 20, 2008, the BART Board authorized execution of a Memorandum of Understanding between the District, City of Oakland and the Peralta Community College District in support of the Lake Merritt Station area planning effort. The City, Peralta Community College District and BART each agreed to contribute \$50,000 in local match funding towards this effort. A highly interactive and collaborative process has been established to both guide the study and ensure that all voices are heard throughout the process. A Community Stakeholder Group (CSG) has been established, with representatives from the City of Oakland, BART, Peralta/Laney College, Oakland Museum, Chinatown, MTC, Association of Bay Area Governments (ABAG), and other groups.

Over the past few months, private developers have expressed interest in pursuing development at the Lake Merritt Station. Discussions have been conducted with the CSG to identify the advantages of creating a relationship with the private sector at this point in the study process. Securing a relationship with the private sector would:

- Provide a private sector reality check on overall development viability.
- Obtain projected private sector costs and revenues at no cost to the study.
- Obtain private sector assessment of placemaking elements – costs to implement and maintain.

The preferred method of securing a relationship with a private developer is through issuance of a Request for Qualifications (RFQ) in keeping with BART's Transit-Oriented Development Policy. Given the status of the planning effort, it would be premature to solicit private development projects at this time. The RFQ would be issued by BART for, at a minimum, property owned by BART at the Lake Merritt Station. Additional land controlled by others at the station (e.g., MTC/ABAG, Peralta/Laney College) could be included at a later date.

The RFQ would solicit development team information to enable an Evaluation Committee to

recommend exclusive negotiations with a preferred development team based upon:

- Qualifications and experience of development team (general qualifications of team members, experience with similar projects, quality and financial performance of past projects, experience with high-profile public-private projects with significant community involvement, experience in working with the public in creating public benefits, and experience with long-term ground leases).
- Financial capability of development team, including lender references (demonstrated ability to raise debt and equity for projects, strength of current relationships with financial institutions, overall financial track record and capacity).

The Evaluation Committee is expected to include representatives from BART, the City of Oakland, MTC/ABAG, Peralta/Laney College as well as from the community. BART normally includes local representation in its developer solicitation efforts and, in the case of development at the MacArthur Station, included community representatives from the Citizen Planning Committee.

Any developer identified through a competitive process would be brought back to the BART Board of Directors for authorization to begin exclusive negotiations. BART's Office of the General Counsel will approve the RFQ solicitation as to form.

FISCAL IMPACT: The only fiscal impact from the proposed action would be staff time involved in preparing the solicitation and conducting evaluations and interviews to determine a preferred developer to begin negotiations.

ALTERNATIVES: Do not pursue private development at the Lake Merritt BART Station at this time. This would result in a missed opportunity to take advantage of private development interest in the station area property.

RECOMMENDATION: Adoption of the following motion:

MOTION: The Board hereby authorizes release of a Request for Qualifications for private development of BART property at the Lake Merritt BART Station.



CAPITOL CORRIDOR JOINT POWERS AUTHORITY
MEETING OF THE BOARD OF DIRECTORS
Wednesday September 21, 2011

10:00 a.m.

City Council Chambers
Sacramento City Hall
915 "I" Street, Sacramento, CA
(see attached map)

DRAFT AGENDA

- I. Call to Order
- II. Roll Call and Pledge of Allegiance
- III. Report of the Chair
- IV. Minutes of the February 16, 2011, March 10, 2011, and June 8, 2011 Meetings *Action*
- V. Consent Calendar **[No items]**
- VI. Action and Discussion Items
 1. CCJPA FY12 Budget *Action*
 2. CCJPA/Amtrak FY 12 Fixed Price Operating Agreement *Action*
 3. Legislative Matters *Action*
 4. Air Quality Grant for Additional Standby Power Units at Sacramento Valley Station *Action*
 5. CCJPA Tiered Capital Improvement Program *Action*
 6. Overview of Positive Train Control for the Capitol Corridor *Discussion*
 7. Results of June 2011 Onboard Surveys *Discussion*
 8. Managing Director's Report *Info*
 9. Work Completed *Info*
 - a. Amtrak Pricing Policy for State-Funded Intercity Passenger Rail Operations
 - b. Yolo Causeway West Crossover Project
 - c. CCJPA Response to City of Davis Application for Grade Crossing at Davis Station
 - d. Marketing Activities (June – August 2011)
 10. Work in Progress *Info*
 - a. Wireless Network (On-Board WiFi Service)
 - b. Capitol Corridor Service at New Caltrain Santa Clara/University Station
 - c. Federal Capital Grant Opportunities for Intercity Passenger Rail
 - d. CCJPA Bike Advisory Working Group
 - e. Sacramento-Roseville 3rd Track Environmental Review/Preliminary Engineering
 - f. Proposition 1B Transit Safety/Security Improvement Projects
 - g. Proposed Extension of Capitol Corridor Trains to Salinas
 - h. Upcoming Marketing Activities
- VII. Board Member Reports
- VIII. Public Comment
- IX. Adjournment. Next Meeting Date: 10:00 a.m., November 16, 2011 at City Council Chambers, Suisun City Hall, 701 Civic Center Blvd., City of Suisun City, CA

Notes:

Members of the public may address the Board regarding any item on this agenda. Please complete a "Request to Address the Board" form (available at the entrance of the Boardroom and at a teleconference location, if applicable) and hand it to the Secretary or designated staff member 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. Speakers are limited to three (3) minutes for any item or matter. The CCJPA Board reserves the right to take action on any agenda item.

Consent calendar items are considered routine and will be enacted, approved or adopted by one motion unless a request for discussion or explanation is received from a CCJPA Board Director or from a member of the audience.

The CCJPA Board provides services/accommodations upon request to persons with disabilities who wish to address Board matters. A request must be made within one and five days in advance of a Board meeting, depending on the service requested. Call (510) 464-6085 for information.