

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

AGENDAS FOR BOARD AND COMMITTEE MEETINGS

December 20, 2007

9:00 a.m.

A regular meeting of the Board of Directors and regular meetings of the Standing Committees will be held on Thursday, December 20, 2007, commencing at 9:00 a.m. All meetings will be held 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 and Standing Committees regarding any matter on these agendas. 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” and “consent calendar addenda” 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/Committee meetings, depending on the service requested. Please contact the Office of the District Secretary at (510) 464-6083 for information.

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 December 6, 2007.* Board requested to authorize.

RECESS TO STANDING COMMITTEES

Immediately following the Standing Committee Meetings, the Board Meeting will reconvene, at which time the Board may take action on any of the following committee agenda items.

ALL COMMITTEES ARE ADVISORY ONLY

ADMINISTRATION COMMITTEE

Immediately following the Board Meeting recess

Director Franklin, Chairperson

- A-1. (CONTINUED from December 6, 2007, Administration Committee Meeting)
Proposed Revision to Board Rules – Board Rule 5-5.1 – Contractor/Subcontractor Contributions.* (Director Keller’s request).
Board requested to authorize.
- A-2. General Discussion and Public Comment.

ENGINEERING AND OPERATIONS COMMITTEE

Director Fang, Chairperson

NO REPORT.

PLANNING, PUBLIC AFFAIRS, ACCESS, AND LEGISLATION COMMITTEE

Director Radulovich, Chairperson

NO REPORT.

RECONVENE BOARD MEETING

3. REPORTS OF STANDING COMMITTEES

A. ADMINISTRATION COMMITTEE

- A-1. (CONTINUED from December 6, 2007, Administration Committee Meeting)
Proposed Revision to Board Rules – Board Rule 5-5.1 – Contractor/Subcontractor Contributions.* (Director Keller’s request).
Board requested to authorize.

B. ENGINEERING AND OPERATIONS COMMITTEE

NO REPORT.

C. PLANNING, PUBLIC AFFAIRS, ACCESS, AND LEGISLATION COMMITTEE

NO REPORT.

4. GENERAL MANAGER’S REPORT

NO REPORT.

5. BOARD MATTERS

A. Roll Call for Introductions.

B. Election of Officers.

1. President.
2. Vice President.

6. GENERAL DISCUSSION AND PUBLIC COMMENT

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

A. CONFERENCE WITH REAL PROPERTY NEGOTIATOR.

Property: Property located at the Pittsburg/Bay Point BART Station bounded by Route 4 on the north, the existing BART parking lot on the west, private land on the east, and West Leland Road on the south in Pittsburg, CA

District Negotiators: Carter Mau, Executive Manager, Planning & Budgets; and Jeffrey P. Ordway, Manager, Property Development

Negotiating Parties: Pittsburg Redevelopment Agency and San Francisco Bay Area Rapid Transit District

Under Negotiation: Price and Terms.

Government Code Section: 54956.8

Property: Property located at Bliss Avenue approximately one-quarter mile east of Railroad Avenue bounded by Route 4 on the north, Bliss Avenue on the south and private property on the east and west in Pittsburg, CA

District Negotiators: Carter Mau, Executive Manager, Planning & Budgets; and Jeffrey P. Ordway, Manager, Property Development

Negotiating Parties: Pittsburg Redevelopment Agency and San Francisco Bay Area Rapid Transit District

Under Negotiation: Price and Terms.

Government Code Section: 54956.8

Property: Property located at Hillcrest Avenue bounded by Route 4 on the south, Hillcrest Avenue on the west, Sunset Avenue on the north and private property on the east in Antioch, CA.

District Negotiators: Carter Mau, Executive Manager, Planning & Budgets; and Jeffrey P. Ordway, Manager, Property Development

Negotiating Parties: City of Antioch, B&W FKP, LLC, and San Francisco Bay Area Rapid Transit District

Under Negotiation: Price and Terms.

Government Code Section: 54956.8

8. OPEN SESSION

- A. Execution of Six Month Exclusive Negotiating Agreements with Each of the Following Entities for Properties in Connection with the Proposed East Contra Costa County BART Extension (eBART):
1. Pittsburg Redevelopment Agency, for property located at the Pittsburg/Bay Point BART Station bounded by Route 4 on the north, the existing BART parking lot on the west, private land on the east, and West Leland Road on the south in Pittsburg, CA;
 2. Pittsburg Redevelopment Agency, for property located at Bliss Avenue approximately one-quarter mile east of Railroad Avenue bounded by Route 4 on the north, Bliss Avenue on the south and private property on the east and west in Pittsburg, CA;
 3. City of Antioch and B&W FKP, LLC, for property located at Hillcrest Avenue bounded by Route 4 on the south, Hillcrest Avenue on the west, Sunset Avenue on the north and private property on the east in Antioch, CA.

Board requested to authorize.

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

MEMORANDUM

TO: Board of Directors **DATE:** December 14, 2007
FROM: Acting General Counsel
SUBJECT: Administration Committee Agenda Materials (Revision to Board Rule 5-5.1)

In response to the direction given by the Board at the December 6, 2007, meeting of the Administration Committee, I have worked with Director Keller to refine a proposal for the Board's consideration, taking into account the discussions at that meeting. Also included as attachments are the previous options reviewed by the Board and a copy of the existing rule.

A. Director Keller's Proposal

That Board Rule 5-5.1 be revised as described in Options 1 and 2 of the previous Committee materials to institute a monetary limit of \$1000 and ending the prohibition on the receipt of contributions upon award. Further, the time period of the prohibition would be uniform for all types of agreements and contracts.

This proposal would preclude a Director from accepting more than \$1000 from any contractor or proposer for the period from the submission of a bid through award. This single rule would apply to all contracts and agreements subject to Board approval, removing the differing periods currently applicable to design-build and competitively negotiated contracts. It was pointed out at the December 6th meeting that the pre bid portion of the prohibition for design-build and competitively negotiated contracts is often quite lengthy.

B. What about the different standard for candidates?

It was also correctly pointed out during the meeting that candidates for the BART Board may raise funds from potential contractors until such time as they actually file a declaration of candidacy, a time period where sitting Board members are precluded by the current Rule from doing so.

In response, it has been suggested that the Rule be revised to exclude Directors in the calendar year of their reelection, until the date of filing for declarations of candidacy with the Registrar of Voters has passed. This date is 88 days prior to an election. The intent of this change would be to permit Directors to raise funds in the same manner, and during the same time period, as potential candidates. Both Directors and candidates would be subject to the Rule once the date for filing of declarations for candidacy has passed.

C. What Other Agencies do

As discussed briefly at the December 6th meeting, most local agencies do not have a restriction in place similar to the District's Rule prohibiting the receipt of campaign contributions from prospective contractors. Those agencies instead rely solely on the disclosure and reporting requirements of the Political Reform Act.

Please telephone me if you have any questions. I can be reached at extension (510) 464-6037.



Matt Burrows

Attachments

SECTION 5. FINANCIAL CONTRIBUTION LIMITATION

5-5.1 Contractor/Subcontractor Contributions. In regard to any contract or agreement requiring authorization of the Board, no prospective contractor, or the contractor's proposed first tier subcontractors and subsuppliers whose subcontracts exceed \$100,000 (hereinafter referred to as "subcontractors"), shall provide to any Director, or any candidate for Director, and no Director, or a candidate for Director, shall accept or solicit any monetary or in-kind contribution (including loans) from any contractor or its subcontractors during the following defined time periods.

(Rev. 11/20/97)

(a) In the case of a competitively negotiated contract pursuant to Public Contract Code Section 20229.1, for the purchase of electronic

equipment and specialized rail transit equipment, this Rule is effective from the date prospective contractors are sent a Request for Proposals (RFP). If a prospective contractor does not submit a proposal, that contractor will not be subject to this Rule after the date the proposals are opened. This Rule shall continue to apply until the award of a contract and also shall continue to apply for three months following the award of a contract in regard to the contractor awarded the contract and its subcontractors.

(Rev. 01/09/03)

- (b) In the case of a contract for the extension of the District's facilities to the San Francisco International Airport where contractors are prequalified pursuant to Public Contract Code Section 20221.1, this Rule is effective from the date prospective contractors submit and the District receives their Qualification Statements. If a prospective contractor does not prequalify, that contractor will not be subject to this Rule from the date of the final determination by the District that it is not prequalified. If a prospective contractor who has been prequalified does

not submit a bid, that contractor will not be subject to this Rule after the date the bids are opened. This Rule shall continue to apply until the award of a contract and also shall continue to apply for three months following the award of a contract in regard to the contractor awarded the contract and its subcontractors.

(Rev. 01/09/03)

- (c) In the case of a design-build contract pursuant to Public Contract Code Section 20209.5 *et seq.*, this Rule is effective from the date a prospective design-build entity submits and the District receives the prospective design-build entity's Qualification Statement. If a prospective design-build entity does not prequalify, that design-build entity will not be subject to this Rule from the date of the final determination by the District that it is not prequalified. If a prospective design-build entity that has been prequalified does not submit a proposal, that design-build entity will not be subject to this Rule after the date the proposals are opened. This Rule shall continue to apply until the award of a contract and also shall continue to apply for three

months following the award of a contract in regard to the design-build entity awarded the contract and its subcontractors.

(New 01/09/03)

- (d) In the case of all other contracts and agreements, this Rule is effective from the date the bids or proposals are submitted by prospective contractors and opened by the District. This Rule shall continue to apply to any prospective contractor and its proposed subcontractors until the award of a contract or agreement and also shall continue to apply for three months following the award of a contract or agreement in regard to the contractor awarded the contract or agreement and its subcontractors.

(Rev. 01/09/03)

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

MEMORANDUM

TO: Board of Directors **DATE:** November 30, 2007
FROM: Acting General Counsel
SUBJECT: Administration Committee Agenda Materials (Revision to Board Rule 5-5.1)

The matter of a possible revision to Board Rule 5-5.1 is scheduled for discussion and possible action at the December 6, 2007, Administration Committee meeting. In preparation for that discussion, I am providing the following advance information.

A. Brief History of the Current Rule:

Board Rule 5-5.1 (the "Rule") is a Board imposed restriction on the solicitation and receipt of campaign contributions from proposed contractors or their proposed first tier subcontractors or subsuppliers, when the value of the contract or subcontract exceeds \$100,000. This prohibition applies to unsuccessful bidders only from the time a bid is submitted until the contract is awarded to another firm. The prohibition extends for three months after award for the successful bidder¹. The Rule does not prohibit a Director from accepting a campaign contribution from contractors or prospective contractors at times other than those enumerated above.

B. Possible Revisions to the Existing BART Rule.

If the Board determines that a revision to the Rule is warranted, options that the Board may wish to consider include:

- 1) Modification of the Rule to place a monetary limit on the amount of money that could be contributed by a contractor or potential contractor. The Rule could be modified from an ultimate prohibition on the receipt of campaign contributions from contractors and potential contractors to a prohibition on receiving contributions in excess of a certain monetary amount, for example, \$1000, from this same group of people.
- 2) Modification of the Rule to shorten the time under which the prohibition is in place. Generally, the prohibition exists from the receipt of bids to the time of award for the unsuccessful bidders and three months following award for the successful bidder.

¹ For certain competitively negotiated contracts and design-build contracts the prohibition begins at receipt of an RFP, or submittal of a Qualification Statement, respectively and may terminate early if no Proposal is submitted or a Qualification Statement is deemed insufficient for prequalification.

The three month period could be shortened, or even eliminated, simply prohibiting campaign contributions for the period while bids are being evaluated.

- 3) Rescinding the Rule altogether. The Board operated without any such prohibition for quite some time prior to the Rule's adoption in 1996. If rescinded, the receipt of campaign contributions from contractors and potential contractors would be subject to the same legal guidelines applicable to other contributors.

The Board may also wish to consider a combination of alternatives "1" and "2."

Please telephone me with any questions or concerns. I can be reached at 464-6037,



Matt Burrows