

DISTRICT PROTEST PROCEDURES

Revised May 2009

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

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PROTEST PROCEDURES

I. PURPOSE

These protest procedures are a revision to the District's February 1996 protest procedures established by the General Manager and are intended, among other things, to implement Chapter III, Section 5 of the Board Rules adopted by the Board in March 1995 concerning protest procedures for competitively bid and competitively negotiated Contracts which reads, in part, as follows:

"The Board delegates to the General Manager the authority to establish procedures for handling and responding to all protests on advertised and negotiated contracts."

II. DEFINITIONS

A. Board

The Board of Directors of the San Francisco Bay Area Rapid Transit District.

B. Days

Unless specified otherwise "days" refers to "calendar days." "Calendar days" are counted by excluding the first day and including the last. The period ends at the end of the business day on the last day counted. If the end of the period falls on a Saturday or Sunday or a holiday, the period is extended to the end of the first business day thereafter.

If "Working days" are specified, holidays and weekends are not included in the counted days. If the period ends on a weekend or holiday, the period is extended to the end of the first business day thereafter.

C. District

The San Francisco Bay Area Rapid Transit District.

D. EDD

Executive Decision Document

E. Federal Law or Regulation

Any valid requirement imposed by Federal statute or regulation governing contracts awarded pursuant to a grant agreement. This includes the requirements as stated in FTA Circular 4220.1F, Third Party Contracting Guidance.

F. File or Submit

"File" or "submit" means receipt by the District Office or Department at the address specified.

G. FTA

Federal Transit Administration, a division of the United States Department of Transportation (DOT).

H. Procurement Contract

The term as used herein includes: Invitation for Bid (IFB) and Procurement Contracts for the purchase of supplies, equipment and materials and excludes Construction Contracts and Design, Furnish and Install Contracts.

I. Solicitation Documents

The documents which constitute the Invitation for Bids or Requests for Proposals including the Advertisement, Form of Agreements or Contract Book, and related documents.

J. Sponsoring Department

The term used for any organizational entity within the District that initiates a request for procurement action and that will ultimately benefit from the goods or services acquired.

K. Transmitted

"Transmitted" refers to "sending" as opposed to "receipt," e.g. putting in the U.S. mail, handing to special delivery, etc. It is not "transmitted" unless it is correctly addressed for the type of transmittal selected.

III. APPLICABILITY AND COMPLIANCE

A. APPLICABILITY

Any provisions in this District's Protest Procedures that make reference to review of protests by the FTA are applicable to the review of protests by other federal funding agencies, as applicable, and as further specified in the solicitation documents for the respective contracts funded by those federal agencies such as the Federal Highway Administration (FHWA), the Federal Emergency Management Agency (FEMA) and the Department of Homeland Security (DHS).

These procedures apply to all Contracts and Agreements as follows:

Section IV. Advertised Construction, Furnish and Install, and Procurement Contracts for \$100,000 or More.

Section V. Competitively Negotiated Agreements including Professional, Technical and Maintenance Services Agreements for \$100,000 or More.

Section VI. Competitively Negotiated Procurement Contracts under Section 20229.1 of the California Public Contract Code (P.C.C.).

Section VII. Advertised Construction and Furnish and Install Contracts over \$10,000 and below \$100,000 if Federally or non-Federally funded.

Section VIII. Competitively Negotiated Agreements including Professional, Technical and Maintenance Services Agreements and Leases and License Agreements below \$100,000.

Section IX. Construction and Furnish and Install Contracts equal to, or below \$10,000 and Procurement Contracts equal to or below \$100,000 if Federally or non-Federally Funded.

Section X. Competitively Bid Design and Construction Contracts under Section 20221.1 of the California Public Contract Code.

- Section XI Design-Build Contracts, pursuant to California Public Contract Code Section 20209.5 et seq.
- Section XII Contracts pursuant to California Government Code Section 5956 et seq.
- Section XIII. Design-Build Contract for Oakland Airport Connector Project, pursuant to California Public Contract Code Section 20209.5 et seq.

B. COMPLIANCE

The responsibility for coordinating, calendaring and tracking protests for proper handling and response, pursuant to these Protest Procedures will rest with the Procurement Department.

No departure from the policies and procedures described herein shall be made in the absence of express authorization of the General Manager in writing. However, the Assistant General Manager, Administration, may approve in writing changes to these procedures that are not inconsistent with the Board Rules.

The Procurement Department is responsible for monitoring compliance with the protest procedures and for determining whether a Sponsoring Department has failed to comply with these procedures. In such instances, the Sponsoring Department may be required by the Procurement Department to obtain appropriate Management approval prior to proceeding with further action on the protest.

Furthermore, in accordance with the provisions of FTA Circular 4220.1F, the Department Manager of Procurement or his/her designee, will be responsible for collecting, consolidating and including information regarding protests of Federally funded procurements on a quarterly basis as a part of the FTA Quarterly Progress Report process.

IV. ADVERTISED CONSTRUCTION, FURNISH AND INSTALL, AND PROCUREMENT CONTRACTS FOR \$100,000 OR MORE

A. Contract Provisions

1. All contracts which are not Federally funded shall contain the provisions in Attachment 1.
2. All Federally funded contracts shall contain the provisions in Attachment 2.

B. Pre-bid Protests. Pre-bid protests are those protests made before Bid opening regarding the content of the Solicitation Documents (Generally, specification challenges).

1. The Office of the District Secretary will receive pre-bid protests and date-stamp them with the time of the receipt, retain an original for the files, and distribute copies of the protest to:
 - a. Project Manager, Director, or Sponsor;
 - b. Department Manager of Procurement;
 - c. Manager, Purchasing or Contract Administration Division, as appropriate; and
 - d. The Office of General Counsel.
2. The Department Manager of Procurement or his/her designee, will be responsible for further distribution if necessary, for coordinating the response and for transmitting a copy of the Final Decision to the protestor.
3. The Project Manager or his/her designee from the Sponsoring Department, with assistance from the Office of the General Counsel and other appropriate Departments will draft a Proposed Decision and a concurrence sheet for circulation. The Proposed Decision shall contain a

summary of the protest and a recommendation as to whether the protest should be allowed or denied and the reasons for the recommendation. The Proposed Decision shall only address the issues raised by the protestor. The Project Manager will circulate the Proposed Decision and the concurrence sheet to those personnel identified in B.1. above and such other departments as the Department Manager of Procurement deems necessary and appropriate.

4. The General Manager delegates to the Department Manager of Procurement the authority to decide pre-bid protests subject to advising the General Manager of significant or critical issues. The Proposed Decision with the concurrence sheet will be submitted to the Department Manager of Procurement for final approval. The Proposed Decision shall be final when approved by the Department Manager of Procurement. The Department Manager of Procurement may submit the Proposed Decision to the General Manager when, in his or her discretion, the General Manager should be advised of significant or critical issues. The Department Manager of Procurement will transmit the Final Decision to the protestor.
 - a. If all parts of the protest are denied, notification of the decision is sent to the protestor in a manner that provides verification of receipt. If the contract is not Federally funded, Bids may be opened as scheduled. If it is Federally funded, see (c) below.
 - b. If the protest is sustained or partially sustained, the notification and the decision will be sent to the protestor in a manner that provides verification of receipt. An addendum to the specifications may be issued to respond to the protest and the Bid opening date extended if necessary, or the advertisement may be canceled. The Bid opening date should allow time for protests on the addendum pursuant to the District's protest procedures (7 to 21 days) and, if Federally funded, an additional 6 days is necessary (see (c) below).
 - c. Federally funded
 - (1) If a protest is denied on a Federally funded contract, the protestor may request FTA review of the District's action on the protest in accordance with the protest provisions of FTA Circular 4220.1F. Such a request shall be filed with the FTA's Regional Administrator for Region IX at 201 Mission Street, Room 2210, San Francisco, CA 94105. A copy of this request shall be submitted to the District Secretary. Except as provided in (4) below, the Bid opening shall occur no less than six (6) working days after the decision becomes final and after the Department Manager of Procurement confirms that FTA has not received a protest on the contract in question.
 - (2) Except as provided in (4) below, if a protest has been filed with the FTA, Bid opening will not occur during the pendency of the protest.
 - (3) Upon notification by FTA of receipt of a protest, the Department Manager of Procurement will submit to FTA, within ten working days, the following:
 - (a) A copy of the District's protest procedures;
 - (b) A description of the process followed concerning the protest; and
 - (c) Any supporting documentation.The Department Manager of Procurement will send copies of the above to the protestor.
 - (4) Exceptions to (1) and (2) above. Bids may be opened before the expiration of six (6) working days after the District's denial of a protest or during the pendency of a protest to the FTA, if the General Manager determines that:
 - (a) The items to be procured are urgently required;

- (b) Delivery or performance will be unduly delayed by failure to make the Award promptly; or
- (c) Failure to make prompt Award will otherwise cause undue harm to the District or the Federal Government.

- (5) The Department Manager of Procurement will notify the FTA of the above determination prior to opening of Bids.

C. Protests Filed After Bid Opening But Before Recommendation To Award

The District Secretary will respond to any correspondence received after Bid opening but before Board action.

D. Protests on the Recommended Award

- 1. When the Board has authorized the General Manager to Award a contract subject to the protest procedures or has rejected all Bids, the Department Manager of Procurement or his/her designee will promptly notify all Bidders of the Board action. The notification will be transmitted in a manner that provides verification of receipt.
 - a. Board actions to reject all Bids shall not be subject to the protest procedures. In rejection of Bids, sole source and single Bid situations, the Board motion for authorization to reject Bids or Award will not contain the following qualifications: for non-Federally funded contracts; "subject to the District's protest procedures"; or, for Federally funded contracts; "subject to the District's protest procedures and the FTA's requirements related to protest procedures". The contract can proceed to either re-advertisement or Award and execution as appropriate upon Board action.
- 2. If a protest is received from a Bidder more than seven (7) calendar days after the receipt of the notification of the Board action, the protest will be denied as untimely. The District Secretary will send the letter of response to the protestor.
- 3. If any protest is received by the District Secretary within seven (7) calendar days after receipt of the mailing or transmission of such notice, the Notice of Award will not be issued and Award will not be made until the requirements of Section IV.D.3.a.- Timely Protest to Recommended Award below have been completed.

- a. Timely Protest to Recommended Award

- (1) The District Secretary will date-stamp all copies of the timely filed protest with the time of receipt, retain one original for the District files and distribute the others as follows:
 - (a) Two copies to the Office of the General Manager;
 - (b) One copy to the Office of the General Counsel;
 - (c) One copy to the Project Manager or Sponsoring Department;
 - (d) Six copies to the Department Manager of Procurement.
- (2) The Department Manager of Procurement will transmit the protest to the Bidder recommended for Award. The Department Manager of Procurement is responsible for further distribution if necessary, for coordinating the response, and for sending a copy of the District's decision to the protestor, and to the Bidder to whom Award was authorized.
- (3) After a protest has been filed, any District employee contacted by an outside party or an attorney in connection with the protest should notify the Office of the General Counsel and receive its advice concerning further contacts with such persons. The

Procurement Department should also be informed of the contact. A District employee contacted by an outside attorney regarding District matters, including protests, should transfer the attorney to the Office of the General Counsel and report the contact to that office.

- (4) Requests for documents or files will be handled in accordance with Board Resolution No. 2267. (Attachment 8)
- (5) The Executive Manager or Assistant General Manager of the Sponsoring Department will designate a staff person to investigate disputed factual allegations, if any, contained in the protest.
 - (a) This Sponsoring Department designee will prepare a Proposed Decision and EDD with assistance from the Office of the General Counsel and other appropriate departments as soon as possible. The Proposed Decision should contain a summary of the protest and any responses received, an evaluation of the protest, and a recommendation as to whether the protest should be allowed or denied. The Proposed Decision will only address the issues raised in the protest.
 - (b) The Sponsoring Department designee will circulate the Proposed Decision with the EDD for concurrence to the Contract Administration Division or Purchasing Division, whichever is appropriate, the Department Manager of Procurement, the Office of the General Counsel, the Assistant General Manager or Executive Manager of the Sponsoring Department, and such other Group or Project Managers as the Department Manager of Procurement deems appropriate. The Sponsoring Department designee will submit the EDD and Proposed Decision to the General Manager for approval.
 - (c) If the EDD and Proposed Decision are approved by the General Manager, the Proposed Decision is then transmitted by the District Secretary to the Board members. The Sponsoring Department will furnish 10 copies of the Proposed Decision to the District Secretary for transmittal to the Board.
- (6) If a member of the Board does not request full Board consideration of the protest within ten days of mailing of the Proposed Decision, the Proposed Decision becomes the Final Decision of the District and, in non-Federally funded contracts, is mailed by the Department Manager of Procurement to the protestor and the Bidder to whom Award was authorized. In Federally funded contracts, the Final Decision is transmitted in a manner that provides verification of receipt.
 - (a) If a protest on a non-Federally funded contract is denied, the Notice of Award may be issued immediately.
 - (b) If a protest on a Federally funded contract is denied, the protestor may request FTA review of the District's action on a protest in accordance with the protest provisions of FTA Circular 4220.1F. Such a request shall be filed with the FTA's Regional Administrator for Region IX at 201 Mission Street, Room 2210, San Francisco, CA 94105. A copy of this request shall be submitted to the District Secretary. Except as provided in (e) below, the Notice of Award may be issued no less than six (6) working days after the decision becomes final and after the Department Manager of Procurement confirms that the FTA has not received a protest on the contract in question.
 - (c) Except as provided in (e) below, if a protest has been filed with FTA, a Notice of Award will not be issued during the pendency of the protest.

- (d) Upon notification by FTA of receipt of a protest, the Department Manager of Procurement will submit to FTA, within ten working days, the following:
 - i) A copy of the District's protest procedures;
 - ii) A description of the process followed concerning the protest; and
 - iii) Any supporting documentation.

The Department Manager of Procurement will also send copies of the above to the protestor.

- (e) Exceptions to (b) and (c) above. Notice of Award may be issued before the expiration of six (6) working days after the District's denial of a protest or during the pendency of a protest to the FTA if the General Manager determines that:
 - i) The items to be procured are urgently required;
 - ii) Delivery or performance will be unduly delayed by failure to make the Award promptly; or
 - iii) Failure to make prompt Award will otherwise cause undue harm to the District or the Federal Government.
- (f) The Department Manager of Procurement will notify the FTA of above determination prior to the issuance of the Notice of Award.
- (g) If the protest is sustained, the Board may authorize Award to the next lowest responsible Bidder at which time a new protest period commences, or reject all Bids.

(7) If a Board member requests a full Board hearing:

- (a) The District Secretary will notify the protestor and the Bidder recommended for Award, place the item on the Board agenda and distribute to each member of the Board the following:
 - i) One copy of the Proposed Decision;
 - ii) One copy of the protest;
 - iii) One copy of any written responses by the Bidder recommended for Award;
 - iv) A copy of any other relevant documents from the District files that the General Manager may designate;
 - v) Alternative motions for approving or not approving the Proposed Decision.
- (b) The Department Manager of Procurement will furnish 15 copies of the above to the District Secretary the Thursday preceding the Board meeting with Notifications of the Hearing to the protestor and the Bidder recommended for Award. The alternative motions will be prepared by the Office of the General Counsel.
- (c) If the protest is brought before the Board, the Board will hear the parties, consider all issues raised and take such action on the merits as it considers appropriate. The hearing will not be an adjudicatory hearing. The District staff will make a presentation after which the protestor will be given an opportunity to make a presentation. The Bidder recommended for Award will be given an opportunity to

make a presentation. No subpoenas will be issued. Formal rules of evidence need not be followed. Speakers will not be sworn and may be questioned by any Board member but not by any party. Any procedural issues not resolved by these rules will be resolved by the District's General Counsel whose decision shall be final. The decision of the Board specifying the grounds for allowing or denying the protest will be mailed by the Department Manager of Procurement to the protestor and the Bidder recommended for Award within five working days of the Board's decision and shall be final when made. The District Secretary will sign the letter transmitting the decision. The decision of the Board is subject to review consistent with the requirements of Section 1085 of the California Code of Civil Procedure.

- (d) After a decision by the Board is made, the process is the same had no meeting been requested,
 - i) If the protest is denied, see (6)(a) through (f) above.
 - ii) If the protest is sustained, see (6)(g) above.
 - iii) If a majority of the Board does not vote to either uphold or deny the protest, then, if the General Manager's decision is to deny the protest and Award the contract as authorized by the Board's original Award decision, the General Manager's decision will be deemed to be upheld. However, if the General Manager's decision is to make an alternate Award or to reject all Bids, the General Manager's decision is not upheld unless approved by a majority vote of the Board.

V. COMPETITIVELY NEGOTIATED AGREEMENTS INCLUDING PROFESSIONAL, TECHNICAL AND MAINTENANCE SERVICES AGREEMENTS, FOR \$100,000 OR MORE

A. Request for Proposal (RFP) Provisions

- 1. Non-Federally Funded Agreements: All published RFPs for non-Federally funded competitively negotiated agreements for \$100,000 or more will contain the provisions in Attachment 3.
- 2. Federally Funded Agreements: All published RFPs for Federally funded competitively negotiated agreements for \$100,000 or more will contain the provisions in Attachment 4.

B. Process

Protests on competitively negotiated agreements will be processed in accordance with Sections IV.B through IV.E. In all documents, language should be changed to appropriate agreement language as applicable e.g., "Contractor" to "Consultant", "Bidder" to "Proposer", "Bid" to "Proposal" etc.

VI. COMPETITIVELY NEGOTIATED PROCUREMENT CONTRACTS UNDER SECTION 20229.1 OF THE CALIFORNIA PUBLIC CONTRACT CODE

A. Protests on competitively negotiated procurement contracts under Section 20229.1 of the California Public Contract Code will be processed in accordance with the following procedures:

1. Contract Provisions

- a. Contracts under Section 20229.1 of the California Public Contract Code which are not Federally funded, will contain the provisions in Attachment 5.

- b. Contracts under Section 20229.1 of the California Public Contract Code which are Federally funded, will contain the provisions in Attachment 6.
2. Pre-bid Protests. Pre-bid protests are protests filed before Proposal Submission Date, which are based on the content of the Request for Proposals (RFP).
- a. Pre-bid protests shall be filed with the District within ten (10) calendar days after the RFP is first advertised. Such protests must be in writing and shall include a full and complete statement specifying in detail the grounds of the protest and the facts supporting the protest.
 - b. If a pre-bid protest is received more than 10 calendar days after the RFP is first advertised, the protest will be denied as untimely and may not be renewed after the mailing of the Notice of Recommended Award. The District Secretary will send the letter of response to the protestor.
 - c. If a pre-bid protest is received by the District Secretary within 10 calendar days after the RFP is first advertised, the District Secretary will date-stamp all copies of the protest with the time of the receipt, retain one original for the District's files, and distribute copies to the following:
 - (1) Project Manager, Project Director, or Sponsoring Department;
 - (2) Department Manager of Procurement;
 - (3) Manager, Purchasing or Contract Administration Division, as appropriate; and
 - (4) The Office of General Counsel.
 - d. The Department Manager of Procurement will be responsible for further distribution if necessary, for coordinating the response and for transmitting a copy of the Final Decision to the protestor.
 - e. After a protest has been filed, any District employee contacted by an outside party in connection with the protest should notify the Office of the General Counsel and receive its advice concerning further contacts with such persons. A District employee contacted by an outside attorney regarding District matters, including protests, should transfer the attorney to the Office of the General Counsel and report the contact to that office.
 - f. Requests for documents or files will be handled in accordance with Board Resolution No. 2267 (Attachment 8).
 - g. The Project Manager or his/her designee from the Sponsoring Department with the assistance of the Office of the General Counsel and other appropriate Departments will prepare a Proposed Decision and an EDD for circulation. The Proposed Decision should contain a summary of the protest and a recommendation as to whether the protest should be allowed or denied and the reasons for the recommendation. The Proposed Decision will only address the issues raised by the protestor.
 - h. The Project Manager or Sponsoring Department will circulate the Proposed Decision and the EDD for concurrence to those personnel identified in c. above and such other Departments as the Department Manager of Procurement deems necessary and appropriate.
 - i. The Proposed Decision with the EDD will then be submitted to the General Manager for approval. The District Secretary will transmit the approved decision to the protestor. Such decision shall be final unless the protestor requests an opportunity to appear and be heard by the full Board within 7 calendar days of the mailing of the decision. The request shall be in writing and shall be accompanied by 10 copies of the written protest and by a certified check in the amount of \$300.00 to cover the cost of having a shorthand reporter attend and prepare a transcript. The General Manager may waive the \$300 fee upon a showing of financial hardship by a protestor.

- j. If the protestor requests an opportunity to appear and be heard by the full Board concerning the protest decision within 7 calendar days of the mailing of the decision, the District Secretary will place the item on the Board agenda and distribute to each Board member the following:
 - (1) One copy of the decision;
 - (2) One copy of the protest;
 - (3) A copy of any other relevant documents from the District files that the General Manager may designate; and
 - (4) Recommended alternative motions for allowing or denying the protest.
- k. The Department Manager of Procurement will furnish 15 copies of the above documents to the District Secretary the Thursday preceding the Board meeting together with Notification to the protestor of the Board meeting. The alternative motions will be prepared by the Office of the General Counsel.
- l. If the protest is brought before the Board, the Board will hear the parties, consider all issues raised and take such action on the merits as it considers appropriate. The hearing will not be an adjudicatory hearing. The District staff will make a presentation after which the protestor will be given an opportunity to make a presentation. No subpoenas will be issued. Formal rules of evidence need not be followed. Speakers will not be sworn and may be questioned by any Board member but not by any party. Any procedural issues not resolved by these rules will be resolved by the District's General Counsel whose decision shall be final. The decision of the Board specifying the grounds for allowing or denying the protest will be mailed by the Department Manager of procurement to the protestor within five working days of the Board's decision and shall be final when made. The District Secretary will sign the letter transmitting the Board decision. The decision of the Board is subject to review consistent with the requirements of Section 1085 of the California Code of Civil Procedure.
- m. If all parts of the pre-bid protest are denied, notification of the decision is sent to the protestor in a manner that provides verification of receipt. If the contract is not Federally funded, Proposals may be submitted as scheduled. If it is Federally funded, see (o) below.
- n. If the pre-bid protest is sustained or partially sustained, the notification and the decision will be sent to the protestor in a manner that provides verification of receipt. An addendum to the specifications may be issued to respond to the protest and the Proposal Submission Date extended if necessary, or the advertisement may be canceled. The Proposal Submission Date should allow time for protests on the addendum pursuant to Federal procedures (an additional 6 days is necessary see (o) below).
- o. Federally funded
 - (1) If a pre-bid protest on a Federally funded contract is denied, the protestor may request FTA review of the District's action on the protest in accordance with the protest provisions of FTA Circular 4220.1F. Such a request shall be filed with the FTA's Region IX at 201 Mission Street, Room 2210, San Francisco, CA 94105. A copy of this request shall be submitted to the District Secretary. Except as provided in (4) below, the opening of Proposals shall occur no less than six (6) working days after the decision becomes final and after the Department Manager of Procurement confirms that FTA has not received a protest on the contract in question.
 - (2) Except as provided in (4) below, if a protest has been filed with the FTA, Proposal submission will not occur during the pendency of the protest.

- (3) Upon notification by FTA of receipt of a protest, the Department Manager of Procurement will submit, within ten working days, the following:
 - (a) a copy of the District's protest procedures;
 - (b) a description of the process followed concerning the protest; and
 - (c) any supporting documentation.

The Department Manager of Procurement shall send copies of the above to the protestor.

- (4) Exceptions to (1) and (2) above. Proposal submission may occur before the expiration of six (6) working days after the District's denial of a protest or during the pendency of a protest to the FTA, if the General Manager determines that:
 - (a) The items to be procured are urgently required;
 - (b) Delivery or performance will be unduly delayed by failure to make the Award promptly; or
 - (c) Failure to make prompt Award will otherwise cause undue harm to the District or the Federal Government.
 - p. The Department Manager of Procurement will notify the FTA of the above determination prior to Proposal submission.
 - q. A timely filed pre-bid protest may be renewed by refiling the protest with the District within fifteen (15) calendar days after the mailing of the Notice of the Recommended Award.
3. Protests Filed After Proposal Submission Date and Before Recommendation for Award (Premature Award Protest). The District Secretary will respond to any correspondence received after the Proposal Submission Date but before Board action.
 4. Protests on the Recommended Award. Protests on the Recommended Award will be processed in accordance with the following procedures:
 - a. When the Board has authorized the General Manager to issue a Notice of Recommended Award subject to the District's protest procedures and, in Federally funded contracts, to the FTA's requirements related to protest procedures, the Department Manager of Procurement will promptly notify all Proposers of the Board action.
 - b. Any Proposer may protest the Recommended Award on any ground not based upon the content of the Request for Proposals, except that a protest based upon the content of the Request for Proposals (pre-bid protest) may be renewed if it was timely filed in accordance with Section VI.2.a. above.
 - c. If a protest is received from a Proposer more than fifteen (15) calendar days after the mailing or transmission of the Notice of Recommended Award, the protest will be denied as untimely. The District Secretary will send the letter of response to the protestor.
 - d. If a protest is received by the District Secretary within fifteen (15) calendar days after the mailing of the Notice of Recommended Award, the District Secretary will date-stamp the time of receipt, retain the original for District files and distribute copies to the following:
 - (1) Project Director or Sponsoring Department;
 - (2) Department Manager of Procurement;

- (3) Manager of Contract Administration or Purchasing, as appropriate; and
 - (4) The Office of General Counsel.
- e. The Department Manager of Procurement will be responsible for further distribution to any other affected departments and, coordinating the response.
 - f. After a protest has been filed, any District employee contacted by an outside party in connection with the protest should notify the Office of the General Counsel and receive its advice concerning further contacts with such persons. A District employee contacted by an outside attorney regarding District matters, including protest, should transfer the attorney to the Office of the General Counsel and report the contact to that office.
 - g. Requests for documents or files should be handled in accordance with Board Resolution No. 2267 (Attachment 8).
 - h. The Executive Manager or Assistant General Manager of the Sponsoring Department will designate a staff person to investigate the disputed factual allegations, if any, contained in the protest. The Sponsoring Department designee will prepare a Proposed Decision and an EDD for circulation with the assistance of the Office of the General Counsel and other appropriate departments as soon as possible. The Proposed Decision should contain a summary of the protest, a summary of any responses received, an evaluation of the protest, and a recommendation as to whether the protest should be allowed or denied, and the reasons for the recommendation. The Proposed Decision will only address the issues raised by the protest.
 - i. The Sponsoring Department designee will circulate the Proposed Decision and EDD for concurrence to the Department Manager of Procurement, the Office of the General Counsel, the Assistant General Manager or the Executive Manager of the Sponsoring Department, and other appropriate Departments. The Sponsoring Department designee will submit the EDD and Proposed Decision to the General Manager for approval. If the EDD and the Proposed Decision are approved by the General Manager, the Proposed Decision is then transmitted to the Board by the District Secretary, and to the protestor by the Department Manager of Procurement. The Sponsoring Department will furnish 10 copies of the Proposed Decision to the District Secretary for transmittal to the Board.
 - j. If either a member of the Board or the protestor does not request that the protestor be given an opportunity to appear and be heard by the full Board within 10 calendar days of the mailing of the Proposed Decision, the Proposed Decision becomes the Final Decision of the District and is mailed by the Department Manager of Procurement to the protestor and the proposer to whom Award was authorized. If either a member of the Board or the protestor requests that the protestor be given an opportunity to appear and be heard by the full Board within 10 calendar days of the mailing of the Proposed Decision, the District Secretary will place the item on the Board agenda and shall distribute to each Board member the following:
 - (1) One copy of the Proposed Decision;
 - (2) One copy of the protest;
 - (3) One copy of any responses by the proposer to whom Award was authorized;
 - (4) A copy of any other relevant documents from the District files that the General Manager may designate; and
 - (5) Recommended alternative motions for allowing or denying the protest.
 - k. The Department Manager of Procurement will furnish 15 copies of the above documents to the District Secretary the Thursday preceding the Board meeting together with Notification to

protestor of the Board hearing. The alternative motions will be prepared by the Office of the General Counsel.

- i. If the protestor is the requestor for the opportunity to appear and be heard by the full Board, the request shall be in writing and shall be accompanied by 10 copies of the written protest and by a certified check in the amount of \$300.00 to cover the cost of having a shorthand reporter attend and prepare a transcript. The General Manager may waive the \$300 fee upon a showing of financial hardship by a protestor.
- m. If the protest is brought before the Board, the Board will hear the parties, consider all issues raised and take such action on the merits as it considers appropriate. The hearing will not be an adjudicatory hearing. The District staff will make a presentation after which the protestor will be given an opportunity to make a presentation. The Bidder recommended for Award will be given an opportunity to make a presentation. No subpoenas will be issued. Formal rules of evidence need not be followed. Speakers will not be sworn and may be questioned by any Board member but not by any party. Any procedural issues not resolved by these rules will be resolved by the District's General Counsel whose decision will be final. The decision of the Board specifying the grounds for allowing or denying the protest will be mailed by the Department Manager of Procurement to the protestor and the Bidder recommended for Award within five working days of the Board's decision and shall be final when made. The District Secretary will sign the letter transmitting the Board decision. The decision of the Board is subject to review consistent with the requirements of Section 1085 of the California Code of Civil Procedure.
- n. If a majority of the Board does not vote to either uphold or deny the protest, then, if the General Manager's decision is to deny the protest and Award the contract as authorized by the Board's original Award decision, the General Manager's decision will be deemed to be upheld. However, if the General Manager's decision is to make an alternate Award or to reject all Bids, the General Manager's decision is not upheld unless approved by a majority vote of the Board.
 - (1) If a protest on a non-Federally funded contract is denied, the Notice of Award may be issued immediately.
 - (2) If a protest on a Federally funded contract is denied, the protestor may request FTA review of the District's action on a protest in accordance with the protest provisions of FTA Circular 4220.1F. Such a request shall be filed with the FTA's Regional Administrator for Region IX at 201 Mission Street, Room 2210, San Francisco, CA 94105. A copy of this request shall be submitted to the District Secretary. Except as provided in (4) below, the Notice of Award may be issued no less than six working days after the decision becomes final and after the Department Manager of Procurement confirms that the FTA has not received a protest on the contract in question. Except as provided in (4) below, if a protest has been filed with FTA, a Notice of Award will not be issued during the pendency of the protest.
 - (3) Upon notification by FTA of receipt of a protest, the Department Manager of Procurement will submit within ten working days the following:
 - (a) a copy of the District's protest procedures;
 - (b) a description of the process followed concerning the protest; and
 - (c) any supporting documentation.

The Department Manager of Procurement will also send copies of the above to the protestor.

- (4) Exceptions to (2) above. Notice of Award may be issued before the expiration of six working days after District's denial of a protest or during the pendency of a protest to the FTA, if the General Manager determines that:
 - (a) The items to be procured are urgently required;
 - (b) Delivery or performance will be unduly delayed by failure to make the Award promptly; or
 - (c) Failure to make prompt Award will otherwise cause undue harm to the District or the Federal Government.
- (5) The Department Manager or Procurement will notify the FTA of above determination prior to issuing the Notice of Award.
- (6) If the protest is sustained, the Board may either authorize Award to the next lowest responsible Bidder at which time a new protest period commences or the Board may choose to reject all Bids.

VII. ADVERTISED CONSTRUCTION AND FURNISH AND INSTALL CONTRACTS OVER \$10,000 AND BELOW \$100,000 IF FEDERALLY OR NON-FEDERALLY FUNDED

A. Contract Provisions

1. All such contracts which are not Federally funded shall contain the provisions in Attachment 1.
2. All Federally funded contracts shall contain the provisions in Attachment 2.

B. Pre-bid Protests

Pre-bid protests (generally specification challenges) will be processed in accordance with Section IV. B herein.

C. Protests filed after Bid Opening but before Recommendation for Award

The District Secretary will respond to any correspondence received after Bid opening but before Notification of the Recommended Award. The District Secretary will forward copies of the correspondence to the Department Manager of Procurement.

Protests on Recommended Award

After receiving the necessary departmental concurrences for Award, the Department Manager, Procurement will notify all Bidders/competitors of the Recommended Award.

If a protest is received from a Bidder or competitor more than seven (7) calendar days after the receipt of the Notice of Recommended Award, the protest will be denied as untimely. The response to the protestor will be signed by the Department Manager of Procurement.

If a protest is received within seven (7) calendar days after receipt of the notification, the Notice of Award will not be issued and Award will not be made until the requirements of Section IV.D.3.a have been completed. The protest will be processed in accordance with Section IV.D.3.a with the following exceptions:

1. A Concurrence Sheet instead of an EDD is used for final approval of the Proposed Decision by the Department Manager of Procurement. General Manager's concurrence is not required. However, the Department Manager of Procurement may submit the Proposed Decision to the General

Manager when, in his or her discretion, the general manager should be advised of significant or critical issues.

2. The Proposed Decision will not be sent to the Board for consideration and Board action is not required.

The Proposed Decision will become final when approved by the Department Manager of Procurement.

VIII. COMPETITIVELY NEGOTIATED AGREEMENTS INCLUDING PROFESSIONAL, TECHNICAL AND MAINTENANCE SERVICES AGREEMENTS AND LEASES AND LICENSE AGREEMENTS BELOW \$100,000

A. Agreements \$50,000 or Less

There is no requirement for a protest procedure for Agreements below \$50,000. For such Agreements, the Manager, Contract Administration or the Manager, Purchasing or their designees will decide and respond to written protests. Significant business issues will be brought to the attention of the Department Manager, Procurement.

B. Agreements Over \$50,000

For Agreements over \$50,000 and below \$100,000, Attachments 3 or 4 will be used and any Protests received will be processed in accordance with Section VII.B., C. and D. above.

IX. CONSTRUCTION AND FURNISH AND INSTALL CONTRACTS EQUAL TO OR BELOW \$10,000 AND PROCUREMENT CONTRACTS EQUAL TO OR BELOW \$100,000 IF FEDERALLY OR NON-FEDERALLY FUNDED

There is no requirement for a protest procedure for purchases at this dollar level.

Either the Manager, Contract Administration or the Manager, Purchasing or their designees will decide and respond to written protests.

X. COMPETITIVELY BID DESIGN AND CONSTRUCTION CONTRACTS UNDER SECTION 20221.1 OF THE CALIFORNIA PUBLIC CONTRACT CODE

- A. Protests on competitively bid design and construction contracts under Section 20221.1 of the California Public Contract Code will be processed in accordance with the following procedures:

1. Prequalification Documents Provisions

Prequalification Documents under Section 20221.1 of the California Public Contract Code shall contain the provisions in Attachment 7.

2. Prequalification Document Protests are protests filed before the Qualification Statement Submission Date, which are based on the content of the Prequalification Document.

- a. Prequalification Document protests shall be filed with the District within ten calendar days after notice of Request for Qualifications is first advertised. Such protests must be in writing and shall include a full and complete statement specifying in detail the grounds of the protest and the facts supporting the protest.

- b. If a Prequalification Document protest is received more than ten calendar days after the notice of Request for Qualifications, the protest will be denied as untimely. The District Secretary will send the letter of response to the protestor.
- c. If a Prequalification Document protest is received by the District Secretary within ten calendar days after the Prequalification Document is first advertised, the District Secretary will date-stamp all copies of the protest with the time of the receipt, retain one original for the District's files, and distribute copies to the following:
 - (1) Executive Manager, West Bay Extensions;
 - (2) Department Manager of Procurement;
 - (3) Division Manager, Contract Administration; and
 - (4) The Office of General Counsel.
- d. The Department Manager of Procurement will be responsible for further distribution, if necessary, for coordinating the response and for transmitting a copy of the Final Decision to the protestor.
- e. After a protest has been filed, any District employee contacted by an outside party in connection with the protest should notify the Office of the General Counsel and receive its advice concerning further contacts with such persons. A District employee contacted by an outside attorney regarding District matters, including protests, should transfer the attorney to the Office of the General Counsel and report the contact to that office.
- f. Requests for documents or files should be handled in accordance with Board Resolution No. 2267 (Attachment 8).
- g. The Executive Manager, West Bay Extensions, or his/her designee with the assistance of the Office of the General Counsel and other appropriate Departments will prepare a Proposed Decision. The Proposed Decision shall contain a summary of the protest and a recommendation as to whether the protest should be allowed or denied and the reasons for the recommendation. The Proposed Decision shall only address the issues raised by the protestor.
- h. The Executive Manager, West Bay Extensions, will circulate the Proposed Decision for concurrence to those personnel identified in Paragraph c. above and such other Departments as the Department Manager of Procurement deems necessary and appropriate.
- i. The General Manager delegates to the Department Manager of Procurement the authority to decide Prequalification Document protests subject to advising the General Manager of significant or critical issues. The Proposed Decision with the concurrence sheet will be submitted to the Department Manager of Procurement for final approval. The Proposed Decision shall be final when approved by the Department Manager of Procurement. The Department Manager of Procurement may submit the Proposed Decision to the General Manager when in his/her discretion the General Manager should be advised of significant or critical issues. The Department Manager of Procurement will transmit the Final Decision to the protestor.
- j. If all parts of the Prequalification Document protest are denied, notification of the Final Decision is sent to the protestor in a manner that provides verification of receipt. Protestors whose protests are denied may request FTA review as described in Paragraph I. below.
- k. If the Prequalification Document protest is sustained or partially sustained, the notification and the decision will be sent to the protestor in a manner that provides verification of receipt. An addendum to the Prequalification Document may be issued to respond to the protest and the Qualification Statement Submission Date extended if necessary, or the advertisement

may be canceled. The Qualification Statement Submission Date must allow time for protests on the addendum pursuant to the District's protest procedures and protest provisions of FTA Circular 4220.1F.

I. FTA Review

- (1) If a Prequalification Document protest is denied, the protestor may request FTA review of the District's action on the protest. Such a request shall be filed with the FTA's Regional Administrator for Region IX at 201 Mission Street, Room 2210, San Francisco, California 94105. A copy of this request shall be submitted to the District Secretary. Except as provided in (4) below, the Qualification Statement Submittal shall occur no less than six (6) working days after the decision becomes final and after the Department Manager of Procurement confirms that FTA has not received a protest on the Prequalification Document in question.
- (2) Except as provided in (4) below, if a protest has been filed with the FTA, Qualification Statement submission will not occur during the pendency of the protest.
- (3) Upon notification by FTA of receipt of a protest, the Department Manager of Procurement shall submit, within ten working days, the following:
 - (a) A copy of the District's protest procedures;
 - (b) A description of the process followed concerning the protest; and
 - (c) Any supporting documentation.

The Department Manager of Procurement shall send copies of the above to the protestor.

- (4) Exceptions to (1) and (2) above. Qualification Statement submission may occur before the expiration of six working days after the District's denial of a protest or during the pendency of a protest to the FTA, if the General Manager determines that:
 - (a) The completion of the Prequalification process is urgently required;
 - (b) Delivery or performance will be unduly delayed by failure to make the Prequalification determination promptly; or
 - (c) Failure to make the Prequalification determination promptly will otherwise cause undue harm to the District or the Federal Government.
- (5) The Department Manager of Procurement will notify the FTA of the above determination prior to Qualification Statement submission.

3. Protests Filed After Qualification Statement Submission Date and Before Action on the Approved Prequalified Bidders List. The District Secretary will respond to any correspondence received after the Qualification Statement Submission Date but before Board action on the Approved Prequalified Bidders List.

4. Protests on the Approved Prequalified Bidders List. Protests on the Approved Prequalified Bidders List will be processed in accordance with the following procedures:

- a. When the Board has approved a list of Prequalified Bidders, the General Manager shall issue a Notice of Approved Prequalified Bidders to all Prospective Bidders who submitted a Qualification Statement.

- b. Any Prospective Bidder who submitted a Qualification Statement may protest the Board's Action approving the Prequalified Bidders List on any ground not based upon the content of the Prequalification Document.
- c. If a protest is received more than seven calendar days after the mailing or transmission of the Notice of Approved Prequalified Bidders, the protest will be denied as untimely. The District Secretary will send the letter of response to the protestor.
- d. If a protest is received by the District Secretary within seven calendar days after the mailing of the Notice of Approved Prequalified Bidders, the District Secretary will date-stamp the time of receipt, retain the original for District files and distribute copies to the following:
 - (1) Executive Manager, West Bay Extension;
 - (2) Department Manager of Procurement;
 - (3) Division Manager, Contract Administration; and
 - (4) The Office of General Counsel.
- e. The Department Manager of Procurement will be responsible for further distribution to any other affected departments and, coordinating the response.
- f. After a protest has been filed, any District employee contacted by an outside party in connection with the protest should notify the Office of the General Counsel and receive its advice concerning further contacts with such persons. A District employee contacted by an outside attorney regarding District matters, including protest, should transfer the attorney to the Office of the General Counsel and report the contact to that office.
- g. Requests for documents or files should be handled in accordance with Board Resolution No. 2267 (Attachment 8).
- h. The Executive Manager, West Bay Extensions, will designate a staff person to investigate the disputed factual allegations, if any, contained in the protest. The designee will prepare a Proposed Decision and an EDD for circulation with the assistance of the Office of the General Counsel and other appropriate departments as soon as possible. Where a Prospective Bidder files a protest based on the fact that its Qualification Statement was rejected, the Proposed Decision shall contain a summary of the protest, an evaluation of the protest, and a recommendation as to whether the protest should be allowed or denied, and the reasons for the recommendation. Where the protest is filed by a Prospective Bidder who objects to the inclusion of a Prospective Bidder on the Approved Prequalified Bidders List, the Department Manager of Procurement will transmit a copy of the protest to the Prospective Bidder who is the subject of the protest for a response. The Proposed Decision shall contain a summary of the protest, a summary of any response received, an evaluation of the protest, and a recommendation as to whether a protest should be allowed or denied. The Proposed Decision shall only address the issues raised by the protest.
- i. The designee shall circulate the Proposed Decision to the Department Manager of Procurement, the Office of the General Counsel, and the Executive Manager, West Bay Extensions, and other appropriate Departments. The designee will submit the EDD and Proposed Decision to the General Manager for approval. If the EDD and the Proposed Decision are approved by the General Manager, the Proposed Decision is then transmitted to the Board by the District Secretary. The designee will furnish 10 copies of the Proposed Decision to the District Secretary for transmittal to the Board.
- j. If a member of the Board does not request that the protestor be given an opportunity to appear and be heard by the full Board within 10 calendar days of the mailing of the Proposed Decision, the Proposed Decision becomes the Final Decision of the District and is mailed by the Department Manager of Procurement to the protestor, and where appropriate, to the Prospective Bidder who is the subject of the protest. If a member of the Board requests that

the protestor be given an opportunity to appear and be heard by the full Board within ten calendar days of the mailing of the Proposed Decision, the District Secretary shall place the item on the Board agenda and shall distribute to each Board member the following:

- (1) One copy of the Proposed Decision;
 - (2) One copy of the protest;
 - (3) One copy of any responses by a Prospective Bidder who is the subject of the protest;
 - (4) A copy of any other relevant documents from the District files that the General Manager may designate; and
 - (5) Recommended alternative motions for allowing or denying the protest.
- k. The Department Manager of Procurement will furnish 15 copies of the above documents to the District Secretary the Thursday preceding the Board meeting together with Notification to the protestor of the Board hearing. The alternative motions will be prepared by the Office of the General Counsel.
- l. If the protest is brought before the Board, the Board will hear the parties, consider all issues raised and take such action on the merits as it considers appropriate. The hearing will not be an adjudicatory hearing. The District staff will make a presentation after which the protestor will be given an opportunity to make a presentation. Where appropriate, the Prospective Bidder who is the subject of the protest will be given an opportunity to make a presentation. No subpoenas will be issued. Formal rules of evidence need not be followed. Speakers will not be sworn and may be questioned by any Board member but not by any party. Any procedural issues not resolved by these rules shall be resolved by the District's General Counsel whose decision shall be final. The decision of the Board specifying the grounds for allowing or denying the protest will be mailed by the Department Manager of Procurement to the protestor and, where appropriate, to the Prospective Bidder who is the subject of the protest within five working days of the Board's decision and shall be final when made. The District Secretary will sign the letter transmitting the Board decision. The decision of the Board is subject to review consistent with the requirements of Section 1085 of the California Code of Civil Procedure.
- m. If a majority of the Board does not vote to either uphold or deny the protest, then, if the General Manager's decision is to deny the protest and proceed as authorized by the Board's original decision approving the List of Prequalified Bidders, the General Manager's decision will be deemed to be upheld. However, if the General Manager's decision is to uphold the protest, the General Manager's decision is not upheld unless approved by a majority vote of the Board.
- (1) If a protest is denied, the protestor may request FTA review of the District's action on a protest. Such a request shall be filed with the FTA's Regional Administrator for Region IX at 201 Mission Street, Room 2210, San Francisco, California 94105. A copy of this request shall be submitted to the District Secretary. Except as provided in (3) below, the Notice of Final Approved Prequalified Bidders List may be issued no less than six working days after the decision becomes final and after the Department Manager of Procurement confirms that the FTA has not received a protest on the Prequalification Document in question. Except as provided in (3) below, if a protest has been filed with FTA, a Final Approved Prequalified Bidders List will not be issued during the pendency of the protest.
 - (2) Upon notification by FTA of receipt of a protest, the Department Manager of Procurement shall submit within ten working days the following:

- (a) A copy of the District's protest procedures;
- (b) A description of the process followed concerning the protestor's protest; and
- (c) Any supporting documentation.

The Department Manager of Procurement will also send copies of the above to the protestor.

- (3) Exceptions to (1) above. Notice of Final Approved Prequalified Bidders List may be issued before the expiration of six working days after District's denial of a protest or during the pendency of a protest to the FTA, if the General Manager determines that:
 - (a) The completion of the Prequalification process is urgently required;
 - (b) Delivery or performance will be unduly delayed by failure to make the Prequalification determination promptly; or
 - (c) Failure to make the Prequalification determination promptly will otherwise cause undue harm to the District or the Federal Government.
 - (4) The Department Manager of Procurement will notify the FTA of the above determination prior to issuing the Notice of Final Approved Prequalified Bidders List.
 - (5) If the protest is sustained, the Board may either add the protestor to the Prequalified Bidders List or disqualify the Prospective Bidder who is the subject to the protest at which time a new protest period commences or the Board may choose to repeat the Prequalification process.
5. Pre-Bid Protests, Protests Filed after Bid Opening, and Protests on the Recommended Award. Protests filed after issuance of the Invitation to Bid will be processed in accordance with Section IV herein, as modified by the Bid Documents. Bid Documents shall contain the provisions of Attachment 2 herein.

XI. DESIGN-BUILD CONTRACTS, PURSUANT TO CALIFORNIA PUBLIC CONTRACT CODE SECTION 20209.5 et seq.

- A. Protests on Design-Build Contracts, pursuant to California Public Contract Code Section 20209.5 et seq. will be processed in accordance with the following procedures:
 - 1. Request for Qualifications ("RFQ") Provisions

All RFQ Documents for Contracts not Federally funded shall contain the provisions in Attachment 9.
 - 2. All RFQ Documents for Contracts which are Federally funded shall contain the provisions in Attachment 10.
- B. RFQ Document Protests. RFQ Document Protests are protests filed before the Qualification Statement Submission Date, which are based on the content of the RFQ Document.
 - 1. RFQ Document protests shall be filed with the District within ten calendar days after the RFQ is first advertised. Such protests must be in writing and shall include a full and complete statement specifying in detail the grounds of the protest and the facts supporting the protest.
 - 2. If an RFQ Document protest is received more than ten calendar days after the RFQ is first advertised, the protest will be denied as untimely. The District Secretary will send the letter of response to the protestor.

3. If an RFQ Document protest is received by the District Secretary within ten calendar days after the RFQ is first advertised, the District Secretary will date-stamp all copies of the protest with the time of the receipt, retain one original for the District's files, and distribute copies to the following:
 - a. Project Manager, Director, or Sponsor;
 - b. Department Manager of Procurement;
 - c. Division Manager, Contract Administration; and
 - d. The Office of General Counsel.
4. The Department Manager of Procurement will be responsible for further distribution, if necessary, for coordinating the response and for transmitting a copy of the Final Decision to the protestor.
5. After a protest has been filed, any District employee contacted by an outside party in connection with the protest should notify the Office of the General Counsel and receive its advice concerning further contacts with such persons. A District employee contacted by an outside attorney regarding District matters, including protests, should transfer the attorney to the Office of the General Counsel and report the contact to that office.
6. Requests for documents or files should be handled in accordance with Board Resolution No. 2267 (Attachment 8).
7. The Project Manager or his/her designee from the sponsoring Department, with the assistance of the Office of the General Counsel and other appropriate Departments will prepare a Proposed Decision. The Proposed Decision shall contain a summary of the protest and a recommendation as to whether the protest should be allowed or denied and the reasons for the recommendation. The Proposed Decision shall only address the issues raised by the protestor.
8. The Project Manager will circulate the Proposed Decision for concurrence to those personnel identified in Paragraph c. above and such other Departments as the Department Manager of Procurement deems necessary and appropriate.
9. The General Manager delegates to the Department Manager of Procurement the authority to decide RFQ Document protests subject to advising the General Manager of significant or critical issues. The Proposed Decision with the concurrence sheet will be submitted to the Department Manager of Procurement for final approval. The Proposed Decision shall be final when approved by the Department Manager of Procurement. The Department Manager of Procurement may submit the Proposed Decision to the General Manager when in his/her discretion the General Manager should be advised of significant or critical issues. The Department Manager of Procurement will transmit the Final Decision to the protestor.
10. If all parts of the RFQ Document protest are denied, notification of the Final Decision is sent to the protestor in a manner that provides verification of receipt. If the contract is not Federally funded, Qualification Statements will be received on the scheduled date. If the contract is Federally funded, Protestors whose protests are denied may request FTA review as described in Paragraph 12. below.
11. If the RFQ Document protest is sustained or partially sustained, the notification and the decision will be sent to the protestor in a manner that provides verification of receipt. An addendum to the RFQ Document may be issued to respond to the protest and the Qualification Statement Submission Date extended if necessary, or the advertisement may be canceled. The Qualification Statement Submission Date must allow time for protests on the addendum pursuant to the District's protest procedures and in Federally funded contracts, pursuant to the protest provisions of FTA Circular 4220.1F.

12. FTA Review

- a. If an RFQ Document protest is denied, the protestor may request FTA review of the District's action on the protest. Such a request shall be filed with the FTA's Regional Administrator for Region IX at 201 Mission Street, Room 2210, San Francisco, California 94105. A copy of this request shall be submitted to the District Secretary. Except as provided in 4) below, the Qualification Statement Submittal shall occur no less than six (6) working days after the decision becomes final and after the Department Manager of Procurement confirms that FTA has not received a protest on the RFQ Document in question.
- b. Except as provided in Paragraph d. below, if a protest has been filed with the FTA, Qualification Statement submission will not occur during the pendency of the protest.
- c. Upon notification by FTA of receipt of a protest, the Department Manager of Procurement shall submit, within ten working days, the following:
 - (1) A copy of the District's protest procedures;
 - (2) A description of the process followed concerning the protest; and
 - (3) Any supporting documentation.

The Department Manager of Procurement shall send copies of the above to the protestor.

- d. Exceptions to a. and b. above. Qualification Statement submission may occur before the expiration of six working days after the District's denial of a protest or during the pendency of a protest to the FTA, if the General Manager determines that:
 - (1) The completion of the Prequalification process is urgently required;
 - (2) Delivery or performance will be unduly delayed by failure to make the Prequalification determination promptly; or
 - (3) Failure to make the Prequalification determination promptly will otherwise cause undue harm to the District or the Federal Government.
 - e. The Department Manager of Procurement will notify the FTA of the above determination prior to Qualification Statement submission.
- C. Protests Filed After Qualification Statement Submission Date and Before Action on the Approved Prequalified Prospective Design-Build Entity ("PDBE")s List. The District Secretary will respond to any correspondence received after the Qualification Statement Submission Date but before Board action on the Approved Prequalified PDBEs List.
- D. Protests on the Approved Pre-qualified PDBEs List. Protests on the Approved Prequalified PDBEs List will be processed in accordance with the following procedures:
1. When the Board has approved a list of Prequalified PDBEs, the General Manager shall issue a Notice of Approved Prequalified PDBEs to all PDBEs who submitted a Qualification Statement.
 2. Any PDBE who submitted a Qualification Statement may protest the Board's Action approving the Prequalified PDBEs List on any ground not based upon the content of the RFQ Document.
 3. If a protest is received more than seven calendar days after the mailing or transmission of the Notice of Approved Prequalified PDBEs, the protest will be denied as untimely. The District Secretary will send the letter of response to the protestor.

4. If a protest is received by the District Secretary within seven calendar days after the mailing of the Notice of Approved Prequalified PDBEs, the District Secretary will date-stamp the time of receipt, retain the original for District files and distribute copies to the following:
 - a. Project Manager, Director or Sponsor;
 - b. Department Manager of Procurement;
 - c. Division Manager, Contract Administration; and
 - d. The Office of General Counsel.
5. The Department Manager of Procurement will be responsible for further distribution to any other affected departments and, coordinating the response.
6. After a protest has been filed, any District employee contacted by an outside party in connection with the protest should notify the Office of the General Counsel and receive its advice concerning further contacts with such persons. A District employee contacted by an outside attorney regarding District matters, including protest, should transfer the attorney to the Office of the General Counsel and report the contact to that office.
7. Requests for documents or files should be handled in accordance with Board Resolution No. 2267 (Attachment 8).
8. The Executive Manager or Assistant General Manager of the Sponsoring Department, will designate a staff person to investigate the disputed factual allegations, if any, contained in the protest. The designee will prepare a Proposed Decision and an EDD for circulation with the assistance of the Office of the General Counsel and other appropriate departments as soon as possible. Where a PDBE files a protest based on the fact that its Qualification Statement was rejected, the Proposed Decision shall contain a summary of the protest, an evaluation of the protest, and a recommendation as to whether the protest should be allowed or denied, and the reasons for the recommendation. Where the protest is filed by a PDBE who objects to the inclusion of a PDBE on the Approved Prequalified PDBEs List, the Department Manager of Procurement will transmit a copy of the protest to the PDBE who is the subject of the protest for a response. The Proposed Decision shall contain a summary of the protest, a summary of any response received, an evaluation of the protest, and a recommendation as to whether the protest should be allowed or denied. The Proposed Decision shall only address the issues raised by the protest.
9. The designee shall circulate the Proposed Decision to the Department Manager of Procurement, the Office of the General Counsel, and the Executive Manager or Assistant General Manager of the Sponsoring Department, and other appropriate Departments. The designee will submit the EDD and Proposed Decision to the General Manager for approval. If the EDD and the Proposed Decision are approved by the General Manager, the Proposed Decision is then transmitted to the Board by the District Secretary. The designee will furnish 10 copies of the Proposed Decision to the District Secretary for transmittal to the Board.
10. If a member of the Board does not request that the protestor be given an opportunity to appear and be heard by the full Board within 10 calendar days of the mailing of the Proposed Decision, the Proposed Decision becomes the Final Decision of the District and in non-Federally funded contracts, is mailed by the Department Manager of Procurement to the protestor, and where appropriate, to the PDBE who is the subject of the protest. In Federally funded contracts, the Final Decision is transmitted in a manner that provides verification of receipt.
 - a. If a protest on a non-Federally funded contract is denied, the Notice of Final Approved Pre-qualified PDBEs may be issued immediately.
 - b. If a protest on a Federally funded contract is denied, the protestor may request FTA review of the District's action on a protest. Such a request shall be filed with the FTA's Regional Administrator for Region IX at 201 Mission Street, Room 2210, San Francisco, California

94105. A copy of this request shall be submitted to the District Secretary. Except as provided in Paragraph (3) below, the Notice of Final Approved Pre-qualified PDBEs may be issued no less than six working days after the decision becomes final and after the Department Manager of Procurement confirms that the FTA has not received a protest on the Approved Pre-qualified PCCs List in question. Except as provided in Paragraph d. below, if a protest has been filed with FTA, a Final Approved Prequalified PDBEs will not be issued during the pendency of the protest.

- c. Upon notification by FTA of receipt of a protest, the Department Manager of Procurement shall submit within ten working days the following:
 - (1) A copy of the District's protest procedures;
 - (2) A description of the process followed concerning the protestor's protest; and
 - (3) Any supporting documentation.

The Department Manager of Procurement will also send copies of the above to the protestor.

- d. Exceptions to Paragraph 10.b. above. Notice of Final Approved Prequalified PDBEs may be issued before the expiration of six working days after District's denial of a protest or during the pendency of a protest to the FTA, if the General Manager determines that:
 - (1) The completion of the Prequalification process is urgently required;
 - (2) Delivery or performance will be unduly delayed by failure to make the Prequalification determination promptly; or
 - (3) Failure to make the Prequalification determination promptly will otherwise cause undue harm to the District or the Federal Government.
- e. The Department Manager of Procurement will notify the FTA of the above determination prior to issuing the Notice of Final Approved Prequalified PDBEs.

- 11. If a member of the Board requests that the protestor be given an opportunity to appear and be heard by the full Board within ten calendar days of the mailing of the Proposed Decision, the District Secretary shall place the item on the Board agenda and shall distribute to each Board member the following:

- a. One copy of the Proposed Decision;
- b. One copy of the protest;
- c. One copy of any responses by a PDBE who is the subject of the protest;
- d. A copy of any other relevant documents from the District files that the General Manager may designate; and
- e. Recommended alternative motions for allowing or denying the protest.

- 12. The Department Manager of Procurement will furnish 15 copies of the above documents to the District Secretary the Thursday preceding the Board meeting together with Notification to the protestor of the Board hearing. The alternative motions will be prepared by the Office of the General Counsel.

- 13. If the protest is brought before the Board, the Board will hear the parties, consider all issues raised and take such action on the merits as it considers appropriate. The hearing will not be an adjudicatory hearing. The District staff will make a presentation after which the protestor will be given an opportunity to make a presentation. Where appropriate, the PDBE who is the subject of

the protest will be given an opportunity to make a presentation. No subpoenas will be issued. Formal rules of evidence need not be followed. Speakers will not be sworn and may be questioned by any Board member but not by any party. Any procedural issues not resolved by these rules shall be resolved by the District's General Counsel whose decision shall be final. The decision of the Board specifying the grounds for allowing or denying the protest will be mailed by the Department Manager of Procurement to the protestor and, where appropriate, to the PDBE who is the subject of the protest within five working days of the Board's decision and shall be final when made. The District Secretary will sign the letter transmitting the Board decision. The decision of the Board is subject to review consistent with the requirements of Section 1085 of the California Code of Civil Procedure.

14. If a majority of the Board does not vote to either uphold or deny the protest, then, if the General Manager's decision is to deny the protest and proceed as authorized by the Board's original decision approving the List of Prequalified PDBEs, the General Manager's decision will be deemed to be upheld. However, if the General Manager's decision is to uphold the protest, the General Manager's decision is not upheld unless approved by a majority vote of the Board.
 - a. If the protest is sustained, the Board may either add the protestor to the Approved Pre-qualified PDBEs List or disqualify the PDBE who is the subject to the protest at which time a new protest period commences or the Board may choose to repeat the pre-qualification process.

E. Request for Proposal (RFP) Provisions

1. Non-Federally funded Contracts: All published RFPs for non-Federally funded contracts will contain the provisions in attachment 11.
2. Federally funded Contracts: All published RFPs for Federally funded contracts will contain the provisions in attachment 12.

F. Pre-Proposal Receipt Protests, Protests Filed after Receipt of Proposals, and Protests on the Recommended Award. Protests filed after issuance of the Request for Proposals will be processed in accordance with Sections IV.B. through IV.D. herein, as modified by Proposal Documents. In all documents, language should be changed as appropriate e.g., "Bidder" to "Proposer", "Bid" to "Proposal" etc. RFP Documents shall contain the provisions of Attachment 11 herein if the contract is non-Federally funded and Attachment 12 herein if the contract is Federally funded.

XII. CONTRACTS PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 5956 et seq.

- A. Protests on Contracts pursuant to California Government Code Section 5956 et seq. will be processed in accordance with the following procedures:
 1. Request for Qualifications ("RFQ") Provisions

All RFQ Documents for Contracts not Federally funded shall contain the provisions in Attachment 13.
 2. All RFQ Documents for Contracts which are Federally funded shall contain the provisions in Attachment 14.
- B. RFQ Document Protests. RFQ Document Protests are protests filed before the Qualification Statement Submission Date, which are based on the content of the RFQ Document.
 1. RFQ Document protests shall be filed with the District within ten calendar days after the RFQ is first advertised. Such protests must be in writing and shall include a full and complete statement specifying in detail the grounds of the protest and the facts supporting the protest.

2. If an RFQ Document protest is received more than ten calendar days after the RFQ is first advertised, the protest will be denied as untimely. The District Secretary will send the letter of response to the protestor.
3. If an RFQ Document protest is received by the District Secretary within ten calendar days after the RFQ is first advertised, the District Secretary will date-stamp all copies of the protest with the time of the receipt, retain one original for the District's files, and distribute copies to the following:
 - a. Project Manager, Director, or Sponsor;
 - b. Department Manager of Procurement;
 - c. Division Manager, Contract Administration; and
 - d. The Office of General Counsel.
4. The Department Manager of Procurement will be responsible for further distribution, if necessary, for coordinating the response and for transmitting a copy of the Final Decision to the protestor.
5. After a protest has been filed, any District employee contacted by an outside party in connection with the protest should notify the Office of the General Counsel and receive its advice concerning further contacts with such persons. A District employee contacted by an outside attorney regarding District matters, including protests, should transfer the attorney to the Office of the General Counsel and report the contact to that office.
6. Requests for documents or files should be handled in accordance with Board Resolution No. 2267 (Attachment 8).
7. The Project Manager or his/her designee from the sponsoring Department, with the assistance of the Office of the General Counsel and other appropriate Departments will prepare a Proposed Decision. The Proposed Decision shall contain a summary of the protest and a recommendation as to whether the protest should be allowed or denied and the reasons for the recommendation. The Proposed Decision shall only address the issues raised by the protestor.
8. The Project Manager will circulate the Proposed Decision for concurrence to those personnel identified in Paragraph 3. above and such other Departments as the Department Manager of Procurement deems necessary and appropriate.
9. The General Manager delegates to the Department Manager of Procurement the authority to decide RFQ Document protests subject to advising the General Manager of significant or critical issues. The Proposed Decision with the concurrence sheet will be submitted to the Department Manager of Procurement for final approval. The Proposed Decision shall be final when approved by the Department Manager of Procurement. The Department Manager of Procurement may submit the Proposed Decision to the General Manager when in his/her discretion the General Manager should be advised of significant or critical issues. The Department Manager of Procurement will transmit the Final Decision to the protestor.
10. If all parts of the RFQ Document protest are denied, notification of the Final Decision is sent to the protestor in a manner that provides verification of receipt. If the contract is not Federally funded, Qualification Statements will be received on the scheduled date. If the contract is Federally funded, protestors whose protests are denied may request FTA review as described in Paragraph 12. below.
11. If the RFQ Document protest is sustained or partially sustained, the notification and the Final Decision will be sent to the protestor in a manner that provides verification of receipt. An addendum to the RFQ Document may be issued to respond to the protest and the Qualification Statement Submission Date extended if necessary, or the advertisement may be canceled. The Qualification Statement Submission Date must allow time for protests on the addendum pursuant

to the District's protest procedures and in Federally funded contracts, pursuant to the protest provisions of FTA Circular 4220.1F.

12. FTA Review

- a. If an RFQ Document protest is denied, the protestor may request FTA review of the District's action on the protest. Such a request shall be filed with the FTA's Regional Administrator for Region IX at 201 Mission Street, Room 2210, San Francisco, California 94105. A copy of this request shall be submitted to the District Secretary. Except as provided in paragraph d. below, the Qualification Statement Submittal shall occur no less than six (6) working days after the decision becomes final and after the Department Manager of Procurement confirms that FTA has not received a protest on the RFQ Document in question.
- b. Except as provided in Paragraph d. below, if a protest has been filed with the FTA, Qualification Statement submission will not occur during the pendency of the protest.
- c. Upon notification by FTA of receipt of a protest, the Department Manager of Procurement shall submit, within ten working days, the following:
 - (1) A copy of the District's protest procedures;
 - (2) A description of the process followed concerning the protest; and
 - (3) Any supporting documentation.

The Department Manager of Procurement shall send copies of the above to the protestor.

- d. Exceptions to paragraphs a. and b. above. Qualification Statement submission may occur before the expiration of six working days after the District's denial of a protest or during the pendency of a protest to the FTA, if the General Manager determines that:
 - (1) The completion of the Prequalification process is urgently required;
 - (2) Delivery or performance will be unduly delayed by failure to make the Prequalification determination promptly; or
 - (3) Failure to make the Prequalification determination promptly will otherwise cause undue harm to the District or the Federal Government.
 - e. The Department Manager of Procurement will notify the FTA of the above determination prior to Qualification Statement submission.
- C. Protests Filed After Qualification Statement Submission Date and Before Action on the Approved Prequalified Prospective Proposers¹ List. The District Secretary will respond to any correspondence received after the Qualification Statement Submission Date but before the General Manager's action on the Approved Prequalified Prospective Proposers List.
- D. Protests on the Approved Prequalified Prospective Proposers List. Protests on the Approved Prequalified Prospective Proposers List will be processed in accordance with the following procedures:
1. When the General Manager has approved a list of Prequalified Prospective Proposers, the District will issue a preliminary Notice of Approved Prequalified Prospective Proposers to all Prospective Proposers who submitted a Qualification Statement.

¹ The terms "Prospective Proposers" may be revised to conform to project specific requirements.

2. Any Prospective Proposer who submitted a Qualification Statement may protest the General Manager's action approving the Prequalified Prospective Proposers List on any ground not based upon the content of the RFQ Document.
3. If a protest is received more than seven calendar days after the mailing or transmission of the preliminary Notice of Approved Prospective Proposers, the protest will be denied as untimely. The District Secretary will send the letter of response to the protestor.
4. If a protest is received by the District Secretary within seven calendar days after the mailing of the preliminary Notice of Approved Prequalified Prospective Proposers, the District Secretary will date-stamp the time of receipt, retain the original for District files and distribute copies to the following:
 - a. Project Manager, Director or Sponsor;
 - b. Department Manager of Procurement;
 - c. Division Manager, Contract Administration; and
 - d. The Office of General Counsel.
5. The Department Manager of Procurement will be responsible for further distribution to any other affected departments and coordinating the response.
6. After a protest has been filed, any District employee contacted by an outside party in connection with the protest should notify the Office of the General Counsel and receive its advice concerning further contacts with such persons. A District employee contacted by an outside attorney regarding District matters, including protests, should transfer the attorney to the Office of the General Counsel and report the contact to that office.
7. Requests for documents or files should be handled in accordance with Board Resolution No. 2267 (Attachment 8).
8. The Executive Manager or Assistant General Manager of the Sponsoring Department, will designate a staff person to investigate the disputed factual allegations, if any, contained in the protest. The designee will prepare a Proposed Decision and an EDD for circulation with the assistance of the Office of the General Counsel and other appropriate departments as soon as possible. Where a Prospective Proposer files a protest based on the fact that its Qualification Statement was rejected, the Proposed Decision shall contain a summary of the protest, an evaluation of the protest, and a recommendation as to whether the protest should be allowed or denied, and the reasons for the recommendation. Where the protest is filed by a Prospective Proposer who objects to the inclusion of a Prospective Proposer on the Approved Prequalified Prospective Proposers List, the Department Manager of Procurement will transmit a copy of the protest to the Prospective Proposer who is the subject of the protest for a response. The Proposed Decision shall contain a summary of the protest, a summary of any response received, an evaluation of the protest, and a recommendation as to whether the protest should be allowed or denied. The Proposed Decision shall only address the issues raised by the protest.
9. The designee shall circulate the Proposed Decision to the Department Manager of Procurement, the Office of the General Counsel, and the Executive Manager or Assistant General Manager of the Sponsoring Department, and other appropriate Departments. The designee will submit the EDD and Proposed Decision to the General Manager for approval. If the EDD and the Proposed Decision are approved by the General Manager, the Proposed Decision becomes the Final Decision of the District and, in non-Federally funded contracts, is mailed by the Department Manager of Procurement to the protestor, and where appropriate, to the Prospective Proposer who is the subject of the protest. In Federally funded contracts, the Final Decision is transmitted in a manner that provides verification of receipt.
 - a. If a protest on a non-Federally funded contract is denied, the final Notice of Approved Prequalified Prospective Proposers may be issued immediately.

- b. If a protest on a Federally funded contract is denied, the protestor may request FTA review of the District's action on a protest. Such a request shall be filed with the FTA's Regional Administrator for Region IX at 201 Mission Street, Room 2210, San Francisco, California 94105. A copy of this request shall be submitted to the District Secretary. Except as provided in Paragraph d. below, the final Notice of Approved Prequalified Prospective Proposers may be issued no less than six working days after the decision becomes final and after the Department Manager of Procurement confirms that the FTA has not received a protest on the Approved Prequalified Prospective Proposers List in question. Except as provided in Paragraph d. below, if a protest has been filed with FTA, a final Notice of Approved Prequalified Prospective Proposers will not be issued during the pendency of the protest.
- c. Upon notification by FTA of receipt of a protest, the Department Manager of Procurement shall submit within ten working days the following:
 - (1) A copy of the District's protest procedures;
 - (2) A description of the process followed concerning the protestor's protest; and
 - (3) Any supporting documentation.

The Department Manager of Procurement will also send copies of the above to the protestor.

- d. Exceptions to Paragraph 10.b. above. The final Notice of Approved Prequalified Prospective Proposers may be issued before the expiration of six working days after District's denial of a protest or during the pendency of a protest to the FTA, if the General Manager determines that:
 - (1) The completion of the Prequalification process is urgently required;
 - (2) Delivery or performance will be unduly delayed by failure to make the Prequalification determination promptly; or
 - (3) Failure to make the Prequalification determination promptly will otherwise cause undue harm to the District or the Federal Government.
- e. The Department Manager of Procurement will notify the FTA of the above determination prior to issuing the final Notice of Approved Prequalified Prospective Proposers.

E. Request for Proposal (RFP) Provisions

- 1. Non-Federally funded Contracts: All published RFPs for non-Federally funded contracts will contain the provisions in Attachment 15.
- 2. Federally funded Contracts: All published RFPs for Federally funded contracts will contain the provisions in Attachment 16.

F. Pre-Proposal Receipt Protests, Protests Filed after Receipt of Proposals, and Protests on the Recommended Award. Protests filed after issuance of the Request for Proposals will be processed in accordance with Sections IV.B. through IV.D. herein, as modified by Proposal Documents. In all documents, language should be changed as appropriate e.g., "Bidder" to "Proposer", "Bid" to "Proposal" etc. RFP Documents shall contain the provisions of Attachment 15 herein if the contract is non-Federally funded and Attachment 16 herein if the contract is Federally funded.

XIII. DESIGN-BUILD CONTRACT FOR OAKLAND AIRPORT CONNECTOR PROJECT, PURSUANT TO CALIFORNIA PUBLIC CONTRACT CODE SECTION 20209.5 et seq.

A. Protests on the Design-Build Contract for Oakland Airport Connector Projct pursuant to California Public Contract Code Section 20209.5 et seq. will be processed in accordance with the following procedures:

1. Request for Qualifications/Proposals ("RFQ/P") Provisions

The RFQ/P Documents shall contain the provisions in Attachment 18 if Federally funded. The RFQ/P Documents shall contain the provisions in Attachment 17 if non-Federally funded.

B. Protets Regarding Prequalification Content of the RFQ/P. These are protests filed before the Qualification Statement Submission Date, which are based on the Prequalification content of the RFQ/P Document.

1. These protests shall be filed with the District within ten calendar days after the RFQ/P is first advertised. Such protests must be in writing and shall include a full and complete statement specifying in detail the grounds of the protest and the facts supporting the protest.
2. If a protest regarding the Prequalification content of the RFQ/P is received more than ten calendar days after the RFQ/P is first advertised, the protest will be denied as untimely. The District Secretary will send the letter of response to the protestor.
3. If such RFQ/P Document protest is received by the District Secretary within ten calendar days after the RFQ/P is first advertised, the District Secretary will date-stamp all copies of the protest with the time of the receipt, retain one original for the District's files, and distribute copies to the following:
 - a. Project Manager, Director, or Sponsor;
 - b. Department Manager of Procurement;
 - c. Division Manager, Contract Administration; and
 - d. The Office of General Counsel.
4. The Department Manager of Procurement will be responsible for further distribution, if necessary, for coordinating the response and for transmitting a copy of the Final Decision to the protestor.
5. After a protest has been filed, any District employee contacted by an outside party in connection with the protest should notify the Office of the General Counsel and receive its advice concerning further contacts with such persons. A District employee contacted by an outside attorney regarding District matters, including protests, should transfer the attorney to the Office of the General Counsel and report the contact to that office.
6. Requests for documents or files should be handled in accordance with Board Resolution No. 2267 (Attachment 8).
7. The Project Manager or his/her designee from the sponsoring Department, with the assistance of the Office of the General Counsel and other appropriate Departments will prepare a Proposed Decision. The Proposed Decision shall contain a summary of the protest and a recommendation as to whether the protest should be allowed or denied and the reasons for the recommendation. The Proposed Decision shall only address the issues raised by the protestor.
8. The Project Manager will circulate the Proposed Decision for concurrence to those personnel identified in Paragraph 3. above and such other Departments as the Department Manager of Procurement deems necessary and appropriate.
9. The General Manager delegates to the Department Manager of Procurement the authority to decide protests based on the Prequalification content of the RFQ/P, subject to advising the

General Manager of significant or critical issues. The Proposed Decision with the concurrence sheet will be submitted to the Department Manager of Procurement for final approval. The Proposed Decision shall be final when approved by the Department Manager of Procurement. The Department Manager of Procurement may submit the Proposed Decision to the General Manager when in his/her discretion the General Manager should be advised of significant or critical issues. The Department Manager of Procurement will transmit the Final Decision to the protestor.

10. If all parts of the protest are denied, notification of the Final Decision is sent to the protestor in a manner that provides verification of receipt. If the Contract is not Federally funded, Qualification Statements will be received on the scheduled date. If the Contract is Federally funded, protestors whose protests are denied may request FTA review as described in Paragraph 12. below.
11. If the protest is sustained or partially sustained, the notification and the Final Decision will be sent to the protestor in a manner that provides verification of receipt. An addendum to the RFQ/P Document may be issued to respond to the protest and the Qualification Statement Submission Date extended if necessary, or the advertisement may be canceled. The Qualification Statement Submission Date must allow time for protests on the addendum pursuant to the District's protest procedures and the protest provisions of FTA Circular 4220.1F.

12. FTA Review

- a. If the protest is denied, the protestor may request FTA review of the District's action on the protest. Such a request shall be filed with the FTA's Regional Administrator for Region IX at 201 Mission Street, Room 2210, San Francisco, California 94105. A copy of this request shall be submitted to the District Secretary. Except as provided in paragraph d. below, the Qualification Statement Submittal shall occur no less than six (6) working days after the decision becomes final and after the Department Manager of Procurement confirms that FTA has not received a protest on the RFQ/P Document.
- b. Except as provided in Paragraph d. below, if a protest has been filed with the FTA, Qualification Statement submission will not occur during the pendency of the protest.
- c. Upon notification by FTA of receipt of a protest, the Department Manager of Procurement shall submit, within ten working days, the following:
 - (1) A copy of the District's protest procedures;
 - (2) A description of the process followed concerning the protest; and
 - (3) Any supporting documentation.

The Department Manager of Procurement shall send copies of the above to the protestor.

- d. Exceptions to paragraphs a. and b. above. Qualification Statement submission may occur before the expiration of six working days after the District's denial of a protest or during the pendency of a protest to the FTA, if the General Manager determines that:
 - (1) The completion of the Prequalification process is urgently required;
 - (2) Delivery or performance will be unduly delayed by failure to make the Prequalification determination promptly; or
 - (3) Failure to make the Prequalification determination promptly will otherwise cause undue harm to the District or the Federal Government.
- e. The Department Manager of Procurement will notify the FTA of the above determination prior to Qualification Statement submission.

- C. Protests Filed After Qualification Statement Submission Date and Before Action on the Approved Prequalified Proposers List. The District Secretary will respond to any correspondence received after the Qualification Statement Submission Date but before the General Manager's action on the Approved Prequalified Proposers List.
- D. Protests on the Approved Prequalified Proposers List. Protests on the Approved Prequalified Proposers List will be processed in accordance with the following procedures:
1. When the General Manager has approved a list of Prequalified Proposers, the District will issue a preliminary Notice of Approved Prequalified Proposers to all Proposers who submitted a Qualification Statement.
 2. Any Proposer who submitted a Qualification Statement may protest the General Manager's action approving the Prequalified Proposers List on any ground not based upon the Prequalification content of the RFQ/P Document.
 3. If a protest is received more than seven calendar days after the mailing or transmission of the preliminary Notice of Approved Prequalified Proposers, the protest will be denied as untimely. The District Secretary will send the letter of response to the protestor.
 4. If a protest is received by the District Secretary within seven calendar days after the mailing of the preliminary Notice of Approved Prequalified Proposers, the District Secretary will date-stamp the time of receipt, retain the original for District files and distribute copies to the following:
 - a. Project Manager, Director or Sponsor;
 - b. Department Manager of Procurement;
 - c. Division Manager, Contract Administration; and
 - d. The Office of General Counsel.
 5. The Department Manager of Procurement will be responsible for further distribution to any other affected departments and coordinating the response.
 6. After a protest has been filed, any District employee contacted by an outside party in connection with the protest should notify the Office of the General Counsel and receive its advice concerning further contacts with such persons. A District employee contacted by an outside attorney regarding District matters, including protests, should transfer the attorney to the Office of the General Counsel and report the contact to that office.
 7. Requests for documents or files should be handled in accordance with Board Resolution No. 2267 (Attachment 8).
 8. The Executive Manager or Assistant General Manager of the Sponsoring Department, will designate a staff person to investigate the disputed factual allegations, if any, contained in the protest. The designee will prepare a Proposed Decision and an EDD for circulation with the assistance of the Office of the General Counsel and other appropriate departments as soon as possible. Where a Proposer files a protest based on the fact that its Qualification Statement was rejected, the Proposed Decision shall contain a summary of the protest, an evaluation of the protest, and a recommendation as to whether the protest should be allowed or denied, and the reasons for the recommendation. Where the protest is filed by a Proposer who objects to the inclusion of a Proposer on the Approved Prequalified Prospective Proposers List, the Department Manager of Procurement will transmit a copy of the protest to the Proposer who is the subject of the protest for a response. The Proposed Decision shall contain a summary of the protest, a summary of any response received, an evaluation of the protest, and a recommendation as to whether the protest should be allowed or denied. The Proposed Decision shall only address the issues raised by the protest.

9. The designee shall circulate the Proposed Decision to the Department Manager of Procurement, the Office of the General Counsel, and the Executive Manager or Assistant General Manager of the Sponsoring Department, and other appropriate Departments. The designee will submit the EDD and Proposed Decision to the General Manager for approval. If the EDD and the Proposed Decision are approved by the General Manager, the Proposed Decision becomes the Final Decision of the District and, is transmitted by the Department Manager of Procurement to the protestor, and where appropriate, to the Proposer who is the subject of the protest. In a manner that provides verification of receipt.
 - a. If the Contract is non-Federally funded, the final Notice of Approval Prequalified Proposers may be issued immediately.
 - b. If the Contract is Federally funded and the protest is denied, the protestor may request FTA review of the District's action on a protest. Such a request shall be filed with the FTA's Regional Administrator for Region IX at 201 Mission Street, Room 2210, San Francisco, California 94105. A copy of this request shall be submitted to the District Secretary. Except as provided in Paragraph c. below, the final Notice of Approved Prequalified Proposers may be issued no less than six working days after the decision becomes final and after the Department Manager of Procurement confirms that the FTA has not received a protest on the Approved Prequalified Proposers List in question. Except as provided in Paragraph c. below, if a protest has been filed with FTA, a final Notice of Approved Prequalified Proposers will not be issued during the pendency of the protest.
 - c. Upon notification by FTA of receipt of a protest, the Department Manager of Procurement shall submit within ten working days the following:
 - (1) A copy of the District's protest procedures;
 - (2) A description of the process followed concerning the protestor's protest; and
 - (3) Any supporting documentation.The Department Manager of Procurement will also send copies of the above to the protestor.
 - d. Exceptions to Paragraph 10.b. above. The final Notice of Approved Prequalified Proposers may be issued before the expiration of six working days after District's denial of a protest or during the pendency of a protest to the FTA, if the General Manager determines that:
 - (1) The completion of the Prequalification process is urgently required;
 - (2) Delivery or performance will be unduly delayed by failure to make the Prequalification determination promptly; or
 - (3) Failure to make the Prequalification determination promptly will otherwise cause undue harm to the District or the Federal Government.
 - e. The Department Manager of Procurement will notify the FTA of the above determination prior to issuing the final Notice of Approved Prequalified Proposers.
- E. Pre-Proposal Receipt Protests, Protests Filed after Receipt of Proposals, and Protests on the Recommended Award. Protests filed after issuance of final Notice of Approved Prequalified Proposers will be processed in accordance with Sections IV.B. through IV.D. herein, as modified by the RFQ/P. In this documents, language should be changed as appropriate e.g., "Bidder" to "Proposer", "Bid" to "Proposal" etc.

ATTACHMENT 1

Contract Provisions (not Federally Funded)

Protests

- (a) All protests must be in writing, stating the name and address of protestor, a contact person, Contract number and/or title and shall specify in detail the grounds of the protest and the facts supporting the protest.

All protests must be addressed as follows:

For Special Delivery or Hand Delivery:

Office of the District Secretary
San Francisco Bay Area Rapid Transit District (BART)
23rd Floor, Kaiser Center Building
300 Lakeside Drive
Oakland, CA 94612

For U.S. Mail:

Office of the District Secretary
San Francisco Bay Area Rapid Transit District (BART)
P.O. Box 12688
Oakland, CA 94604-2688

Protests not properly addressed to the District Secretary may not be considered by the District. Copies of the District Protest Procedures may be obtained from the District's Division of Contract Administration, BART, P.O. Box 12688, Oakland, California 94604-2688, Telephone (510) (INSERT CONTRACT ADMINISTRATOR'S PHONE NUMBER).

- (b) Pre-bid Protests. Pre-bid Protests are protests based upon the content of the Solicitation Documents. Five (5) copies of pre-bid protests must be received by the District Secretary's Office no later than _____¹ calendar days prior to Bid opening. A written Decision specifying the grounds for sustaining all or part of or denying the protest will be transmitted to the protestor in a manner that provides verification of receipt, prior to the opening of Bids. If the protest is sustained, the Bid opening date may be postponed and an addendum issued to the Solicitation documents or, at the sole discretion of the District, the advertisement may be canceled. If the protest is denied, Bids will be received and opened on the scheduled date.
- (c) Protests on the Recommended Award. All Bidders will be notified of the Recommended Award. This notice will be transmitted to the Bidder at the address contained in its Bid Form in a manner that provides verification of receipt. Any Bidder whose Bid has not lapsed may protest the Recommended Award on any ground not specified in (b) above. Ten (10) copies of a full and complete written statement specifying in detail the grounds of the protest and facts supporting the protest must be received by the District Secretary at the appropriate address in (a) above no later than seven (7) calendar days after the date such notification is received. A written Decision stating the grounds for allowing or denying the protest will be transmitted to the protestor and the Bidder recommended for Award, prior to issuing the Notice of Award. Such Decision shall be final.

¹ The number of days specified may vary between 7 and 21, depending upon the length of time between advertisement and Bid opening. Note that a short period will require quick staff response to avoid postponement of Bid opening.

ATTACHMENT 2

Contract Provisions (Federally Funded)

Protests

- (a) All protests must be in writing, stating the name and address of protestor, a contact person, Contract number and/or title and shall specify in detail the grounds of the protest and the facts supporting the protest.

All protests must be addressed as follows:

For Special Delivery or Hand Delivery:

Office of the District Secretary
San Francisco Bay Area Rapid Transit District (BART)
23rd Floor, Kaiser Center Building
300 Lakeside Drive
Oakland, CA 94612

For U.S. Mail:

Office of the District Secretary
San Francisco Bay Area Rapid Transit District (BART)
P.O. Box 12688
Oakland, CA 94604-2688

Protests not properly addressed to the District Secretary may not be considered by the District.

Copies of the District Protest Procedures and the protest provisions of FTA Circular 4220.1F may be obtained from the District's Division of Contract Administration, P.O. Box 12688, Oakland, California 94604-2688, Telephone (510) (INSERT CONTRACT ADMINISTRATOR'S PHONE NUMBER). Bids will be opened and a Notice of Award will be issued by the District in accordance with the District's Protest Procedures and the protest provisions of FTA Circular 4220.1F.

- (b) Pre-bid Protests. Pre-bid Protests are protests based upon the content of the Solicitation Documents. Five (5) copies of pre-bid protests must be received by the District Secretary's Office no later than _____¹ calendar days prior to Bid opening. A written Decision specifying the grounds for sustaining all or part of or denying the protest will be transmitted to the protestor prior to the opening of Bids in a manner that provides verification of receipt prior to the opening of Bids. If the protest is sustained, the Bid opening date may be postponed and an addendum issued to the Solicitation documents (or, at the sole discretion of the District, the advertisement may be canceled. If the protest is denied, Bids will be received and opened on the scheduled date unless a protest is filed with FTA. See (d) below.
- (c) Protests on the Recommended Award. All Bidders will be notified of the Recommended Award. This notice will be transmitted to the Bidder at the address contained in its Bid Form in a manner that provides verification of receipt. Any Bidder whose Bid has not lapsed may protest the Recommended Award on any ground not specified in (b) above. Ten (10) copies of a full and complete written statement specifying in detail the grounds of the protest and the facts supporting the protest must be received by the District Secretary at the appropriate address in (a) above no later than seven (7) calendar days after the date such notification is received. A written Decision stating the grounds for allowing or denying the protest will

¹ The number of days specified may vary between 7 and 21, depending upon the length of time between advertisement and Bid opening. Note that a short period will require quick staff response to avoid postponement of Bid opening.

be transmitted to the protestor and the Bidder recommended for Award in a manner that provides verification of receipt, prior to issuing the Notice of Award. Such Decision shall be final.

- (d) “FTA review. A Bidder or prospective Bidder who submits a protest may request FTA review of District action on a protest subject to the following requirements: FTA review is limited to the alleged failure of the District to have written protest procedures, the alleged failure of the District to follow those procedures, the alleged failure of the District to review a protest, or the alleged violation of Federal law or regulation; an appeal to FTA must be received by FTA's Regional Administrator for Region IX in San Francisco, within five (5) working days after the District's final Decision is received by the Bidder or prospective Bidder, or five (5) working days after the Bidder or prospective Bidder– learned or should have learned of the District's final Decision or other basis of appeal to FTA; a copy of the appeal filed with the FTA shall be submitted to the District Secretary.”

ATTACHMENT 3

Request for Proposal Provisions (not Federally Funded)

Protests

- (a) All protests must be in writing, stating the name and address of protestor, a contact person, Contract number and/or title and shall specify in detail the grounds of the protest and the facts supporting the protest.

All protests must be addressed as follows:

For Special Delivery or Hand Delivery:

Office of the District Secretary
San Francisco Bay Area Rapid Transit District (BART)
23RD Floor, Kaiser Center Building
800 Madison Street
Oakland, CA 94612

For U.S. Mail:

Office of the District Secretary
San Francisco Bay Area Rapid Transit District (BART)
P.O. Box 12688
Oakland, CA 94604-2688

Protests not properly addressed to the District Secretary may not be considered by the District. Copies of the District Protest Procedures may be obtained from the District's Division of Contract Administration, BART, P.O. Box 12688, Oakland, California 94604-2688, Telephone (510) (INSERT CONTRACT ADMINISTRATOR'S PHONE NUMBER).

- (b) Pre-bid Protests. Pre-bid Protests are protests based on the content of the Solicitation Documents. Five (5) copies of the pre-bid protests must be received by the District Secretary's Office no later than _____¹ calendar days prior to Proposal submission date. A written Decision specifying the grounds for sustaining all or part of or denying the protest will be transmitted to the protestor in a manner that provides verification of receipt, prior to the submission of Proposals. If the protest is sustained, the Proposal submission date may be postponed and an addendum issued to the Solicitation documents or, at the sole discretion of the District, the advertisement may be canceled. If the protest is denied, Proposals will be received on the scheduled date.
- (c) Protests on the Recommended Award. All Proposers will be notified of the Recommended Award, if any. This notice will be transmitted to each Proposer at the address contained in its Proposal in a manner that provides verification of receipt. Any Proposer whose Proposal has not lapsed may protest the Recommended Award on any ground not specified in (b) above. Ten (10) copies of a full and complete written statement specifying in detail the grounds of the protest and the facts supporting the protest must be received by the District Secretary at the appropriate address in (a) above no later than seven (7) calendar days following receipt of such notification. A written Decision stating the grounds for allowing or denying the protest will be mailed to the protestor prior to execution of the Agreement. Such Decision shall be final.

¹ The number of days specified may vary between 7 and 21, depending upon the length of time between advertisement and the Proposal submission date. Note that a short period will require quick staff response to avoid postponement of Proposal submission date.

ATTACHMENT 4

Request for Proposal Provisions (Federally Funded)

Protests

- (a) All protests must be in writing, stating the name and address of protestor, a contact person, Contract number and/or title and shall specify in detail the grounds of the protest and the facts supporting the protest.

All protests must be addressed as follows:

For Special Delivery or Hand Delivery:

Office of the District Secretary
San Francisco Bay Area Rapid Transit District (BART)
23rd Floor, Kaiser Center Building
300 Lakeside Drive
Oakland, CA 94612

For U.S. Mail:

Office of the District Secretary
San Francisco Bay Area Rapid Transit District (BART)
P.O. Box 12688
Oakland, CA 94604-2688

Protests not properly addressed to the District Secretary may not be considered by the District.

Copies of the District Protest Procedures and the protest provisions of FTA Circular 4220.1F may be obtained from the District's Division of Contract Administration, P.O. Box 12688, Oakland, California 94604-2688, Telephone (510) (INSERT CONTRACT ADMINISTRATOR'S PHONE NUMBER). Proposals will be opened and a Notice of Award will be issued by the District only in accordance with the District's Protest Procedures and the protest provisions of FTA Circular 4220.1F.

- (b) Pre-bid Protests. Pre-bid Protests are protests based upon the content of the Solicitation Documents. Five (5) copies of pre-bid protests must be received by the District Secretary's Office no later than _____¹ calendar days prior to Proposal submission date. A written Decision specifying the grounds for sustaining all or part of or denying the protest will be transmitted to the protestor in a manner that will provide verification of receipt, prior to the submission of Proposals. If the protest is sustained, the Proposal submission date may be postponed and an addendum issued to the Request for Proposal Document or, at the sole discretion of the District, the advertisement may be canceled. If the protest is denied, Proposals will be received on the scheduled date.
- (c) Protests on the Recommended Award. All Proposers will be notified of the Recommended Award, if any. This notice will be transmitted to each Proposer at the address contained in its Proposal in a manner that provides verification of receipt. Any Proposer whose Proposal has not lapsed may protest the Recommended Award on any ground not specified in (b) above. Ten (10) copies of a full and complete written statement specifying in detail the grounds of the protest and the facts supporting the protest must be received by the District Secretary at the appropriate address in (a) above no later than seven (7) calendar days following receipt of such notification. A written Decision stating the grounds for allowing or

¹ The number of days specified may vary between 7 and 21, depending upon the length of time between advertisement and the Proposal submission date. Note that a short period will require quick staff response to avoid postponement of the Proposal submission date.

denying the protest will be mailed to the protestor and the Proposer recommended for Award in a manner that provides verification of receipt, prior to execution of the Agreement. Such Decision shall be final.

- (d) “FTA review. A Bidder or prospective Bidder who submits a protest may request FTA review of District action on a protest subject to the following requirements: FTA review is limited to the alleged failure of the District to have written protest procedures, the alleged failure of the District to follow those procedures, the alleged failure of the District to review a protest, or the alleged violation of Federal law or regulation; an appeal to FTA must be received by FTA's Regional Administrator for Region IX in San Francisco, within five (5) working days after the District's final Decision is received by the Bidder or prospective Bidder, or five (5) working days after the Bidder or prospective Bidder– learned or should have learned of the District's final Decision or other basis of appeal to FTA; a copy of the appeal filed with the FTA shall be submitted to the District Secretary.”

ATTACHMENT 5

Contract Provisions for Competitively Negotiated Procurement Contracts Under Section 20229.1 of the California Public Contract Code (not Federally Funded)

Protests

- A. General: A person who submits, or who plans to submit, a Proposal may protest as follows:
1. Any protest shall contain a full and complete written statement specifying in detail the grounds of the protest and the facts supporting the protest. Protestors shall have an opportunity to appear and be heard before the District Board of Directors prior to the opening of the Proposals in the case of protests based on the content of the Request for Proposal (RFP), prior to final Award in the case of protests based on other grounds or the renewal of protests based on the content of the RFP.

All protests must be addressed as follows:

For Special Delivery or Hand Delivery:

Office of the District Secretary
San Francisco Bay Area Rapid Transit District (BART)
23RD Floor, Kaiser Center Building
300 Lakeside Drive
Oakland, CA 94612

For U.S. Mail:

Office of the District Secretary
San Francisco Bay Area Rapid Transit District (BART)
P.O. Box 12688
Oakland, CA 94604-2688

Protests not properly addressed to the District Secretary may not be considered by the District. Copies of the District Protest Procedures may be obtained from the District's Division of Contract Administration, BART, P.O. Box 12688, Oakland, California 94604-2688, Telephone (510) (INSERT CONTRACT ADMINISTRATOR'S PHONE NUMBER).

- B. Pre-bid Protests. Pre-bid Protests are protests based on the content of the RFP.
1. Protests based on the content of the RFP must be filed with the District Secretary within ten (10) calendar days after the RFP is first advertised. The District will issue a written Decision on the protest prior to opening of Proposals. A timely filed pre-bid protest may be renewed by refiling the protest with the District within fifteen (15) calendar days after the mailing of the Notice of Recommended Award. If a pre-bid protest is received more than 10 calendar days after the RFP is first advertised, the protest will be denied as untimely and may not be renewed after the mailing of the Notice of Recommended Award.
- C. Protests on Recommended Award
1. Any Proposer may protest the recommended Award on any ground not based on the content of the RFP by filing a protest with the District Secretary within fifteen (15) calendar days after the mailing of the Notice of Recommended Award.

ATTACHMENT 6

Contract Provisions for Competitively Negotiated Procurement Contracts Under Section 20229.1 of the California Public Contract Code (Federally Funded)

Protests

- A. General: A person who submits, or who plans to submit a Proposal may protest as follows:
1. Any protest shall contain a full and complete written statement specifying in detail the grounds of the protest and the facts supporting the protest. Protestors shall have an opportunity to appear and be heard before the District Board of Directors prior to the opening of the Proposals in the case of protests based on the content of the Request for Proposal (RFP), prior to final Award in the case of protests based on other grounds or the renewal of protests based on the content of the RFP.

All protests must be addressed as follows:

For Special Delivery or Hand Delivery:

Office of the District Secretary
San Francisco Bay Area Rapid Transit District (BART)
23RD Floor, Kaiser Center Building
300 Lakeside Drive
Oakland, CA 94612

For U.S. Mail:

Office of the District Secretary
San Francisco Bay Area Rapid Transit District (BART)
P.O. Box 12688
Oakland, CA 94604-2688

Protests not properly addressed to the District Secretary may not be considered by the District.

Copies of the District Protest Procedures and the protest provisions of FTA Circular 4220.1F may be obtained from the District's Division of Contract Administration, P.O. Box 12688, Oakland, California 94604-2688, Telephone (510) (INSERT CONTRACT ADMINISTRATOR'S PHONE NUMBER). Proposals will be opened and a Notice of Award will be issued by the District only in accordance with the District's Protest Procedures and the protest provisions of FTA Circular 4220.1F.

- B. Pre-bid Protests. Pre-bid Protests are protests based on the content of the RFP.
1. Protests based on the content of the RFP must be filed with the District Secretary within ten (10) calendar days after the RFP is first advertised. The District will issue a written Decision on the protest prior to opening of Proposals. A timely filed pre-bid protest may be renewed by refiling the protest with the District within fifteen (15) calendar days after the mailing of the Notice of the Recommended Award. If a pre-Bid protest is received more than 10 calendar days after the RFP is first advertised, the protest will be denied as untimely and may not be renewed after the mailing of the Notice of Recommended Award.

C. Protest on Recommended Award

1. Any Proposer may protest the recommended Award on any ground not based on the content of the RFP by filing a protest with the District Secretary within fifteen (15) calendar days after the mailing of the Notice of Recommended Award.

D. “FTA review. A Bidder or prospective Bidder who submits a protest may request FTA review of District action on a protest subject to the following requirements: FTA review is limited to the alleged failure of the District to have written protest procedures, the alleged failure of the District to follow those procedures, the alleged failure of the District to review a protest, or the alleged violation of Federal law or regulation; an appeal to FTA must be received by FTA's Regional Administrator for Region IX in San Francisco, within five (5) working days after the District's final Decision is received by the Bidder or prospective Bidder, or five (5) working days after the Bidder or prospective Bidder– learned or should have learned of the District's final Decision or other basis of appeal to FTA; a copy of the appeal filed with the FTA shall be submitted to the District Secretary.”

ATTACHMENT 7

Prequalification Document Provisions Under Section 20221.1 of the California Public Contract Code

Protests

1. A Prospective Bidder who submits, or who plans to submit, a Qualification Statement may protest as follows: All protests must be in writing, stating the name and address of protestor, a contact person, the title of the Prequalification Document and shall specify in detail the grounds of the protest and the facts supporting the protest.

All protests must be addressed as follows:

For Special Delivery or Hand Delivery

Office of the District Secretary
San Francisco Bay Area Rapid Transit District (BART)
23rd Floor, Kaiser Center Building
300 Lakeside Drive
Oakland, CA 94612

For U.S. Mail

Office of the District Secretary
San Francisco Bay Area Rapid Transit District (BART)
P.O. Box 12688
Oakland, CA 94604-2688

Protest not properly addressed to the District Secretary may not be considered by the District.

Copies of the District's Protest Procedures and Protest provisions of FTA Circular 4220.1F may be obtained from the District's Division of Contract Administration, P.O. Box 12688, Oakland, California 94604-2688, telephone (510) (INSERT CONTRACT ADMINISTRATOR'S PHONE NUMBER). Qualification Statements will be received and Prequalification determinations made by the District only in accordance with the District's Protest Procedures and the protest provisions of FTA Circular 4220.1F.

2. Protests Regarding Prequalification Document Content: Five copies of protests based on the content of the Prequalification Document must be received by the District Secretary's office no later than ten calendar days after notice of the Request for Qualifications is first advertised. A written decision specifying the grounds for sustaining all or part of or denying the protest will be transmitted to the protestor in a manner that provides verification of receipt, prior to the submission of Qualification Statements. If the protest is sustained, the Qualification Statement Submission Date may be postponed and an addendum issued to the Prequalification Document or, at the sole discretion of the District, the advertisement may be canceled. If the protest is denied, Qualification Statements will be received on the scheduled date unless a protest is filed with FTA. See Paragraph 4. below.
3. Protests of the District's Action on the approved Prequalified Bidders List: The District will transmit to all Prospective Bidders who have submitted a Qualification Statement a Notice of Approved Prequalified Bidders at the address contained in the Qualification Statement in a manner that provides verification of receipt. Any Prospective Bidder who has submitted a Qualification Statement may protest the District's action on the Approved Prequalified Bidders list on any ground not specified in Paragraph 2. above. Ten (10) copies of a full and complete written statement specifying in detail the grounds of the protest must be received by the District Secretary at the appropriate address in Paragraph 1. above not later than seven calendar days after the date such notification is received. A written decision stating the grounds for allowing or denying the protest will be transmitted to the protestor and any affected Prospective Bidder in a manner that provides verification of receipt prior to issuing the Notice of Final Approved Prequalified Bidders List. Such decision shall be final. If the Board decides to repeat the Prequalification process, no protest will be considered.

4. “FTA review. A Bidder or prospective Bidder who submits a protest may request FTA review of District action on a protest subject to the following requirements: FTA review is limited to the alleged failure of the District to have written protest procedures, the alleged failure of the District to follow those procedures, the alleged failure of the District to review a protest, or the alleged violation of Federal law or regulation; an appeal to FTA must be received by FTA's Regional Administrator for Region IX in San Francisco, within five (5) working days after the District's final Decision is received by the Bidder or prospective Bidder, or five (5) working days after the Bidder or prospective Bidder– learned or should have learned of the District's final Decision or other basis of appeal to FTA; a copy of the appeal filed with the FTA shall be submitted to the District Secretary.”

ATTACHMENT 8

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

In the matter of public
access to District records. /Resolution No. 2267

WHEREAS, the Board of Directors of San Francisco Bay Area Rapid Transit District desires to establish written guidelines for public inspection and duplication of District records,

NOW, THEREFORE, BE IT RESOLVED that upon written application to the Secretary of the District, any person, corporation, partnership, firm, or association shall be permitted to inspect the records of the District or obtain copies of identifiable District records, except for those records of the District which are exempt from disclosure under California law, including those records identified as exempt under the California Public Records Act (Government Code Section 6250 et. seq.), and

BE IT FURTHER RESOLVED that upon receipt of such written application, the Secretary shall cause such records to be made available to the requester during the normal working hours being observed in the District's Administration Building while causing the least disruption possible to the District's work activities,

BE IT FURTHER RESOLVED that in the case of any question as to whether or not a District record is exempt under California law from inspection, duplication, or distribution, the Secretary shall determine the status of such record after consultation with the appropriate staff member and the Office of the General Counsel, and

BE IT FURTHER RESOLVED that fees or deposits for copies of District records shall be established from time to time by the Board of Directors and shall be collected by the Director of Finance or his designated representative in advance of preparation and distribution, and

BE IT FURTHER RESOLVED that nothing in these guidelines shall be construed to limit the authority of the District to distribute with or without charge, as appropriate, documents which are regularly and customarily provided in the normal course of conducting the District's business.

ATTACHMENT 9

Request for Qualifications ("RFQ") Provisions, Pursuant to California Public Contract Code Section 20209.5 et seq. (not Federally Funded)

Protests

1. Address: A Prospective Design-Build Entity who submits, or who plans to submit, a Qualification Statement may protest as follows: All protests must be in writing, stating the name and address of protestor, a contact person, the title of the RFQ Document and shall specify in detail the grounds of the protest and the facts supporting the protest.

All protests must be addressed as follows:

For Special Delivery or Hand Delivery

Office of the District Secretary
San Francisco Bay Area Rapid Transit District (BART)
23rd Floor, Kaiser Center Building
300 Lakeside Drive
Oakland, CA 94612

For U.S. Mail

Office of the District Secretary
San Francisco Bay Area Rapid Transit District (BART)
P.O. Box 12688
Oakland, CA 94604-2688

Protests not properly addressed to the District Secretary may not be considered by the District.

Copies of the District's Protest Procedures may be obtained from the District's Division of Contract Administration, P.O. Box 12688, Oakland, California 94604-2688, telephone (510) (INSERT CONTRACT ADMINISTRATOR'S PHONE NUMBER). Qualification Statements will be received and Prequalification determinations made by the District only in accordance with the District's Protest Procedures.

2. Protests Regarding RFQ Document Content: Five copies of protests based on the content of the RFQ Document must be received by the District Secretary's office no later than ten calendar days after the RFQ is first advertised. A written decision specifying the grounds for sustaining all or part of or denying the protest will be transmitted to the protestor in a manner that provides verification of receipt, prior to the submission of Qualification Statements. If the protest is sustained, the Qualification Statement Submission Date may be postponed and an addendum issued to the RFQ Document or, at the sole discretion of the District, the advertisement may be canceled. If the protest is denied, Qualification Statements will be received on the scheduled date.
3. Protests of the District's Action on the approved Prequalified PDBE List: The District will transmit to all PDBEs who have submitted a Qualification Statement a Notice of Approved Prequalified PDBEs at the address contained in the Qualification Statement in a manner that provides verification of receipt. Any PDBE who has submitted a Qualification Statement may protest the District's action on the Approved Prequalified PDBE list on any ground not specified in Paragraph 2. above. Ten (10) copies of a full and complete written statement specifying in detail the grounds of the protest must be received by the District Secretary at the appropriate address in Paragraph 1. above not later than seven calendar days after the date such notification is received. A written decision stating the grounds for allowing or denying the protest will be transmitted to the protestor and any affected PDBE in a manner that provides verification of receipt prior to issuing the Notice of Final Approved PDBE List. Such decision shall be final. If the Board decides to repeat the Prequalification process, no protest will be considered.

ATTACHMENT 10

Prequalification Document Provisions, Pursuant to California Public Contract Code Section 20209.5 et seq. (Federally Funded)

Protests

1. Address: A Prospective Design-Build Entity ("PDBE") who submits, or who plans to submit, a Qualification Statement may protest as follows: All protests must be in writing, stating the name and address of protestor, a contact person, the title of the Prequalification Document and shall specify in detail the grounds of the protest and the facts supporting the protest.

All protests must be addressed as follows:

For Special Delivery or Hand Delivery

Office of the District Secretary
San Francisco Bay Area Rapid Transit District (BART)
23rd Floor, Kaiser Center Building
300 Lakeside Drive
Oakland, CA 94612

For U.S. Mail

Office of the District Secretary
San Francisco Bay Area Rapid Transit District (BART)
P.O. Box 12688
Oakland, CA 94604-2688

Protest not properly addressed to the District Secretary may not be considered by the District.

Copies of the District's Protest Procedures and Protest provisions of FTA Circular 4220.1F may be obtained from the District's Division of Contract Administration, P.O. Box 12688, Oakland, California 94604-2688, telephone (510) (INSERT CONTRACT ADMINISTRATOR'S PHONE NUMBER). Qualification Statements will be received and Prequalification determinations made by the District only in accordance with the District's Protest Procedures and the protest provisions of FTA Circular 4220.1F.

2. Protests Regarding Prequalification Document Content: Five copies of protests based on the content of the Prequalification Document must be received by the District Secretary's office no later than ten calendar days after the RFQ is first advertised. A written decision specifying the grounds for sustaining all or part of or denying the protest will be transmitted to the protestor in a manner that provides verification of receipt, prior to the submission of Qualification Statements. If the protest is sustained, the Qualification Statement Submission Date may be postponed and an addendum issued to the Prequalification Document or, at the sole discretion of the District, the advertisement may be canceled. If the protest is denied, Qualification Statements will be received on the scheduled date unless a protest is filed with FTA. See Paragraph 4. below.
3. Protests of the District's Action on the approved Prequalified PDBE List: The District will transmit to all PDBEs who have submitted a Qualification Statement a Notice of Approved Prequalified PDBEs at the address contained in the Qualification Statement in a manner that provides verification of receipt. Any PDBE who has submitted a Qualification Statement may protest the District's action on the Approved Prequalified PDBE list on any ground not specified in Paragraph 2. above. Ten (10) copies of a full and complete written statement specifying in detail the grounds of the protest must be received by the District Secretary at the appropriate address in Paragraph 1. above not later than seven calendar days after the date such notification is received. A written decision stating the grounds for allowing or denying the protest will be transmitted to the protestor and any affected PDBE in a manner that provides verification of receipt prior to issuing the Notice of Final Approved Prequalified PDBE List. Such decision shall be final. If the Board decides to repeat the Prequalification process, no protest will be considered.

4. “FTA review. A Bidder or prospective Bidder who submits a protest may request FTA review of District action on a protest subject to the following requirements: FTA review is limited to the alleged failure of the District to have written protest procedures, the alleged failure of the District to follow those procedures, the alleged failure of the District to review a protest, or the alleged violation of Federal law or regulation; an appeal to FTA must be received by FTA's Regional Administrator for Region IX in San Francisco, within five (5) working days after the District's final Decision is received by the Bidder or prospective Bidder, or five (5) working days after the Bidder or prospective Bidder– learned or should have learned of the District's final Decision or other basis of appeal to FTA; a copy of the appeal filed with the FTA shall be submitted to the District Secretary.”

ATTACHMENT 11

Request for Proposal ("RFP") Provisions, Pursuant to California Public Contract Code Section 20209.5 et seq. (not Federally Funded)

Protests

- (a) All protests must be in writing, stating the name and address of protestor, a contact person, Contract number and/or title and shall specify in detail the grounds of the protest and the facts supporting the protest.

All protests must be addressed as follows:

For Special Delivery or Hand Delivery:

Office of the District Secretary
San Francisco Bay Area Rapid Transit District (BART)
23rd Floor, Kaiser Center Building
300 Lakeside Drive
Oakland, CA 94612

For U.S. Mail:

Office of the District Secretary
San Francisco Bay Area Rapid Transit District (BART)
P.O. Box 12688
Oakland, CA 94604-2688

Protests not properly addressed to the District Secretary may not be considered by the District. Copies of the District Protest Procedures may be obtained from the District's Division of Contract Administration, BART, P.O. Box 12688, Oakland, California 94604-2688, Telephone (510) (INSERT CONTRACT ADMINISTRATOR'S PHONE NUMBER).

- (b) Pre-bid Protests. Pre-bid Protests are protests based on the content of the RFP Documents. Any Prequalified prospective Design-Build Entity ("PDBE") may protest based on the content of the RFP documents. Five (5) copies of the pre-bid protests must be received by the District Secretary's Office no later than _____¹ calendar days prior to Proposal Submission Date. A written Decision specifying the grounds for sustaining all or part of or denying the protest will be transmitted to the protestor in a manner that provides verification of receipt, prior to the submission of Proposals. If the protest is sustained, the Proposal Submission Date may be postponed and an addendum issued to the RFP Documents or, at the sole discretion of the District, the solicitation may be canceled. If the protest is denied, Proposals will be received on the scheduled date.
- (c) Protests on the Recommended Award. All Proposers will be notified of the Recommended Award, if any. This notice will be transmitted to each Proposer at the address contained in its Proposal in a manner that provides verification of receipt. Any Proposer whose Proposal has not lapsed may protest the Recommended Award on any ground not specified in Paragraph (b) above. Ten (10) copies of a full and complete written statement specifying in detail the grounds of the protest and the facts supporting the protest must be received by the District Secretary at the appropriate address in (a) above no later than

¹ The number of days specified may vary between 7 and 21, depending upon the length of time between advertisement and the Proposal submission date. Note that a short period will require quick staff response to avoid postponement of Proposal submission date.

seven (7) calendar days following receipt of such notification. A written Decision stating the grounds for allowing or denying the protest will be mailed to the protestor prior to execution of the Agreement. Such Decision shall be final.

ATTACHMENT 12

Request for Proposal ("RFP") Provisions, Pursuant to California Public Contract Code Section 20209.5 et seq. (Federally Funded)

Protests

- (a) All protests must be in writing, stating the name and address of protestor, a contact person, Contract number and/or title and shall specify in detail the grounds of the protest and the facts supporting the protest.

All protests must be addressed as follows:

For Special Delivery or Hand Delivery:

Office of the District Secretary
San Francisco Bay Area Rapid Transit District (BART)
23rd Floor, Kaiser Center Building
300 Lakeside Drive
Oakland, CA 94612

For U.S. Mail:

Office of the District Secretary
San Francisco Bay Area Rapid Transit District (BART)
P.O. Box 12688
Oakland, CA 94604-2688

Protests not properly addressed to the District Secretary may not be considered by the District.

Copies of the District Protest Procedures and the protest provisions of FTA Circular 4220.1F may be obtained from the District's Division of Contract Administration, P.O. Box 12688, Oakland, California 94604-2688, Telephone (510) 464-6540. Proposals will be opened and a Notice of Award will be issued by the District only in accordance with the District's Protest Procedures and the protest provisions of FTA Circular 4220.1F.

- (b) Pre-bid Protests. Pre-bid Protests are protests based upon the content of the RFP Documents. Any Prequalified Prospective Design-Build Entity ("PDBE") may protest based on the content of the RFP documents. Five (5) copies of the pre-bid protests must be received by the District Secretary's Office no later than _____¹ calendar days prior to Proposal Submission Date. A written Decision specifying the grounds for sustaining all or part of or denying the protest will be transmitted to the protestor in a manner that will provide verification of receipt, prior to the submission of Proposals. If the protest is sustained, the Proposal Submission Date may be postponed and an addendum issued to the Request for Proposal Document or, at the sole discretion of the District, the solicitation may be canceled. If the protest is denied, Proposals will be received on the scheduled date.
- (c) Protests on the Recommended Award. All Proposers will be notified of the Recommended Award, if any. This notice will be transmitted to each Proposer at the address contained in its Proposal in a manner that provides verification of receipt. Any Proposer whose Proposal has not lapsed may protest the Recommended Award on any ground not specified in Paragraph (b) above. Ten (10) copies of a full and

¹ The number of days specified may vary between 7 and 21, depending upon the length of time between advertisement and the Proposal submission date. Note that a short period will require quick staff response to avoid postponement of the Proposal submission date.

complete written statement specifying in detail the grounds of the protest and the facts supporting the protest must be received by the District Secretary at the appropriate address in (a) above no later than seven (7) calendar days following receipt of such notification. A written Decision stating the grounds for allowing or denying the protest will be mailed to the protestor and the Proposer recommended for Award in a manner that provides verification of receipt, prior to execution of the Agreement. Such Decision shall be final.

- (d) “FTA review. A Bidder or prospective Bidder who submits a protest may request FTA review of District action on a protest subject to the following requirements: FTA review is limited to the alleged failure of the District to have written protest procedures, the alleged failure of the District to follow those procedures, the alleged failure of the District to review a protest, or the alleged violation of Federal law or regulation; an appeal to FTA must be received by FTA's Regional Administrator for Region IX in San Francisco, within five (5) working days after the District's final Decision is received by the Bidder or prospective Bidder, or five (5) working days after the Bidder or prospective Bidder– learned or should have learned of the District's final Decision or other basis of appeal to FTA; a copy of the appeal filed with the FTA shall be submitted to the District Secretary.”

ATTACHMENT 13

Request for Qualifications ("RFQ") Provisions, Pursuant to California Government Code Section 5956 et seq. (not Federally Funded)

Protests

1. Address: A Prospective Proposer¹ who submits, or who plans to submit, a Qualification Statement may protest as follows: All protests must be in writing, stating the name and address of protestor, a contact person, the title of the RFQ Document and shall specify in detail the grounds of the protest and the facts supporting the protest.

All protests must be addressed as follows:

For Special Delivery or Hand Delivery

Office of the District Secretary
San Francisco Bay Area Rapid Transit District (BART)
23rd Floor
300 Lakeside Drive
Oakland, CA 94612

For U.S. Mail

Office of the District Secretary
San Francisco Bay Area Rapid Transit District (BART)
P.O. Box 12688
Oakland, CA 94604-2688

Protests not properly addressed to the District Secretary may not be considered by the District.

Copies of the District's Protest Procedures may be obtained from the District's Division of Contract Administration, P.O. Box 12688, Oakland, California 94604-2688, telephone (510) (INSERT CONTRACT ADMINISTRATOR'S PHONE NUMBER). Qualification Statements will be received and Prequalification determinations made by the District only in accordance with the District's Protest Procedures.

2. Protests Regarding RFQ Document Content: Five copies of protests based on the content of the RFQ Document must be received by the District Secretary's office no later than ten calendar days after the RFQ is first advertised. A written decision specifying the grounds for sustaining all or part of or denying the protest will be transmitted to the protestor in a manner that provides verification of receipt, prior to the submission of Qualification Statements. If the protest is sustained, the Qualification Statement Submission Date may be postponed and an addendum issued to the RFQ Document or, at the sole discretion of the District, the advertisement may be canceled. If the protest is denied, Qualification Statements will be received on the scheduled date.
3. Protests of the District's Action on the Approved Prequalified Prospective Proposers List: The District will transmit to all Prospective Proposers who have submitted a Qualification Statement a preliminary Notice of Approved Prequalified Prospective Proposers at the address contained in the Qualification Statement in a manner that provides verification of receipt. Any Prospective Proposer who has submitted a Qualification Statement may protest the District's action on the Approved Prospective Proposers List on any ground not specified in Paragraph 2. above. Ten (10) copies of a full and complete written statement specifying in detail the grounds of the protest must be received by the District Secretary at the appropriate

¹ The terms "Prospective Proposer" may be revised to conform to project specific requirements.

address in Paragraph 1. above not later than seven calendar days after the date such notification is received. A written decision stating the grounds for allowing or denying the protest will be transmitted to the protestor and any affected Prospective Proposer in a manner that provides verification of receipt prior to issuing the final Notice of Approved Prequalified Prospective Proposers. Such decision shall be final. If the District decides to repeat the Prequalification process, no protest will be considered.

ATTACHMENT 14

Request for Request for Qualifications (“RFQ”) Provisions, Pursuant to California Government Code Section 5956 et seq. (Federally Funded)

Protests

1. Address: A Prospective Proposer¹ who submits, or who plans to submit, a Qualification Statement may protest as follows: All protests must be in writing, stating the name and address of protestor, a contact person, the title of the Prequalification Document and shall specify in detail the grounds of the protest and the facts supporting the protest.

All protests must be addressed as follows:

For Special Delivery or Hand Delivery

Office of the District Secretary
San Francisco Bay Area Rapid Transit District (BART)
23rd Floor
300 Lakeside Drive
Oakland, CA 94612

For U.S. Mail

Office of the District Secretary
San Francisco Bay Area Rapid Transit District (BART)
P.O. Box 12688
Oakland, CA 94604-2688

Protest not properly addressed to the District Secretary may not be considered by the District.

Copies of the District's Protest Procedures and Protest provisions of FTA Circular 4220.1F may be obtained from the District's Division of Contract Administration, P.O. Box 12688, Oakland, California 94604-2688, telephone (510) (INSERT CONTRACT ADMINISTRATOR'S PHONE NUMBER). Qualification Statements will be received and Prequalification determinations made by the District only in accordance with the District's Protest Procedures and the protest provisions of FTA Circular 4220.1F.

2. Protests Regarding Prequalification Document Content: Five copies of protests based on the content of the Prequalification Document must be received by the District Secretary's office no later than ten calendar days after the RFQ is first advertised. A written decision specifying the grounds for sustaining all or part of or denying the protest will be transmitted to the protestor in a manner that provides verification of receipt, prior to the submission of Qualification Statements. If the protest is sustained, the Qualification Statement Submission Date may be postponed and an addendum issued to the Prequalification Document or, at the sole discretion of the District, the advertisement may be canceled. If the protest is denied, Qualification Statements will be received on the scheduled date unless a protest is filed with FTA. See Paragraph 4. below.
3. Protests of the District's Action on the Approved Prequalified Prospective Proposers List: The District will transmit to all Prospective Proposers who have submitted a Qualification Statement a preliminary Notice of Approved Prequalified Prospective Proposers at the address contained in the Qualification Statement in a manner that provides verification of receipt. Any Prospective Proposer who has submitted a Qualification Statement may protest the District's action on the Approved Prequalified Prospective

¹ The terms “Prospective Proposer” may be revised to conform to project specific requirements.

Proposers List on any ground not specified in Paragraph 2. above. Ten (10) copies of a full and complete written statement specifying in detail the grounds of the protest must be received by the District Secretary at the appropriate address in Paragraph 1. above not later than seven calendar days after the date such notification is received. A written decision stating the grounds for allowing or denying the protest will be transmitted to the protestor and any affected Prospective Proposer in a manner that provides verification of receipt prior to issuing the final Notice of Approved Prequalified Prospective Proposers. Such decision shall be final. If the District decides to repeat the Prequalification process, no protest will be considered.

4. “FTA review. A Prospective Proposer who submits a protest may request FTA review of District action on a protest subject to the following requirements: FTA review is limited to the alleged failure of the District to have written protest procedures, the alleged failure of the District to follow those procedures, the alleged failure of the District to review a protest, or the alleged violation of Federal law or regulation; an appeal to FTA must be received by FTA's Regional Administrator for Region IX in San Francisco, within five (5) working days after the District's final Decision is received by the Prospective Proposer, or five (5) working days after the Prospective Proposer learned or should have learned of the District's final Decision or other basis of appeal to FTA; a copy of the appeal filed with the FTA shall be submitted to the District Secretary.”

ATTACHMENT 15

Request for Proposal ("RFP") Provisions, Pursuant to California Government Code Section 5956 et seq. (not Federally Funded)

Protests

- (a) All protests must be in writing, stating the name and address of protestor, a contact person, Contract number and/or title and shall specify in detail the grounds of the protest and the facts supporting the protest.

All protests must be addressed as follows:

For Special Delivery or Hand Delivery:

Office of the District Secretary
San Francisco Bay Area Rapid Transit District (BART)
23rd Floor
300 Lakeside Drive
Oakland, CA 94612

For U.S. Mail:

Office of the District Secretary
San Francisco Bay Area Rapid Transit District (BART)
P.O. Box 12688
Oakland, CA 94604-2688

Protests not properly addressed to the District Secretary may not be considered by the District.

Copies of the District Protest Procedures may be obtained from the District's Division of Contract Administration, BART, P.O. Box 12688, Oakland, California 94604-2688, Telephone (510) (INSERT CONTRACT ADMINISTRATOR'S PHONE NUMBER).

- (b) Pre-bid Protests. Pre-bid Protests are protests based on the content of the RFP Documents. Any Prequalified Prospective Proposer¹ may protest based on the content of the RFP documents. Five (5)² copies of the pre-bid protests must be received by the District Secretary's Office no later than _____ calendar days prior to Proposal Submission Date. A written Decision specifying the grounds for sustaining all or part of or denying the protest will be transmitted to the protestor in a manner that provides verification of receipt, prior to the submission of Proposals. If the protest is sustained, the Proposal Submission Date may be postponed and an addendum issued to the RFP Documents or, at the sole discretion of the District, the solicitation may be canceled. If the protest is denied, Proposals will be received on the scheduled date.
- (c) Protests on the Recommended Award. All Proposers will be notified of the Recommended Award, if any. This notice will be transmitted to each Proposer at the address contained in its Proposal in a manner that provides verification of receipt. Any Proposer whose Proposal has not lapsed may protest the Recommended Award on any ground not specified in Paragraph (b) above. Ten (10) copies of a full and

1 The terms "Prospective Proposer" may be revised to conform to project specific requirements.

2 The number of days specified may vary between 7 and 21, depending upon the length of time between advertisement and the Proposal submission date. Note that a short period will require quick staff response to avoid postponement of Proposal Submission Date.

complete written statement specifying in detail the grounds of the protest and the facts supporting the protest must be received by the District Secretary at the appropriate address in Paragraph (a) above no later than seven (7) calendar days following receipt of such notification. A written Decision stating the grounds for allowing or denying the protest will be mailed to the protestor prior to execution of the Agreement. Such Decision shall be final.

ATTACHMENT16

Request for Proposal ("RFP") Provisions, Pursuant to California Government Code Section 5956 et seq. (Federally Funded)

Protests

- (a) All protests must be in writing, stating the name and address of protestor, a contact person, Contract number and/or title and shall specify in detail the grounds of the protest and the facts supporting the protest.

All protests must be addressed as follows:

For Special Delivery or Hand Delivery:

Office of the District Secretary
San Francisco Bay Area Rapid Transit District (BART)
23rd Floor
300 Lakeside Drive
Oakland, CA 94612

For U.S. Mail:

Office of the District Secretary
San Francisco Bay Area Rapid Transit District (BART)
P.O. Box 12688
Oakland, CA 94604-2688

Protests not properly addressed to the District Secretary may not be considered by the District.

Copies of the District Protest Procedures and the protest provisions of FTA Circular 4220.1F may be obtained from the District's Division of Contract Administration, P.O. Box 12688, Oakland, California 94604-2688, Telephone (510) (INSERT CONTRACT ADMINISTRATOR'S PHONE NUMBER). Proposals will be opened and a Notice of Award will be issued by the District only in accordance with the District's Protest Procedures and the protest provisions of FTA Circular 4220.1F.

- (b) Pre-bid Protests. Pre-bid Protests are protests based upon the content of the RFP Documents. Any Prequalified Prospective Proposer¹ may protest based on the content of the RFP documents. Five (5)² copies of the pre-bid protests must be received by the District Secretary's Office no later than _____ calendar days prior to Proposal Submission Date. A written Decision specifying the grounds for sustaining all or part of or denying the protest will be transmitted to the protestor in a manner that will provide verification of receipt, prior to the submission of Proposals. If the protest is sustained, the Proposal Submission Date may be postponed and an addendum issued to the Request for Proposal Document or, at the sole discretion of the District, the solicitation may be canceled. If the protest is denied, Proposals will be received on the scheduled date.
- (c) Protests on the Recommended Award. All Proposers will be notified of the Recommended Award, if any. This notice will be transmitted to each Proposer at the address contained in its Proposal in a manner that provides verification of receipt. Any Proposer whose Proposal has not lapsed may protest the Recommended Award on any ground not specified in Paragraph (b) above. Ten (10) copies of a full and

¹ The terms "Prospective Proposer" may be revised to conform to project specific requirements.

² The number of days specified may vary between 7 and 21, depending upon the length of time between advertisement and the Proposal submission date. Note that a short period will require quick staff response to avoid postponement of the Proposal Submission Date.

complete written statement specifying in detail the grounds of the protest and the facts supporting the protest must be received by the District Secretary at the appropriate address in Paragraph (a) above no later than seven (7) calendar days following receipt of such notification. A written Decision stating the grounds for allowing or denying the protest will be mailed to the protestor and the Proposer recommended for Award in a manner that provides verification of receipt, prior to execution of the Agreement. Such Decision shall be final.

- (d) FTA review. A Proposer who submits a protest may request FTA review of District action on a protest subject to the following requirements: FTA review is limited to the alleged failure of the District to have written protest procedures, the alleged failure of the District to follow those procedures, the alleged failure of the District to review a protest, or the alleged violation of Federal law or regulation; an appeal to FTA must be received by FTA's Regional Administrator for Region IX in San Francisco, within five (5) working days after the District's final Decision is received by the Proposer or Prospective Proposer, or five (5) working days after the Proposer or Prospective Proposer learned or should have learned of the District's final Decision or other basis of appeal to FTA; a copy of the appeal filed with the FTA shall be submitted to the District Secretary.

ATTACHMENT 17

Request for Qualifications/Proposals for the Oakland Airport Connector Project, **Pursuant to California Public Contract Code Section 20209.5 et seq.** **(not Federally Funded)**

Protests

1. Address: A Prospective Design-Build Entity (here after referred to as Proposer) who submits, or who plans to submit, a Qualification Statement may protest as follows: All protests must be in writing, stating the name and address of protestor, a contact person, the title of the Prequalification Document and shall specify in detail the grounds of the protest and the facts supporting the protest.

All protests must be addressed as follows:

For Special Delivery or Hand Delivery

Office of the District Secretary
San Francisco Bay Area Rapid Transit District (BART)
23rd Floor, Kaiser Center Building
300 Lakeside Drive
Oakland, CA 94612

For U.S. Mail

Office of the District Secretary
San Francisco Bay Area Rapid Transit District (BART)
P.O. Box 12688
Oakland, CA 94604-2688

Protest not properly addressed to the District Secretary may not be considered by the District.

Copies of the District's Protest Procedures may be obtained from the District's Division of Contract Administration, P.O. Box 12688, Oakland, California 94604-2688, telephone (510) (INSERT CONTRACT ADMINISTRATOR'S PHONE NUMBER). Qualification Statements will be received and Prequalification determinations made also, Proposals will be opened and a Notice of Award will be issued, by the District only in accordance with the District's Protest Procedures.

2. Protests Regarding Prequalification Document Content: Five copies of protests based on the content of the Prequalification Document must be received by the District Secretary's office no later than ten calendar days after the RFQ/P is first advertised. A written decision specifying the grounds for sustaining all or part of or denying the protest will be transmitted to the protestor in a manner that provides verification of receipt, prior to the submission of Qualification Statements. If the protest is sustained, the Qualification Statement Submission Date may be postponed and an addendum issued to the Prequalification Document or, at the sole discretion of the District, the advertisement may be canceled. If the protest is denied, Qualification Statements will be received on the scheduled date.
3. Protests of the District's Action on the approved Prequalified Proposers List: The District will transmit to all Proposers who have submitted a Qualification Statement a Notice of Approved Prequalified Proposers at the address contained in the Qualification Statement in a manner that provides verification of receipt. Any Proposer who has submitted a Qualification Statement may protest the District's action on the Approved Prequalified Proposer list on any ground not specified in Paragraph 2. above. Ten (10) copies of a full and complete written statement specifying in detail the grounds of the protest must be received by the District Secretary at the appropriate address in Paragraph 1. above not later than seven calendar days after the date such notification is received. A written decision stating the grounds for allowing or denying

the protest will be transmitted to the protestor and any affected Proposer in a manner that provides verification of receipt prior to issuing the Notice of Final Approved Prequalified Proposer List. Such decision shall be final. If the District decides to repeat the Prequalification process, no protest will be considered.

4. Pre-Proposal Protests. Pre-Proposal Protests are protests based on the Proposal Document content of the RFP/P. Any Prequalified Proposer may protest Proposal Document based on the content of the RFP/P. Five (5) copies of the pre-Proposal protests must be received by the District Secretary's Office no later than _____ calendar days prior to Proposal Submission Date. A written Decision specifying the grounds for sustaining all or part of or denying the protest will be transmitted to the protestor in a manner that provides verification of receipt, prior to the submission of Proposals. If the protest is sustained, the Proposal Submission Date may be postponed and an addendum issued to the Proposal Document Content of the RFP/P Documents or, at the sole discretion of the District, the solicitation may be canceled. If the protest is denied, Proposals will be received on the scheduled date.
5. Protests on the Recommended Award. All Proposers will be notified of the Recommended Award, if any. This notice will be transmitted to each Proposer at the address contained in its Proposal in a manner that provides verification of receipt. Any Proposer whose Proposal has not lapsed may protest the Recommended Award on any ground not specified in Paragraph (b) above. Ten (10) copies of a full and complete written statement specifying in detail the grounds of the protest and the facts supporting the protest must be received by the District Secretary at the appropriate address in Paragraph (4) above no later than seven (7) calendar days following receipt of such notification. A written Decision stating the grounds for allowing or denying the protest will be mailed to the protestor prior to execution of the Agreement. Such Decision shall be final.

¹ The number of days specified may vary between 7 and 21, depending upon the length of time between advertisement and the Proposal submission date. Note that a short period will require quick staff response to avoid postponement of Proposal Submission Date.

ATTACHMENT 18

Request for Qualifications/Proposals for the Oakland Airport Connector Project, **Pursuant to California Public Contract Code Section 20209.5 et seq.** **(Federally Funded)**

Protests

1. Address: A Prospective Design-Build Entity (here after referred to as Proposer) who submits, or who plans to submit, a Qualification Statement may protest as follows: All protests must be in writing, stating the name and address of protestor, a contact person, the title of the Prequalification Document and shall specify in detail the grounds of the protest and the facts supporting the protest.

All protests must be addressed as follows:

For Special Delivery or Hand Delivery

Office of the District Secretary
San Francisco Bay Area Rapid Transit District (BART)
23rd Floor, Kaiser Center Building
300 Lakeside Drive
Oakland, CA 94612

For U.S. Mail

Office of the District Secretary
San Francisco Bay Area Rapid Transit District (BART)
P.O. Box 12688
Oakland, CA 94604-2688

Protest not properly addressed to the District Secretary may not be considered by the District.

Copies of the District's Protest Procedures and Protest provisions of FTA Circular 4220.1F may be obtained from the District's Division of Contract Administration, P.O. Box 12688, Oakland, California 94604-2688, telephone (510) (INSERT CONTRACT ADMINISTRATOR'S PHONE NUMBER). Qualification Statements will be received and Prequalification determinations made also, Proposals will be opened and a Notice of Award will be issued, by the District only in accordance with the District's Protest Procedures and the protest provisions of FTA Circular 4220.1F.

2. Protests Regarding Prequalification Document Content: Five copies of protests based on the content of the Prequalification Document must be received by the District Secretary's office no later than ten calendar days after the RFQ/P is first advertised. A written decision specifying the grounds for sustaining all or part of or denying the protest will be transmitted to the protestor in a manner that provides verification of receipt, prior to the submission of Qualification Statements. If the protest is sustained, the Qualification Statement Submission Date may be postponed and an addendum issued to the Prequalification Document or, at the sole discretion of the District, the advertisement may be canceled. If the protest is denied, Qualification Statements will be received on the scheduled date unless a protest is filed with FTA. See Paragraph 6. below.
3. Protests of the District's Action on the approved Prequalified Proposers List: The District will transmit to all Proposers who have submitted a Qualification Statement a Notice of Approved Prequalified Proposers at the address contained in the Qualification Statement in a manner that provides verification of receipt. Any Proposer who has submitted a Qualification Statement may protest the District's action on the Approved Prequalified Proposer list on any ground not specified in Paragraph 2. above. Ten (10) copies of a full and complete written statement specifying in detail the grounds of the protest must be received by

the District Secretary at the appropriate address in Paragraph 1. above not later than seven calendar days after the date such notification is received. A written decision stating the grounds for allowing or denying the protest will be transmitted to the protestor and any affected Proposer in a manner that provides verification of receipt prior to issuing the Notice of Final Approved Prequalified Proposer List. Such decision shall be final. If the District decides to repeat the Prequalification process, no protest will be considered.

4. Pre-Proposal Protests. Pre-Proposal Protests are protests based on the Proposal Document content of the RFP/P. Any Prequalified Proposer may protest Proposal Document based on the content of the RFP/P. Five (5) copies of the pre-Proposal protests must be received by the District Secretary's Office no later than _____ calendar days prior to Proposal Submission Date. A written Decision specifying the grounds for sustaining all or part of or denying the protest will be transmitted to the protestor in a manner that provides verification of receipt, prior to the submission of Proposals. If the protest is sustained, the Proposal Submission Date may be postponed and an addendum issued to the Proposal Document Content of the RFP/P Documents or, at the sole discretion of the District, the solicitation may be canceled. If the protest is denied, Proposals will be received on the scheduled date.
5. Protests on the Recommended Award. All Proposers will be notified of the Recommended Award, if any. This notice will be transmitted to each Proposer at the address contained in its Proposal in a manner that provides verification of receipt. Any Proposer whose Proposal has not lapsed may protest the Recommended Award on any ground not specified in Paragraph (b) above. Ten (10) copies of a full and complete written statement specifying in detail the grounds of the protest and the facts supporting the protest must be received by the District Secretary at the appropriate address in Paragraph (4) above no later than seven (7) calendar days following receipt of such notification. A written Decision stating the grounds for allowing or denying the protest will be mailed to the protestor prior to execution of the Agreement. Such Decision shall be final.
6. "FTA review. A Proposer who submits a protest may request FTA review of District action on a protest subject to the following requirements: FTA review is limited to the alleged failure of the District to have written protest procedures, the alleged failure of the District to follow those procedures, the alleged failure of the District to review a protest, or the alleged violation of Federal law or regulation; an appeal to FTA must be received by FTA's Regional Administrator for Region IX in San Francisco, within five (5) working days after the District's final Decision is received by the Bidder or prospective Bidder, or five (5) working days after the Bidder or prospective Bidder- learned or should have learned of the District's final Decision or other basis of appeal to FTA; a copy of the appeal filed with the FTA shall be submitted to the District Secretary."

¹ The number of days specified may vary between 7 and 21, depending upon the length of time between advertisement and the Proposal submission date. Note that a short period will require quick staff response to avoid postponement of Proposal Submission Date.