

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

AGENDAS FOR BOARD AND COMMITTEE MEETINGS

July 9, 2009

9:00 a.m.

A regular meeting of the Board of Directors and regular meetings of the Standing Committees will be held on Thursday, July 9, 2009, commencing at 9:00 a.m. All meetings will be held in the BART Board Room, Kaiser Center 20th Street Mall – Third Floor, 344 – 20th Street, Oakland, California.

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

Rules governing the participation of the public at meetings of the Board of Directors and Standing Committees are available for review on the District's website (<http://www.bart.gov/about/bod>), in the BART Board Room, and upon request, in person or via mail, at the Office of the District Secretary, 23rd Floor, 300 Lakeside Drive, Oakland, California.

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

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

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

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

Kenneth A. Duron
District Secretary

Regular Meeting of the
BOARD OF DIRECTORS

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

1. CALL TO ORDER

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

2. CONSENT CALENDAR

- A. Approval of Minutes of the Meeting of June 4, 2009 (Special).* Board requested to authorize.
- B. Disability Discrimination and Reasonable Accommodation Policy.* Board requested to authorize
- C. Award of Contract No. 09DJ-213A, Procurement of DC Power Supply for Cathodic Protection.* Board requested to authorize.
- D. Award of Contract No. 15TE-110, Aerial Structure Fall Protection – West Oakland.* Board requested to authorize.

RECESS TO STANDING COMMITTEES

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

ALL COMMITTEES ARE ADVISORY ONLY

ADMINISTRATION COMMITTEE

NO REPORT

Director Murray, Chairperson

ENGINEERING AND OPERATIONS COMMITTEE

NO REPORT

Director Keller, Chairperson

PLANNING, PUBLIC AFFAIRS, ACCESS, AND LEGISLATION COMMITTEE

Immediately following the Board Meeting recess

Director Sweet, Chairperson

- C-1. Fiscal Year 2010 Agreement with the San Francisco Municipal Transportation Agency to Participate in the Employer Ticket Sales Program.* Board requested to authorize.
- C-2. General Discussion and Public Comment.

RECONVENE BOARD MEETING

3. CONSENT CALENDAR ADDENDA

Board requested to authorize as recommended from committee meetings above.

4. REPORTS OF STANDING COMMITTEES

- A. ADMINISTRATION COMMITTEE
NO REPORT

B. ENGINEERING AND OPERATIONS COMMITTEE
NO REPORT

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

- C-1. Fiscal Year 2010 Agreement with the San Francisco Municipal Transportation Agency to Participate in the Employer Ticket Sales Program.* Board requested to authorize.

5. GENERAL MANAGER'S REPORT

Proposed San Francisco International Airport Employee Discount. For information.

6. BOARD MATTERS

- A. Workshop: Disability Discrimination and Reasonable Accommodation.* For information.
- B. Report of the BART Police Department Review Committee. For information.
- C. Roll Call for Introductions.

7. GENERAL DISCUSSION AND PUBLIC COMMENT

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

A. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION

Name of Case: Johnson et al. vs. BART
Government Code Section: Subdivision (a) of Government Code Section 54956.9

B. CONFERENCE WITH LABOR NEGOTIATORS:

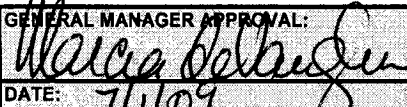

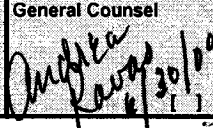
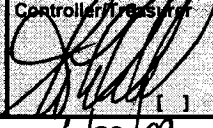
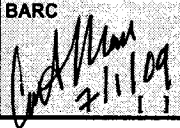
Designated representatives: Dorothy W. Dugger, General Manager; Teresa E. Murphy, Assistant General Manager – Administration; M. Carol Stevens, Burke, Williams & Sorensen, LLP

Employee Organizations: (1) Amalgamated Transit Union, Local 1555;
(2) American Federation of State, County and Municipal Employees, Local 3993;
(3) BART Police Officers Association;
(4) BART Police Managers Association;
(5) Service Employees International Union, Local 1021; and
(6) Service Employees International Union, Local 1021, BART Professional Chapter

Government Code Section: 54957.6



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: 		GENERAL MANAGER ACTION REQ'D: Board Approval and Authorization		
DATE: 7/1/09		BOARD INITIATED ITEM: No		
Originator/Prepared by: Elaine M. Kurtz Dept:  Signature/Date:	General Counsel  6/30/09	Controller/Treasurer  6/30/09	District Secretary []	BARC  7/1/09
Status: Routed		Date Created: 06/25/2009		

TITLE:

Adoption of the District's Reasonable Accommodation Policy

NARRATIVE:

Purpose:

To request that the Board of Directors formally adopt a Reasonable Accommodation Policy for the District.

Discussion:

Since 1963 the District has affirmed its commitment to fair employment practices, including for those individuals with disabilities, through various Board Resolutions and associated Management Procedures.

Specifically, on May 14, 1976, an Employment Policy was adopted by the Board (Resolution No. 2472) which read in part "... no person seeking employment with the District shall be discriminated against because of ... Physical Handicap which does not limit his or her ability to perform the job."

Subsequent to this action, the Board has reiterated, reinforced, and expanded the District's policy against discrimination, including disability discrimination. These actions include Resolution 3047, June 16, 1983; Resolution 4483, January 28, 1993; Resolution 4516, February 24, 1994; and Resolution 4554, March 9, 1995.

By order of the California Fair Employment and Housing Commission, the District has been directed to issue, "... a policy that advises management and supervisors of their FEHA obligation to make reasonable accommodation for BART employees' physical or mental disabilities and to engage in a timely, good faith, interactive process with BART employees to determine what accommodations are appropriate." The attached resolution has been reviewed and approved by the District's General Counsel as meeting those and other relevant criteria.

The approval and posting of this document, when combined with an aggressive program of training for managers and supervisors presently in progress, and other remedial and affirmative

efforts, will not only comply with the directive of the DFEH, but will sharpen the focus of the District's efforts in this important area of fair employment practice.

Fiscal Impact:

There is no fiscal impact to this policy.

Alternatives:

Adopt an amended or modified Policy statement.

Recommendations:

Adopt the following motion:

Motion:

That the Board adopts the the Proposed Reasonable Accommodation Policy, a copy of which is attached.



REASONABLE ACCOMMODATION AND DISABILITY DISCRIMINATION POLICY

It is the District's intent, consistent with its Equal Employment Opportunity Policy, to comply fully with applicable laws governing the rights of applicants and employees, including but not limited to The Americans with Disabilities Act (ADA), as amended (ADAA (2008)), the Rehabilitation Act of 1973 (Rehab. Act), the California Fair Employment and Housing Act (FEHA), California workers compensation statutes, and federal and state family and medical care leave and pregnancy disability leave statutes.

Employees and applicants have the right to be free from discrimination on the basis of an actual or perceived physical or mental disability. A physical disability includes any physiological disease, disorder, or condition, cosmetic disfigurement or anatomical loss that affects one or more of the body's major systems and limits a major life activity as defined by law. A mental disability includes having any mental or psychological disorder or condition that limits a major life activity.

The District is committed to providing qualified employees and applicants with a disability a reasonable accommodation, unless to do so would result in an undue hardship. As part of its commitment to ensure that individuals with disabilities receive equal access to employment opportunities, the District will strive to process requests for reasonable accommodation in a prompt, fair and efficient manner.

Individuals seeking accommodation must meet with the Employee Services section of Human Resources to engage in a timely, good faith interactive process to identify the limitations resulting from the disability and potential accommodations for those limitations. Information obtained in the interactive process is confidential.

Retaliation against an individual for seeking a reasonable accommodation is prohibited.

If an individual believes that he/she has been discriminated against because of an actual or perceived physical or mental disability or retaliated against for exercising his/her legal rights as set forth in this policy that individual may file a complaint with the Department of Fair Employment and Housing; they can be reached at 800 884-1684.

If you have any questions, please contact the Employees Services section of Human Resources or the Office of Civil Rights.



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Marica delBusto</i>		GENERAL MANAGER ACTION REQ'D: Approve and Forward to the Board	
DATE: 7/1/09		BOARD INITIATED ITEM: No	
Originator/Prepared by: Khawaja Zubair Dept: Engineering Signature: <i>Khawaja Zubair</i> Date: 6/29/09	General Counsel <i>Andrew...</i> Date: 6/29/09	Controller/Treasurer <i>[Signature]</i> Date: 6/29/09	District Secretary <i>[Signature]</i> Date: 7/1/09
Status: Routed		Date Created: 06/10/2009	

TITLE:

AWARD OF CONTRACT NO. 09DJ-213A, PROCUREMENT OF DC POWER SUPPLY FOR CATHODIC PROTECTION

NARRATIVE:

PURPOSE: To obtain Board authorization for the General Manager to award Contract 09DJ-213A, Procurement of Direct Current (DC) Power Supply for Cathodic Protection (CP) to Online Power, of Los Angeles, California.

DISCUSSION:

This procurement Contract is to design, manufacture, test and deliver 25 cathodic protection DC power supplies. At present there are 30 anodes on the San Francisco Bay floor that provide corrosion protection to the metal shell of the transbay tube (TBT). The anodes are powered by an equal number of power supplies. Most of the existing power supplies are more than thirty years old, and their performance has not been very satisfactory. Many of the power supplies have failed and are difficult to repair.

The new power supplies will provide superior performance over the existing units. The new power supplies will provide better cathodic protection due to increased current capability. The power supplies will have a self diagnostic system and will be equipped with a remote control and monitoring system. The power supplies will have the capability to adjust the cathodic protection level of the TBT.

The power supplies will be installed under a separate Contract at a later date.

Advance Notice to bidders was mailed on April 17, 2009 to twenty five (25) prospective bidders. The Contract was advertised on April 17, 2009. The pre-bid meeting was conducted on May 7, 2009 with three prospective bidders attending the meeting. The following two bids were received on June 2, 2009.

<u>BIDDER</u>	<u>BID PRICE(Lump Sum)</u>
On-Line Power Inc. Los Angeles, California	\$443,480.00
Quality Transformer, Milpitas, California	\$651,473.00
Engineer's Estimate	\$460,000.00

After review by District staff, the bid submitted by the low bidder, On-Line Power Inc., has been deemed to be responsive to the solicitation. Furthermore, a review of the bidder's business experience and financial capabilities has resulted in a determination that the bidder is

responsible. Staff has determined that the price bid by On-Line Power Inc. is fair and reasonable.

FISCAL IMPACT:

Funding of \$486,719 (443,480 bid plus 43,239 estimated tax) for Contract 09DJ-213A is included in the total project budget for the 09DJ Transbay Tube Cathodic Protection. The Office of the Controller/Treasurer certifies that funds are currently available to meet this obligation.

47W - CA-03-0729 FY05 Capital Improvement

\$486,719

As of period ending 05/24/09, \$4,958,891 is available for commitment from this fund source for this project, and BART has committed \$4,462,741 to date. There are pending commitments of \$9,431 in BART's financial management system. This action will commit \$486,719, leaving an uncommitted balance of \$0.00 in this fund.

There is no fiscal impact on available unprogrammed District Reserve

ALTERNATIVES:

The alternative is to not replace the existing power supplies for the Cathodic Protection (CP) system. By doing so, some of the CP system will be inoperative, resulting in increased corrosion of the steel shell. This will make the TBT more susceptible to water leaks.

RECOMMENDATION:

Adoption of the following motion.

MOTION:

The General Manager is authorized to award Contract No. 09DJ-213A, Procurement of DC Power Supply for Cathodic Protection, to On-Line Power Inc. for the bid price of \$ 443,480.00, plus applicable taxes, pursuant to notification to be issued by the General Manager, and subject to compliance with the District's protest procedures and FTA's requirements related to protest procedures.



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL <i>Malca Delacruz</i>		GENERAL MANAGER ACTION REQ'D:		
DATE: 7/1/09		BOARD INITIATED ITEM: No		
Originator/Prepared by: Pepe Vallenar Dept. Maintenance and Engineering <i>Pepe Vallenar</i>	General Counsel <i>Andrew...</i>	Controller/Treasurer <i>[Signature]</i>	District Secretary <i>[Signature]</i>	BART <i>[Signature]</i>
Signature/Date: 7/1/09	6/29/09	[]	[]	[]
Status: Routed		Date Created: 06/09/2009		

TITLE:

Award Contract No. 15TE-110, Aerial Structure Fall Protection, West Oakland, Phase 1

NARRATIVE:

PURPOSE:

To authorize the General Manager to award Contract No. 15TE-110: "Aerial Structure Fall Protection, West Oakland, Phase 1" to Summit Steel Works of Mountain View.

DISCUSSION:

Elevated BART aerial structures currently have no guardrails. Workers need to wear full body harness fall protection devices and be tethered to perform maintenance and other work on the aerial structures. Mobility and work speed are affected, especially since most of the maintenance work is done at night during non-revenue hours. With the installation of guard rails on the aerial structure, the workers' safety and work efficiency will be significantly improved.

The work under this contract consists of providing all labor, materials, equipment and other accessories necessary to install approximately 1,600 linear feet of guard rails on the aerial structure between West Oakland BART Station and the U. S. Post Office, Oakland. This is the first phase of a system wide effort to provide fall protection. Additional phases will be implemented as funds become available with the goal of eventually completing installation of fall protection for all BART aerial structures.

Advance Notice to Bidders was mailed out on April 29, 2009 to 82 prospective bidders. The Contract was advertised on April 30, 2009. Contract Documents were mailed to 19 plan rooms and minority assistance organizations. A Pre-Bid Meeting was held on April 24, 2009, with a total of four (4) prospective bidders in attendance. Two addenda were issued to make revisions to the drawings and specifications and the Bid Due Date was extended from May 5, 2009 to May 26, 2009. Five bids were received as follows:

<u>Bidder</u>	<u>Location</u>	<u>Total Bid</u>
1. Summit Steel Works, Inc.	Mountain View	\$366,000
2. California Engineering Contractors	Pleasanton	\$390,000
3. Beliveau Engineering Contractors, Inc.	Oakland	\$411,700
4. Jedco Consulting Engineers, Inc.	Berkeley	\$448,900
5. Andes Construction, Inc.	Oakland	\$490,000

ENGINEER'S ESTIMATE

\$473,000

Staff has determined that the bid submitted by Summit Steel Works is responsive to the solicitation, and that the bidder's license, business experience, and financial capabilities indicate that the bidder is responsible. Staff has also determined that the bid price of \$366,000 is fair and reasonable.

Staff has determined that there will be no significant effect on the environment with installation of guardrails on the

aerial structures at BART facilities, and that the work is categorically exempt from the provisions of the California Environmental Quality Act (CEQA), pursuant to CEQA Guidelines Section 15301(f), which exempts the addition of safety protection for existing facilities and structures. The project will receive federal funding and is therefore subject to the National Environmental Policy Act (NEPA). The federal funding agency, FTA, has concurred that implementation of the project will not have a significant impact on the environment and qualifies for a categorical exclusion as defined under 23 CFR 771.117 (c)(18).

FISCAL IMPACT:

Funding for this \$366,000 award of Contract No. 15TE-110 is included in the total project budget for the FMS #15TE, Aerial Structure Fall Protection. The Office of the Controller/Treasurer certifies that funds are currently available to meet this obligation.

F/G 52Y – FTA CA 90-Y421

\$200,000

As of month ending 5/24/09, of \$500,000 available for commitment from this fund source for this project, BART has committed \$218,565 to date. There are no pending commitments in BART's financial management system. This action will commit \$200,000 leaving an uncommitted balance of \$81,435 in this fund source.

F/G 47Z – FTA CA 05-0216

\$166,000

As of month ending 5/24/09, of \$500,000 available for commitment from this fund source for this project, BART has committed \$20,000 to date. There are pending commitments of \$62,997 in BART's financial management system. This action will commit \$166,000 leaving an uncommitted balance of \$251,003 in this fund source.

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

ALTERNATIVES:

The Board may reject all bids and re-bid the contract. Rejecting bids will delay the guard rail installation, and is not likely to result in better pricing.

RECOMMENDATION:

Adoption of the following motion:

MOTION:

The General Manager is authorized to award Contract No. 15TE-110: " Aerial Structure Fall Protection, West Oakland, Phase 1" for the bid price of \$366,000 to Summit Steel Works, Inc. pursuant to notification to be issued by the General Manager, and subject to the District's protest procedures and FTA's requirements related to protest procedures.



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>[Signature]</i>		GENERAL MANAGER ACTION REQ'D: Forward to PAAL Committee		
DATE: <i>7/2/09</i>		BOARD INITIATED ITEM: No		
Originator/Prepared by: Julie A Yim Dept: <i>[Signature]</i>	General Counsel <i>[Signature]</i> <i>8/2/09</i>	Controller/Treasurer <i>[Signature]</i> <i>7/2/09</i>	District Secretary	BARC <i>[Signature]</i> <i>8-2-09</i>
Signature/Date: <i>[Signature]</i> <i>8/2/09</i>				
Status: Routed		Date Created: 06/29/2009		

TITLE:

FY2010 Agreement with the San Francisco Municipal Transportation Agency to Participate in the Employer Ticket Sales Program

NARRATIVE:

Purpose: To authorize the General Manager to enter into an Agreement between the City and County of San Francisco Municipal Transportation Agency (MUNI) and BART for the Delivery and Sale of Transit Passes or Tickets, (the Employer Ticket Sales Program), for the period starting July 15, 2009 through January 15, 2010 with an option to extend for one year. The cost per ticket will increase from \$.60 per ticket sold in FY 2009 to \$1.20 per ticket sold in FY2010.

Discussion: MUNI has been operating the Program since FY99 on behalf of the Regional Transit Coordinating Council (RTCC). MUNI sells transit tickets and passes through employers. Orders are received and filled, tickets are delivered and sales proceeds are collected and returned to the participating transit agency. The program was created and managed by MTC in the 1980's and operated by a private contractor until MUNI took over the contract in 1999.

BART sales account for 58% of total program sales. AC Transit, Blue and Gold Ferry, CalTrain, County Connection, City Pass, Golden Gate, MUNI, SamTrans and Vallejo Transit account for the remaining 42% of sales. The program has benefited mostly companies in the San Francisco downtown area. However employer enrollment has declined from 160 employers in 1999 to 77 employers in 2009. From 1999 to 2003, BART sold an average of \$10 million per year, or 238,000 tickets per year through this program. Last year sales resulted in \$7.6 million with the sale of 155,630 tickets. Third party administrators for transit benefits have affected this market by delivering tickets directly to their customer's employees, thus reducing the need for MUNI's ticket service. At the conclusion of this contract, it is the hope of the RTCC that the remaining employer vendors will transition onto the Translink system thus eliminating the need for this program.

Fiscal Impact: The program allows MUNI to charge each of the participating agencies a fee per ticket sold. The fee of \$.60 was set in 1999 and has not increased. MUNI is increasing the fee from \$.60 to \$1.20 so it can cover its operational costs. From 2003 to 2007, BART paid an average of \$113,000 per year in fees to MUNI. In the past two years BART paid an average of \$96,000 to MUNI. Although the fee will double under this contract if approved, the contract period will be reduced to six months and only the \$60.00 high value blue ticket will be available for sale in this program. Therefore we do not expect the program cost to exceed \$100,000 for any six month period..

Alternative: Discontinue participation in the Program and solicit the employers to become BART ticket vendors directly. Or eliminate employer vendors and encourage their employees to buy their tickets from the 300 retail vendors located throughout our service area.

Recommendation: Adopt the following motion. The Office of the General Counsel will approve the Agreement as to form.

Motion: That the General Manager is authorized to enter into an Agreement with the City and County of San Francisco Municipal Transportation Agency for the Delivery and Sale of Transit Passes or Tickets, (the Employer Ticket Sales Program), for the period starting July 15, 2009 through January 15, 2010 at a cost not to exceed \$1.20 per ticket sold and that the General Manager be authorized to exercise the option to extend the contract for one year at the same per ticket cost. The total cost under this agreement will not exceed \$100,000 in any six month period.

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

MEMORANDUM

TO: Board of Directors
FROM: General Counsel
SUBJECT: Decision in Bartley v. BART

DATE: July 1, 2009

I write to advise you that as a result of an adverse decision issued by the Fair Employment and Housing Commission (FEHC) in the above referenced matter, the District has been directed to implement a training program for all managers and officers covering the subject of disability discrimination and reasonable accommodation. While we may disagree with the decision based upon the facts of the particular case, we agree that the required training is important to continue to educate our supervisors and managers about the importance of reasonable accommodation in the workplace.

The Human Resources Department and the Office of Civil Rights have done a remarkable job of getting an interactive training program in place that managers and supervisors can take at their workstations via computer within the very short time window provided by the FEHC.

We read the decision to include the District's directors, but rather than require you to undertake the training via computer, Elaine Kurtz will provide you with a brief summary of the training at the conclusion of the July 9 Board meeting to comply with the FEHC's decision. We estimate that Elaine's presentation will take approximately 10 minutes.



Matthew Burrows

cc: Board Appointed Officers
Deputy General Manager
AGM – Operations
AGM – Administration