

SANTA CRUZ METROPOLITAN TRANSIT DISTRICT

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Effective Date: February 12, 2009

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**TITLE: PRE-BID, PRE-AWARD AND POST-AWARD PROCUREMENT
PROTEST PROCEDURES**

Procedure History

NEW POLICY

February 12, 2009

October 15, 2012

SUMMARY OF POLICY

New Policy

Updated Address

(APPROVED)

L. W.



I. POLICY

- 1.01 It is the policy of the Santa Cruz Metropolitan Transit District (METRO) that it is responsible for resolving all Pre-Bid, Pre-Award and Post-Award Procurement Protest disputes arising out of third party procurements using good administrative practices and sound business judgment. It is METRO's intention that its procurement process provides for fair and open competition in compliance with federal and state laws and METRO policies.
- 1.02 METRO has established these Pre-Bid, Pre-Award and Post-Award Procurement Protest Policy and Procedures so that all procurement protests/disputes are filed, processed and resolved in a manner consistent with the requirements of the Federal Transit Administration (FTA) Circular (4220.1F) *Third Party Contracting Guidance*, dated November 1, 2008, which are on file at METRO's Administrative Offices, 110 Vernon Street, Santa Cruz, CA 95060, and available upon request.

II. APPLICABILITY

- 2.01 This regulation is applicable to all METRO employees.
- 2.02 This regulation is applicable to any Interested Party as defined herein who has a protest/dispute against METRO in the Pre-Bid, Pre-Award and Post-Award procurement phase.

III. DEFINITIONS:

- 3.01 "**Common Grant Rules**" refers to the Department of Transportation regulations "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," 49 CFR Part 18, which apply to Federal grants and cooperative

agreements with governmental recipients of Federal assistance including Indian tribal governments.

- 3.02 **“Interested Party”** means a party that is an actual or prospective bidder or offeror whose direct economic interest would be affected by the award or failure to award the third party contract at issue. A subcontractor does not qualify as an “interested party”.
- 3.03 **“Protest”** means a formal declaration of disapproval or objection issued by a concerned person, group, or organization that arises during the procurement process. A Protest is a potential bidder’s or contractor’s remedy for correcting a perceived wrong in the procurement process. See “Types of Protests” below.
- 3.04 **“Protester”** means a person, group, or organization that files a formal declaration of disapproval or objection. A protester must qualify as an “interested party”.
- 3.05 **“Types of Protests”**: There are three basic types of Protests pursuant to this regulation, based on the time in the procurement cycle when they occur:
- a.) A pre-bid or solicitation phase Protest is received prior to the bid opening or proposal due date. Pre-bid protests are those based on the content of the initial Notice and/or solicitation published by METRO requesting bids from vendors or other interested parties.
 - b.) A pre-award Protest is a protest against making an award and is received after receipt of proposals or bids, but before award of a contract.
 - c.) A post-award Protest is a protest received after award of a contract. A post-award Protest must be received within 5 business days of the making of the award. A post-award Protest generally alleges a violation of applicable federal or state law and/or METRO policy or procedures relative to the seeking, evaluating and/or awarding of the contract.

IV. STANDARDS:

- 4.01 All Protests must be filed in writing with the METRO Administrative Offices, Finance Manager, Santa Cruz Metropolitan Transit District, 110 Vernon Street, Santa Cruz, CA 95060, or electronically at financemanager@scmtd.com. No other location is acceptable.
- 4.02 A Protest must be in writing and set forth the specific grounds of the dispute and shall be fully supported with technical data, test results, or other pertinent information related to the subject being protested. The Protest shall include the name and contact information of the Protester, solicitation/contract number or description, and what remedy the Protester is seeking. The Protester is responsible for adhering to this regulation.
- 4.03 A Protester must exhaust all of METRO’s administrative remedies before pursuing a protest with the FTA.

- 4.04 METRO's Finance Manager shall make a determination on the Protest generally within ten (10) working days from receipt of the Protest. The Decision of the Finance Manager must be in writing and shall include a response to each substantive issue raised in the Protest.
- 4.05 Any Decision by the Finance Manager may be appealed to the Board of Directors. The Protester has the right within five (5) business days of receipt of the Finance Manager's Decision to file an appeal restating the basis of the Protest and the grounds of the appeal. In the appeal, the Protester is only permitted to raise information and issues previously provided in the Protest or discovered after the Protest was submitted to the Finance Manager for Decision and directly related to the grounds of the Protest. The Protester shall be provided with at least 72-hour notification of when the Board of Directors will hear the Appeal. The Protestor may appear, be represented and present evidence and testimony at the Appeal Hearing. The Board of Directors' decision shall constitute METRO's final administrative determination.
- 4.06 In the event that the Protester is not satisfied with METRO's Board of Directors' final administrative determination, he/she may proceed within 90 days of the final decision to State Court for judicial relief. The Superior Court of the State of California for the County of Santa Cruz is the appropriate judicial authority having the jurisdiction over Protest(s) and Appeal(s).
- 4.07 At any time, the Protester may request reconsideration of METRO's Final Decision if data or information becomes available that was not previously known, or there has been an error of law or regulations.
- 4.08 The Protester may withdraw its Protest or Appeal at any time before METRO issues a final decision.
- 4.09 If METRO postpones the date of proposal submission because of a Protest or Appeal of the solicitation specifications, addenda, dates or any other issue relating to the procurement, METRO will notify, via addendum, all parties who are on record as having obtained a copy of the solicitation documents that a Protest/Appeal had been filed, and the due date for proposal submission shall be postponed until METRO has issued its final Decision.
- 4.10 Reviews of Protests by FTA are limited to 1) METRO's failure to have or follow its protest procedures, or its failure to review a complaint or Protest; or 2) violations of Federal law or regulation.
- 4.11 A Protest Appeal to the FTA must be filed in accordance with the provisions of FTA Circular 4220.1F. Any appeal to the FTA shall be made not later than five (5) working days after a final decision is rendered under METRO's protest procedure. Protest appeals should be filed with:

Federal Transit Administration
Regional Administrator Region IX
201 Mission Street, Suite 1650
San Francisco, CA 94105-1839

Telephone: (415) 744-3133
Fax: (415) 744-2726

V. METRO Responsibilities to FTA

- 5.01 METRO's Finance Manager will notify the FTA when he/she receives a third party contract protest to which the FTA Circular (4220.1F) *Third Party Contracting Guidance* applies, and will keep the FTA informed about the status of the Protest including any appeals.
- 5.02 METRO's Finance Manager will provide the following information to FTA:
- a. Subjects: A list of Protests involving third party contracts and potential third party contracts that:
 - (a) Have a value exceeding \$100,000, or
 - (b) Involve controversial matter, irrespective of amount, or
 - (c) Involve a highly publicized matter, irrespective of amount.
 - b. Details: The following information about each Protest:
 - (a) A brief description of the Protest,
 - (b) The basis of disagreement, and
 - (c) If open, how far the Protest has proceeded, or
 - (d) If resolved, the agreement or decision reached, and
 - (e) Whether an appeal has been taken or is likely to be taken.
 - c. When and Where: METRO will provide this information:
 - (a) In its next quarterly Milestone Progress Report, and
 - (b) At its next Project Management Oversight review, if any.
 - d. FTA Officials to Notify: When METRO's Board of Directors denies a bid Protest, and an appeal is likely to occur, METRO's Finance Manager will inform the FTA Regional Administrator for Region IX, or the FTA Associate Administrator for the program office administering a headquarters project directly about the likely appeal.
- 5.03 METRO's Finance Manager will disclose information about any third party procurement Protest to FTA upon request. FTA reserves the right to require METRO to provide copies of a particular Protest or all Protests, and any or all related supporting documents, as FTA may deem necessary.

VI. ADMINISTRATION OF REGULATION

- 6.01 METRO will integrate the Protest Policy and Procedures into their Policies and Procedures.