

# REGIONAL TRANSIT ISSUE PAPER

Agenda Item No.	Board Meeting Date	Open/Closed Session	Information/Action Item	Issue Date
9	04/13/09	Open	Action	03/17/09

Subject: Amending Title I and Title II of the Sacramento Regional Transit District's Administrative Code

## ISSUE

Whether to amend Title I and Title II of the Sacramento Regional Transit District's Administrative Code to remedy deficiencies noted during the Federal Transit Administration's Procurement Systems Review (PSR) and an internal RT review.

## RECOMMENDED ACTION

- A. Motion: Waive the First Reading of an Ordinance Amending and Restating Chapters 1 and 2 of Title I of the Sacramento Regional Transit District Administrative Code Pertaining to Procurement Activities and Disposal of Surplus Property; and
- B. Adopt Resolution 09-04-\_\_\_, Amending and Restating Title II of the Sacramento Regional Transit District's Administrative Code.

## FISCAL IMPACT

None

## DISCUSSION

The FTA has established regulations and guidance documents for conducting procurements with federal funds. To ensure compliance with its standards, the FTA performs periodic oversight reviews, including the PSR. A third-party contractor for the FTA (Business Management Research Associates) conducted a PSR of RT during the period of November 10<sup>th</sup> through November 14<sup>th</sup>, 2008. Though the findings of the PSR were generally positive, it did identify several deficiencies in RT's procurement process. Staff is addressing the majority of these deficiencies through modification of staff-level procedures and manuals for carrying out procurement activities.

Two of the deficiencies identified in the PSR require modification of RT's adopted Administrative Code (Title I and Title II).

## Protest Procedure

With respect to Title I, Procurement Ordinance, the PSR noted that Section 1.614, "FTA Protest Appeal Procedure," does not accurately describe when and how the FTA will entertain a protest from a bidder or proposer. The current provision is based on an outdated version of the FTA Third Party Contracting Circular (C.4420.1C). Staff is recommending that the Board approve an amendment to the Procurement Ordinance to incorporate the most recent FTA guidance (C.4220.1F) regarding FTA involvement in protests.

Approved:

  
General Manager/CEO

Presented:

  
Randall Miller, Director Procurement Services

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In addition, during an internal review of the protest procedure following the PSR, staff identified two additional changes needed to close a gap in the protest procedure related to disqualification of bidders and proposers. The protest procedure currently specifies that an interested party can submit a protest of a written recommendation to the Board or General Manager/CEO to disqualify a bidder or proposer. However, the protest procedure does not set out a time frame for filing such a protest. The revised protest procedure would begin the time frame for filing such a protest at the time a bidder or proposer receives written notice that it has been deemed not responsible or non-responsive and provide 10 working days to file a protest.

The text of the proposed replacement sections is attached as Attachment A. Attachment B, which is the proposed ordinance, would amend and restate the entire Procurement Ordinance for continuity purposes. The restated ordinance will also update two terms used for competitive procurements: (1) the current ordinance refers to "Invitation for Bids", but the more standard term is "Invitation to Bid"; and (2) the current ordinance refers to "Request for Proposal", but the more standard term is "Request for Proposals."

At this time, the Board is being asked to waive the first reading of the amendment. Staff will bring the ordinance back to the Board for adoption at the May 11<sup>th</sup> Board meeting.

Activities by Agents

The PSR noted that Title II, Conflict of Interest and Code of Ethics, does not adequately cover activities by "agents" of RT, as required by the FTA. To remedy this deficiency, staff is recommending that the Board adopt an amended and restated Title II that expands the coverage of Title II to include actions by agents of RT.

Amendments to Article VI of Chapter 1 of Title 1 of the RT Procurement Ordinance

“1.601        Scope of Protest Procedure

This Article specifies procedures for interested parties to protest the following RT staff actions:

- A.     A written notice denying a bidder's or proposer's request for a change in a specification requirement.
- B.     A written notice to bidder or proposer that it has been deemed not responsible or non-responsive.
- C.     A written recommendation to the Board or General Manager/CEO to award a contract to a particular bidder or proposer.”

“§1.607        Time for Filing a Protest

Protest to any particular provision of the specification must be received by RT no later than 10 working days prior to the date established in the ITB or RFP as the deadline for submittal of bids or proposals. Protests of a determination that a bidder or proposer is not responsible or non-responsive must be received by RT no later than 10 working days from the date of the letter providing notice of the determination. Protests of a staff recommendation to the General Manager/CEO or the Board pertaining to the award of a contract must be received by RT no later than 10 working days from the date of the letter providing notice of the staff recommendation.”

“§1.614        FTA Protest Procedure

A protester must file a protest with RT in accordance with this Article and the Board must deny that protest or fail to timely render a decision on the protest before a bidder or proposer may seek review by Federal Transit Administration, U.S. Department of Transportation (FTA), unless otherwise permitted under the FTA Third Party Contracting Circular (C.4220.1F, Chapter VII, or any successor thereto), and/or by a court of competent jurisdiction. All Board decisions, including a decision on a protest, are final and therefore appealable to FTA or a court of competent jurisdiction if such fora exist.

FTA will accept a protest when a protester asserts that RT: (1) does not have a written protest procedure; (2) has failed to follow its written protest procedure; (3) has failed to review a complaint or protest. In addition, the FTA may accept a protest alleging a substantive violation of federal law or regulations if the FTA determines, in its discretion, that the appeal involves issues important to FTA's overall public transportation program. The FTA will refer alleged violations of

state or local law or regulations to the state or local authority having proper jurisdiction.

The protester must deliver its appeal to the FTA Regional Administrator for the region administering its project or the FTA Associate Administrator for the program office administering its project within 5 working days of the date when the protester has received actual or constructive notice of the recipient's final decision. Likewise, the protester must provide its appeal to the FTA Regional Administrator for the region administering its project or the FTA Associate Administrator for the program office administering its project within 5 working days of the date when the protester has identified other grounds for appeal to FTA. For example, other grounds for appeal include the recipient's failure to have or failure to comply with its protest procedures or failure to review the protest.

Requests for FTA review must be filed with FTA Region IX Administrator, and protesters must provide a copy to RT.

**ORDINANCE NO. 09-05-01**

Adopted by the Board of Directors of the Sacramento Regional Transit District on the date of:

May 11, 2009

**AN ORDINANCE AMENDING AND RESTATING CHAPTERS 1 AND 2 OF TITLE I OF THE SACRAMENTO REGIONAL TRANSIT DISTRICT ADMINISTRATIVE CODE PERTAINING TO PROCUREMENT ACTIVITIES AND DISPOSAL OF SURPLUS PROPERTY**

THE BOARD OF DIRECTORS OF THE SACRAMENTO REGIONAL TRANSIT DISTRICT DO ORDAIN AS FOLLOWS:

**SECTION 1:**

This Ordinance is adopted pursuant to the authority set forth in *Public Utilities Code* Section 102121(d). This Section authorizes the RT Board of Directors to adopt an Administrative Code prescribing the powers and duties of District officers. *Public Utilities Code* Section 102107 provides, in part, that: No ordinance shall be passed by the board on the day of its introduction, nor within three days thereafter, nor at any time other than at a regular or adjourned regular meeting.

**SECTION 2:**

Ordinance 97-08-02, Ordinance 00-01-01, Ordinance 06-11-01, and Ordinance 07-11-01 (Chapters 1 and 2 of Title I of the Sacramento Regional Transit District Administrative Code) are hereby repealed.

**SECTION 3:**

Chapters 1 and 2 are hereby added to Title I of the Sacramento Regional Transit District Administrative Code to read as follows:

**SACRAMENTO REGIONAL TRANSIT DISTRICT  
ADMINISTRATIVE CODE**

**TITLE I - PROCUREMENT ORDINANCE**

**CHAPTER 1**

**SOLICITATION AND AWARD OF CONTRACTS**

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General Requirements**

- §1.101 Definitions
- §1.102 Petty Cash Expenditures
- §1.103 Administrative Procedures
- §1.104 Unauthorized Procurement
- §1.105 Splitting Procurement Prohibited
- §1.106 Collusion with Bidder or Proposer
- §1.107 Independent Price Determination
- §1.108 Compliance with Federal Law
- §1.109 Execution of Contracts
- §1.110 Severance

**Article II  
Contents of Solicitation Documents**

- §1.201 Bid Forms
- §1.202 Invitation for Bid
- §1.203 Request for Proposals
- §1.204 Request for Qualifications
- §1.205 Bid Security on Public Works Contracts

**Article III  
Solicitation Procedures**

- §1.301 Approval of Solicitations
- §1.302 Advertisement of Solicitations
- §1.303 Additional Advertising Requirements for Procurements
- §1.304 Submittal of Sealed Bids and Proposals
- §1.305 Opening of Bids

**Article IV  
Evaluation of Bids and Proposals**

- §1.401 Responsibility Factors
- §1.402 Responsiveness
- §1.403 Application of Responsibility Factors
- §1.404 Evaluation of Professional Service Proposals
- §1.405 Noncompetitive and Sole Source Procurement

- §1.406 Negotiated Procurement
- §1.407 Cooperative Purchase Agreements

**Article V**  
**Awarding Procurements and Issuing Change Orders**

- §1.501 Award to Lowest Responsible Bidder
- §1.502 Award of Professional Services Contract
- §1.503 Authority to Award Procurements Exceeding \$100,000
- §1.504 Authority to Award Procurements of \$100,000 or Less
- §1.505 Authority to Approve Amendments to SUPPLY and SERVICE CONTRACTS
- §1.506 Authority to Issue Change Orders
- §1.507 Delegation of Authority
- §1.508 Award in Case of Identical Bids
- §1.509 Rejection of Bids/Proposals; Waiver of Minor Irregularities
- §1.510 Alternative Award; Failure to Enter into Contract

**Article VI**  
**Bid/Proposal Protest Procedure**

- §1.601 Scope of Protest Procedure
- §1.602 Affect of Protest on Contract Award or Bid Opening
- §1.603 Release of Protest Information
- §1.604 Maintenance of Protest Records
- §1.605 Inclusion of Protest Procedures in Solicitations
- §1.606 Who May File a Protest
- §1.607 Time for Filing a Protest
- §1.608 Form for Filing a Protest
- §1.609 RT's Preliminary Response to a Protest
- §1.610 Further Investigation of Protest
- §1.611 General Manager's Recommendation or Decision
- §1.612 Submittal of Protest to the Board
- §1.613 Board of Directors' Decision
- §1.614 FTA Protest Appeal Procedure

**Article VII**  
**Debarment**

- §1.701 Scope of Debarment Procedure
- §1.702 Violations Subject to Debarment
- §1.703 Debarment Procedures
- §1.704 General Manager's/Board of Directors' Decision
- §1.705 Affect of Debarment on Submittal of Bids or Proposals

**CHAPTER 2**

**DISPOSAL OF SURPLUS PROPERTY**

- §2.101 Authority for Disposal of Surplus Property
- §2.102 Procedure for Disposal of Surplus Property
- §2.103 Incidental Sale of Certain Items
- §2.104 Sale to Another Public Entity
- §2.105 Limitation Upon Employees of RT



## CHAPTER 1

### SOLICITATION AND AWARD OF CONTRACTS

#### Article I General Requirements

##### §1.101 Definitions

The following capitalized words and phrases whenever used in this Chapter shall be construed as defined below:

- A. BOARD shall mean the Board of Directors of the Sacramento Regional Transit District.
- B. CONTRACT shall mean a written agreement, including, without limitation, letter of agreement, memorandum of understanding, contract, contract change order, purchase order, or an amendment or supplemental agreement to any of the foregoing.
- C. FTA shall mean the United States Department of Transportation, Federal Transit Administration.
- D. GENERAL MANAGER shall mean the General Manager of RT.
- E. INVITATION TO BIDS (ITB) shall mean a solicitation for submittal of bids for SUPPLIES, NONPROFESSIONAL SERVICES or a PUBLIC WORKS project.
- F. NONPROFESSIONAL SERVICES shall mean and include services of a nonprofessional character of any type, description or variety including, without limitation, landscape maintenance services, janitorial services, repair of office machines and equipment, and security guard services.
- G. PROCUREMENT shall mean a CONTRACT for SUPPLIES, SERVICES, or PUBLIC WORKS.
- H. PROFESSIONAL SERVICES shall mean and include professional services of any type or variety, including, without limitation, services rendered by accountants, actuaries, appraisers, architects, attorneys, consultants, doctors, and engineers.
- I. PUBLIC WORKS shall mean a project for the erection, construction, alteration, repair or improvement of any public structure, building or other public improvement of any kind. (*Public Contract Code* § 1101).

- J. PURCHASE shall mean the acquisition, renting, or leasing of SUPPLIES.
- K. RT shall mean the Sacramento Regional Transit District as established and operated under Part 14, Division 10 of the *California Public Utilities Code*.
- L. REQUEST FOR PROPOSAL (RFP) shall mean a solicitation for submittal of proposals for PROFESSIONAL SERVICES.
- M. REQUEST FOR QUALIFICATIONS (RFQ) shall mean a solicitation for submittal of qualifications to perform PROFESSIONAL SERVICES.
- N. SERVICES shall mean PROFESSIONAL AND/OR NON-PROFESSIONAL SERVICES, or both, in accordance with the context.
- O. SUPPLIES shall mean and include personal property, goods, equipment and materials, including, without limitation, materials required for the maintenance or repair of any property of RT or of any other person or agency for which it is the duty of RT to maintain or repair.

#### **§1.102 Petty Cash Expenditures**

The GENERAL MANAGER shall establish control procedures for PROCUREMENTS without use of a CONTRACT for items costing less than Two Hundred Dollars (\$200). PROCUREMENTS costing Two Hundred Dollars (\$200) or more shall require use of a CONTRACT.

#### **§1.103 Administrative Procedures**

The GENERAL MANAGER may prepare administrative procedures to carry out the intent of this Chapter. The procedures shall establish a system for informal bidding or informal proposals when advertising for bids or proposals is not required.

#### **§1.104 Unauthorized Procurement**

Any CONTRACT made contrary to the provisions of this Chapter shall be null and void unless the contrary action is waived or the CONTRACT is ratified by the BOARD upon a determination that it is in the best interest of RT to do so. Notwithstanding the foregoing, a CONTRACT for PROFESSIONAL or NONPROFESSIONAL SERVICES approved by the BOARD or GENERAL MANAGER shall not be void or voidable by either party to the CONTRACT or any third party due to failure to adhere to any solicitation procedure set forth in Article III.

**§1.105      Splitting Procurement Prohibited**

Splitting or separating a PROCUREMENT into smaller units for the purpose of evading the provisions of this Chapter is prohibited. Splitting or separating a PROCUREMENT shall mean and include reducing the amount of any SUPPLIES, SERVICES, or PUBLIC WORKS to be furnished when there is reasonable knowledge that the same SUPPLIES, SERVICES, OR PUBLIC WORKS will be additionally required within the same RT fiscal year if operating funds are used, or for the same capital project if capital funds are used, when there are funds available for the PROCUREMENT, and when the primary purpose of splitting or separating the PROCUREMENT is to evade the purposes of this Chapter, including formally calling for bids or proposals.

**§1.106      Collusion With Bidder or Proposer**

An RT officer or employee is prohibited from engaging in collusion with a bidder or proposer. Collusion includes, without limitation, knowingly doing any of the following:

- A. Aiding or assisting a bidder or proposer in securing a PROCUREMENT at a higher price than that proposed by any other bidder or proposer; or
- B. Favoring one bidder or proposer over another by giving or withholding information; or
- C. Willfully misleading any bidder or proposer as to the character of the work or service to be performed or product to be supplied; or
- D. Accepting SUPPLIES, SERVICES, or PUBLIC WORKS that are inferior to that called for in the CONTRACT; or
- E. Falsely reporting the receipt of a greater amount or a different kind of SUPPLIES, SERVICES, or PUBLIC WORKS than has been actually received; or
- F. Intentionally acting or failing to act in relation to a bid/bidder or proposal/proposer by wrongfully favoring a bidder's or proposer's interest over RT's interests.

**§1.107      Independent Price Determination**

It is prohibited for a bidder or proposer to:

- A. Propose or bid prices that have not been arrived at independently without consultation, communication, or agreement with any other bidder, offeror or competitor for the purpose of restricting

competition as to any matter relating to the prices bid or proposed;  
or

- B. Knowingly disclose any price bid or proposed to any other bidder, offeror or to any competitor prior to opening of the bids or proposals, unless otherwise required by law; or
- C. Make any attempt to induce any other person, firm or other entity or association to submit or not to submit a bid or proposal for the purpose of restricting competition; or
- D. Knowingly be interested in more than one bid as the principal bidder; provided, however, subcontract bids to the principal bidders or proposers are excluded from this paragraph D.

In case of joint venture bids or proposals, the joint venture itself and each and every member of the joint venture shall, for the purposes of the foregoing, be construed to be the person submitting the bid or proposal.

Any bid or proposal received or CONTRACT awarded where there was a violation of this section shall be a null and void. RT shall dispose of the matter in the same manner as if the bidder or proposer involved had failed to enter the CONTRACT after award.

#### **§1.108 Compliance with Federal Law**

Pursuant to *California Government Code* Section 53702, a PROCUREMENT funded in full or in part pursuant to the terms of a federal grant or loan shall be advertised, prepared, awarded, performed, and administered in compliance with all applicable requirements of federal laws, regulations and orders whenever compliance with those laws, regulations and orders is a prerequisite of federal financial assistance.

#### **§1.109 Execution of Contracts**

The GENERAL MANAGER shall institute control procedures for the execution of CONTRACTS as required herein. RT's attorney shall approve the form and legality of all CONTRACTS prior to the execution thereof. If the GENERAL MANAGER will be unavailable to sign a CONTRACT, s/he or the BOARD may delegate such authority in writing to a named RT employee who shall be authorized to sign CONTRACTS on behalf of the GENERAL MANAGER. A copy of such authorization shall be filed with the Clerk to the BOARD.

#### **§1.110 Severance**

If any provision or part of this Ordinance conflicts with state or federal laws, regulations, or grant conditions applicable to RT PROCUREMENTS, or decisional law binding upon RT, the provision or part in conflict shall be

deemed severed from this Ordinance and the remainder shall stay in full force and effect.

**Article II**  
**Contents of Solicitation Documents**

**§1.201**      **Bid Forms**

All formal bids shall be made on forms provided by RT. The execution of the forms by bidders shall be subject to procedures formulated by the GENERAL MANAGER and shall include controls over erasures, corrections, and interlineations.

**§1.202**      **Invitation for Bids**

All ITBs shall, at a minimum, include all of the following information:

- A. A description of the PUBLIC WORKS, NONPROFESSIONAL SERVICES or SUPPLIES required without use of brand or trade names except as authorized by state law and federal grant conditions. (*Public Contract Code § 3400*)
- B. Time for performance or delivery.
- C. The time period that the bidder's offer must be held open for RT acceptance.
- D. Disadvantaged business enterprise goals and good faith efforts requirements if required by the terms of a federal grant.
- E. Criteria for CONTRACT award to lowest responsible and responsive bidder.
- F. Date and time for bid submittal.
- G. Bid protest procedures as set out in Article VI.
- H. For PUBLIC WORKS projects, the contractor licensing and subcontractor listing requirements, the prevailing wage notification, the required bid security as set out in Section 1.205, and all statutorily required bonds.
- I. Federal and/or state requirements including contract clauses, certifications, and bonds (bid, performance, payment and service disruption). For federally funded SUPPLY and NON-PROFESSIONAL SERVICES CONTRACTS, RT may allow submittal of an irrevocable letter of credit or other negotiable instrument in-lieu of a bond.

- J. RT contract clauses.
- K. Notification that RT reserves the right to reject all bids and to waive minor irregularities in a bidder's bid.

Notwithstanding the foregoing, an RFP may be issued for NONPROFESSIONAL SERVICES if approved by the BOARD.

**§1.203 Request for Proposals**

All REQUESTS FOR PROPOSALS shall include at a minimum all of the following information:

- A. A description of the type of PROFESSIONAL SERVICES required.
- B. Time for performance or length of service.
- C. The time period that the proposer's proposal must be held open for RT acceptance.
- D. The required work products and/or tasks.
- E. A request for a description of the firm's qualifications, size and prior experience in performing similar PROFESSIONAL SERVICES, unless a prior REQUEST FOR QUALIFICATIONS was issued to pre-qualify potential proposers.
- F. Disadvantaged business enterprise goals and good faith efforts requirements if required by the terms of a federal grant.
- G. Local business point preference may be included if businesses performing the type of PROFESSIONAL SERVICES desired are located within Sacramento County for non-federally funded CONTRACTS.
- H. Consultant selection criteria, weighting factors and selection process.
- I. Date and time for proposal submittal.
- J. Proposal protest procedures as set out in Article VI.
- K. Federal and/or state contract clauses, certifications and insurance requirements.

Notwithstanding the foregoing, an RFP may be issued for NON-PROFESSIONAL SERVICES if approved by the BOARD.

**§1.204      Request for Qualifications**

An RFQ may be issued in order to pre-qualify proposers for a particular RFP or to establish a listing of pre-qualified proposers when several RFP's for separate CONTRACTS will be issued for the same discipline of PROFESSIONAL SERVICES. The listing of pre-qualified professionals shall be effective if approved by the GENERAL MANAGER, unless BOARD approval is required. The listing must be approved by the BOARD to be effective if: (i) any one CONTRACT would require BOARD approval as set forth in Section 1.503 or (ii) the list will be effective for more than three (3) years. The RFQ shall, at a minimum, include or request all of the following information:

- A. Description of the type of PROFESSIONAL SERVICES required.
- B. Number of years that the firm has provided such services.
- C. Size of firm and, if applicable, a breakdown of number of employees by employment classification.
- D. Prior experience in performing desired PROFESSIONAL SERVICES, and, if applicable, sample work products.
- E. Listing of references.

**§1.205      Bid Security on Public Works Contracts**

For any PUBLIC WORKS CONTRACT, the solicitation documents shall require the bidder to submit with the bid as security one of the following:

- A. Cash; or
- B. Cashier's check or certified check made payable to RT; or
- C. Bidder's bond executed by an admitted surety insurer and made payable to RT.

The security shall be in an amount determined by RT to be sufficient, but shall not exceed 10% of the total bid amount.

If within twenty (20) calendar days after CONTRACT award, the successful bidder fails to enter into the CONTRACT or, if applicable, provide all required insurance certificates and bonds, the bid security shall be forfeited in favor of RT. Upon good cause being shown, the GENERAL

MANAGER in his/her discretion, may extend the time for the bidder to enter the CONTRACT for a period not to exceed thirty (30) additional days.

Upon award to the lowest responsible bidder, the security of an unsuccessful bidder shall be returned no later than sixty (60) days after CONTRACT award. However, if a bid protest is timely filed, the security of unsuccessful bidders shall not be returned until the expiration of the bid validity period. The bid security of the successful bidder shall be returned after execution of the CONTRACT and receipt of the applicable insurance certificate and performance, payment and service disruption bonds (*Public Contract Code* § 20322).

### **Article III Solicitation Procedures**

#### **§1.301     Approval of Solicitations**

For a PROCUREMENT expected to be awarded for an amount equal to or greater than the amount set out in Section 1.302 for a contract for PUBLIC WORKS, SUPPLIES, NONPROFESSIONAL SERVICES or PROFESSIONAL SERVICES, respectively, a written ITB or RFP must be prepared and thereafter approved by either the BOARD or the General Manager or his or her designee prior to its release. BOARD approval of the ITB or RFP is required if the resulting contract would require BOARD approval as set forth in Section 1.503.

#### **§1.302     Advertisement of Solicitation**

The solicitation for bids/proposals for CONTRACTS expected to be awarded for an amount in excess of Five Thousand Dollars (\$5,000) for PUBLIC WORKS, Forty Thousand Dollars (\$40,000) for SUPPLIES, and Fifty Thousand Dollars (\$50,000) for NONPROFESSIONAL SERVICES and PROFESSIONAL SERVICES shall be advertised once in a newspaper of general circulation not less than ten (10) days prior to the date established for the bid/proposal submittal. In addition, advertisement of solicitations for PROCUREMENTS involving an expenditure in excess of the amounts set out above must comply with the requirements set out in Section 1.303.

#### **§1.303     Additional Advertising Requirements for Procurements**

Solicitations for bids/proposals for CONTRACTS expected to be awarded for an amount in excess of Fifty Thousand Dollars (\$50,000) shall be advertised as required under Section 1.302 and as follows:



- A. PUBLIC WORKS ITBs shall be advertised once in at least two trade papers serving the Sacramento area, e.g., Daily Pacific Builder and Sacramento Builder's Exchange Weekly Bulletin, at least ten (10) days before the bid submittal date; and
- B. If time permits, ITBs and RFPs for PUBLIC WORKS, SUPPLIES, and NONPROFESSIONAL SERVICES shall be advertised once in local minority newspapers and, for PROFESSIONAL SERVICES in professional trade publications at least ten (10) days before the proposal submittal date.

If an RFQ is issued to pre-qualify potential proposers, it must be advertised in the same manner as an RFP. However, advertising shall not be required when an RFP is released to firms or persons on an approved listing if the RFP is limited to the category of work or service for which the listing was approved pursuant to Section 1.204.

#### **§1.304 Submittal of Sealed Bids and Proposals**

All bids/proposals for CONTRACTS expected to be awarded for an amount in excess of Five Thousand Dollars (\$5,000) for PUBLIC WORKS, Forty Thousand Dollars (\$40,000) for SUPPLIES, Fifty Thousand Dollars (\$50,000) for NONPROFESSIONAL SERVICES and PROFESSIONAL SERVICES shall be sealed, identified as a bid/proposal on the envelope, and shall be submitted to the GENERAL MANAGER or his/her designee at the place and time specified in the public notice inviting bids/proposals. The time specified in the public notice may be extended and notice of the extension may be given by addendum to the bid documents. Submittals received after the specified time shall not be accepted and shall be returned to the bidder or proposer unopened.

#### **§1.305 Opening of Bids**

Bids shall be opened by the GENERAL MANAGER or his/her designee, in public, at the time and place designated in the notice inviting bids. The time specified in the public notice may be extended and notice of the extension may be given by addendum to the bid documents.

### **Article IV Evaluation of Bids and Proposals**

#### **§1.401 Responsibility Factors**

In determining whether a bidder is responsible, consideration shall be given to each of the following factors:

- A. The ability, capacity and skill of the bidder to satisfactorily perform the CONTRACT;

- B. The ability of the bidder to perform the CONTRACT within the time specified, without delay;
- C. The character, integrity, reputation, judgment, experience and efficiency of the bidder;
- D. The quality of bidder's performance on previous CONTRACTS with RT.

**§1.402 Responsiveness**

- A. A bid/proposal is responsive if the bidder/proposer submits all information and documents required by the ITB, RFP, or RFQ in the form and at the time required by the ITB, RFP, or RFQ, and the bidder/proposer is offering to perform pursuant to the ITB, RFP, or RFQ requirements.
- B. The BOARD may adopt programs or procedures for providing price or point preferences, including but not limited to preferences to promote the participation and use of minority-owned business enterprises, women- owned business enterprises, disadvantaged business enterprises, local business enterprises and/or small business enterprises. The lowest responsible bidder shall be the responsible bidder whose bid price is the lowest after all bid prices are calculated to include any such preferences.

**§1.403 Application of Responsibility Factors**

The BOARD or GENERAL MANAGER shall award CONTRACTS for PUBLIC WORKS, SUPPLIES, or NONPROFESSIONAL SERVICES to the lowest bidder submitting a responsive bid as provided by Section 1.501, unless the BOARD or GENERAL MANAGER makes a finding that such bidder is not responsible based upon its failure to satisfy one or more of the criteria set forth in Section 1.401.

**§1.404 Evaluation of Professional Service Proposals**

Proposals for PROFESSIONAL SERVICES shall be evaluated based upon the criteria set out in the RFP. RT may reject any proposer that is nonresponsible or any proposal that is nonresponsive, it may waive any required information for all proposers, and it may waive minor irregularities in any proposal as provided in Section 1.508.

**1.405 Noncompetitive and Sole Source Procurement**

A noncompetitive or sole source PROCUREMENT is the direct solicitation of only one source. An amendment to an existing CONTRACT to include PUBLIC WORKS, SUPPLIES, or SERVICES outside the scope of that CONTRACT is also deemed a sole source PROCUREMENT.

Noncompetitive and sole source PROCUREMENTS are not permitted unless at least one of the following circumstances occurs:

- A. After the solicitation procedures of Article III have been followed, no bids or proposals are received.
- B. The BOARD or GENERAL MANAGER, as applicable, has determined that the PUBLIC WORKS, SUPPLIES, or SERVICES can be provided only by one firm and that efforts to seek competition would be futile. The General Manager may not delegate his/her authority to make such a determination. However, if the GENERAL MANAGER is unavailable and has delegated authority for execution of contracts, such delegation may also include his/her authority under this paragraph.
- C. For PROFESSIONAL and NONPROFESSIONAL SERVICE CONTRACTS, when the BOARD determines that it is in the best interests of RT to solicit only one consultant or to amend an existing SERVICE CONTRACT without compliance with the competitive solicitation procedures set forth in Article III.
- D. After receiving bids or proposals, the GENERAL MANAGER or the BOARD rejects all such bids or proposals based on responsibility, responsiveness, or cost factors and makes a determination as set out in paragraph B, above.
- E. For PROCUREMENT involving an expenditure in excess of Forty Thousand Dollars (\$40,000) for SUPPLIES or Five Thousand Dollars (\$5,000) for PUBLIC WORKS, upon four-fifths (4/5) vote of the BOARD if it finds that an emergency exists and that it is in the best interests of RT to suspend competitive bidding.
- F. Noncompetitive PROCUREMENT is otherwise authorized under applicable federal and state statutes and/or case law. The BOARD or GENERAL MANAGER, as applicable, shall approve noncompetitive PROCUREMENTS. The General Manager may not delegate such approval authority. However, if the GENERAL MANAGER is unavailable and has delegated authority for execution of CONTRACTS, such delegation may also include his/her authority under this paragraph.

**§1.406 Negotiated Procurement**

PURCHASE by competitive negotiation of the items set out in *Public Contract Code* Section 20323 [(i) computers, telecommunication equipment, fare collection equipment, microwave equipment, replacement radio equipment, and other related electronic equipment and apparatus; (ii) specialized rail transit equipment, including, but not limited to, rail cars; and (iii) electric powered transit vehicles] is permitted upon a finding

made by two-thirds (2/3) vote of all members of the BOARD that a competitive bidding procedure will not meet RT's needs and that the product is not available in substantial quantities to the general public. The procedures set out in *Public Contract Code* Section 20323 shall apply to such PURCHASES.

**§1.407 Cooperative Purchase Agreements**

RT may enter into cooperative purchasing agreements for SUPPLIES or SERVICES through Contracts of other public entities without competitive bidding by RT if the bidding procedures followed by a public entity for any such Contract satisfies the bidding requirements set out in this Procurement Ordinance and if the CONTRACT does not violate any federal or state requirements applicable to RT. RT may negotiate the PURCHASE of personal property from any federal, state, or local public agency without compliance with competitive solicitation procedures (*Public Contract Code* § 20209).

**Article V**

**Awarding Procurements and Issuing Change Orders**

**§1.501 Award to Lowest Responsible Bidder**

CONTRACTS involving an expenditure in excess of Five Thousand Dollars (\$5,000) for PUBLIC WORKS, Forty Thousand Dollars (\$40,000) for SUPPLIES, and Fifty Thousand (\$50,000) for NONPROFESSIONAL SERVICES shall be awarded to the responsible bidder submitting the lowest responsive bid.

**§1.502 Award of Professional Service Contracts**

A CONTRACT for PROFESSIONAL SERVICES shall be awarded to the responsible firm whose proposal is deemed responsive and the most advantageous to RT. Neither the GENERAL MANAGER nor the BOARD is required to award the CONTRACT to the proposer offering the lowest price.

**§1.503 Authority to Award Procurements Exceeding \$100,000**

Unless otherwise provided herein, all PROCUREMENTS involving an expenditure exceeding One-Hundred Thousand Dollars (\$100,000) shall be subject to award and/or approval by the BOARD. Said PROCUREMENTS shall be formal written CONTRACTS executed by the BOARD Chair and/or the GENERAL MANAGER on behalf of RT as set out in the authorizing resolution.

**§1.504 Authority to Award Procurements of \$100,000 or Less**

Subject to the availability of funds and the procedures set forth in this Chapter, the GENERAL MANAGER is authorized to award and bind RT to PROCUREMENTS involving a total expenditure of One-Hundred Thousand Dollars (\$100,000) or less.

**§1.505 Authority to Approve Amendments to SUPPLY and SERVICE CONTRACTS**

The GENERAL MANAGER is authorized to bind RT to amendments to BOARD approved SUPPLY or SERVICE CONTRACTS provided that the sum of all such amendments for any single CONTRACT shall not exceed: (1) for a SUPPLY CONTRACT: \$40,000 when added to the initial amount of the SUPPLY CONTRACT or (2) for a SERVICE CONTRACT: the lesser of \$100,000 or fifteen percent (15%) of the initial CONTRACT price.

**§1.506 Authority to Issue Change Orders for Public Works CONTRACTS**

Subject to the availability of funds, the GENERAL MANAGER is authorized to bind RT to change orders for work being performed under a PUBLIC WORKS CONTRACT provided that the change order meets all of the following requirements:

- A. For CONTRACTS originally awarded for a price of ONE HUNDRED THOUSAND DOLLARS (\$100,000) or less, the GENERAL MANAGER shall have the authority to issue change orders, provided that the sum of original CONTRACT price and all such change orders does not exceed ONE HUNDRED THOUSAND DOLLARS (\$100,000). For CONTRACTS originally awarded for a price of greater than ONE HUNDRED THOUSAND DOLLARS (\$100,000) but less than ONE MILLION DOLLARS (\$1,000,000), the GENERAL MANAGER shall have the authority to issue change orders, provided that the sum of all such change orders for any single CONTRACT shall not exceed ten percent (10%) of the original CONTRACT price.
- B. For CONTRACTS originally awarded for a price of less than Ten Million Dollars (\$10,000,000), but more than One Million Dollars (\$1,000,000), the GENERAL MANAGER shall have the authority to issue change orders provided that the sum of all such change orders for any single CONTRACT shall not exceed the following percentages of the original contract amount: ten percent (10%) of the first Million Dollars, plus eight percent (8%) of the balance.
- C. For CONTRACTS originally awarded for a price of Ten Million Dollars (\$10,000,000) or more, the GENERAL MANAGER shall have the authority to issue change orders provided, that the sum of all such change orders for any single CONTRACT shall not exceed

the following percentages of the original contract amount: ten percent (10%) of the first million dollars, plus eight percent (8%) of the next Nine Million Dollars, plus six percent (6%) of the balance.

- D. Notwithstanding the foregoing, any single change order which exceeds One Hundred Thousand Dollars (\$100,000) shall require BOARD approval.
- E. Change orders approved or ratified by the BOARD are not counted in calculating the monetary limitations set forth in A through C above.
- F. Notwithstanding the foregoing, the GENERAL MANAGER shall have authority to issue change orders in such sums as may reasonably be necessary if the GENERAL MANAGER determines a change order is required to:
  1. Prevent interruption of the work which would result in a substantial increase in cost to RT; or
  2. Protect the work, or equipment or materials to be used in the work, human safety, or the environment at or near the site of the work from substantial and immediate danger or injury; or
  3. Protect the work, or equipment or materials to be used in the work, or human safety or the environment at or near the work site where damage or injury has occurred from further or additional damage or injury or deterioration caused by man, nature or other source.

The GENERAL MANAGER shall report such action to the BOARD as soon as reasonably possible but in no event more than thirty (30) days after the action is taken.

**§1.507      Delegation of Authority**

- A. Notwithstanding anything to the contrary herein, the BOARD may by resolution delegate authority to the GENERAL MANAGER to bind RT to a CONTRACT for any amount under the terms and conditions set forth in the resolution delegating such authority.
- B. The GENERAL MANAGER may delegate his or her power under Sections 1.504, 1.505, 1.506 and 1.507 A. to bind RT by CONTRACT. The delegation shall be made in writing and shall specifically designate the RT employee(s) who may act for the GENERAL MANAGER. RT employees who are authorized to act for the GENERAL MANAGER to bind RT by CONTRACT shall be bonded for the faithful performance of their duties in such amounts as the GENERAL MANAGER reasonably determines to be adequate. A copy of the written delegation shall be given to the Clerk to

the BOARD who shall retain it with RT's corporate files. Upon request, the Clerk to the BOARD shall certify the continuing validity of a written delegation made pursuant to this Section.

**§1.508 Award in Case of Identical Bids**

The GENERAL MANAGER or the BOARD shall determine by lot which bid shall be accepted when two (2) or more responsible bidders submit responsive bids in the same amount. (*Government Code* § 53064).

**§1.509 Rejection of Bids/Proposals; Waiver of Minor Irregularities**

The GENERAL MANAGER or the BOARD, as appropriate, may reject any and all bids or proposals and may waive minor irregularities in the bids or proposals. An irregularity in a bid or proposal may be waived if such waiver does not give the bidder/proposer an unfair advantage. If the GENERAL MANAGER or the BOARD rejects all bids or proposals, the GENERAL MANAGER or BOARD shall re-evaluate the cost estimates for the project. The project shall then either be abandoned, a new solicitation issued in the manner prescribed in Article III, or the GENERAL MANAGER or BOARD may award a noncompetitive or sole source PROCUREMENT pursuant to Section 1.405. If a new solicitation is issued and the GENERAL MANAGER or BOARD again rejects all bids or proposals submitted, the GENERAL MANAGER or BOARD may proceed with the project using RT personnel, issue another solicitation, or award a noncompetitive or sole source PROCUREMENT as provided in Section 1.405.

**§1.510 Alternative Award; Failure to Enter Into Contract**

If the bidder or proposer to whom the CONTRACT is awarded fails to enter into the CONTRACT as required, the GENERAL MANAGER or BOARD, as appropriate, may declare the award to that bidder or proposer a nullity and award the CONTRACT to the next lowest responsible and responsive bidder or proposer, re-advertise, or award a noncompetitive or sole source CONTRACT as provided in Section 1.405

**Article VI  
Bid/Proposal Protest Procedure**

**§1.601 Scope of Protest Procedure**

This Article specifies procedures for interested parties to protest the following RT staff actions:

- A. A written notice denying a bidder's or proposer's request for a change in a specification requirement.

- B. A written notice to bidder or proposer that it has been deemed not responsible or non-responsive.
- C. A written recommendation to the Board or General Manager/CEO to award a contract to a particular bidder or proposer.

**§1.602 Effect of Protest on Contract Award or Bid Opening**

When a protest has been properly filed prior to CONTRACT award, the BOARD or GENERAL MANAGER will not award the CONTRACT prior to issuance of a final decision on the protest. When a protest has been properly filed before the opening of bids, bids will not be opened prior to the BOARD'S or GENERAL MANAGER's decision on the protest.

**§1.603 Release of Protest Information**

Materials submitted as a part of the protest resolution process will be available to the public except to the extent that:

- A. The withholding of information is permitted or required by law or regulation; and
- B. The information is designated proprietary by the person submitting the information to RT. If the person submitting material to RT indicates that the material contains proprietary material which should be withheld, a statement advising of this fact shall be affixed to the front page of the material submitted and the alleged proprietary information must be specifically identified in the body of the materials wherever it appears.

**§1.604 Maintenance of Protest Records**

The GENERAL MANAGER, or his or her designee, will maintain a written record of each step taken in every bid or proposal protest. The record will list dates of each event and photocopies of all correspondence sent and/or received by RT pertaining to the protest. These records will be retained for at least three (3) years from the date each protest is resolved.

**§1.605 Inclusion of Protest Procedures in Solicitations**

A copy of this Bid/Proposal protest procedure will either be included in every ITB or RFP issued by RT, or be referenced in every ITB or RFP issued by RT with a statement that a copy of this Bid/Proposal Protest Procedure will be provided immediately to all persons upon request.



**§1.606 Who May File a Protest**

Protests may be filed only by interested parties. Interested parties are defined as actual or prospective bidders or proposers for an RT CONTRACT and subcontractors or suppliers at any tier whose direct economic interest would be affected by an award or failure to amend a CONTRACT, a provision of the specifications, or a bid or proposal submitted to RT by a prime contractor, or by the interpretation of the provisions of such documents. Submission of a bid or sub-bid protest will be deemed a waiver of any protest to any provision of the specifications which is not the subject of the protest, and entitle the bidder/proposer or sub-bidder/sub-consultant only to protest any subsequent recommendations/decisions of RT staff, the GENERAL MANAGER or the BOARD to disqualify the bidder/proposer, reject its bid/proposal, or award the CONTRACT.

**§1.607 Time For Filing a Protest**

Protest to any particular provision of the specification must be received by RT no later than 10 working days prior to the date established in the ITB or RFP as the deadline for submittal of bids or proposals. Protests of a determination that a bidder or proposer is not responsible or non-responsive must be received by RT no later than 10 working days from the date of the letter providing notice of the determination. Protests of a staff recommendation to the General Manager/CEO or the Board pertaining to the award of a contract must be received by RT no later than 10 working days from the date of the letter providing notice of the staff recommendation.

**§1.608 Form For Filing a Protest**

Protests must be addressed to the Regional Transit GENERAL MANAGER, 1400 - 29th Street (Box 2110), Sacramento, CA 95816 (95812-2110). Protests must be in writing and contain a statement of the ground(s) for protest. At least ten (10) copies of the protest must be submitted by the protestor in the time and manner specified in this Article. The GENERAL MANAGER, or his/her designee, will provide notice, by telephone or by letter, to all bidders or proposers known to RT for the CONTRACT which is the subject of the protest. Such notice will state that a protest has been filed with RT and identify the name of the protestor. The notice shall be given not more than five (5) working days after receipt of a properly filed protest. The notice will state that interested parties will receive further information relative to the protest only if they submit a written request to the GENERAL MANAGER.

**§1.609 RT's Preliminary Response to a Protest**

All RT responses to a protest will be issued in writing. The GENERAL MANAGER will designate an RT staff person who, not more than ten (10)

working days after receipt of a properly filed protest, will prepare and mail the following information to the protestor and all interested parties requesting such information:

- A. A preliminary staff response to the protest including a brief explanation of the rationale supporting the response; and
- B. The proposed time, date and place of the meeting at which the protestor and RT staff will attempt to resolve the protest, if such a meeting is appropriate in the judgement of the GENERAL MANAGER.

Within five (5) working days after the meeting or, if no meeting is scheduled, within 10 calendar days after the date RT's response was mailed, the protestor shall give the GENERAL MANAGER written notice that the protest is withdrawn or, alternatively, that the protestor requests further consideration of the protest. If the protestor fails to deliver such notice to the office of the GENERAL MANAGER within five (5) working days after the meeting, the protest shall be deemed withdrawn.

#### **§1.610 Further Investigation of Protest**

If a protest is not withdrawn pursuant to Section 1.609, the GENERAL MANAGER or his/her designee will further investigate the protest. The GENERAL MANAGER may contract for third-party consulting services to investigate a protest, when necessary. The GENERAL MANAGER may negotiate with the protestor and other interested parties to share the cost of such consulting services. As part of the investigation, the GENERAL MANAGER or his/her designee will establish reasonable times when RT, the protestor, and other interested parties will exchange all documents and arguments relevant to the protest.

Upon written request of the protestor, the GENERAL MANAGER may forward the protest and RT staff response to the BOARD (if the BOARD is the awarding authority) for decision without further investigation of the protest by the GENERAL MANAGER. If the GENERAL MANAGER elects to proceed without further investigation of the protest, the prior RT staff response shall be the recommendation of the GENERAL MANAGER and the GENERAL MANAGER will proceed as set out in Section 1.612.

#### **§1.611 General Manager's Recommendation or Decision**

Following investigation, the GENERAL MANAGER will distribute to the protestor and all interested parties requesting such information, either a written decision, if the GENERAL MANAGER is the awarding authority, or a written recommendation that the GENERAL MANAGER will submit to the BOARD to resolve the protest, if the BOARD is the awarding authority. The GENERAL MANAGER's written decision is final. Upon issuance of the GENERAL MANAGER's decision, any interested party may appeal to

a court of competent jurisdiction, if such forum exists, or file a protest directly with FTA if any resulting contract is funded by FTA. Within five (5) working days after the date of the letter transmitting the GENERAL MANAGER's recommendation on the protest, the protestor must notify the GENERAL MANAGER in writing whether that the protest is withdrawn or that the protestor requests the protest continue to the BOARD for decision. If the protestor fails to submit such a notice, the protest shall be deemed to be withdrawn and all proceedings shall cease.

#### **§1.612 Submittal of Protest to the Board**

If the protest is continued to the BOARD for resolution, the protestor, and all interested parties requesting such information, will be notified of the date, time and place of the BOARD's hearing at which the protest will be considered; and the date that the protestor and other interested parties must submit written comments with respect to the recommendation. The date established by the GENERAL MANAGER for submittal of comments by the protestor and other persons will allow a reasonable period for rebuttal and may vary according to the complexity of the particular protest.

A copy of the agenda package sent to BOARD members prior to a protest hearing will be sent to the protestor and sent or made available to any interested person at least five (5) working days before the hearing and will include the GENERAL MANAGER's recommendation and all written comments received from the protestor and other persons within the submittal period. If the GENERAL MANAGER has revised his/her recommendation since its distribution, a written description of the new intended decision and the reason(s) for revision will be sent to the protestor and sent or otherwise made available to any interested person.

#### **§1.613 Board of Directors' Decision**

At the BOARD meeting scheduled for the protest hearing, the BOARD, in its discretion, may conduct the hearing and/or continue the hearing to a subsequent BOARD meeting, or hire an impartial hearing officer to conduct a hearing and prepare a written recommended decision including findings of fact.

At the hearing, the BOARD Chair or hearing officer may announce procedural rules including those that are reasonably necessary to preclude repetitious or irrelevant testimony. RT staff, the protestor, and any interested person may present evidence relating to the protest. If either party arranges for the use of a court reporter to transcribe the hearing, the other party shall share the cost of transcribing the hearing if it requests a copy of the transcript.

If an impartial hearing officer conducts the hearing, the GENERAL MANAGER will provide written notice to the protestor, and all interested parties requesting such information, of the date, time and place of the RT

BOARD meeting at which the hearing officer's recommendation will be considered for adoption, and the date that the protestor must provide written comments for submittal to the BOARD. A copy of the documents pertaining to the protest that is provided to the BOARD with its meeting agenda will be sent to the protestor at least five (5) days before the meeting.

In rendering its decision on the protest, the BOARD, in its discretion, may adopt the decision recommended by the GENERAL MANAGER, adopt the written recommendation and findings of fact prepared by a hearing officer, or adopt a separate decision. The protestor and all interested parties will be notified in writing of the final decision of the BOARD within thirty (30) calendar days from the date of the BOARD meeting. Failure of the BOARD to reach a final decision or failure to send the written notification of the BOARD's decision within the prescribed time frame are grounds for any interested party to appeal to a court of competent jurisdiction, if such forum exists, or to file the protest directly with FTA for federally-funded projects.

#### **§1.614 FTA Protest Appeal Procedure**

A protester must file a protest with RT in accordance with this Article and the Board must deny that protest or fail to timely render a decision on the protest before a bidder or proposer may seek review by Federal Transit Administration, U.S. Department of Transportation (FTA), unless otherwise permitted under the FTA Third Party Contracting Circular (C.4220.1F, Chapter VII, or any successor thereto), and/or by a court of competent jurisdiction. All Board decisions, including a decision on a protest, are final and therefore appealable to FTA or a court of competent jurisdiction if such fora exist.

FTA will accept a protest when a protester asserts that RT: (1) does not have a written protest procedure; (2) has failed to follow its written protest procedure; (3) has failed to review a complaint or protest. In addition, the FTA may accept a protest alleging a substantive violation of federal law or regulations if the FTA determines, in its discretion, that the appeal involves issues important to FTA's overall public transportation program. The FTA will refer alleged violations of state or local law or regulations to the state or local authority having proper jurisdiction.

The protester must deliver its appeal to the FTA Regional Administrator for the region administering its project or the FTA Associate Administrator for the program office administering its project within 5 working days of the date when the protester has received actual or constructive notice of the recipient's final decision. Likewise, the protester must provide its appeal to the FTA Regional Administrator for the region administering its project or the FTA Associate Administrator for the program office administering its project within 5 working days of the date when the protester has identified other grounds for appeal to FTA. For example, other grounds for appeal

include the recipient's failure to have or failure to comply with its protest procedures or failure to review the protest.

Requests for FTA review must be filed with FTA Region IX Administrator, and protesters must provide a copy to RT.

**§1.615 Waiver of Damages**

By submitting a bid/proposal or sub-bid/sub-proposal, each bidder/proposer and sub-bidder/sub-proposer agrees that in the event that it submits any protest to the terms of the specifications or to any subsequent decision of RT staff, GENERAL MANAGER or BOARD, RT retains the discretion to reject all bids/proposals or to make no decision whatsoever. If the RT GENERAL MANAGER or BOARD rejects all bids/proposals for any reason, or overrules any protest and awards the CONTRACT, the protesting entity waives all claims, rights and causes of action for loss of anticipated profits from the CONTRACT or any subcontract, regardless of whether RT=s decision is subsequently invalidated by a court of law. RT shall be deemed to have relied to its detriment on such waiver in deciding either to reject all bids/proposals or to award the CONTRACT. Any attempted reservation of rights waived herein shall be grounds to reject a bid as nonresponsive.

**Article VII  
Debarment**

**§1.701 Scope of Debarment Procedure**

This Article specifies procedures for RT's debarring potential bidders or proposers from award of an RT CONTRACT. The provisions set forth in 49 *Code of Federal Regulations* Part 29 are hereby incorporated by reference. "Debarment" is defined as an action which excludes a firm from contracting directly with RT or participating as a subcontractor for an RT CONTRACT.

**§1.702 Violations Subject to Debarment**

A contractor who commits, based on information sufficient to support a reasonable belief, any of the following acts or omissions is subject to an RT debarment action:

- A. Any action set forth in 49 *Code of Federal Regulations* Section 29.305; or

- B. Willful failure to perform or violation of any term or condition of a CONTRACT with RT, including violation of any federal or state statutory or regulatory provision.

**§1.703****Debarment Procedures**

- A. If a contractor is alleged to have committed any one of the violations set forth in Section 1.702, the GENERAL MANAGER shall give notice in writing by certified mail, return receipt requested, of the reasons for the proposed debarment. The notice shall contain the following information:
1. That debarment is being considered;
  2. Reasons for the proposed debarment;
  3. Conduct or transaction(s) upon which the action is based;
  4. Potential effect of a debarment;
  5. Proposed scope of debarment;
  6. Proposed period of debarment; and
  7. Opportunity to contest proposed debarment.
- B. The contractor shall have thirty (30) days from the date of receipt of the notice of proposed debarment to submit any written objections. After consideration of the contractor's written response, the GENERAL MANAGER shall provide written notice by certified mail, return receipt requested, of the time, date and place of a meeting with the GENERAL MANAGER, or his/her designee, to discuss the proposed debarment action.
- C. In actions not based upon a conviction or civil judgment, if the GENERAL MANAGER finds that the contractor's response raises a dispute over facts material to the proposed debarment, the contractor shall be afforded an opportunity to appear with a representative before the GENERAL MANAGER, or his/her designee, submit evidence, present witnesses, and confront any witness RT presents.
- D. Within thirty (30) days after the meeting, the GENERAL MANAGER shall provide written notice by certified mail, return receipt requested, of the GENERAL MANAGER'S final debarment decision. Within thirty (30) days after receipt of the GENERAL MANAGER'S final decision, the contractor shall give the GENERAL MANAGER written notice of an appeal of the debarment decision. Failure to submit a written notice of appeal shall constitute consent

to the debarment and the GENERAL MANAGER'S decision shall be final as of the date on the notice.

- E. If a written appeal is submitted, the GENERAL MANAGER shall provide written notice by certified mail, return receipt requested, of the date, time and place of the BOARD meeting at which the appeal of the GENERAL MANAGER'S debarment decision will be considered and the date that the contractor must submit written comments for submittal to the BOARD. The BOARD of Director's debarment agenda package shall be sent to the contractor at least five (5) days before the meeting.
- F. At the BOARD meeting, the BOARD may elect to receive and file the GENERAL MANAGER'S decision, set the matter for hearing at a subsequent BOARD meeting, or hire an impartial hearing officer to conduct a hearing and prepare a written decision, including findings of fact.
- G. Within thirty (30) days after the meeting, the GENERAL MANAGER shall provide written notice by certified mail, return receipt requested, of the BOARD'S action. If the BOARD receives and files the GENERAL MANAGER'S decision, the debarment decision shall be final as of the date on the written notice of the BOARD'S action.
- H. If the BOARD elects to hold a hearing or to hire an impartial hearing officer to conduct a hearing, RT staff and any other interested person may present evidence relating to the appeal of the GENERAL MANAGER'S decision at the hearing. At the beginning of the hearing, the BOARD Chair or hearing officer may announce time limits on testimony and any other procedural rules which, in his/her opinion, are reasonably necessary to preclude repetitious or irrelevant testimony. If either party arranges for the use of a court reporter to transcribe the hearing, the other party shall share the cost of transcribing the hearing if it requests a copy of the transcript.
- I. If an impartial hearing officer conducts the hearing, the GENERAL MANAGER shall provide written notice by certified mail, return receipt requested, of the recommendation of the hearing officer, the date, time and place of the BOARD meeting at which the hearing officer's recommendation will be considered for adoption, and the date that the contractor must provide written comments for submittal to the BOARD. A copy of the BOARD of Director's debarment agenda package shall be sent to the contractor at least five (5) days before the meeting.
- J. In rendering its decision on the debarment, the BOARD may elect to receive and file the GENERAL MANAGER'S decision, adopt the

written recommendation and findings of fact prepared by the hearing officer, or adopt a separate decision. RT shall provide contractor with written notice of the BOARD'S decision by certified mail, return receipt requested, within thirty (30) days after the BOARD meeting. All BOARD decisions are final as of the date on the written notice of the BOARD'S action.

**§1.704 General Manager's/Board of Directors' Decision**

- A. Debarment shall be imposed by the GENERAL MANAGER or BOARD only when it finds, based on a preponderance of the evidence, that the contractor committed one of the violations referenced in Section 1.702 and that debarment is in the best interest of the public and for the protection of RT. The seriousness of the contractor's acts or omissions and any mitigating factors shall be considered in making any debarment decision.
- B. Debarment constitutes debarment of all divisions or other organizational elements of the contractor, unless the debarment decision is limited by its terms to specific divisions, organizational elements or commodities.
- C. In imposing debarment, the GENERAL MANAGER or BOARD shall specify the scope and term of the debarment. Debarment shall not exceed three (3) years, unless circumstances warrant a longer period.
- D. In order to protect the interest of RT, the period of debarment may be extended by the GENERAL MANAGER or the BOARD after compliance with the procedures set forth in Section 1.703. The debarment period may be suspended and/or the scope of the debarment may be modified at the direction of the GENERAL MANAGER or the BOARD after submittal by the contractor of a written request, including documents which support such modifications.

**§1.705 Affect of Debarment on Submittal of Bids or Proposals**

If the GENERAL MANAGER or BOARD acts to debar a contractor, that contractor shall be prohibited from submitting any bids or proposals for a PROCUREMENT as a prime contractor or subcontractor during the period of debarment, unless the debarment is limited in scope and the contractor is authorized under the terms of the debarment to submit a bid or proposal for the particular CONTRACT.

A contractor that has been debarred or suspended by the federal government shall be prohibited from submitting any bids or proposals for a federally-funded PROCUREMENT during the period of federal debarment or suspension. A contractor that has been debarred or suspended by the



state shall be prohibited from submitting any bids or proposals for a state funded PROCUREMENT during the period of state debarment or suspension.

If RT receives an unauthorized bid or proposal from a contractor debarred by RT and/or the federal or state government, the bid or proposal shall be returned and such bid or proposal shall not be evaluated or considered in determining the lowest responsive and responsible bidder or the highest ranked proposer.

## **CHAPTER 2**

### **DISPOSAL OF SURPLUS PERSONAL PROPERTY**

#### **§2.101 Authority for Disposal of Surplus Property**

All RT surplus personal property, including any lost or unclaimed property shall be disposed of according to the provisions of this Article.

#### **§2.102 Procedure for Disposal of Surplus Property**

The GENERAL MANAGER may declare as surplus any personalty that is no longer necessary or useful to RT's operations or activities. The GENERAL MANAGER may dispose of surplus property to the highest bidder by sale at a public auction, by sealed bids, or by incidental sale. Notice of public auction or sealed bid submittal must be given by publication once in a newspaper of general circulation no later than ten (10) calendar days prior to such auction or bid submittal date.

Said notices shall specify the time, place and purpose of such auction or bid submittal and shall specify the following, where appropriate:

- A. The percentage of the bid price that the successful bidder must deposit at the time of the auction or bid submittal;
- B. The time by which the remainder of the bid price must be paid;
- C. The time by which the successful bidder must remove the PURCHASED item(s) from the premises;
- D. The minimum bid price;
- E. Reservation of RT's right to reject any and all bids received for any item or to withdraw any or all items offered for sale prior to bid opening.

If the GENERAL MANAGER rejects any and all such bids so received, he/she shall not thereafter sell such property at a price less than the highest bid received until the property is first offered at the highest bid

price to the person who submitted the highest bid. If such person refuses to PURCHASE the item, the GENERAL MANAGER may sell such property at a lesser price.

**§2.103 Incidental Sale of Certain Items**

When it is determined by the GENERAL MANAGER that any item of surplus property is scrap or salvage material, is perishable, or has been offered for public sale by auction or sealed bids and no offer to PURCHASE has been received, or the property has no market value, the GENERAL MANAGER may sell the item by incidental sale. Prior to such sale, the GENERAL MANAGER shall inform the BOARD. For the purposes of this Section, the term "incidental sale" shall mean the sale of any item at a price, time and place to be determined by the GENERAL MANAGER, to any buyer who is willing to pay the price requested, without first advertising such sale or calling for the receipt of bids.

When the item declared to be salvage or scrap material still has a value as reflected on RT books, that value shall be the minimum sale price, unless a lower price is authorized by the BOARD.

When the GENERAL MANAGER has complied with Sections 2.102 or 2.103, and the item remains unsold, the GENERAL MANAGER shall again comply with Section 2.102, unless the item is scrap, salvageable material, is perishable, or has no market value.

**§2.104 Sale to Another Public Entity**

Notwithstanding anything to the contrary in this Chapter, the BOARD may dispose of surplus property by sale to another public entity on such terms and conditions as are agreed upon by RT and the public entity. (*Public Contract Code § 20209*)

**§2.105 Limitation Upon Employees of RT**

No employee, officer, or their agent, or member of their family shall be permitted to PURCHASE any RT property by incidental sale. Nothing herein, however, shall prevent such employee, officer, or their agent or members of their family from purchasing RT property through public auction or sealed bids.

**SECTION 3:** This Ordinance shall become effective thirty (30) days following its adoption.

**SECTION 4:** Within fifteen (15) calendar days after adoption, the RT Secretary is hereby directed to publish this Ordinance, in full, in a newspaper of general circulation published within RT's activated boundaries.

Passed and adopted at a regular meeting of the Sacramento Regional Transit District on this \_\_\_\_ day of \_\_\_\_\_, 2009, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

\_\_\_\_\_  
STEVE COHN, Chair

A T T E S T:

MICHAEL R. WILEY, Secretary

By: \_\_\_\_\_  
Cindy Brooks, Assistant Secretary

RESOLUTION NO. 09-04-\_\_\_\_\_

Adopted by the Board of Directors of the Sacramento Regional Transit District on this date:

April 13, 2009

**AMENDING AND RESTATING TITLE II OF THE SACRAMENTO REGIONAL  
TRANSIT DISTRICT'S ADMINISTRATIVE CODE.**

WHEREAS, pursuant to Government Code Section 87300, the Sacramento Regional Transit District has adopted a Conflict of Interest Code; and

WHEREAS, the Federal Transit Administration (FTA) has recommended changes to the Conflict of Interest Code to ensure that agents of RT do not engage in prohibited activities.

NOW THEREFORE, BE IT HEREBY RESOLVED BY THE BOARD OF DIRECTORS OF THE SACRAMENTO REGIONAL TRANSIT DISTRICT AS FOLLOWS:

THAT, Resolution 08-03-0030 is hereby repealed.

THAT, Title II of the Sacramento Regional Transit District Administrative Code pertaining to conflicts of interest and ethics is hereby approved and adopted as follows:

**TITLE II**

**CONFLICT OF INTEREST AND CODE OF ETHICS**

**CHAPTER 1**

**CONFLICT OF INTEREST CODE FOR THE  
SACRAMENTO REGIONAL TRANSIT DISTRICT**

**Article 1**

**Legislative Requirement**

**§2-1.101     Statutory Authority**

The Political Reform Act, Government Code Sections 81000, *et seq.*, requires state and local government agencies to adopt and promulgate Conflict of Interest Codes. The Fair Political Practices Commission (FPPC) has adopted a regulation, 2 Cal. Code of Regulations, Section 18730, which contains the terms of a standard Conflict of Interest Code, which can be incorporated by reference, and which may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act after public notice and hearing.

## §2-1.102     Incorporation of FPPC Regulations

The terms of Title 2 of Division 6 of the California Code of Regulations, Section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission, hereinafter referred to as FPPC Code, along with the attached Appendix A in which officials, employees and consultants are designated and disclosure categories are set forth, are hereby incorporated by reference and constitute the Conflict of Interest Code of the Sacramento Regional Transit District (RT).

## §2-1.103     Filing Requirements

Pursuant to Section 18730(b) of the FPPC Code, designated employees as set forth in Appendix A shall file assuming office statements, annual statements, and leaving office statements of economic interests with the RT. Assuming office statements for officials and employees shall include income received during the 12 months prior to the date of assuming office. Upon receipt of the statements of members of the RT Board of Directors (Board) and the General Manager, RT shall make and retain a copy and forward the original of these statements to the Fair Political Practices Commission. In the case of all other employees, agents and consultants required to file statements of economic interest with RT, the statements shall be filed with the filing officer and shall be retained in the official records of RT.

If an RT agent may either: (1) make a governmental decision on behalf of RT to (a) enter into, modify or renew a contract, (b) grant approval of a contract in which RT is a party, or of the specifications for such contract, (c) grant approval to a plan, design, report, study or similar item, or (d) adopt or approve policies, standards, or guidelines for RT; or (2) serve in a staff capacity and in that capacity perform the same or substantially all the same duties for RT that would otherwise be performed by an RT employee designated in Appendix A, that agent shall file the statements required under this Section.

## **CHAPTER 2**

### **CODE OF ETHICS**

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#### **Article 1 Inimical Activities**

## §2-2.101     Purpose

The purpose of the RT Code of Ethics is to improve government efficiency, assure equal treatment of equal claims, instill public confidence in the decisions of RT, prevent the use of public office for private gain, and to preserve the integrity of government policy-making institutions by assuring through these regulations that RT officers, employees, and agents are adhering to the self-evident truth that no person can faithfully serve two masters.

## §2-2.102     Incompatible Activities

- A. No RT Board member, employee or agent shall engage in any employment, activity or enterprise for compensation which is inconsistent, incompatible, in conflict with, or inimical to the duties, functions or responsibilities which he or she possesses as

the Board member, employee, or agent of RT. Such officer, employee or agent shall not perform any work, service or counsel for compensation outside of his or her duties for RT when any part of his or her efforts would be subject to approval of any other officer, employee, board or committee of RT, unless otherwise approved in the manner set forth below. The Board shall, from time to time, set forth specific activities which it deems to be inconsistent, incompatible or in conflict with the duties of Board members, employees or agents under its jurisdiction. The Board may adopt rules governing disciplinary action for violation of the provisions of this section.

- B. Employment, activities, and enterprise for compensation are prohibited if any of the following is involved:
1. Use of RT's time, facilities, equipment and supplies, uniform, prestige or influence for private gain or advantage.
  2. Receipt or acceptance of money or other consideration from anyone other than RT for the performance of an act which the officer, employee, or agent, if not performing such act, would be required or expected to render in the regular course or hours of RT employment or as a part of his or her duties as an RT officer, employee or agent.
  3. The performance of an act in other than the individual's capacity as an officer, employee, or agent which act may later be subject directly or indirectly to the control, inspection, review, audit or enforcement of any other officer, employee, or employee of RT.
  4. Time demands that would render performance of the individual's duties as an RT officer or employee less efficient. (Source: Government Code Section 1126).
- C. An RT officer, employee or agent shall disclose possible incompatible activities to his/her supervisor or to an attorney in the office of the Chief Legal Counsel.

§2-2.103 Disqualification of Former Officers and Employees in Matters Connected With Former Official Responsibilities

Due to the appearance of favoritism or conflict of interest and to avoid possible protests, it is the policy of RT to discourage former officers and employees of RT, within one (1) year after RT employment has ceased, from personally appearing before the RT Board or any RT Committee or any department, as an agent for anyone other than RT in connection with any proceeding, application, request for ruling or other determination, contract, claim, controversy or other matter which was under his/her official responsibility as an officer or employee of RT at any time within one (1) year prior to the termination of such responsibility.

- A. As used herein, the phrase "official responsibility" means the authority, whether intermediate or final, whether exercisable or with others and whether exercisable personally or through subordinates to approve, disapprove, or make recommendations for approval or disapproval to the RT Board or RT Committee, in connection with any proceeding, application, request for ruling or other determination, contract, claim, controversy or other matter before RT.

- B. As used herein, "officer" means the persons designated under California Public Utilities Code Section 102160, exclusive of RT Board members.
- C. Members of the RT Board and the General Manager/CEO are covered by the provisions set forth under Government Code Section 87406.3.

§2-2.104     Gratuities and Gifts

The Political Reform Act and the regulations of the Fair Political Practices Commission prohibit designated employees and Board members from accepting gifts or anything of value aggregating more than a specific dollar amount from a single source pursuant to Government Code Sections 89503(a) and (c).

FTA requires RT to prohibit employees and officers, including Board members, from soliciting, accepting or agreeing to accept gratuities, favors or anything of more than a nominal intrinsic value from a contractor or potential contractor. For purposes of this Code of Ethics, contractor shall include anyone acting on behalf of the contractor including the contractor's officers and agents. For purposes of this Code of Ethics, nominal intrinsic value shall mean: 1) anything having a value of \$35.00 or less per year; or 2) any perishable item (flowers or food) of any value. Prepared meals are subject to the \$35.00 limit.

All employees and Board members shall comply with applicable state and FTA prohibitions. Employees and Board members must either refuse or return prohibited items.

**Article 2**  
**Interest in Contracts**

§2-2.201     Prohibition of Contract Made in Official Capacity

The terms of Government Code Section 1090 et seq. as they may be amended from time to time are hereby incorporated into this Code of Ethics by this reference. Pursuant to Government Code Sections 1090 et seq., no member of the Board, nor any RT employee or agent shall be financially interested in any contract made by them, recommended to be made by their superiors, or to be administered by them in their official capacity, or by any body or board of which they are members. No Board members, RT employees or agents shall be purchasers at any sale or vendors at any purchase made by them in their official capacity. Certain interests are not prohibited; permitted interests are set forth at Government Code sections 1091 and 1091.5. No Board member, RT employee, or agent shall accept any commission for the placement of any contract on behalf of RT.

§2-2.203     Compliance with the Political Reform Act

All members of the Board and all RT employees shall comply with the provisions of the Political Reform Act (Government Code sections 87100 et seq.). Under the Political Reform Act, members of the Board and RT employees are prohibited from influencing, making or participating in making any RT decision when the individual knows or should know that he/she has a financial interest in the decision, unless the individual is a Board member and is legally required to participate under Government Code section 87101.

§2-2.204     Contracts Made in Violation of These Provisions are Voidable

Every contract made in violation of any of the provisions of this Code may be avoided at the instance of any party except the officer interested therein. No such contract may be avoided because of the interest of an officer therein unless such contract is made in the official capacity of such officer, or by a board or body of which he or she is a member. (Source: Government Code Section 1092).

§2-2.205      Dealing in Evidence of Public Indebtedness

RT financial officers, supervisors of the financial department, employees of the financial department and their clerks shall not purchase or sell, or in any manner receive for their own or any other person's use or benefit any RT warrants, script, orders, demands, claims, or other evidences of indebtedness against the RT . This section does not apply to evidences of indebtedness issued to or held by such officer, clerk or employee for services rendered by them, nor to evidences of funded indebtedness of the RT. (Source: Government Code Section 1093).

§2.2-206      Payment of Warrants or Other Evidences of Indebtedness

Officers charged with the disbursement of RT public monies shall not pay any warrant or other evidence of indebtedness against the RT when it has been purchased, sold, received, or transferred contrary to any of the provisions of this Article. (Source: Government Code Section 1095).

§2.2-207      Disclosure or Use of Confidential Information for Pecuniary Gain

The terms of Government Code Section 1098, as it may be amended from time to time, are hereby incorporated into this Code of Ethics by this reference. Pursuant to Government Code Section 1098, no officer or employee may willfully and knowingly disclose for pecuniary gain, to any other person, confidential information acquired by him or her in the course of his or her official duties; nor may any officer or employee use any such information for the purpose of pecuniary gain.

However, this section shall not apply to any disclosure made to any law enforcement agency, nor to any disclosure made pursuant to Sections 10542 and 10543 of the Government Code.

§2-2.208      Securities; Interest of Officer

Notwithstanding any other provision of this Article to the contrary, a Board member or any officer or employee of RT shall not be deemed interested in a contract for the sale of any public securities issued by RT; provided, that such public securities are sold at public sale to the highest bidder after notice inviting bids has been published as required by law under which said bonds are issued or for one time in a newspaper of general circulation not less than five (5) days prior to the date of such sale. As used herein "public securities" means any issue of bonds, notes, warrants, or other evidences of indebtedness and the interest coupons if any, attached thereto, issued by RT. (Source: Government Code Section 1100 and 1102).



§2-2.209     Violations; Charges

Any person alleged to have violated the provisions of this Chapter shall receive a charge, in writing, specifying the applicable code section and the particular facts of the violation. If the person alleged to be in violation is the General Manager, Chief Legal Counsel or a Board member, except the Chairman, the charge shall be signed by the Chairman of the Board . If the Chairman is alleged to be in violation, the charge shall be signed by the Vice-Chairman. If the person alleged to be in violation is an employee, the charges shall be signed by the General Manager.

§2-2.210     Hearing

Within five (5) days after receipt of the charge, the person alleged to be in violation may request a hearing. For Board members, the General Manager and the Chief Legal Counsel, the hearing shall be before the Board . For any employee or agent not mentioned above, the hearing shall be before the General Manager. Said hearing shall be held within ten (10) days of the request for same. Said hearing shall be held in accordance with the Uniform Arbitration Procedures Act. The burden of proof shall be beyond a reasonable doubt. Findings shall be prepared at the completion of the proceedings.

§2-2.211     Remedies

In addition to the remedies provided by Government Code Section 1097, in the event the individual is found to have violated the provisions of this chapter, the remedies shall include:

- A. For Board members:
  - 1. Censorship by fellow Board members; or
  - 2. A recommendation for removal by the Board to the appointing authority.
  
- B. For the General Manager, Chief Legal Counsel, and other staff members;
  - 1. Formal reprimand; or
  - 2. Suspension without pay; or
  - 3. Termination.

**Article 3**  
**Organizational Conflicts of Interest**

§2-3.101     Definitions

The following capitalized words and phrases whenever used in this Article shall be construed as defined below:

- A. ORGANIZATIONAL CONFLICT OF INTEREST. An organizational conflict of interest exists where, because of other activities, financial interests, relationships, or contracts: (1) a contractor is unable, or potentially unable, to render impartial assistance or advice to RT; (2) the contractor's objectivity in performing the contract work is or might be impaired; or (3) a contractor has an unfair competitive advantage. Organizational Conflicts of Interest can

cause two distinct problems: Bias and Unfair Competitive Advantage.

- B. BIAS. Bias occurs when a contractor is placed in a situation where it may have an incentive to distort its advice or decisions.
- C. UNFAIR COMPETITIVE ADVANTAGE. Unfair competitive advantage occurs when one contractor has information not available to other contractors in the normal course of business. For example, an unfair competitive advantage would occur when a contractor developing specifications or work statements has access to information that RT has paid the contractor to develop, or information which RT has furnished to the contractor for its work, when that information has not been made available to the public. Because this information enhances the contractor's competitive position in the procurement process, it represents an unfair competitive advantage over the other offerors.

#### §2-3.102 Prohibition of Contracts Resulting in Organizational Conflict of Interest

No contract may be awarded by the RT Board of Directors or any RT employee if the contract award would result in an Organizational Conflict of Interest due to a real or apparent potential for Bias or an Unfair Competitive Advantage.

The existence of a real or apparent Organizational Conflict of Interest will be determined on a case-by-case basis, taking into account all relevant facts to determine whether (1) there is a real conflict of interest or (2) a reasonable person would believe there appears to be a conflict. The following are examples of situations that may result in a prohibited Organizational Conflict of Interest:

- Providing both design and construction services for the same project or portion of a project.
- Providing both design and construction management services for the same project or portion of a project.
- Providing both design and project control services for the same project or portion of a project.
- Providing both construction and construction management services for the same project or portion of a project.
- Providing both project control and construction services for the same project or portion of a project.
- Preparing an Environmental Impact Report or Statement while, at the same time, providing design (other than Preliminary Engineering necessary to complete the EIR/S) or construction services that may be affected by the outcome of the EIR/S.
- Bidding or proposing for a project if the consultant helped develop or draft the specifications, requirements, statements of work, invitations for bids and/or requests for proposals.

#### §2-3.304 Avoiding Organizational Conflicts

Procurements shall be structured, when possible and practicable, to avoid or mitigate Organizational Conflicts of Interest. Unfair Competitive Advantage may be avoided by ensuring that all bidders or proposers have access to all relevant information that will affect the bid, proposal, or the conduct of the work.

In selecting a contractor or consultant to assist in: procurement evaluation; providing advice on competing approaches; contract for technical review and project oversight services; or developing a scope of work or specifications for a Contract, RT shall consider whether the contractor or consultant will be prohibited from participating in the Contract and, if so, shall inform the contractor or consultant of the prohibition at the earliest opportunity.

Where appropriate and otherwise permitted by law, a procurement may be divided to afford maximum participation by a broad range of consultants and contractors, while eliminating the potential for Bias.

§2-3.303      Disclosure of Organizational Conflicts of Interest

When conducting a procurement, if RT believes that (1) due to work on a prior or current contract, certain bidders or proposers must be precluded from participation or (2) participating in the procurement will potentially affect the ability of the successful proposer or bidder to participate in future contracts due to a real or apparent Organizational Conflict of Interest, RT will inform all prospective proposers and bidders of these limitations and restrictions as part of the procurement process. In addition, RT will require all proposers or bidders to inform prospective subcontractors that the subcontractors also could be subject to these limitations and restrictions.

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STEVE COHN, Chair

A T T E S T:

MICHAEL R. WILEY, Secretary

By: \_\_\_\_\_  
Cindy Brooks, Assistant Secretary

## APPENDIX A

### CONFLICT OF INTEREST CODE OF THE SACRAMENTO REGIONAL TRANSIT DISTRICT

<u>Designated Positions</u>	<u>Disclosure Categories</u>
Accessible Services Administrator	2, 3
Accessible Services Manager	3
Accounting Manager	2, 3
AGM of Engineering & Construction	1
AGM of Marketing & Communications	1
AGM of Planning & Transit System Development	1
Assistant Project Manager	2, 3
Attorney I	2-6
Attorney II	2-6
Attorney III	2-6
Benefits Administrator	3, 4
Budget Manager	2, 3
Buyer	3
Chief Administrative Officer	1
Chief Engineer	2, 3
Chief of Facilities & Business Support Services	1
Chief Legal Counsel	1
Chief Litigation Counsel	1
Chief Operating Officer	1
Chief of Operations Support	2, 3
Compliance & Quality Assurance Auditor	2, 3
Community & Governmental Affairs Manager	1
Community Bus Services (SBC) Manager	2, 3
Construction Manager	2, 3
Consultant (not those involved in the investment of public funds)	*
Customer Services Administrator	3
Customer Services Supervisor	3
Director of Accessible Services & Customer Advocacy	2, 3
Director of Civil & Track Design	2, 3
Director of Community Bus Services	2
Director of Facilities	2-6
Director of Information Technology	2, 3
Director of Light Rail	2, 3
Director of Maintenance	2, 3
Director of Planning	2, 3
Director of Program Control	2, 3
Director of Project Management	2, 3
Director of Real Estate	2, 3, 5, 6
Director of Safety	3, 4
Director of Scheduling	2, 3
Director of Systems Design	2, 3
Director of Transportation	2, 3

## SACRAMENTO REGIONAL TRANSIT DISTRICT

<u>Designated Positions</u>	<u>Disclosure Categories</u>
Employee Programs manager	2, 3
Employee Relations Manager	3, 4
Enterprise Resource & Database Manager	3
Equal Employment Opportunity Administrator	3, 4
Human Resources Administrator	3
Human Resources Manager	3, 4
Manager of Business Analysis & Reporting	2, 3
Materiel Management Supervisor	3
Office of Management & Budget Director	1
Planning Manager	2, 3
Policy & Program Manager	1
Procurement & DBE Administrator	3
Procurement Services Manager	2, 3
Purchasing & Materiel Administrator	3
Quality Assurance Administrator	3
Real Estate Administrator, Acquisition, & Joint Development	2, 3, 5, 6
Real Estate Administrator, Asset Management	2, 3, 5, 6
Revenue Manager	2, 3
Senior Architect	2, 3
Senior Customer Services Supervisor	3
Senior Procurement Analyst	3
Senior Property Analyst	2, 3, 5, 6

\* Consultants shall be included in the list of designated positions and shall disclose pursuant to the disclosure requirements in this code subject to the following limitation:

The General Manager may determine in writing that a particular consultant, although a "designated position," is hired to perform a range of duties that is limited in scope and thus is not required to comply fully with the disclosure requirements in this section. Such written determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The General Manager's determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code.

# SACRAMENTO REGIONAL TRANSIT DISTRICT

## DISCLOSURE CATEGORIES

### Disclosure Requirements

Individuals holding designated positions must report their interests according to the following corresponding disclosure category(ies) to which their position has been assigned.

#### Disclosure Category 1

Interests in real property located within the jurisdiction or within two miles of the boundaries of the jurisdiction or within two miles of any land owned or used by the District; and investments and business positions in business entities, and income, including loans, gifts, and travel payments, from all sources.

#### Disclosure Category 2

Interests in real property located within the jurisdiction or within two miles of the boundaries of the jurisdiction or within two miles of any land owned or used by the District.

#### Disclosure Category 3

Investments and business positions in business entities, and income, including loans, gifts, and travel payments, from sources, that provide services, supplies, materials, machinery, or equipment of the type utilized by the department or division to which the filer is assigned duties.

#### Disclosure Category 4

Investments and business positions in business entities, and income, including loans, gifts, and travel payments, from sources, that filed a claim against the District during the previous two years, or have a claim pending.

#### Disclosure Category 5

Investments and business positions in business entities, and income, including loans, gifts, and travel payments, from sources, that are of the type to request an entitlement to use District property or facilities, including, but not limited to:

- a license
- utility permit
- station vendor permit.

#### Disclosure Category 6

Investments and business positions in business entities, and income, including loans, gifts, and travel payments, from sources, that sought to acquire an interest in real property owned in whole or in part by the District during the previous two years, or have such a proposal pending.

## **SACRAMENTO REGIONAL TRANSIT DISTRICT**

### **87200 FILERS**

#### **Public Officials Who Manage Public Investments**

The following positions are not covered by this conflict of interest code because those individuals holding these positions must file under Government Code Section 87200. These positions are listed for informational purposes only:

- Board Members
- Retirement Board Members
- Director of Finance/Treasury
- Chief Financial Officer
- Deputy General Manager
- General Manager/CEO
- Consultants (those involved in the investment of public funds)

An individual holding one of the above-listed positions may contact the Fair Political Practices Commission for assistance or written advice regarding their filing obligations if they believe that their position has been categorized incorrectly. The Fair Political Practices Commission makes the final determination whether a position is covered by Government Code Section 87200.