

REGIONAL TRANSIT ISSUE PAPER

Agenda Item No.	Board Meeting Date	Open/Closed Session	Information/Action Item	Issue Date
8	10/28/13	Open	Action	10/21/13

Subject: 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

ISSUE

Whether to 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

RECOMMENDED ACTION

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

FISCAL IMPACT

Unknown at this time, but likely small.

Use of a “Best Value” procurement approach for supply procurements could result in higher prices for acquisition, but lower life cycle costs due to higher-quality suppliers and products.

Increasing the threshold for formal solicitation will lower reproduction costs and reduce staff costs to prepare and distribute solicitation documents.

Eliminating the requirement to advertise ITBs and RFPs in a newspaper of general circulation will lower solicitation costs.

Allowing sale of surplus property through on-line auction could result in higher returns for RT.

DISCUSSION

Prior to the January 1, 2013 effective date of Senate Bill (S.B.) 1068, RT was required by state law to award supply contracts over \$40,000 to the lowest responsive bidder submitting a sealed bid in response to an invitation to bid. Senate Bill 1068 permits RT, in its discretion, to use a “best value” procurement method that considers other non-price factors for supply purchases over \$100,000. The statute also increased the formal procurement threshold for supply purchases to \$100,000. For all supply procurements between \$3,000 and \$100,000, RT is required, to the extent practicable, to obtain a minimum of 3 verbal quotations.

While the authority conferred by S.B. 1068 was effective January 1, 2013, the expanded authority has not been used because the Procurement Ordinance has not been updated and still contains

Approved:

Presented:

Final 10/21/13

General Manager/CEO

Randall Miller, Director, Procurement Services

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more restrictive limitations. Over the past several months, Procurement and Legal Staff have conducted a thorough review of the Procurement Ordinance, with multiple objectives: (1) incorporate the additional authority conferred by S.B. 1068; (2) correct errors, oversights and inconsistencies within the Procurement Ordinance; and (3) make process changes to make the Procurement process more transparent and efficient. After multiple meetings and conducting peer research, Staff recommends that the Board adopt an amended and restated Procurement Ordinance that would include the following major changes:

- Consistent with Public Utilities Code Section 102222, added by S.B. 1068, allow RT to determine, for supply contracts in excess of \$100,000, whether to use a “best value” procurement that considers factors other than price (issuing an RFP) or whether to use a lowest bid procurement (issuing an ITB). (Section 1.406).
- Clarify that the “best value” for a contract awarded for other than architectural and engineering services may be determined using one of two methodologies: (1) lowest-priced technically acceptable; or (2) a tradeoff process, where other factors are weighed against price and award may be made to other than the lowest-priced offeror or other than the highest-technically-rated offeror. (Section 1.404).
- Increase the threshold for “formal solicitation” to procurements in excess of \$100,000 for Supplies, Professional Services, and Non-Professional Services. Under the current Procurement Ordinance, a formal solicitation (ITB or RFP and advertising) is required for supply procurements in excess of \$40,000 and for service procurements in excess of \$50,000. The revisions would raise both thresholds to \$100,000. (Section 1.301).
- Allow the General Manager/CEO to release ITBs and RFPs for capital projects that are contained in the Capital Improvement Plan (CIP) that is annually adopted by the Board. Contracts arising from those ITBs or RFPs would continue to be approved by the Board. (Section 1.301).
- Identify certain types of procurement actions that don’t require a solicitation or a contract because they aren’t conducive to competition (e.g., public utility charges, fees charged by other public agencies, subscriptions to periodicals, conference registration fees, deposition fees, purchases of radio and television advertising). (Section 1.102).
- Set out minimum requirements for informal solicitations, including a requirement, to the extent practicable, to obtain three quotes for supply purchases between \$3,000 and \$100,000. (Section 1.103).
- Revise the definition of prohibited “procurement splitting” to be consistent with the FTA definition. (Section 1.105).
- Increase the threshold at which a procurement is required to be advertised to procurements in excess of \$100,000 for supplies and services and allow for advertisement on RT’s web-site, rather than in a newspaper of general circulation. The threshold for advertising public works contracts (in excess of \$5,000) would remain the same, but they could be advertised on RT’s web-site, rather than in a newspaper of general circulation. This is consistent with FTA requirements. Procurements below this threshold may be

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advertised, at the discretion of the Procurement Department and depending on circumstances. (Sections 1.302 and 1.303).

- Revise ambiguous provisions related to the General Manager's authority to issue amendments. Would clarify that the General Manager is authorized to: (1) bind RT to amendments to Board-approved supply or service contracts if the sum of all such amendments for any single contract does not exceed the lesser of \$100,000 or fifteen percent (15%) of the initial contract price; and (2) bind RT to amendments to General Manager-approved contracts if the sum of the initial contract and all prior General Manager-approved amendments is less than \$100,000. Would also specify that amendments that are Board-approved or are initially executed by the General Manager and subsequently ratified by the Board are not counted toward the foregoing \$100,000 limitation. (Section 1.505) .
- Specify a process and requirements for amending contracts that were originally awarded using an informal solicitation when the amendments would push the contract past the threshold for formal solicitation. (This situation was previously unaddressed by the Procurement Ordinance.) (Section 1.505).
- Allow the General Manager/CEO to reject all bids/proposals and allow for re-solicitation on the same terms and conditions as the original solicitation. (Section 1.509). Currently, the Board must reject bids/proposals for solicitations where the Board authorized release of the RFP/ITB. There have been instances where Staff desires to reject all bids and resolicit using substantially the same document (for reasons including but not limited to: technical flaw in the procurement, lack of competition due to the timing of procurement, misinterpretation of a solicitation requirement by bidders/proposers) and there has been a delay due to the need to obtain Board approval.
- Allow for disposal of surplus property through an on-line auction. Eliminate the requirement that surplus property auctions be advertised in a newspaper of general circulation and instead allow for posting of public notice on RT's web-site. (Section 2.102).
- Allow the General Manager/CEO to sell surplus property with an aggregate value of \$10,000 or less to another public entity, without Board approval. (Section 2.104).
- Restructure the provisions related to non-competitive procurements to more clearly distinguish between federally-funded procurements (where non-competitive procurements are heavily restricted); and state-funded procurements (where RT has more flexibility). (Section 1.405).
- Expressly permit sole source procurements for litigation-related services. (Section 1.405.B.3)
- Clarify that the protest procedure applies to all procurements, not just formal procurements where an ITB or RFP was issued. (Article VI, Bid/Proposal Protest Procedure).
- Remove a requirement, which has not been observed, that individuals who will bind RT to contracts be bonded for the performance of their duties. The actions of these individuals are covered by RT's insurance policies.
- Add definitions for new terms and previously-undefined terms. (Section 1.101).

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- Add a requirement that RFPs and ITBs include information about how bidders and proposers, as applicable, must comply with the terms of a Board-adopted small or local business program. (Section 1.202 and 1.203).

Attachment 1 shows the proposed changes to the Procurement Ordinance. Staff recommends that the Board waive the first reading of the Ordinance, which will be brought back for approval at the November 11th Board meeting.

**SACRAMENTO REGIONAL TRANSIT DISTRICT
ADMINISTRATIVE CODE**

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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 must be construed as defined below:

- A. ARCHITECT AND ENGINEERING SERVICES (A&E SERVICES) means those professional services of an architectural, landscape architectural, engineering, environmental, or land surveying nature as well as incidental services that members of these professions and those in their employ may logically or justifiably perform (Government Code Section 4525).
- B. BEST VALUE means the overall combination of quality, price, and other elements of a PROPOSAL that, when considered together, provide the greatest overall benefit in response to the requirements described in the SOLICITATION DOCUMENTS.
- C. BID means a written or oral offer of a BIDDER to provide goods, services or work in response to a SOLICITATION where award will be made to the lowest responsive and responsible BIDDER.
- D. BIDDER means any individual, firm, partnership, corporation or combination thereof submitting an offer to provide goods, services or work in response to a SOLICITATION where award will be made to the lowest responsive and responsible bidder.
- E. BOARD means the Board of Directors of the Sacramento Regional Transit District.
- F. CONTRACT means a written agreement executed by an authorized representative of RT that binds RT to a course of action, 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 .
- G. CONTRACTOR means an individual or entity that enters into a CONTRACT with RT.
- H. FORMAL SOLICITATION means a SOLICITATION that requires issuance of a SOLICITATION DOCUMENT, full and open competition, advertisement, and a sealed response.
- I. FTA means the United States Department of Transportation, Federal Transit Administration.

- J. GENERAL MANAGER means the General Manager/CEO of RT.
- K. INFORMAL SOLICITATION means a SOLICITATION that does not require advertisement and a sealed response and, depending on the dollar amount, may not require full and open competition. An INFORMAL SOLICITATION may include oral requests for BIDs or PROPOSALS.
- L. INVITATION TO BID (ITB) means a SOLICITATION for submittal of sealed BIDs for SUPPLIES, NONPROFESSIONAL SERVICES or a PUBLIC WORKS project to be awarded to the lowest responsive and responsible BIDDER.
- M. LETTER OF SOLICITATION means a type of INFORMAL SOLICITATION in which potential offerors are provided with a written scope of work and invited to submit written responses/offers.
- N. NONPROFESSIONAL SERVICES means and includes all services that are not PROFESSIONAL SERVICES.
- O. PERSONAL PROPERTY means a movable or intangible thing, not real property or a fixture to real property, that is owned by RT.
- P. PROCUREMENT means a SOLICITATION for an initial CONTRACT for SUPPLIES, SERVICES and PUBLIC WORKS and modifications for existing CONTRACTS, including amendments, Contract Change Orders, Work Orders, and the exercising of CONTRACT options.
- Q. PROFESSIONAL SERVICES means and includes services that involve labor and skills that are predominantly mental or intellectual rather than physical or manual, where the providers of the service are members of disciplines requiring special knowledge or the attainment of a high level of learning or skill, including, without limitation, services rendered by accountants, actuaries, appraisers, architects, attorneys, consultants, doctors, and engineers.
- R. PROPOSAL means a written or oral offer to provide goods, services or work in response to a SOLICITATION where award will be based on a determination of the response that offers the BEST VALUE to RT.
- S. PROPOSER means any individual, firm, partnership, corporation or combination thereof submitting a PROPOSAL in response to a SOLICITATION where award will be based on a determination of the response that offers the BEST VALUE to RT.
- T. PUBLIC WORKS means 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).
- U. PURCHASE means the acquisition, renting, or leasing of SUPPLIES.
- V. RT means the Sacramento Regional Transit District as established and

operated under Part 14, Division 10 of the *California Public Utilities Code*.

- W. REQUEST FOR PROPOSAL (RFP) means a written SOLICITATION DOCUMENT by which PROPOSALS are solicited and a CONTRACT is awarded based on a determination of the PROPOSAL that offers the BEST VALUE.
- X. REQUEST FOR QUALIFICATIONS (RFQ) means a SOLICITATION for submittal of qualifications to perform PROFESSIONAL or NONPROFESSIONAL SERVICES or to provide SUPPLIES.
- Y. REQUEST FOR QUOTE is an INFORMAL SOLICITATION document used to request offers for NONPROFESSIONAL SERVICES or SUPPLIES when formal advertising is not required. The acronym “RFQ” is also used to refer to a REQUEST FOR QUOTE, but all references to an RFQ in this Ordinance refer to a REQUEST FOR QUALIFICATIONS.
- Z. SOLICITATION means the process used to communicate PROCUREMENT requirements and request responses from interested vendors. A SOLICITATION may be, but is not limited to, an INVITATION TO BID, REQUEST FOR PROPOSAL, REQUEST FOR QUOTE, LETTER OF SOLICITATION or oral requests for BIDS or PROPOSALS.
- AA. SOLICITATION DOCUMENT means documents used to request BIDS, PROPOSALS or quotations (offers) from suppliers for the goods, works or SERVICES required. Types of SOLICITATION DOCUMENTs include ITB, RFP, RFQ, REQUEST FOR QUOTE, and LETTER OF SOLICITATION.
- BB. SERVICES means PROFESSIONAL AND/OR NON-PROFESSIONAL SERVICES, or both, in accordance with the context.
- CC. SUPPLIES means and includes 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.

When the term “days” is used in this Ordinance, it refers to calendar days unless preceded by “working”. When “working days” is used, it refers to Monday through Friday, excluding state-recognized holidays.

§1.102 Procurements not Requiring a Solicitation or a Contract

The following types of SUPPLIES and SERVICES do not require a SOLICITATION or a CONTRACT:

1. Public utility charges based on an adopted rate and service structure;
2. Permits and fees imposed by public agencies or public or private utilities for SERVICES;
3. Subscriptions for periodicals and books related to RT operations;
4. Advertisements in newspapers, magazines or professional journals or on radio or television when the advertisement is targeted to specific types of

- subscribers or viewers;
5. Travel expenses, including without limitation airline, car rental and hotel charges;
 6. Conference registration fees;
 7. Membership dues and fees of professional and nonprofit organizations related to RT operations;
 8. Deposition fees, appraisal fees, jury fees, photocopies and witness fees
 9. SERVICES and SUPPLIES purchased under the Procurement Credit Card Program authorized in a BOARD-adopted resolution;
 10. SERVICES and SUPPLIES costing, in the aggregate, for a single purchase, less than \$200.

Other than the exceptions set forth above, all PROCUREMENTs of SUPPLIES and SERVICES costing Two Hundred Dollars (\$200) or more require use of a CONTRACT, unless the Chief Counsel issues a written determination that a CONTRACT is not required for a specific SERVICE or SUPPLY. The GENERAL MANAGER shall establish control procedures for PROCUREMENTs not requiring a SOLICITATION or CONTRACT.

§1.103 Administrative Procedures

The GENERAL MANAGER may prepare administrative procedures to carry out the intent of this Chapter. The procedures must establish a system for INFORMAL SOLICITATIONS. The system for INFORMAL SOLICITATIONS must incorporate the responsibility and responsiveness factors identified in Section 1.401 and 1.402 of this Ordinance. In addition, to ensure compliance with Public Utilities Code Section 102222, the administrative procedures must require that, to the extent practicable, a minimum of three quotations must be obtained, either written or oral, that permit prices and other terms to be compared, when a PROCUREMENT for SUPPLIES is expected to exceed \$3,000.

§1.104 Unauthorized Procurement

Any CONTRACT made contrary to the provisions of this Chapter is 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, as applicable, in accordance with the authority set out in this Ordinance is not 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 RT requirements into smaller units for the purpose or with the effect of evading the provisions of this Chapter or any other requirements for full and open competition is prohibited. Splitting or separating a PROCUREMENT means and includes buying a SUPPLY or SERVICE repetitively, at frequent intervals, when there is no good business

or program reason not to consolidate requirements and solicit bids or proposals for a length of time and for such quantities as to maximize price competition.

§1.106 Collusion With Bidder or Proposer

BIDDERS and PROPOSERS are prohibited from colluding with RT employees and officers. Collusion includes, without limitation, knowingly doing any of the following:

- A. Aiding or assisting a BIDDER or PROPOSER in securing a CONTRACT 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 for reasons unrelated to the best interests of RT; 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.

Any BID or PROPOSAL received or CONTRACT awarded where there was a violation of this section is null and void. RT will dispose of the matter in the same manner as if the BIDDER or PROPOSER involved had failed to enter the CONTRACT after award.

§1.107 Collusion Between Bidders or Proposers

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 must, 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 is null and void. RT will 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 must 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 must institute procedures for the execution of CONTRACTS as required herein. The Chief Counsel or his/her designee must 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 will be authorized to sign CONTRACTS on behalf of the GENERAL MANAGER. A copy of such authorization must 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 BIDS must be made on forms provided by RT. The execution of the forms by BIDDERS will be subject to procedures formulated by the GENERAL MANAGER, which must include controls over erasures, corrections, and interlineations.

§1.202 **Invitation to Bid**

All ITBs must, 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. Any applicable requirements to comply with a BOARD-adopted small or local business program or receive a small/local business price preference.
- F. Criteria for CONTRACT award to lowest responsible and responsive BIDDER.
- G. Date and time for BID submittal.
- H. Bid protest procedures as set out in Article VI.
- I. 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.
- J. 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.

- K. RT contract clauses.
- L. 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 or for SUPPLIES when determined to be in the best interest of RT, as specified in Section 1.406.

§1.203 Request for Proposals

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

- A. A description of the type of SERVICES or SUPPLIES required.
- B. Time for performance or length of SERVICES or for delivery of SUPPLIES.
- 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 SERVICES, or providing similar SUPPLIES, unless a 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. Any applicable requirements to comply with a BOARD-adopted small or local business program or receive a small/local business point preferences.
- 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.

§1.204 Request for Qualifications

An RFQ may be issued to pre-qualify PROPOSERS for a particular RFP or to establish a listing of pre-qualified PROPOSERS when

several RFPs for separate CONTRACTS will be issued for the same discipline of SERVICES or the same type of SUPPLIES. The listing of pre-qualified professionals will 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 must, at a minimum, include or request all of the following information:

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

If an RFQ is issued to pre-qualify potential PROPOSERS and is expected that the CONTRACT that would be awarded pursuant to a subsequent RFP would exceed \$100,000, the RFQ must be advertised in the manner specified under Section 1.304 for RFPs.

§1.205 Bid Security on Public Works Contracts

For any PUBLIC WORKS CONTRACT, the SOLICITATION DOCUMENTS must 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 must be in an amount determined by RT to be sufficient, but must not exceed 10% of the total bid amount.

If the successful BIDDER fails to execute and return the CONTRACT or, if applicable, provide all required insurance certificates and bonds within 20 days after the CONTRACT is mailed by RT, the BID security must 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 an additional thirty (30) days.

Upon award to the lowest responsible BIDDER, RT must return the security of an unsuccessful BIDDER no later than sixty (60) days after CONTRACT award. However, if a BID protest is timely filed, the security of unsuccessful BIDDERS will not be returned until the expiration of the BID validity period. The BID security of the successful BIDDER must 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 in excess of the amounts set out in Section 1.302 and Section 1.303 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 and the Chief Counsel 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, unless the ITB or RFP relates to a capital project included in Tier 0 or Tier 1 of the current BOARD-approved Capital Improvement Plan, in which case the ITB or RFP may be released by the GENERAL MANAGER. Any resultant CONTRACT for such a capital project must receive BOARD approval for award.

§1.302 Advertising Requirements for ITBs

ITBs for CONTRACTS expected to be awarded for an amount in excess of Five Thousand Dollars (\$5,000) for PUBLIC WORKS, One Hundred Thousand Dollars (\$100,000) for SUPPLIES, and One Hundred Thousand Dollars (\$100,000) for NONPROFESSIONAL SERVICES must be publicly advertised not less than 10 days prior to the date established for the BID submittal.

In addition, PUBLIC WORKS ITBs must 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 10 days before the BID submittal date; and

B. If time permits, ITBs must be advertised once in local minority newspapers.

§1.303 Advertising Requirements for RFPs

RFPs for CONTRACTS expected to be awarded for an amount in excess of (\$100,000) must:

- A: Be publicly advertised not less than ten (10) days prior to the date established for the PROPOSAL submittal.

- B. If time permits, RFPs must be advertised once in local minority newspapers and, for PROFESSIONAL SERVICES, in professional trade publications at least 10 days before the PROPOSAL submittal date.

Advertising is not required when an RFP is released to firms or persons on an approved listing generated in response to an RFQ as specified in Section 1.204, if the RFP is limited to the category of work or service for which the listing was approved.

§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, One Hundred Thousand Dollars (\$100,000) for SUPPLIES, and One Hundred Thousand Dollars (\$100,000) for both NONPROFESSIONAL SERVICES and PROFESSIONAL SERVICES must be sealed, identified as a BID/PROPOSAL on the envelope, and must 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 SOLICITATION DOCUMENTS. Submittals received after the specified time will not be accepted and will be returned to the BIDDER or PROPOSER unopened.

§1.305 Opening of Bids

Bids will 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 SOLICITATION DOCUMENTS.

**Article IV
Evaluation of Bids and Proposals**

§1.401 Responsibility Factors

In determining whether a BIDDER or PROPOSER is responsible, consideration must be given to each of the following factors:

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

- B. The ability of the BIDDER or PROPOSER to perform the CONTRACT within the time specified, without delay;
- C. The character, integrity, reputation, judgment, experience and efficiency of the BIDDER or PROPOSER;
- D. The quality of BIDDER's or PROPOSER'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. If good faith efforts are required to comply with a BOARD-adopted program or procedure 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 BIDDER/PROPOSER must demonstrate such efforts to be deemed responsive.

§1.403 Application of Responsibility Factors to ITBs

CONTRACTS for PUBLIC WORKS, SUPPLIES, or NONPROFESSIONAL SERVICES for which BIDs were solicited using an ITB must be awarded 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 Proposals Submitted in Response to an RFP.

Proposals submitted in response to an RFP will be evaluated based upon the criteria set out in the RFP. Evaluation of Architectural and Engineering (A&E) CONTRACTS must follow the Brooks Act and California Government Code Section 4525 and following. RT may reject any PROPOSER that is not responsible 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 1.509.

The evaluation process for non-A&E CONTRACTs will be based on one of two alternative methods:

- (1) A tradeoff process, where other factors are weighed against price and award may be made to other than the lowest-priced offeror or other than the highest-technically-rated offeror; or

- (2) The lowest-price technically acceptable source selection process, where award will be made to the lowest-priced PROPOSER that satisfies the technical requirements.

1.405

Noncompetitive and Sole Source Procurement

A. Federally-Funded Procurements

The federal Common Grant Rules (49 C.F.R. Part 18) require recipients to use PROCUREMENT procedures that provide full and open competition unless the PURCHASE is below the micro-purchase threshold (currently \$3,000). The procedures developed by the General Manager under Section 1.103 must provide for full and open competition to the extent required by federal law and guidance.

Noncompetitive PROCUREMENTs may be used only when the PROCUREMENT is inappropriate for small purchase procedures, sealed BIDs, or competitive PROPOSALS, and at least one of the following circumstances are present:

1. The SUPPLIES or SERVICES are available from only one source due to the following conditions:
 - a. Unique or Innovative Concept. The offeror demonstrates a unique or innovative concept or capability not available from another source. Unique or innovative concept means a new, novel, or changed concept, approach, or method that is the product of original thinking, the details of which are kept confidential or are patented or copyrighted, and is available to the recipient only from one source and has not in the past been available to the recipient from another source.
 - b. Patents or Restricted Data Rights. Patent or data rights restrictions preclude competition.
 - c. Substantial Duplication Costs. In the case of a follow-on CONTRACT for the continued development or production of highly specialized equipment and major components thereof, when it is likely that award to another contractor would result in substantial duplication of costs that are not expected to be recovered through competition.
 - d. Unacceptable Delay. In the case of a follow-on CONTRACT for the continued development or production of a highly specialized equipment and major components thereof, when it is likely that award to another contractor would result in unacceptable delays in fulfilling the recipient's needs.

In addition to the foregoing, for federally-funded PUBLIC WORKS CONTRACT over \$5,000 or a SUPPLY CONTRACT over \$100,000, the BOARD or GENERAL MANAGER must determine that efforts to

seek competition would be futile.

2. There is an unusual or urgent need for the SUPPLIES or SERVICES, such that RT would be seriously harmed unless permitted to limit the solicitation. The finding of unusual or urgent need (emergency) must be supported by a 4/5ths vote of the BOARD; provided that, if emergency action is necessary to sustain or restore service, the GENERAL MANAGER may award CONTRACTs for SERVICES, SUPPLIES, or PUBLIC WORKS needed to sustain or restore service. The GENERAL MANAGER must 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.
3. The noncompetitive PROCUREMENT is otherwise authorized by the FTA, as set out in federal law, rules, regulations or circulars and also under state statutes and/or case law.

The BOARD or GENERAL MANAGER, as applicable, is responsible for approving 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.

B. Non-Federally-Funded Procurements

For CONTRACTs that are not federally-funded, a noncompetitive PROCUREMENT is permitted if one of the following circumstances exists:

1. 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.
2. 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.
3. For SERVICES related to litigation against or by RT, including but not limited to expert witnesses and outside counsel, when the Chief Counsel or his designee 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.

4. For PROCUREMENT involving an expenditure in excess of One Hundred Thousand Dollars (\$100,000) 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.
5. Noncompetitive PROCUREMENT is otherwise authorized under applicable state statutes and/or case law.

The BOARD or GENERAL MANAGER, as applicable, is responsible for approving 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 Best Value Procurement for Supplies

As set out in *Public Utilities Code* Section 102222, prior to beginning a SOLICITATION for the PURCHASE of SUPPLIES in excess of One Hundred Thousand Dollars (\$100,000), RT must determine whether it is in the best interest of RT to award to the lowest responsible BIDDER, or, in RT's discretion, to the responsible PROPOSER submitting a PROPOSAL that provides the BEST VALUE, as defined in Section 1.101, to RT. If RT determines that the BEST VALUE approach is most appropriate for a specific PROCUREMENT, an RFP will be issued, rather than an ITB.

§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

Any CONTRACT awarded pursuant to an ITB must be awarded to the responsible BIDDER submitting the lowest responsive BID, after applying any applicable price preferences. When only one BID is received for a federally-funded CONTRACT, a determination must be made that the competition was adequate (unless a noncompetitive PROCUREMENT was authorized) and a cost analysis must be performed before the CONTRACT

may be awarded.

§1.502 Award to Best Value or Most Qualified Proposer

Any CONTRACT awarded pursuant to an RFP must be awarded to the highest scoring responsive PROPOSAL or the lowest-priced technically-acceptable PROPOSAL, based on the evaluation criteria set out in the RFP and incorporating any point preferences, submitted by a responsible PROPOSER. When only one PROPOSAL is received for a federally-funded CONTRACT, a determination must be made that the competition was adequate (unless a noncompetitive PROCUREMENT was authorized) and a cost analysis must be performed before the CONTRACT may be awarded.

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

Unless otherwise provided herein, all CONTRACTs involving an expenditure exceeding One-Hundred Thousand Dollars (\$100,000) must be awarded and/or approved by the BOARD. Such CONTRACTS must be executed by the BOARD Chair and/or the GENERAL MANAGER on behalf of RT as set out in the authorizing resolution. When only one PROPOSAL is received for a federally-funded CONTRACT, a determination must be made that the competition was adequate and a cost analysis must be performed before the CONTRACT may be awarded.

§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 and any implementing procedures adopted under Section 1.103, 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 if the sum of all such amendments for any single CONTRACT does not exceed the lesser of \$100,000 or fifteen percent (15%) of the initial CONTRACT price.

The GENERAL MANAGER is authorized to bind RT to amendments to GENERAL MANAGER-approved CONTRACTs if the sum of the initial CONTRACT and all prior GENERAL MANAGER-approved amendments is less than \$100,000. Amendments that are BOARD-approved or are initially executed by the GENERAL MANAGER and subsequently ratified by the BOARD are not counted toward the foregoing \$100,000 limitation.

If a CONTRACT was initially awarded using an INFORMAL SOLICITATION and the aggregate total of the initial CONTRACT, prior amendments and the proposed new amendment would exceed the threshold for FORMAL SOLICITATION, then, prior to approving the amendment, the BOARD must

determine that: (1) there was not improper procurement splitting; and (2) either the requirements for a new INFORMAL SOLICITATION have been met or the criteria for a non-competitive SOLICITATION are met as set forth in Section 1.405.

§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 if 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 has authority to issue change orders if 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 has authority to issue change orders if the sum of all such change orders for any single CONTRACT does 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 has authority to issue change orders if the sum of all such change orders for any single CONTRACT does 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 has authority to issue change orders if the sum of all such change orders for any single CONTRACT does 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 that exceeds One Hundred Thousand Dollars (\$100,000) 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 has 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 must 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 to a CONTRACT. The delegation must be made in writing and must specifically designate the RT employee(s) who may act for the GENERAL MANAGER. A copy of the written delegation must be given to the Clerk to the BOARD, who must retain it with RT's corporate files. Upon request, the Clerk to the BOARD must 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 must determine by lot which BID must 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 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 rejects all BIDs or PROPOSALS due to cost, the GENERAL MANAGER must re-evaluate the cost estimates for the project. The project must then either be abandoned, a new SOLICITATION issued in the manner prescribed in Article III, or the GENERAL MANAGER or BOARD may proceed with a noncompetitive SOLICITATION if authorized pursuant to Section 1.405. If the GENERAL MANAGER, or his or her designee, rejects all BIDs or

PROPOSALS for a SOLICITATION initially authorized by the BOARD, the GENERAL MANAGER may re-issue the SOLICITATION DOCUMENTS on the terms and conditions set out in the original authorization without the need for additional BOARD approval.

§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: (1) award the CONTRACT to the next-lowest responsible and responsive BIDDER or next-highest-ranked PROPOSER, (2) re-advertise, or (3) award a noncompetitive CONTRACT if permitted by 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 requirement in a SOLICITATION DOCUMENT.
- 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 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 must 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 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 protest procedure will either be included in every SOLICITATION DOCUMENT issued by RT, or be referenced in every SOLICITATION DOCUMENT issued by RT with a statement that a copy of this 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 SOLICITATION DOCUMENTS, 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 will be deemed a waiver of any protest to any provision of the SOLICITATION DOCUMENTS that 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 a SOLICITATION DOCUMENT must be received by RT no later than 10 working days prior to the date established in the SOLICITATION DOCUMENT 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 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 three copies of the protest and supporting documentation 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 PROCUREMENT that 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 must 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 judgment of the GENERAL MANAGER.

Within five (5) working days after the meeting, RT will provide a further response to the protestor either upholding or modifying the preliminary staff response. Within five (5) working days after the further response is mailed or, if no meeting is scheduled, within 10 calendar days after the date RT's first response was mailed, the protestor must 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 the specified time, the protest will 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 will 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 will be deemed to be withdrawn and all proceedings will 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 party as defined in Section 1.606 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 must 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 (for Federally-Funded Procurements Only)**

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 SOLICITATION DOCUMENTS 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 GENERAL MANAGER rejects all BIDs/PROPOSALS for any reason, or if the GENERAL MANAGER or BOARD 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 will 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 will be grounds to reject a BID or PROPOSAL 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 that 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 must give notice in writing by certified mail, return receipt requested, of the reasons for the proposed debarment. The notice must 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 has 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, if any, the GENERAL MANAGER must 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 must 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 must 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 must give the GENERAL MANAGER written notice of an appeal of the debarment decision. Failure to submit a written notice of appeal constitutes consent to the debarment and the GENERAL MANAGER'S decision is final as of the date on the notice.
- E. If a written appeal is submitted, the GENERAL MANAGER must 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 must 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 must 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 will 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 must 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 must 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's debarment agenda package must

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 must 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. The GENERAL MANAGER or BOARD may impose debarment 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 must 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 must specify the scope and term of the debarment. Debarment must not exceed three (3) years, unless circumstances warrant a longer period.
- D. To protect the interests 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 Effect of Debarment on Submittal of Bids or Proposals

If the GENERAL MANAGER or BOARD acts to debar a CONTRACTOR, that CONTRACTOR is 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 is 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 of California is 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 will be returned and such BID or PROPOSAL will 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, must 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 PERSONAL PROPERTY that is no longer necessary or useful to RT's operations or activities. In disposing of surplus PERSONAL PROPERTY, the GENERAL MANAGER must comply with all applicable state and federal laws, regulations and guidance. The GENERAL MANAGER may dispose of surplus property to the highest bidder by: (1) sale at a public auction, including a public on-line auction, (2) by sealed bids, (3) by incidental sale. Notice of public auction or sealed bid submittal must be given by publication once in a newspaper of general circulation or on RT's web-site no later than ten (10) calendar days prior to such auction or bid submittal date. Notice is not required for sale by on-line auction; however, the bid period for any on-line auction must provide for a bid period of at least 10 calendar days.

Said notices must specify the time, place and purpose of such auction or bid submittal and must 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 must 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 must inform the BOARD. For the purposes of this Section, the term "incidental sale" means 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 must 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 must 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 or the GENERAL MANAGER 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). The GENERAL MANAGER's authority under this Section is limited to surplus property with an aggregate value of \$10,000 or less.

§2.105 Limitation Upon Employees of RT

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