

21. FALSE OR FRAUDULENT STATEMENTS AND CLAIMS

A. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying Agreement, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA-assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

B. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

C. The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

22. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1D, dated April 15, 1996, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA-mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any City request which would cause the City to be in violation of the FTA terms and conditions.

PUBLIC TRANSPORTATION DEPARTMENT  
SAN FRANCISCO MUNICIPAL RAILWAY

PROTEST PROCEDURES  
FOR THE  
BIDDING AND AWARD PROCESS  
OF  
FEDERALLY ASSISTED  
THIRD PARTY CONTRACTS

(Construction, public improvements, personal services, negotiated procurement and other major procurement contracts)

REVISED: MARCH 1996

1. Policy

In the event that any protests, discrepancies, or legal questions arise during the bidding and award process of federally assisted construction, public improvements, personal services, negotiated procurement and other major procurement contracts, the Administrative Engineer shall report unresolved protests to the Director of Public Transportation, who shall review the protest and recommend its resolution to the Public Transportation Commission (PTC). These procedures shall be incorporated by reference in all bid packages.

2. Definitions

Award shall mean authorization by resolution of the Public Transportation Commission for its staff to contract with a bidder or proposer.

Award Process includes the pre-award, award and post-award phases of a negotiated procurement, a request for proposals (RFP) and a competitive bid.

Bid includes the terms "offer" or "proposal" as used in the context of negotiated procurements, requests for proposals and competitive bids.

City means the City and County of San Francisco, acting through its Public Transportation Commission.

Days refers to working days of the City and County of San Francisco (unless otherwise indicated).

Administrative Engineer (AE) refers to the Public Transportation Department engineer in charge of administering the contract which is the subject of the protest. AE also refers to the manager of the project when there is no engineer administering the contract.

Deputy Director refers to either (a) the Deputy director of Operations, (b) the Deputy Director of Maintenance, (c) the Deputy Director for Capital Projects, or (d) the Deputy Director of Finance, Administration and Personnel of the Public Transportation Department.

Director refers to the Director of Public Transportation of the Public Transportation Department.

Protest is a complaint by a bidder or proposer regarding a bid or the award or process which arises anytime prior to award and is formally communicated to the Director.

Post-Award Protest is a complaint by a bidder or proposer when the Public Transportation Commission awards a contract to other than the bidder or proposer recommended for award by the PTC staff

### 3. Responsibilities

- 3.1 The Administrative engineer (AE) obtains the response to issues not related to affirmative action and coordinates the resolution of all protest issues.
- 3.2 The Contract Compliance Office (CCO) resolves the affirmative action issues.
- 3.3 In the event that a protest is not resolved by the AE, the Director shall review the protest and make a recommendation to the PTC for final action.

### 4. Implementation

#### 4.1 Submit Protest

A protest describing the nature of the disagreement must be submitted in writing to the PTC no later than five (5) days following notification of proposed award. A post-award protest describing the nature of the disagreement must be submitted in writing to the PTC no later than five (5) days following the Notification of Award of the contract. If the bid procedure requires submission of documents in separate phases and bidders may be

disqualified at the end of a phase prior to final award, then protests regarding a phase of the procedure (including protests concerning documents received by bidders during the phase) must be submitted in writing with a description of the disagreement to the PTC no later than five (5) days following receipt of notification of the results of that phase.

Protests shall be addressed to:

Director of Public Transportation  
Public Transportation Department  
949 Presidio Avenue  
San Francisco, CA 94115

with a copy to:

Deputy Director for Capital Projects  
Public Transportation Department  
Capital Projects Division  
1155 Market Street  
San Francisco, CA 94102

(when contract is administered by Capital Projects Division)

The letter shall contain the project description and shall be signed and dated. Information copies of all protests shall be sent to:

Deputy Director of Finance, Administration & Personnel  
Public Transportation Department  
425 Mason Street, 7th Floor  
San Francisco, CA 94102

#### 4.2 Coordination Resolution

With direction from the Director, and following the requirements of FTA Circular 4220.1C, the AE shall determine the nature of the disagreement and coordinate resolution efforts.

#### 4.3 Verify Affirmative Action Requirements

If the protest involves meeting requirements for affirmative action requirements, the AE shall forward a copy of the protest to the Contract

Compliance Office for review and recommendations. The AE shall also send a copy to the City Attorney for information.

The Contract Compliance Office shall review affirmative action requirements for the project and examine whether the protest has merit. Based on the examination, the CCO shall notify the Director and the AE of its decision. The AE shall provide copies of the decision to the Deputy Director of Finance, Administration and Personnel. The AE shall then inform the protester, in writing, of the decision, responding at least generally to each material issue raised in the protest. The AE's letter to the protester shall state that (a) the protester may contact the AE to discuss the response, (b) the protester has the right to appeal his decision to the Director pursuant to Section 4.5, and (c) the protester has the right to address the PTC on the date when the matter is calendared to be heard if the Director denies the appeal.

#### 4.4 Resolve Issues Not Related to Affirmative Action

If the protest concerns complaints regarding discrepancies in the bid documents, missing or required documentation, or the selection process and is not related to affirmative action, the AE or a person designated by the AE shall prepare a memorandum to the City Attorney requesting an opinion on the protest. The AE shall attach a copy of the bidder's protest and all documentation from the bid package and any other document deemed necessary by the attorney.

Upon receipt of the memorandum, the City Attorney will investigate and will respond with an opinion to the Director and the AE for review and evaluation. The AE shall provide copies of the opinion to the Deputy Director of Finance, Administration and Personnel, and the Director, Contract Compliance Office. The AE shall inform the protester in writing of the AE's recommendation, stating the reasons for the recommendation, and responding at least generally to each material issue raised in the protest. The AE's letter to the protester shall state that (a) the protester may contact the AE to discuss the response, (b) the protester has the right to appeal his decision to the Director pursuant to Section 4.5, and (c) the protester has the right to address the PTC on the date when the matter is calendared to be heard if the Director denies the appeal.

4.5 Disagreement by Protester

In the event that the protester disagrees with the recommendations or decisions rendered, the protester may submit a written request to the Director for review of the decision within five (5) days of receipt of the AE's letter responding to the protest. The Director shall review the decision and make a recommendation to the Public Transportation Commission for final action. The AE shall inform the protester of the Director's recommendation, the date when the PTC will consider the item, and the protester's opportunity to address the PTC regarding the matter.

4.6 Incorporate Legal Opinion/Recommendation

The AE shall incorporate appropriate language reflecting outcome of the protest in the calendar item and resolution for PTC contract award approval. However, in the event of a multi-phased bid procedure as described in Section 4.1 above, the protest may be considered by the PTC prior to the meeting when final award is determined.

4.7 Final Action

The protester shall be notified in writing of the PTC decision regarding the protest and/or award of the contract.

The action of the PTC is final. Subject to the provisions of Section 4.8, the protester may seek a remedy in State or Federal court, as appropriate, from the final action of the PTC.

4.8 Protest to FTA

FTA may entertain a protest that alleges the PTC failed to have or follow its written protest procedures, or its failure to review a complaint or protest. A protest to FTA must be received by the cognizant FTA working days of the date the protester knew or should have known of the violation. A protester must exhaust all administrative remedies with the PTC/MUNI before pursuing a protest with FTA.

NEGOTIATED PROCUREMENT PROCEDURE  
REVISED: MARCH 26, 1996  
PTC RESOLUTION NO. 96-024

1.0 GENERAL

The San Francisco Charter, Section 7.200 "Public Works and Purchasing Contracts" includes the following.

"Notwithstanding any other provision of the charter or ordinances of the City and County of San Francisco, the Municipal Railway, through its department head and through the purchaser, shall be duly authorized to include among their purchasing specifications the use of negotiated procurement procedures for the purchase of mass-transit vehicles."

This document describes the process and prescribes guidelines for the Municipal Railway (MUNI) to purchase mass-transit vehicles by the use of negotiated procurement. This document covers those phases in the procurement process that may differ from the lowest reliable and responsible bidder procurement and those that are unique to a negotiated procurement. All other non-conflicting City purchasing/contracting requirements still apply to this negotiated procurement process. The procedures for the major phases of a Negotiated Procurement follow.

2.0 REQUEST FOR PROPOSALS

The Request for Proposal (RFP) will describe the negotiated procurement process and will disclose the evaluation criteria which will be used to determine the proposal ranking. Disclosure of the evaluation criteria will also include their relative importance although numerical weighting schemes may be disclosed. Selection of evaluation criteria will be determined by the Director of Public Transportation, the Manager of Fleet Engineering, and the Director of Purchasing (Purchaser) and will include items such as but not limited to:

- Conformance with technical specifications
- Price
- Verified service history of subsystems and equipment
- Contractor's performance on past programs either for MUNI and/or other major transit properties
- Adequacy of manufacturing facilities
- Qualifications of management/technical personnel
- Program management experience and financial stability and capability
- Quality assurance program

- After sales and warranty support capability and history
- History of meeting delivery schedules

### 3.0 PREPROPOSAL CONFERENCE

A preproposal conference will be held to explain more fully how the Municipal Railway intends to procure mass-transit vehicles under the RFP. The RFP will be used to announce the time, place and scope of the preproposal conference. Potential proposers may be requested to submit written questions in advance of the conference.

A complete record of the conference proceedings will be made and distributed to all prospective proposers and attendees after the conference. Also, all attendees will be advised that remarks and explanations made at the conference will not qualify the terms of the RFP and the terms remain unchanged unless the RFP is amended in writing.

### 4.0 RECEIVED PROPOSALS

Receipt and handling of proposals will be accomplished with the same degree of security and confidentiality as other sealed bids. There will be no public opening of proposals.

Proposers will be responsible for delivering the proposals in accordance with the instructions contained in the RFP. Proposals delivered to the Purchaser as stated in the RFP will be entered in a log with the date and time noted. Each proposal will be inventoried. Discrepancies, shortages, or other problems discovered during the inventory will be noted and documented. After the inventory has been finished by the Purchaser, the log and the proposal will be placed in secure storage to await further processing. The Purchaser will safeguard from unauthorized disclosure the number of proposals received, the names of the proposers, the bid prices, and other information contained in the proposals. However, in the event of a known breach in security the City's only obligation will be to disclose the same or equivalent information to all proposers.

### 5.0 EVALUATE PROPOSALS

Prior to receipt of proposals, the Purchaser will assemble a proposal evaluation team and will established an evaluation method. The evaluation method will provide a reasonable basis for source selection and will be in accordance with the evaluation criteria identified in the RFP.

Proposals will be evaluated to:

- Determine that proposals either meet or exceed the evaluation criteria

- Establish a competitive range for negotiations
- Determine which proposals (technical and price) are within the competitive range
- Identify nonconforming areas and potentially beneficial substitute designs for further discussions with proposers
- Identify and document any requirements in the RFP which may have to be changed.

The proposals will be evaluated and a ranking established based on the results. The evaluation will be accomplished through an objective application of the evaluation procedure. A numerical weighting system will be used in the evaluation, however, it need not be disclosed to the proposers. The results of the evaluation will be documented.

#### 6.0 ESTABLISH THE COMPETITIVE RANGE

The evaluation of proposals will determine which proposals are in the competitive range for the purpose of conducting negotiations. The competitive range will be established based on the proposer's scores and rankings. The competitive range will include those proposers who the proposal evaluation team judges to be within reach of becoming the number one ranked proposer after negotiation and submittal of the best and final offer. Proposers judged not to be within reach of becoming the number one ranked proposer will be determined to be out of the competitive range and eliminated from this procedure. If a proposal is judged to be on the borderline, it will be placed in the competitive range. If only one proposal is found to be in the competitive range, one of the following courses will be followed:

- Recommend award to the single proposer without negotiations or a Best and Final offer.
- Negotiate with the single proposer and request a Best and Final offer.
- Reject all proposals.

Proposers not within the competitive range will be notified in writing at the earliest practical time. This notification will advise proposers that any protests must be filed in accordance with the protest procedure referenced in Section 11.0 herein.

#### 7.0 NEGOTIATIONS WITH PROPOSERS IN COMPETITIVE RANGE

Negotiations will be conducted with all proposers whose proposals are in the competitive range. The content and extend of the negotiations may vary from one proposer to another.