

Attachment H – VTA Protest Procedures

1.0 General

- 1.1 These VTA Protest Procedures set out the exclusive Protest remedies available with respect to Procurements and applies to all Offerors participating, or planning to participate, in a Procurement action ("**Interested Parties**"). Interested Parties do not include Subcontractors or suppliers of an actual or prospective Offeror or Contractor or joint venture parties acting independently of a joint venture Offeror or Contractor.
- 1.2 Interested Parties responding to a Procurement may submit a written objection or complaint to: (a) the content of a Solicitation, including its terms, conditions, or form; and/or (b) the recommended award of a Contract, in each case in accordance with these VTA Protest Procedures (a "**Protest**").
- 1.3 VTA will review and resolve each Protest fairly and equitably in accordance with these VTA Protest Procedures.

2.0 Protest Procedures

- 2.1 This Section 2.0 applies to all Procurements, except those Procurements described in Section 3.0. Each Interested Party expressly recognizes the limitation on its rights to Protest contained in this Section 2.0, expressly waives all other rights and remedies, and agrees that VTA's decision on any Protest, as provided in this Section 3.0, will be VTA's final and conclusive determination.
- 2.2 An Interested Party may submit to VTA a Protest on the content of a Solicitation, including the procurement process, or on items, including any Contract documents, contained in the Solicitation. Any such Protest must be filed with VTA within 10 days after the Solicitation is first advertised. If VTA issues any addendum to a Solicitation, a Protest related to the contents of that addendum must be filed with VTA within five days after issuance of the relevant addendum.
- 2.3 Protests regarding the Notice of Recommended Award for a Solicitation may be made by an Interested Party that has submitted an unsuccessful Offer. Any Protest regarding the Notice of Recommended Award must be filed with VTA within five (5) business days after the date VTA issues the Notice of Recommended Award.
- 2.4 A Protest under this Section 2.0 must contain a full and complete written statement specifying in detail the grounds of the Protest and the facts supporting the Protest as further described in Section 4.0.

3.0 Protests in Relation to Procurements for Technology Products under CPCC § 20306

3.1 This Section 3.0 applies to Procurements of Technology Products* under California Public Contract Code (CPCC) § 20306. Each Interested Party expressly recognizes the limitation on its rights to Protest contained in this Section 2.0, expressly waives all other rights and remedies, and agrees that VTA's decision on any Protest, as provided in this Section 2.0, will be final and conclusive. (*See CPCC § 20306(b)(1)(A) & (B) and the definition of “Technology Products” in Section 6.)

3.2 An Interested Party may Protest any acquisition conducted in accordance with CPCC § 20306 pursuant to the following Protest procedures:

- (a) Protests based on the content of the request for proposals must be filed with VTA within 10 days after the request for proposals is first advertised. VTA will issue a written decision on the Protest prior to opening of proposals. A Protest based on the content of the request for proposals may be renewed by refileing the Protest with VTA within fifteen days after the Notice of Recommended Award has been made available to the public.
- (b) An Interested Party may Protest the recommended award on any ground not based upon the content of the request for proposals by filing a Protest with VTA within fifteen (15) days after the Notice of Recommended Award has been made available to the public.
- (c) A Protest under this Section 2.0 must contain a full and complete written statement specifying in detail the grounds of the Protest and the facts supporting the Protest as further described in Section 4.0.
- (d) An Interested Party who files a Protest under this Section 2.0 will have an opportunity to appear and be heard before VTA prior to the opening of proposals in the case of Protests based on the content of the request for proposals, or prior to final award in the case of Protests based on other grounds or the renewal of Protests based on the content of the request for proposals.

4.0 Form, Content and Submittal of a Protest

4.1 Any Protest filed with VTA must be written, legible and contain the following:

- (a) the name, email address, physical address, and telephone number of the Interested Party and the Interested Party's designated point of contact, which must be the address for service purposes during the course of the proceeding;
- (b) Solicitation name and number;

- (c) relationship of the Interested Party to the Solicitation sufficient to establish that the Protest is being filed by a proper Interested Party;
- (d) a detailed statement of the legal and factual grounds of Protest, including copies of relevant documents, technical data, or other pertinent information as evidence to support the Protest; and
- (e) a statement as to the nature of the relief requested.

4.2 Protests must be addressed to the following physical or e-mail address:

Santa Clara Valley Transportation Authority
Procurement and Contracts Department
Attention: Chief Procurement Officer
3331 North First Street, Building B
San Jose, CA 95134

procurement@vta.org

- 4.3 A Protest must be received by VTA on or before 5.00 p.m. (Pacific) on the day that it is due under Section 2.0 or Section 3.0 (as applicable). If the due date for submission of a Protest under Section 2.0 or Section 3.0 (as applicable) falls on a weekend or legal holiday, the Protest period will be extended to end at 5.00 p.m. (Pacific) on the next working day.
- 4.4 The Chief Procurement Officer of VTA may decide the outcome of the Protest without requesting further submission(s) from the Interested Party submitting the Protest. It is therefore the responsibility of the Interested Party to ensure that the initial Protest filed with VTA includes all the matters the Interested Party wishes VTA to consider in deciding the outcome of the Protest.
- 4.5 All untimely protests will be rejected.
- 4.6 An Interested Party may withdraw its Protest at any time before VTA issues a final decision.

5.0 **VTA Determination**

- 5.1 VTA's Chief Procurement Officer (or designee) will investigate each timely and properly submitted Protest filed by an Interested Party, will respond to each substantive issue raised by such Protest, and will make the final decision regarding such Protest.
- 5.2 Those Offerors that may become ineligible for an award if a Protest is upheld may be invited by VTA to respond to the basis of the Protest to the extent the basis of the Protest relates to their capabilities to perform. The decision to invite a response from other affected Offerors is at the sole discretion of the Chief Procurement Officer.

- 5.3 Where a timely and proper Protest regarding the content of the Solicitation has been filed, VTA may (in its sole discretion) extend the due date for receipt of Offers to accommodate the time needed to resolve the Protest and institute any remedial measures.
- 5.4 If a Protest is based on a complaint or objection to the proposed award of a Contract, the award of the Contract will be delayed pending disposition of the Protest, and the Offeror listed in the Notice of Recommended Award will be informed of the Protest. VTA may request that such Offeror extend the time for acceptance of their Offer to avoid the need for a re-solicitation. If VTA is unable to secure an extension of the validity period for the Offer, VTA may proceed with award notwithstanding the Protest if one of the following conditions is met: (a) the urgent need for delivery or performance of the goods or services being procured; or (b) a prompt award is otherwise in the best interests of VTA.
- 5.5 VTA will mail or otherwise furnish its final written determination to the Interested Party prior to award of a Contract.
- 5.6 Subject to Section 5.9 below, the decision of VTA's Chief Procurement Officer (or designee) will be VTA's final and conclusive determination.
- 5.7 For federally funded Procurements:
- (a) the FTA Regional Office (or other applicable regional office) will be notified by the Chief Procurement Officer upon receive of a Protest; and
 - (b) after exhausting the Protest procedures set out in these VTA Protest Procedures, an Interested Party may deliver an 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 five working days of the date when the Interested Party has received actual or constructive notice of VTA's final decision. Likewise, the Interested Party 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 five working days of the date when the Interested Party has identified other grounds for appeal to FTA. For example, other grounds for appeal include VTA's failure to comply with its Protest procedures or failure to review the Protest.

6.0 Definitions Applicable to VTA Protest Procedures

For the purposes of these VTA Protest Procedures:

"Interested Party" is defined in Section 1.1 of these VTA Protest Procedures.

"Notice of Recommended Award" means the notice of staff recommendation for award of the Contract described in CPCC § 20306.

"Offer" means a response (including a bid or a proposal) to a Solicitation that, if accepted, would bind the Offeror to perform according to the terms specified in the Solicitation or otherwise responds to the Solicitation.

"Offeror" means a bidder or proposer (as applicable) who responds to a Solicitation by submitting a bid or proposal (as applicable).

"Procurement" means the acquiring by contract of goods (including but not limited to supplies, equipment, and material) and services (including, but not limited to, construction, public works, communication, and planning projects) by and for the use of VTA through purchase or lease, whether the goods or services are already in existence or must be created, developed, demonstrated, and evaluated.

"Protest" is defined in Section 1.2 of these VTA Protest Procedures.

"Technology Products" means (i) computers, telecommunications equipment, fare collection equipment, radio and microwave equipment, and other related electronic equipment and apparatus; and (ii) specialized rail transit equipment, including, but not limited to, railcars or tunnel boring machines.