



SOLICITATION PROTEST POLICY

Policy #: AP-1027 **Origination Date:** February 12, 2009 **Revised Date:** June 25, 2021

I. PURPOSE

- 1.01 Santa Cruz METRO reserves the right to amend, modify, or delete this policy at any time.
- 1.02 Santa Cruz METRO is responsible for resolving all procurement Protests arising out of third party procurements using good administrative practices and sound business judgment. It is Santa Cruz METRO's intention that its procurement process provides for fair and open competition in compliance with federal and state laws and METRO policies.
- 1.03 Santa Cruz METRO has established this Solicitation Protest Policy so that all procurement protests are filed, processed and resolved in a manner consistent with the requirements of the Federal Transit Administration (FTA) Circular (4220.1F) Third Party Contracting Guidance, dated November 1, 2008, which is on file at Santa Cruz METRO's Administrative Offices, 110 Vernon Street, Santa Cruz, CA 95060, and available upon request.

II. APPLICABILITY

- 2.01 This policy applies to all Santa Cruz METRO employees and all Santa Cruz METRO facilities.
- 2.02 This regulation is applicable to any Protester as defined herein that has a Protest against Santa Cruz METRO in any phase of a procurement process.

III. DEFINITIONS

- 3.01 "Protest" means a formal declaration of disapproval or objection filed by a Protester during the procurement process. A Protest is a potential bidder's or proposer's remedy for correcting a perceived wrong in the procurement process. See "Types of Protests" below.
- 3.02 "Protester" means a person, group, or organization that is an actual or prospective bidder or proposer whose direct economic interest would be

affected by the award or failure to award the third party contract at issue and that files a Protest. A subcontractor does not qualify as a "Protester."

3.03 "Types of Protests": There are two basic types of Protests pursuant to this Policy, based on the time in the procurement cycle when they occur:

- a) A pre-bid or solicitation phase Protest is received no later than five (5) calendar days prior to the bid opening or proposal due date. Pre-bid protests are those based on the content of the initial Notice and/or solicitation published by Santa Cruz METRO requesting bids/proposals.
- b) A pre-award Protest is a protest against making an award of a contract and is received after receipt of proposals or bids, but no later than five (5) calendar days after the date of Santa Cruz METRO's issuance of a notice of intent to award a contract.

A post-award Protest is a protest received after award of a contract. No protests will be considered after contract award, except for compelling reasons whereby the lateness is due to Santa Cruz METRO's untimely handling of the protest submission. In no event will METRO consider protests filed after contract award due to the neglect of the Protestor.

IV. PROCEDURES

- 4.01 Prior to filing a Protest, a Protester must first utilize any procedures in the specifications for Approved Equals or requests for clarification. Santa Cruz METRO will deny or approve such requests and, if the requestor disagrees, they may avail themselves of these Protest procedures.
- 4.02 All Protests must be filed in writing with the Santa Cruz METRO Administrative Offices, CFO, Santa Cruz Metropolitan Transit District, 110 Vernon Street, Santa Cruz, CA 95060, or electronically at financemanager@scmtd.com. No other location is acceptable.
- 4.03 A Protest must set forth the specific grounds of the dispute and shall be fully supported with technical data, test results, or other pertinent information related to the subject being protested. The Protest must include the name and contact information of the Protester, solicitation/contract number or description, and what remedy the Protester is seeking. The Protester is responsible for adhering to these requirements. Failure to comply with the

time periods for filing Protests as set forth herein shall be a basis for rejection of the Protest.

- 4.04 Santa Cruz METRO's Chief Financial Officer (CFO) shall make a determination on the Protest generally before the submission date for bids or proposals or within ten (10) working days from receipt of the Protest, whichever is later, although this deadline may be extended at Santa Cruz METRO's sole discretion. The decision of the CFO must be in writing and will include a response to each substantive issue raised in the Protest.
- 4.05 Any decision by the CFO may be appealed to the Board of Directors. The Protester has the right within five (5) business days of receipt of the CFO's decision to file an appeal restating the basis of the Protest and the grounds of the appeal. In the appeal, the Protester is only permitted to raise information and issues previously provided in the Protest or discovered after the Protest was submitted to the CFO for decision and directly related to the grounds of the Protest. The Protester shall be provided with at least 72-hour notification of when the Board of Directors will hear the appeal. The Protester may appear, be represented and present evidence and testimony at the appeal. The Board of Directors' decision shall constitute Santa Cruz METRO's final administrative determination.
- 4.06 The Protester may withdraw its Protest or appeal at any time before Santa Cruz METRO issues a final decision.
- 4.07 If Santa Cruz METRO postpones the date of bid or proposal submission because of a Protest (or appeal thereof) of the solicitation specifications, addenda, dates or any other issue relating to the procurement, Santa Cruz METRO will notify, via addendum, all parties who are on record as having obtained a copy of the solicitation documents that a Protest/appeal had been filed, and the due date for bid or proposal submission shall be postponed until Santa Cruz METRO has issued its final decision.

V. METRO RESPONSIBILITIES TO THE FTA

- 5.01 In cases where contracts are substantially funded by the FTA, as a best practice, Santa Cruz METRO's CFO will notify its FTA regional office when it receives a third party contract protest, and keep FTA informed about the status of the protest.
- 5.02 For Protests covered by Section 5.01 above, Santa Cruz METRO's CFO will provide the following information to FTA:



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- a) Subjects: A list of Protests involving third party contracts and potential third party contracts that are substantially funded by FTA.
 - b) Details: The following information about each Protest:
 - 1. A brief description of the Protest
 - 2. The basis of disagreement,
 - 3. If open, how far the Protest has proceeded, or
 - 4. If resolved, the agreement or decision reached.
 - c) When and Where: Santa Cruz METRO will provide this information:
 - 1. In its next quarterly Milestone Progress Report, and
 - 2. At its next Project Management Oversight review, if any.

5.03 Santa Cruz METRO's CFO will disclose information about any third party procurement Protest to FTA upon request.

VI. ADMINISTRATION OF POLICY

6.01 The Purchasing Department, under the supervision of the CFO and General Counsel, is responsible for administering this policy and procedures.

VII. REVISION HISTORY

Date	Action	Approved By
February 12, 2009	New Policy	
October 15, 2012	Updated Address	

END OF POLICY