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| <b>BID PROTEST</b> | <b>PROCEDURE</b>        |            |
|                    | <b>Document Number:</b> | FRS-PR-036 |
|                    | <b>Version Number:</b>  | 5          |

**1.0 Purpose:**

To implement the provisions of VTA Policy FRS-PL- 036 "Bid Protests".

**2.0 Scope:**

This Procedure applies to all VTA departments and all vendors participating in the established VTA procurement process.

**3.0 Responsibilities:**

It is the responsibility of the Purchasing and Materials Manager to draft and obtain approval of this procedure to assure organizational understanding and compliance with Policy FRS-PL-036. Additionally, the Purchasing and Materials Manager will have responsibility for periodic review and proposing updates to the Policy and Procedure.

**4.0 Procedure:**

**4.1 Types of protests:**

4.1.1 A pre-bid or solicitation phase protest. This type of protest may be filed for the following reasons:

- Restrictive or discriminatory specifications;
- Improper advertising;
- Inadequate time provided in the solicitation to prepare a bid.

4.1.2 A pre-award protest. This is a protest against making an award and is received after receipt of bids, but before award of the contract. This type of protest may be filed for the following reasons:

- Restrictive or discriminatory specifications;
- An improper short list decision;
- Inadequate time was provided in the solicitation to prepare a bid;
- Award is made to other than the lowest responsible, responsive bidder on formally advertised (IFB) procurements;
- Responsibility or responsiveness determinations;
- Failure to adhere to the evaluation criteria set forth in the specification;
- Changes in criteria during the evaluation process;
- Negotiation after bid opening in formally advertised (IFB) procurements;
- Improper determination of DBE or SBE goal achievement;
- Improper determination of DBE or SBE good faith efforts.

4.1.3 A post-award protest. This is a protest received after the award of a contract.

This type of protest may be filed for the following reasons:

- Sole-source or non-competitive procurements;

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- Violations of the procurement process that the protester could only have become aware of after the award was made.

## 4.2 Submission of Protests

### 4.2.1 Protest submission deadlines:

Pre-bid or solicitation phase protests must be filed at least ten days prior to the scheduled date for submission of bids.

Pre-award protests must be filed within five days after the date of the Notice of Recommended Award.

Post-award protests must be filed within five days of the award of the contract or date the protester knew or should have known of the alleged violation.

If necessary, the closing date of the solicitation may be extended pending a resolution of the protest.

### 4.2.2 The protest shall be submitted in writing to the attention of:

Purchasing and Materials Manager  
Santa Clara Valley Transportation Authority  
3331 North First Street  
San Jose, CA 95134-1906

To expedite handling, the address must include the wording, "Attention—Bid Protest" clearly displayed on the envelope.

### 4.2.3 Mandatory Protest Contents:

The protest shall include:

- The name and address of the protester;
- The solicitation number and the project description;
- A statement of the grounds for protest and all supporting documentation;
- The requested resolution to the protest desired from VTA.

Protests or complaints received by VTA staff other than the Purchasing and Materials Manager should be reported or forwarded to the Purchasing and Materials Manager immediately.

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#### 4.3 VTA Protest Review

##### PURCHASING AND MATERIALS MANAGER

The Purchasing and Materials Manager shall review all materials submitted with the initial protest with legal staff and other VTA staff as needed. No additional materials will be accepted for consideration during the protest review unless specifically requested in writing by the Purchasing and Materials Manager. If additional material is requested, it must be submitted within five days of the request. The Purchasing and Materials Manager shall respond in writing to each substantive issue raised in the protest.

#### 4.4 Final Decision

The decision of the Purchasing and Materials Manager shall be VTA's final decision in the matter. The decision of the Purchasing and Materials Manager exhausts the administrative remedies of the protester for purposes of appealing to the FTA as provided in paragraph 4.6 of this Procedure.

#### 4.5 Requests for Reconsideration

A protestor may file a request for reconsideration with the Purchasing and Materials Manager if information becomes available that was not previously known or could have been known by the protester, or the protester claims there has been an error of law or regulation. Requests for reconsideration will be granted only for the reasons stated above, and will not be allowed for the consideration of issues not previously raised as substantive.

#### 4.6 Federal Procurements

4.6.1 Upon receipt of a protest on a solicitation for a FTA funded project, VTA shall notify the FTA Regional office and keep FTA informed of the status of the protest in compliance with FTA Circular 4220.1F, Chapter VII.

4.6.2 If the procurement is on an FTA funded project, the protester may file a protest with the FTA pursuant to the provisions of FTA Circular 4220.1F, Chapter VII, after the protester has exhausted all administrative remedies with VTA. An appeal to the FTA must be received by the cognizant FTA Regional or Headquarters Office within five working days of the date the protester has received actual or constructive notice of VTA's final decision.

4.6.3 For procurements funded by other federal agencies, VTA will adhere to the requirements of those agencies.



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### 5.0 Definitions:

|                   |   |
|-------------------|---|
| Days:             | Working days of VTA.  |
| File or Submit:   | The date of receipt by VTA.   |
| Interested Party: | All bidders/proposers on a procurement, and any subcontractor or supplier that shows a substantial economic interest in a provision of the Invitation for Bids (IFB) or Request for Proposal (RFP), or in the interpretation of such a provision. |
| Bid:              | Includes "offer" and "proposal".  |
| IFB:              | Invitation for Bids   |
| DBE:              | Disadvantaged Business Enterprise   |
| FTA:              | Federal Transportation Administration   |

### 6.0 Records:

Records of protests shall be maintained within the Contracts and Materials Management Department according to established record retention guidelines.

### 7.0 Appendices:




N/A.

### 8.0 Training Requirements:

Contracts and Materials Management will have responsibility for training VTA staff for compliance with this Procedure.

### 9.0 Summary of Changes:

Changing the procedure to a one step review process.

| <i>Prepared by</i>   | <i>Reviewed by</i>   | <i>Approved by</i>   |
|--|--|--|
| <br>Thomas B. Smith<br>Purchasing and Materials Manager | <br>Joseph T. Smith<br>Chief Financial Officer | <br>Michael T. Burns<br>General Manager |

Date Signed

| Original Date: | Revision Date: | Page 4 of 4 |
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| 10/14 /94      | 6/28/11        |             |