



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <div style="border: 1px solid black; padding: 2px; display: inline-block;"> DocuSigned by: <i>Michael Jones</i> 47000790F2D7463... </div>		GENERAL MANAGER ACTION REQ'D: Approve and Send to Board		
DATE: 12/23/2022 1/4/2023		BOARD INITIATED ITEM: No		
Originator/Prepared by: Rachel Russell Dept: Strategic Engineering <div style="border: 1px solid black; padding: 2px; display: inline-block;"> DocuSigned by: <i>Rachel Russell</i> 6916944E998244E... </div> Signature/Date: <div style="text-align: right;">12/30/2022</div>	General Counsel <div style="border: 1px solid black; padding: 2px; display: inline-block;"> DocuSigned by: <i>Jana Belan</i> F8FD7B3A73E74E8... </div> <div style="text-align: right;">12/30/2022 []</div>	Controller/Treasurer <div style="border: 1px solid black; padding: 2px; display: inline-block;"> DocuSigned by: <i>Chris Gan</i> EE11C8CEEEA04FD... </div> <div style="text-align: right;">12/30/2022 []</div>	District Secretary <div style="text-align: right;">[]</div>	BARC <div style="border: 1px solid black; padding: 2px; display: inline-block;"> DocuSigned by: <i>Shane Edwards</i> 8128A2EB2F014F3... </div> <div style="text-align: right;">1/3/2023 []</div>

Rescind Original Authorization to Award and Reject All Bids for Contract No. 15CQ-211, Procurement of Direct Fixation Fastener Assemblies

PURPOSE:

To obtain Board authorization to rescind the original authorization to award and reject all Bids for Contract No. 15CQ-211 for the procurement of Direct Fixation Fastener Assemblies and authorize the General Manager to re-advertise the Solicitation.

DISCUSSION:

On January 13, 2022, the Board authorized the General Manager to award Contract No. 15CQ-211 to Progress Rail Services (Progress Rail).

On August 2, 2022, BART's General Manager presented Proposed Decisions to the Board regarding protests filed by L.B. Foster Company ("L.B. Foster") and Voestalpine Railway Systems Nortrak Inc. ("Nortrak") against Award of Contract No. 15CQ-211 to Progress Rail. Per BART's Protest Procedures the Board had ten (10) days to discuss the Proposed Decision. The Board did not request a hearing, so the Proposed Decisions are final.

The first protest by L.B. Foster, received prior to the Bid award, stating that inaccuracies in their Disadvantaged Business Enterprise ("DBE") Bid form were immaterial, is denied. L.B. Foster submitted a direct appeal to the Federal Transit Administration ("FTA") on BART's denial, but FTA declined review of the appeal.

Nortrak's protest, received after the Bid award, is granted due to inaccuracies in Progress Rail's Designation of Sub-suppliers, DBE, and Small Business Enterprise ("SBE") form. However, after further evaluation of Nortrak's Bid, Staff also found it to be inaccurate due

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to irregularities in their DBE submittal.

This Contract was advertised pursuant to the District's Disadvantaged Business Enterprise ("DBE") Program requirements. The Office of Civil Rights reviewed the scope of work for this Contract and determined there were DBE subcontracting opportunities; therefore, a DBE participation goal of 3% was set for this Contract. After review of all bids, the Office of Civil Rights has determined that all bidders are found non-responsive.

Based on Staff analysis of the protest filed by L.B Foster it is clear the bid of L.B. Foster was non-responsive. Based on Staff analysis of the protest filed by Nortrak it is clear the Bid of Progress Rail was non-responsive. Based on further Staff analysis of Nortrak's Bid, Staff has found it to be non-responsive.

FISCAL IMPACT:

There is no fiscal impact.

ALTERNATIVES:

Due to all of the Bids received being non-responsive, there is no alternative to rescinding the original authorization to award, rejecting all Bids, and re-advertising the solicitation.

RECOMMENDATION:

It is recommended that the Board adopt the following motion.

MOTION:

The Board authorizes the General Manager to rescind the original authorization to award, reject all Bids for Contract No. 15CQ-211, Procurement of Direct Fixation Fastener Assemblies, and re-advertise the Solicitation.