



**Alameda-Contra Costa Transit District**

Matter of: *HR Management Procurement Award Protest*  
 File: *RFP 2023-1585 Appeal Response and Final Determination*  
 Date: *3 August 2022*  
 To: *Clarence Hunt for the Protestor*

Dear Mr. Hunt:

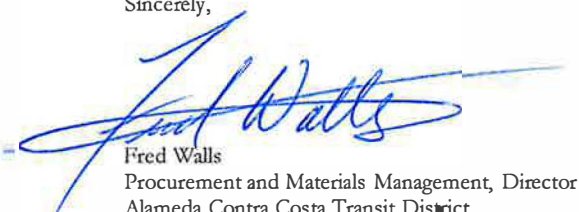
This letter is the response to your appeal of the Procurement and Materials Management Director's protest decision (dated July 19<sup>th</sup>, 2022). AC Transit's Procurement Protest Procedures, outlined in Board Policy 468 (section IV. F. 5.) require the first appeal to be addressed to the Director of Procurement and Materials Management. We are unable to provide remedy outside the Board-approved procurement and protest procedures. To suggest an "informal meeting" with the District's General Manager in an effort to achieve a different outcome is not part of our procedures and disregards public procurement principles.

Your original protest involved a complaint regarding the District's small business participation policy. AC Transit Board Policy 468 (section IV. F. 2.) requires all protests involving small business participation to be first evaluated by the District's Contracts Compliance department. Furthermore, protests based on the contents of the solicitation (including SBE/DBE program) should have been submitted on or before the proposal due date of April 19<sup>th</sup>, 2022 by 2 pm (AC Transit Board Policy 468 Procurement Protest Procedures IV. D. 1). This was a very competitive procurement, and, out of the eleven (11) responsive proposals, HR Management's proposal did not receive the required minimal technical points to be considered competitive. HR Management's overall raw score of 132 points ranked 10 out of the 11 proposals and did not meet the 70% cut-off threshold<sup>1</sup>. HR Management did not provide a proposal that would justify an award and a re-evaluation. Even the addition of a small business participation goal would not change that decision.

The District employs several efforts to be inclusive and equitable in the procurement process. The "blind" evaluation established an equitable approach for all evaluations of this RFP. California Proposition 209 amended the California State Constitution, Section 31(a), to state, "The State shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.". Mandating that this RFP be parceled out to African American DBEs could thus violate both Proposition 209 and the California State Constitution.. Moreover, Page 14 of the RFP (2023-1585) clearly states that the District is not responsible for any costs incurred by the proposer in submitting a response to the RFP, a protest, or requests for information. Additionally, the District reserves the right to continue the procurement process irrespective of potential protests (Board Policy 468, IV. C).

Accordingly, your appeal is denied and this final determination from the Procurement and Materials Director sustains the decision of the initial protest. We are available to address any additional concerns HR Management may have regarding the strengths and weaknesses of the submitted proposal upon request.

Sincerely,



Fred Walls  
 Procurement and Materials Management, Director  
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 fwalls@actransit.org

<sup>1</sup> The District determined, in accordance with the solicitation, that offerors whose submittals did not receive an initial score of at least 70.0 would be determined not to be in the competitive range and would, therefore not be considered further in the selection process.