



**By Email and U.S. Mail**

August 12, 2013

Mr. Edward D. Reiskin  
Director of Transportation  
San Francisco Municipal  
Transportation Agency  
One South Van Ness Ave., 7th floor  
San Francisco, CA 94103

Ms. Trinh Nguyen  
Senior Program Manager  
San Francisco Municipal  
Transportation Agency  
One South Van Ness Ave., 7th floor  
San Francisco, CA 94103

Mr. John Haley  
Director of Transit  
San Francisco Municipal  
Transportation Agency  
One South Van Ness Ave., 7th floor  
San Francisco, CA 94103

**Re: Request for Qualifications – Procurement of Light Rail Vehicles  
CONTRACT No. SFMTA-2013-19 QUALIFICATION PROTEST**

Dear Messrs. Reiskin, Haley and Ms. Nguyen:

This Letter constitutes AnsaldoBreda's formal protest ("Protest") to SFMTA's wrongful findings with respect to AnsaldoBreda's eligibility to fully compete for the above referenced Contract.

AnsaldoBreda timely submitted its Statement of Qualifications (SOQ) as regards the above-referenced procurement and this information was reviewed by SFMTA thereafter. By correspondence dated August 6, 2013, SFMTA advised AnsaldoBreda that according to the criteria set forth in the Request for Qualifications (RFQ) its SOQ was scored as 49 and thus fell below the 50 point competitive range threshold by one point. As a result, SFMTA would not permit AnsaldoBreda to proceed to the Request for Proposal (RFP) phase of the procurement.

Based upon review of the RFQ criteria, Quantitative Score Evaluations and governing standards, AnsaldoBreda submits this qualification protest challenging the evaluation process as performed in this instance which has yielded an arbitrary and capricious determination inconsistent with proper procedure.

#### **Basis of Protest**

Pre-qualification requirements are by their nature an exception to the obligations of public agencies to promote maximum competition through competitive processes and thus, it is of paramount importance, that the prequalification process itself be fair, uniform, objective and untainted by evidence of improper favoritism or exclusion. Pursuant to Cal. Pub. Cont. Code §§ 20101 California public agencies are required to establish and apply equally to all potential bidders a uniform system of rating based upon objective criteria.

Objective scoring, the backbone of any pre-qualification process, is of particular importance. AnsaldoBreda's review of the SOQ determination by SFMTA demonstrates that it was flawed by error with respect to both uniformity and objectivity based on SFMTA's own written standards, and was in fact, arithmetically incorrect which errors were material to the overall total score accorded AnsaldoBreda. These errors resulted in AnsaldoBreda's improper elimination from the competitive process.

In this regard, note first the evaluation sheet of Panelist 4. While the Evaluation Summary shows that Panelist 4 scored "8" with respect to item 8 "Production Schedule Solutions," Panelist 4's handwritten evaluation shows that "9" was overwritten, that is "8" was changed to "9". Because Panelist 4 failed to tally its Total Score as required by the form and process, this error was not evident to SFMTA in calculating the Evaluation Summary and it erroneously transcribed the score as "8" penalizing AnsaldoBreda.

Second, the scoring of item 5 "Weight Compliance" was patently arbitrary and capricious at minimum with respect to 4 of the 5 evaluations. In this category, panelist 3 purportedly considering the same information with the same objectivity as the other panelists has scored this item at "0" where three of the other panelists scored weight compliance at 4, and the final panelist at 5.

#### **Corporate Headquarters**

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AnsaldoBreda's SOQ, as required, provided its experience and past performance as a design and manufacturing prime contractor for five electrically powered rail transit vehicles projects one of which was required to be for a U.S. customer. With respect to "Weight Compliance," the materials provided by AnsaldoBreda which were not challenged or questioned by SMFTA, show that three of the five projects as delivered met or bettered the contract weight restrictions. The fourth project, an SFMTA procurement, indicated a small weight overage which was resolved satisfactorily in project close out without assessment of any liquidated damages or other penalty but which, had it not been so resolved, could have been proven by AnsaldoBreda to be the result of modifications requested by the customer. A fifth project resulted in an overweight penalty which was paid by AnsaldoBreda.

The RFQ at page 9 sets out the objective scoring criteria for item 5 "Weight Compliance" as follows:

"Unacceptable – Weight goals in contract are not achieved in the **majority** of examples provided. Missing significant information in SOQ." The scoring range for the Unacceptable category for Weight Compliance is shown as **0-4**.

"Acceptable – Weight goals in contract are not met in fewer than half of the examples provided, and reasons for failure to meet are not linked to client requests. Missing minor information in SOQ." The scoring range for the Acceptable category for Weight Compliance is shown as **5-7**.

"Exceeds – Weight goals in contract are met or beaten. Any failure to meet weight requirements can be clearly aligned to a customer-requested change. No significant missing information in SOQ." The scoring range for the Exceed category for Weight Compliance is shown as **8-10**.

Based on these criteria, where three of the five examples provided by AnsaldoBreda met or exceeded contract weight goals and no panelist commented that any information was missing, SFMTA's own evaluation **standards required a minimum score of "5"** in the Weight Compliance category. The lower grades of zero and four, as given here to AnsaldoBreda by four of the five evaluators is by definition arbitrary, capricious and inconsistent with proper procedure. (While such information is not presently available to AnsaldoBreda it would further demonstrate the improper nature of the SFMTA's scoring if panelist 3 gave any proposer with a single instance of weight non-compliance more than a zero score.) SFMTA's scoring approach as evidenced here is simply not sustainable under California decisional law. See *Schram Const. Inc. v. Regents of the Univ. of California*, 187 Cal App. 4th 1040, 1051-52 (Cal Ct App 2010) (public entity's determination may not be arbitrary, capricious, lacking in evidentiary support or inconsistent with proper procedure).

#### **Conclusion**

Recalculation of AnsaldoBreda's quantitative evaluation based upon the minimum weight scores permissible pursuant to SFMTA's criteria and standards yield a total score of 50.8 with only one category ranked as unacceptable – well within the competitive range. Accordingly, AnsaldoBreda respectfully requests that SFMTA withdraw its August 6, 2013 flawed evaluation and find that AnsaldoBreda, is in fact, eligible to proceed to the RFP phase of the procurement.

Should SFMTA deny this Protest AnsaldoBreda reserves its right to raise additional grounds based on a complete review of the scoring of all proposers, which information will if necessary be sought by separate procedures.

Thank you for your consideration.

Sincerely,

Mauro Melani  
General Manager  
AnsaldoBreda, Inc.

Attachment: August 6, 2013 SFMTA letter with attachments  
Request for Qualifications p. 9



By email and U.S. Mail

August 6, 2013

Mr. Andrea Pepi  
AnsaldoBreda SpA  
Via Ciliegiole 110/b – 51100  
Pistoia, Italy

Mr. Cristiano Torresi  
AnsaldoBreda, Inc.  
1461 Loveridge Road,  
Pittsburg, CA 94565

**SFMTA**  
Municipal Transportation Agency

Subject: SFMTA Contract No. 2013-19 – LRV4 Procurement

Dear Mr. Andrea Pepi

We have evaluated your Statement of Qualifications (SOQ) submitted in response to the Request for Qualifications (RFQ) for the above-referenced contract. Unfortunately, your SOQ did not score within the competitive range according to the criteria set forth in the RFQ. Therefore, the SFMTA has determined that AnsaldoBreda is not eligible to proceed to the RFP phase of this procurement.

The RFQ listed the threshold a Proposer must achieve to score within the competitive range:

Prospective Qualifier will be deemed **not** in the Competitive Range if **one or more** of the following occurs:

- The Total Maximum Points are less than 50.
- Three or more of the Scoring Criteria are ranked as 'Unacceptable.'

AnsaldoBreda scored 49 out of 100 possible points; therefore, we cannot find AnsaldoBreda to be within the competitive range. Attached are copies of the scoring sheets for AnsaldoBreda's SOQ.

If you wish to appeal this determination, the Protest Procedures, attached as Appendix E to the RFQ require that you submit such an appeal within five business days following receipt of this letter.



Edwin M. Lee, *Mayor*  
Tom Nolan, *Chairman*  
Cheryl Brinkman,  
*Vice-Chairman*  
Leona Bridges, *Director*  
Malcolm Heinicke, *Director*  
Jerry Lee, *Director*  
Joél Ramos, *Director*  
Cristina Rubke, *Director*  
Edward D. Reiskin  
*Director of Transportation*

One South Van Ness Avenue  
Seventh Floor  
San Francisco, CA 94103

Tele: 415.701.4500

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Thank you for your participation in this process.

Sincerely,

Trinh Nguyen, P.E.  
Senior Program Manager, LRV4 Procurement

Enclosed: Attachment 1 – AnsaldoBreda SOQ Evaluation Summary

CC: Mr. John Haley, SFMTA Director of Transit  
Mr. Bruno Siller Tasselli, AnsaldoBreda SpA  
Ms. Patrizia Nuti, AnsaldoBreda SpA  
Mr. Cristiano Torresi, AnsaldoBreda, Inc.  
Project File

**Attachment 1:  
 AnsaldoBreda SOQ Evaluation Summary  
 Quantitative Scores**

	CRITERIA	PANELIST					AVERAGE Per Criteria
		Panelist 1	Panelist 2	Panelist 3	Panelist 4	Panelist 5	
1	Schedule Adherence	9	5	4	7	9	6.8
2	Change Orders	7	6	6	6	6	6.2
3	Reliability Performance	10	5	13	12	9	9.8
4	Non-Car Delivery Items	4	3	4	2	2	3.0
5	Weight Compliance	4	5	0	4	4	3.4
6	Quality of Product	7	9	8	5	10	7.8
7	Managerial Approach	3	3	3	4	3	3.2
8	Production Schedule Solutions	10	8	8	8	10	8.8
	Total Score						49

Criteria for Prospective Qualifier to be deemed not in the Competitive Range:  
 The Total Score is less than 50.

Form 7  
 Written Proposal Evaluation Form for Scoring  
 SOQ Quantitative Evaluation (Scoring)

Name of Panelist : [REDACTED]

Name of Prospective Qualifier : *Breda*

Information:

1. This form is required for each Prospective Qualifier.
2. Use Table 7.1 for Prospective Qualifier in single entity.
3. If needed, use Form 10 for more space in writing comments.

For Prospective Qualifier in single entity

Table 7.1

	Criteria	Scoring Range			Score	Comments
		E	A	U		
1	Schedule Adherence (20)	16-20	10-15	0-9	9	
2	Change Orders (10)	8-10	5-7	0-4	7	
3	Reliability Performance (20)	16-20	10-15	0-9	10	
4	Non-Car Delivery Items (5)	5	3-4	0-2	4	
5	Weight Compliance (10)	8-10	5-7	0-4	4	
6	Quality of Product (15)	12-15	8-11	0-7	7	
7	Managerial Approach (5)	5	3-4	0-2	3	
8	Production Schedule Solutions (15)	12-15	8-11	0-7	10	
	Total Score (100)	<del>0</del> 0	<del>5</del> 38	<del>3</del> 20	54	



Form 7  
 Written Proposal Evaluation Form for Scoring  
 SOQ Quantitative Evaluation (Scoring)

Name of Panelist : [REDACTED]

Name of Prospective Qualifier : *Angaldo Breda*

Information:

1. This form is required for each Prospective Qualifier.
2. Use Table 7.1 for Prospective Qualifier in single entity.
3. If needed, use Form 10 for more space in writing comments.

For Prospective Qualifier in single entity

Table 7.1

	Criteria	Scoring Range			Score	Comments
		E	A	U		
1	Schedule Adherence (20)	16-20	10-15	0-9	5	<i>consistent late</i>
2	Change Orders (10)	8-10	5-7	0-4	6	
3	Reliability Performance (20)	16-20	10-15	0-9	5	<i>significant info missing.</i>
4	Non-Car Delivery Items (5)	5	3-4	0-2	3	<i>consistent late just lease half the items.</i>
5	Weight Compliance (10)	8-10	5-7	0-4	5	
6	Quality of Product (15)	12-15	8-11	0-7	9	
7	Managerial Approach (5)	5	3-4	0-2	3	
8	Production Schedule Solutions (15)	12-15	8-11	0-7	8	
	Total Score (100)	/	/	/	44	

Form 7  
 Written Proposal Evaluation Form for Scoring  
 SOQ Quantitative Evaluation (Scoring)

Name of Panelist : [REDACTED]

Name of Prospective Qualifier : BREDA

Information:

1. This form is required for each Prospective Qualifier.
2. Use Table 7.1 for Prospective Qualifier in single entity.
3. If needed, use Form 10 for more space in writing comments.

For Prospective Qualifier in single entity

Table 7.1

	Criteria	Scoring Range			Score	Comments
		E	A	U		
1	Schedule Adherence (20)	16-20	10-15	0-9	4	
2	Change Orders (10)	8-10	5-7	0-4	6	
3	Reliability Performance (20)	16-20	10-15	0-9	13	
4	Non-Car Delivery Items (5)	5	3-4	0-2	4	
5	Weight Compliance (10)	8-10	5-7	0-4	0	
6	Quality of Product (15)	12-15	8-11	0-7	9	
7	Managerial Approach (5)	5	3-4	0-2	3	
8	Production Schedule Solutions (15)	12-15	8-11	0-7	8	
	Total Score (100)	/	/	/	46	





Form 7  
 Written Proposal Evaluation Form for Scoring  
 SOQ Quantitative Evaluation (Scoring)

Name of Panelist : [REDACTED]

Name of Prospective Qualifier : *Analdo Breda*

Information:

1. This form is required for each Prospective Qualifier.
2. Use Table 7.1 for Prospective Qualifier in single entity.
3. If needed, use Form 10 for more space in writing comments.

For Prospective Qualifier in single entity

Table 7.1

	Criteria	Scoring Range			Score	Comments
		E	A	U		
1	Schedule Adherence (20)	16-20	10-15	0-9	<i>7</i>	
2	Change Orders (10)	8-10	5-7	0-4	<i>6</i>	
3	Reliability Performance (20)	16-20	10-15	0-9	<i>12</i>	
4	Non-Car Delivery Items (5)	5	3-4	0-2	<i>2</i>	
5	Weight Compliance (10)	8-10	5-7	0-4	<i>4</i>	<i>Fine on the overweight</i>
6	Quality of Product (15)	12-15	8-11	0-7	<i>5</i>	
7	Managerial Approach (5)	5	3-4	0-2	<i>4</i>	
8	Production, Schedule Solutions (15)	12-15	8-11	0-7	<i>8</i>	
	Total Score (100)					

Form 7  
 Written Proposal Evaluation Form for Scoring  
 SOQ Quantitative Evaluation (Scoring)

Name of Panelist : [REDACTED]

Name of Prospective Qualifier : ANSALDOBREDA

Information:

1. This form is required for each Prospective Qualifier.
2. Use Table 7.1 for Prospective Qualifier in single entity.
3. If needed, use Form 10 for more space in writing comments.

For Prospective Qualifier in single entity

Table 7.1

	Criteria	Scoring Range			Score	Comments
		E	A	U		
1	Schedule Adherence (20)	16-20	10-15	0-9	9	LATE DELIVERY
2	Change Orders (10)	8-10	5-7	0-4	6	
3	Reliability Performance (20)	16-20	10-15	0-9	9	LACK OF DATA
4	Non-Car Delivery Items (5)	5	3-4	0-2	2	LATE WITH TOOLS, MANUAL
5	Weight Compliance (10)	8-10	5-7	0-4	4	OVERWEIGHT, ACCEPTED RESPONSIBILITY AND BOND DAMAGES
6	Quality of Product (15)	12-15	8-11	0-7	10	
7	Managerial Approach (5)	5	3-4	0-2	3	
8	Production Schedule Solutions (15)	12-15	8-11	0-7	10	
	Total Score (100)				53	

**CITY AND COUNTY OF SAN FRANCISCO  
San Francisco Municipal Transportation Agency**

**Request for Qualifications**

**Procurement of Light Rail Vehicles (LRV4)**

**CONTRACT No. SFMTA-2013-19**

March 29, 2013

**SUBMISSION DEADLINE  
DATE: April 22, 2013, 2:00 P.M. PDT**

(3) Reliability Performance

Exceeds – Reliability goals in contract are met ahead of schedule and sustained. Some post-contract data provided, indicating good ongoing relationship with owner. No significant missing information in SOQ.

Acceptable – Reliability goals eventually achieved for a sustained period. If fall-off occurs after required levels achieved, clarify that the reason was beyond the control of the Prospective Qualifier. Missing minor information in SOQ.

Unacceptable – Performance not achieved, or only achieved briefly during contractual demonstration. Missing significant information in SOQ.

(4) Non-Car Delivery Items

Exceeds - Deliveries are mostly within schedule. Acceptance occurs within a reasonably short time from delivery, without numerous instances of resubmittals. No significant missing information in SOQ.

Acceptable – Up to half of the items are delivered late. Multiple occurrences of resubmittals or significant delays between delivery and acceptance. Not all projects show these delays. Missing minor information in SOQ.

Unacceptable – Chronic late submittals, multiple resubmittals and long delays in acceptance. Missing significant information in SOQ.

(5) Weight Compliance

Exceeds – Weight goals in contract are met or beaten. Any failure to meet weight requirement can be clearly aligned to a customer-requested change. No significant missing information in SOQ.

Acceptable – Weight goals in contract are not met in fewer than half of the examples provided, and reasons for failure to meet are not linked to client requests. Missing minor information in SOQ.

Unacceptable – Weight goals in contract are not achieved in the majority of examples provided. Missing significant information in SOQ.

(6) Quality of Product (defects and required modifications)

Exceeds – Post-delivery modifications are generally below 100. Defects found on a typical car are below 25, with an improving trend from first to last car. No significant missing information in SOQ.

Acceptable – Post-delivery modifications are generally below 200. Defects found on a typical car are below 50, with some improvement from first to last car. Missing minor information in SOQ.



By email and U.S. Mail

August 23, 2013

Mr. Andrea Pepi  
AnsaldoBreda SpA  
Via Ciliegiole 110/b – 51100  
Pistoia, Italy

**Subject:** Request for Qualifications – Procurement of Light Rail Vehicles.  
Contract No. 2013-19 – LRV4 Procurement  
Protest of AnsaldoBreda

Dear Mr. Pepi:

The San Francisco Municipal Transportation Agency (SFMTA) received a protest letter dated August 12, 2013 from Mauro Melani, General Manager, AnsaldoBreda, Inc., purportedly on behalf of AnsaldoBreda SpA (AnsaldoBreda). We note that the letter did not follow the lines of communication for AnsaldoBreda SpA as provided in its Statement of Qualifications (SOQ) – that is, it was neither submitted by AnsaldoBreda SpA nor one of the persons listed in the SOQ authorized to represent AnsaldoBreda SpA. Nevertheless, we will respond to the allegations in your letter.

### **Background**

In response to a Request for Qualifications (RFQ), AnsaldoBreda submitted an SOQ on April 22, 2013. SFMTA conducted a thorough evaluation of the SOQs received from four respondents (including AnsaldoBreda), including verifying information in the SOQs from project references. On August 6, 2013, the SFMTA sent AnsaldoBreda a letter notifying the company that its score of 49 out of 100 points did not qualify AnsaldoBreda to proceed to the next phase of the procurement process (submission of proposals in response to a Request for Proposals). The minimum score to be eligible to proceed to the next round was 50. This protest followed.

### **Protest**

AnsaldoBreda states that a pre-qualification process must have a uniform system of rating based on objective criteria. AnsaldoBreda does not allege that the SFMTA's rating system did not apply to all companies who submitted SOQs or that the criteria for evaluation were not objective. Rather, AnsaldoBreda contends (1) that the results of the scoring revealed arithmetic

Edwin M. Lee  
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*Director*

Jerry Lee  
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Joél Ramos  
*Director*

Cristina Rubke  
*Director*

Edward D. Reiskin  
*Director of  
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error that was detrimental to AnsaldoBreda or (2) that the evaluators scored in an arbitrary and capricious manner with respect to one of the criteria.

### **(1) Alleged Arithmetic Error**

AnsaldoBreda claims that Panelist 4's score for item 8 "Production Schedule Solutions," was overwritten, changing an "8" to a "9." AnsaldoBreda further claims that this result was not captured in the total. Although we acknowledge that the copy of the scoresheet provided is not clear, our review of the original evaluation form reveals the number to be an "8" that was changed from a "7." This fact was confirmed with Panelist 4 at the time of the scoring. We are attaching another copy which may be more clear than the copy originally provided to you.

### **(2) Weight Compliance**

AnsaldoBreda next alleges that the scoring of the "Weight Compliance" criterion by four of the five panelists was arbitrary and capricious.<sup>1</sup>

Courts give the greatest deference possible to the agency's proposal evaluation. See *Gulf Group Inc. v. United States*, 61 Fed.Cl. 338, 351 (2004);<sup>2</sup> *Overstreet Elec. Co. v. United States*, 59 Fed.Cl. 99, 117 (2003); *Mike Moore's 24-Hour Towing v. City of San Diego*, 45 Cal.App.4th 1294, 1305-1306 (1996). The review is limited to an inquiry into whether the decision was arbitrary, capricious or entirely lacking in evidentiary support. *Citizens for Improved Sorrento Access, Inc. v. City of San Diego*, 118 Cal. App. 4th 808, 814 (2014). If there is a reasonable basis for the agency's decision, the court will not overturn it and may not substitute its judgment for that of the agency. *Cube Corp. v. United States*, 46 Fed.Cl. 368, 374 (2000).

Based on the above authority, we find that there was ample evidence to support the scoring of the evaluation panelists.

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<sup>1</sup> AnsaldoBreda cites California Public Contract Code Section 20101. Notably, San Francisco, as a chartered city and county, has home rule powers and is not bound by the provisions of Section 20101 in establishing procurement procedures. *MCM Const. Inc. v. City & County of San Francisco*, 66 Cal. App.4th 359, 372 (1998), citing *R&A Vending Services, Inc. v. City of Los Angeles*, 172 Cal.App.3d 1188, 1192(1985).

<sup>2</sup> The City may properly look to federal authority for standards applicable to bid protests. California courts are "strongly persuaded by decisions relating to federal procurement bidding." *Pacific Architects Collaborative v. State of California*, 100 Cal. App. 3d 110, 125 (1979).



The criteria for “Unacceptable” for the Weight Compliance category, meriting scores in the 0-4 range, was as follows:

Unacceptable – Weight goals in contract are not achieved in the majority of examples provided. **Missing significant information in SOQ.** (emphasis supplied).

The criteria for “Acceptable,” with a scoring range of 5-7, was as follows:

Acceptable – Weight goals in contract are not met in fewer than half of the examples provided, and reasons for failure to meet are not linked to client requests. Missing minor information in SOQ.

AnsaldoBreda listed five projects in its SOQ. The two U.S. examples were clearly overweight. Details extracted from AnsaldoBreda’s SOQ are provided below:

Section	Project	Contract Weight	Actual Weight
D.1	LACMTA	144,000 lbs.	149,900 lbs. (overweight by 5,900lbs)
D.2	SFMTA	75,984 lbs. + 933lbs. 76,917 lbs	79,120 lbs. (overweight by 2,203lbs) <sup>3</sup>

With respect to the three European projects listed (Naples, Milan, Madrid), AnsaldoBreda did not provide all information requested in the RFQ. Section 4.c.3.5 of the RFQ states: “Weight compliance information shall include **vehicle weight specified in the contract**, and the **final actual average weight of the vehicle**” (emphasis supplied). Unfortunately, AnsaldoBreda did not provide the actual average vehicle weight for these projects, nor did AnsaldoBreda submit the actual contract requirements for vehicle weight.

Rather, AnsaldoBreda submitted axle weights (contractual and actual) for the Milan project, with no information regarding the number of axles per vehicle. Further, the axle weight provided for the Milan project was for an M1 unit with

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<sup>3</sup> The statements in your letter with respect to the SFMTA procurement are not accurate. You state that there was “a small weight overage which was resolved satisfactorily in project close out *without assessment of any liquidated damages or other penalty* but which, had it not been so resolved, could have been proven by AnsaldoBreda to be the result of modifications requested by the customer.” (Emphasis supplied.) First, the contract weight listed in the above table includes modifications of 933 pounds requested by SFMTA. Second, the closeout documents reveal that weight penalties of \$303,935 were factored into the settlement agreement. In compliance with contract requirements, SFMTA assessed the weight penalty to any vehicle weight overage above 78,000 pounds.



no information as to its configuration (e.g., a single light rail vehicle, a trailer car or combination) what constituted a complete train set. Without information regarding the complete configuration, the evaluation panel had no way to assess the complete weight of the vehicle. The contract weight for the Naples project specified a "fully loaded" weight, but AnsaldoBreda did not specify whether the actual average weight was fully loaded. Nor was the actual axle weight provided, even though the contract specified an axle weight.

Based on the omissions in AnsaldoBreda's SOQ, the evaluators reasonably could have concluded that the SOQ was missing significant information and that AnsaldoBreda failed to establish that it met the contract weight goals in the majority of the examples provided. This conclusion is underscored by the fact that four out of five evaluators scored this criterion in the Unacceptable range.

### **Conclusion**

For the reasons discussed above, we deny your protest in all regards. You may contact the undersigned to discuss the response. You also have the right to appeal this decision to the Director of Transportation pursuant to Section 4.5 of the Protest Procedures contained in the RFQ. Finally, you have the right to address the SFMTA Board of Directors on the date when the matter is calendared to be heard if the Director of Transportation denies the appeal.

Sincerely,

Trinh Nguyen, P.E.  
Senior Program Manager, LRV4 Procurement

CC: Mr. John Haley, SFMTA Director of Transit  
Mr. Bruno Siller Tasselli, AnsaldoBreda SpA  
Ms. Patrizia Nuti, AnsaldoBreda SpA  
Mr. Cristiano Torresi, AnsaldoBreda, Inc.  
Mr. Mauro Melani, General Manager AnsaldoBreda, Inc  
Project File

Form 7  
 Written Proposal Evaluation Form for Scoring  
 SOQ Quantitative Evaluation (Scoring)

Name of Panelist : [REDACTED]

Name of Prospective Qualifier : *Analdo Breda*

Information:

1. This form is required for each Prospective Qualifier.
2. Use Table 7.1 for Prospective Qualifier in single entity.
3. If needed, use Form 10 for more space in writing comments.

For Prospective Qualifier in single entity

Table 7.1

	Criteria	Scoring Range			Score	Comments
		E	A	U		
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2	Change Orders (10)	8-10	5-7	0-4	<i>6</i>	
3	Reliability Performance (20)	16-20	10-15	0-9	<i>12</i>	
4	Non-Car Delivery Items (5)	5	3-4	0-2	<i>2</i>	
5	Weight Compliance (10)	8-10	5-7	0-4	<del><i>4</i></del>	<i>Fine on the overweight</i>
6	Quality of Product (15)	12-15	8-11	0-7	<i>5</i>	
7	Managerial Approach (5)	5	3-4	0-2	<i>4</i>	
8	Production Schedule Solutions (15)	12-15	8-11	0-7	<i>8</i>	
	Total Score (100)					

August 29, 2013

Via E-mail and Courier

Mr. Edward D. Reiskin  
Director of Transportation  
San Francisco Municipal Transportation Agency  
One South Van Ness Avenue, 7th Floor  
San Francisco, CA 94103

Re: Request for Qualifications – Procurement of Light Rail Vehicles  
Contract No. SFMTA-20013-19  
Qualification Protest

Dear Mr. Reiskin:

Pursuant to Section 4.5 of the Protest Rules appended to the above-referenced Request for Qualifications, AnsaldoBreda hereby appeals the letter of the Senior Program Director dated August 23, 2013. That letter responded to our August 12, 2013 protest of Agency's arbitrary and capricious refusal to qualify AnsaldoBreda to participate in the Request for Proposals phase of the LRV procurement.

Regrettably, the Senior Program Director's letter endorses SFMTA's continuing disregard of not only public procurement law and regulation applicable to this solicitation, but also the Agency's own protest procedures. Moreover, the newly created explanations now supplied to rationalize the improper disqualification of our company with its proven track record of manufacture and supply here in the Bay Area – on the basis of a score of '49' rather than the minimum required '50' – are not sustainable and are actually contradicted by the factual and written record.

Indeed, the August 23rd letter appears to be an after-the-fact effort to mask the Agency's misunderstanding or disregard of binding obligations with respect to vendor prequalification





and its own published scoring criteria, by retrospectively and selectively combing the record to present an alternative justification. These justifications however are implausible and/or in contradiction to the actual content of the written Statement of Qualifications furnished by our company, and inconsistent with reasonable and customary industry practice in terms of review of the included data.

**A. Disregard of Protest Procedure**

As an initial matter, and indicative of the improper, arbitrary and capricious treatment of AnsaldoBreda throughout this qualification process, the Senior Program Director's August 23rd letter does not accord with the Agency's own published procedures, which were appended as Appendix E to the Request for Qualification document.

The Protest Rules set forth a three-stage process leading up to the Agency's final disposition of a vendor protest. Following receipt of the vendor's initial protest submission, and after consultation with the City Attorney's Office, the contract manager is to "inform the protester in writing of the CM's *recommendation* . . . ." (Protest Rules 4.1 and 4.4) (emphasis added). Thereafter, "if the protester disagrees with the recommendations," it has the opportunity to request review by the Director of Transportation, who will thereafter "make a *recommendation* to the Agency for final action." (Protest Rule 4.5) (emphasis added). The Director of Transportation's recommendation is then presented for Agency Board consideration, at which time the protester has the opportunity "to address the Agency regarding the matter." (Id.) Thereafter, "[t]he protester shall be notified in writing of the Agency decision regarding the protest . . . . The action of the Agency is final," subject to potential subsequent FTA or court action. (Protest Rules 4.7 and 4.8.)

Here, AnsaldoBreda on August 12th provided its initial submission to the contract manager (here, the Senior Program Director). The August 23rd response, however, was not a contract manager's "recommendation." First, the reply purports to respond for the entirety of the Agency ("[t]he San Francisco Municipal Transportation Agency (SFMTA) received a protest letter dated August 12, 2013 . . . *we will respond* [herein] to the allegations in your letter") (emphasis added). Second, the letter purports to be an Agency-wide denial of the protest on each and every possible ground: "For the reasons discussed above, *we deny your protest in all regards.*" (Emphasis added.) This is a far cry from the fair process envisioned



by the Rules, which calls for a CM “recommendation” at the first stage, acceptance of which is at the discretion of the Director of Transportation in his own second “recommendation,” which the operative document to be then considered by the Agency Board.

SFMTA has however at the first stage jumped the gun and provided an Agency-wide denial of AnsaldoBreda’s protest “in all regards,” not only derogating its own procedure, but also running afoul of Federal Transit Administration requirements for federally-funded procurements such as this (see FTA Circular 4220.1F, Ch. VII, § 1.a(1) (“the Common Grant Rule for governmental recipients requires the recipient to have protest procedures”); § 1.b(2)(a) (“FTA will consider a protest if the [grant] recipient . . . [h]as not complied with its protest procedures”); and 49 C.F.R. § 18.36(b)(12) (basis of above)). See also S.F. Admin. Code Sec. 21.3(i) (“the procedure for resolving Bid protests shall be established by regulations adopted by the Purchaser”).

Even if the August 23rd letter is withdrawn, as it should be, the apparent Agency prejudgment at this early stage effectively deprives AnsaldoBreda – and the taxpayers who maintain an interest in fair and open procurement – of the benefit and protections intended to be conferred by the subsequent stages of the mandated protest procedures.

AnsaldoBreda reserves all its rights and advises that its participation should not be construed and does not constitute a waiver of its position that the protest process has been irretrievably tainted. Moreover, SFMTA’s departure from the Protest Rules whether viewed in isolation or in the context of the other deficiencies described below, is indicative of a flawed qualification process which can only be cured by vacating the unsupported non-eligibility determination and reinstating AnsaldoBreda as a proposer or, alternatively, re-running the RFQ process.

## **B. Qualification Standards and Process**

SFMTA’s August 23rd letter contends that Agency prequalification determinations are subject to *de minimis* scrutiny, and also appears to reject the principle of equal application to all



bidders of an objective and uniform system of rating, on the apparent basis that as a municipal agency, SFMTA is free from such constraints. This position is not supported.<sup>1</sup>

When local agencies receive federal funding for a procurement (as is the case here), then pursuant to 49 C.F.R. § 18.36(c)(4) such FTA “grantees and subgrantees will not preclude potential bidders from qualifying during the solicitation period.” In particular, pursuant to § 18.36(c)(1) grantees are required to conduct procurements “in a manner providing full and open competition consistent with the standards of § 18.36. Some of the situations considered to be restrictive of competition include but are not limited to . . . [p]lacing unreasonable requirements on firms in order to qualify . . . .” Throughout the procurement the grantee is required to act pursuant to “written selection procedures . . . .” 49 C.F.R. § 18.36(c)(3). Finally, FTA grantees are all times barred from taking “[a]ny arbitrary action in the procurement process.” 49 C.F.R. § 18.36(c)(1)(vii).

Here, contrary to federal regulation SFMTA disregarded its own written criteria, and its actions do not withstand scrutiny whether using the stricter reasonableness standard that applies to qualifications, or the arbitrary and capricious standard minimally applicable to other aspects of grantee procurements.<sup>2</sup>

### **1. Arithmetical Error / Integrity**

One of the multiple issues raised by AnsaldoBreda in its August 12th letter involved error or process integrity issues with respect to the importation of the scoring of Panelist No. 4 to the final tabulation sheet. Specifically, Panelist No. 4 overwrote a handwritten initial entry of ‘8’ for the category of “production schedule solutions” with ‘9,’ but this was input as the lower figure on the tabulation sheet.

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<sup>1</sup> Apart from applicability of federal law and regulations to this procurement by virtue of FTA funding, the Agency’s suggestion that a municipality could dispense with equal application of an objective or uniform qualification rating system has not been supported with reference to any authority or precedent.

<sup>2</sup> In its August 23rd rejection, the Agency posited that AnsaldoBreda’s grievance related only to arithmetical errors and improper application of scoring criteria to its own qualification statement, and did not implicate unequal application of scoring criteria that unduly benefited its competitors. AnsaldoBreda has not been provided with information regarding competitors’ scores and/or how the criteria were applied to these competitors and whether there was any disparate application. AnsaldoBreda reserves its rights to the extent additional information in this regard becomes available that would suggest further prejudice to the company.



In its August 23rd denial-in-all-regards, the Agency posits that “our review of the original evaluation form reveals the number to be an ‘8’ that was changed from a ‘7,’” and anecdotally relates this was confirmed “with Panelist 4 at the time,” without explaining how or providing any evidence of the same. The ‘clearer’ copy SMFTA provided with the Agency denial letter however further supports that the score was in fact changed to a ‘9,’ and that AnsaldoBreda was shorted in the final tabulation where this was input only as ‘8.’

	Criteria	Scoring Range			Score	Comments
		E	A	U		
1	Schedule Adherence (20)	16-20	10-15	0-9	7	
2	Change Orders (10)	8-10	5-7	0-4	6	
3	Reliability Performance (20)	16-20	10-15	0-9	12	
4	Non-Car Delivery Items (5)	5	3-4	0-2	2	
5	Weight Compliance (10)	8-10	5-7	0-4	4	Fine on the overweight
6	Quality of Product (15)	12-15	8-11	0-7	5	
7	Managerial Approach (5)	5	3-4	0-2	4	
8	Production Schedule Solutions (15)	12-15	8-11	0-7	8	←
	Total Score (100)					←

**Figure 1: Excerpt of Panelist 4 Scoring Sheet attached to Agency Aug. 23rd Letter. Arrows point to score SMFTA claims is an ‘8,’ and the blank “Total Score” box.**

Nor does the Agency explain, why having purportedly taken Panelist No. 4 aside to clarify the scoring, they failed to have Panelist No. 4 insert the “Total Score” at the bottom of the form, which would have added certainty to the Agency’s position on the ‘clarification.’ In this regard, on each and every of the other panelist scoring sheets, the “Total Score” is filled in. Here, it is left blank, which not only clouds what this evaluator actually intended and when



changes were made but also heightens the risk of process irregularities, including with respect to the category 5 (“Weight Compliance”) score which appears to have been altered from a prior entry that may have been a ‘6.’ Accordingly, irregularities in SFMTA’s own record keeping and the process integrity issues arising therefrom require AnsaldoBreda be afforded a minimum of one additional scoring point. Alternatively, because of these irregularities and process integrity issues and the other issues described below which materially affect achievement of the qualification threshold, the RFQ process must be re-run.

## **2. “Weight Compliance” Category**

On page 9 of the RFQ and on the panelists’ evaluation forms, SFMTA set forth the written scoring criteria for qualification, which under federal regulations grantees are obliged to follow so as not to unreasonably prevent proposers from participation in a procurement. The proposers’ performance on five electric propulsion rolling stock contracts detailed in their respective Statement of Qualifications was to be rated with respect to eight categories. In regard to the particular category of “Weight Compliance” – in which proposers could earn up to 10 scoring points – the criteria and allowable scoring based on such criteria are specifically described as follows:

- “Unacceptable – Weight goals in contract are not achieved in the majority of examples provided. Missing significant information in the SOQ.” The scoring range for “Unacceptable” is shown as 0 to 4.
- “Acceptable – Weight goals in contract are not met in fewer than half of the examples provide, and reasons for failure to meet are not linked to client requests. Missing minor information in SOQ.” The scoring range for “Acceptable” is shown as 5 to 7.
- “Exceeds – weight goals in contract are met or beaten. Any failure to meet weight requirements can be clearly aligned to a customer-requested change. No significant missing information in SOQ.” The scoring range for “Exceeds” is shown as 8 to 10.

The Agency’s August 23rd denial-in-all-regards posits that “there was ample evidence to support the scoring” of the evaluation panelists which consisted of one score of ‘0’; three scores of ‘4’; and one score of ‘5.’ SMFTA asserts that scores of zero, or otherwise at the bottom end of the range, are supported under the published criteria because two California





projects “were clearly overweight,” and the two Italian projects lacked significant information in the submitted SOQ, placing weight compliance performance in the “unacceptable” range.<sup>3</sup>

SFMTA’s assertions are unsupported by the factual record and any reasonable interpretation of the content of the Statement of Qualifications.

In regard to the Los Angeles project, AnsaldoBreda does not dispute that this single example involved a weight overage which was resolved pursuant to contract terms. However, this is the only project of the five where any recognized overage occurred, as is clear from the written qualifications submission and as is known by the Agency.

Incredibly, with respect to the other California project – a prior SFMTA LRV procurement – the Agency attempts to advance its overweight argument with citation to a global contract closeout and settlement agreement in which it actually agreed *to waive and release any potential overage claim* against AnsaldoBreda for all purposes, with the sole exception that a prospective claim<sup>4</sup> could be revived in the event of the company’s nonperformance of a single-vehicle repair project, due in 2015. At paragraph VII.B, the agreement contains a clause entitled “City’s Release,” which states,

“Except as otherwise provide in this Agreement, the City and the San Francisco municipal Transportation Agency, on behalf of themselves and their respective past, present and future directors, managers, officers, agents [and] employees . . . release and forever discharge the Contractor . . . from all liabilities, claims, rights, causes of action suits, obligations, damages, demands, expenses, costs, debts, matters and issues of any nature, known or unknown, related to [LRV] Contract 309.”

Accordingly, any overage assertion is not only improperly raised in this (or any other) context, but actually represents breach of the closeout and settlement agreement, of which such release formed both a material term and inducement (and as to such breach, the

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<sup>3</sup> SFMTA’s denial letter offers no significant discussion of the fifth project, in Madrid, Spain. Given that at least one project indisputably met or exceeded contract weight requirements, under no standard can the zero score by one of the reviewers be justified.

<sup>4</sup> AnsaldoBreda continues to maintain the existence of defenses to this now-extinguished claim.



Company reserves its rights). In addition to the other bases cited above, for this reason alone, SFMTA is obligated to withdraw its August 23rd letter.

With respect to the two Italian projects, the Agency is now claiming that “missing significant information” mandated a score at the lower end of the 10-point range. This is not plausible based on the scoring record, and appears to be an after-the-fact justification that also cannot withstand scrutiny based on the actual content of the Statement of Qualifications and reviewer forms.

As an initial matter, in categories where a purported lack of information actually factored into the reviewers’ scoring, this was clearly stated in their comments, as shown in the examples below.

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3	Reliability Performance (20)	16-20	10-15	0-9	5	significant info missing
3	Reliability Performance (20)	16-20	10-15	0-9	9	lack of data

**Figure 2: “Significant Info Missing” and “Lack of Data” noted by reviewers on scoring sheets**

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By contrast, in the case of weight compliance, *not a single reviewer* complained of a lack of data. The record again undercuts the credibility of SFMTA’s denial and precludes the Agency from now raising this issue.

Apart from the reality that **no reviewer actually considered AnsaldoBreda to have provided insufficient weight compliance information**, it is also the case that the purported examples of inadequate data given by the Agency in its August 23rd letter, do not withstand scrutiny when compared against actual content of the Statement of Qualifications. Moreover,



certain of SFMTA's purported criticisms are wholly undermined by other of its comments found elsewhere in the same letter. Others seek to portray ambiguity where there is none. All are specious and appear to reflect after-the-fact efforts to comb the SOQ for defects in an effort to justify the reviewers' and Agency's improper scoring and assorted process irregularities.

In regard to the Milan Meneghino project, AnsaldoBreda is attacked for providing the specified and delivery axle weights – which demonstrate that the company beat the customer's requirement by more than 1.4% – when the contract specified an axle weight requirement for these units consisting of multiple and differing cars.<sup>5</sup> Yet, on the very next page in regard to the Naples Circumvesuviana project, AnsaldoBreda is attacked because average “actual axle weight [was not] provided, even though the contract specified an axle weight.” (In fact, axle weight is easily determined by simple division based on the other information supplied.) In regard to this same project, AnsaldoBreda additionally furnished (a) the fully loaded vehicle weight mentioned in the contract (100,000 kg), and (b) final average vehicle weight (99,665 kg). SFMTA professes confusion as to whether (b), the final average weight, represents fully loaded weight, allowing for an apples-to-apples comparison. However, no reasonable industry participant could be confused, for if this were the non-loaded weight, then the fully loaded weight would necessarily be tens of thousands of kilograms more, exceeding specification in the double-digits of percentages, with the deliverable never to be accepted by the transit property. In fact, AnsaldoBreda here once again beat the contractual weight requirement – as it did in Madrid by an even greater factor.

Indeed, the absence of recognized overage in four of the five examples provided was readily apparent based on the information available to SFMTA, and required AnsaldoBreda to receive scores in the '5' to '9' range for the weight compliance category. Whereas SFMTA as a federal grantee is obligated to act reasonably in the qualification process and strictly adhere to its written evaluation criteria, on the record here there is no plausible explanation for its derogation of these scoring parameters, and certainly none that can withstand any level of scrutiny.

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<sup>5</sup> In this regard, the RFQ states at page 9 that a high score (8 to 10 per the instructions given the evaluators) will be given where “[w]eight goals in contract are met or beaten.”



In this context it should also be noted that the Agency presents no justification or rationale whatsoever for one evaluator affording AnsaldoBreda a zero (of 10) score when the majority of the company's five weight references demonstrated indisputable compliance with applicable contract requirements and all other reviewers, based on the same information, scored this category at '4' or '5.' This single score, if increased to the minimally required '5' would alone result in an overall AnsaldoBreda score of 50 and result in qualification.


### **Conclusion**

As reviewed above, the SFMTA qualification process involving AnsaldoBreda displays a pattern of improprieties, inexplicable acts and procedural irregularities, continuing through the protest process in which Agency judgment has been prematurely cast, tainting the entire RFQ phase and the reliability of the Agency's continuing review. The justifications offered are implausible, if not entirely impossible, and could be viewed as an effort to preclude the company's deserved participation in the LRV procurement. AnsaldoBreda's qualifications to participate in the RFP stage are well established in the record and confirmed in its SOQ. We respectfully request that the Agency's August 23rd letter be withdrawn and that the Director of Transportation recommend to the Agency Board that AnsaldoBreda's protest be sustained, the non-eligibility determination be overturned and the company be permitted to participate in the procurement or, alternatively, that the RFQ be re-run.

AnsaldoBreda reserves all of its rights and remedies under law.

Sincerely,

ANSALDOBREDA  
  
(Giancarlo Fantappié)

of local Counsel:  
  
(Willie L. Brown, Jr., Esq)

  
(Steven Key, Esq.)



Enclosures: (1) SFMTA August 6, 2013 letter; (2) AnsaldoBreda August 12, 2013 letter; (3) SFMTA August 23, 2013 letter

cc, via Email: **Mr. A.Pepi** and **Mr. M.Melani**, AnsaldoBreda

cc, via Email **Mr. Steven M. Polan**, Esq., **Mr. Ron Grodzinski**, Esq. and **Ms. Nancy K. Feinrider**, Esq., Mantt, Phelps & Phillips, LLP, 7 Times Square, New York, NY 10036

cc, via E-mail and Courier:

**Mr. John Haley**

Director of Transit

San Francisco Municipal Transportation Agency

One South Van Ness Avenue, 7th Floor

San Francisco, CA 94103

**Ms. Trinh Nguyen**

Senior Program Manager

San Francisco Municipal Transportation Agency

One South Van Ness Avenue, 7th Floor

San Francisco, CA 9410



**SFMTA**  
Municipal  
Transportation  
Agency

Edwin M. Lee, *Mayor*

Tom Nolan, *Chairman*

Malcolm Heinicke, *Director*

Joél Ramos, *Director*

Edward D. Reiskin, *Director of Transportation*

Cheryl Brinkman, *Vice-Chairman*

Jerry Lee, *Director*

Cristina Rubke, *Director*

**VIA EMAIL AND U.S. MAIL**  
**September 11, 2013**

**Giancarlo Fantappié**  
**AnsaldoBreda SpA**  
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**Subject: SFMTA Request for Qualifications: Contract No. 2013-19 – LRV4 Procurement  
Director of Transportation Recommendation Re Appeal of AnsaldoBreda**

**Dear Sirs:**

This responds to your August 29, 2013 letter on behalf of AnsaldoBreda SpA (AB) appealing the SFMTA staff recommendation denying AB's protest.

### **Background**

On April 22, 2013, in response to a Request for Qualifications (RFQ), AB submitted a Statement of Qualifications (SOQ). An SFMTA evaluation committee reviewed the SOQs received from four respondents, including AB, as well as information gathered from references. On August 6, 2013, the SFMTA notified AB that its score of 49 out of 100 points fell below the minimum competitive score of 50 and that AB did not qualify to proceed to the next phase of the procurement process (submission of proposals in response to a Request for Proposals). On August 12, 2013, AB filed a protest, and on August 23, 2013, the Project Manager, Trinh Nguyen, denied the protest. AB then submitted this appeal.

### **Decision**

In making a decision about the AB appeal, I have reviewed the record of the selection committee's work to evaluate whether any defect AB alleges harmed the selection process. For reasons discussed further below, I find that the record supporting the challenged aspects of the selection panel's determinations shows them to have been reasonable. Accordingly, while I value the



SFMTA's long and continuing relationship with AnsaldoBreda and note that AB fell only one point short of the minimum required score, after carefully considering AB's objections and the record of the panel's actions, I recommend that the SFMTA Board of Directors uphold the panel's decision and not grant the appeal absent receipt of any further information addressing the discussion below.

## **Appeal**

### **A. Protest Procedures**

AB alleges that the SFMTA did not follow its protest procedures because the Contract Manager's letter denying the protest gives the appearance of being a final SFMTA determination rather than the "recommendation" described in the protest procedure. This is a matter of semantics rather than substance. As provided in the protest procedures, I have carefully reviewed the AB appeal. This letter stands as my recommendation to the SFMTA Board of Directors. Should you wish to address the Board, you should anticipate that the Board will, at their meeting scheduled for Tuesday, September 17, consider my recommendation and consider authorizing issuance of the RFP to qualified proposers.

### **B. Qualification Standards**

#### **1. Alleged Arithmetic Error**

AB claims that Panelist 4's score for item 8 "Production Schedule Solutions," was overwritten, changing an "8" to a "9." AB further claims that this result was not captured in the total, which was left blank by the evaluator. First, AB's claim is inaccurate. Shortly after the selection panel meeting at which the scoring was conducted the Contract Manager investigated Panelist 4's intent in making the change. The panelist stated that she had in fact changed a "7" to an "8." I am attaching a declaration, under penalty of perjury, from Ha Nguyen, Panelist 4, explaining her intent. I trust this declaration will put this issue to rest. Second, even if AB's claim were accurate, AB's total score would not reach the minimum competitive score of 50.

#### **2. Weight Compliance**

AB next alleges that the scoring of the "Weight Compliance" criterion was arbitrary and capricious. The RFQ indicates that Weight Compliance points would be awarded according to the following relevant standards:

Unacceptable – Weight goals in contract are not achieved in the majority of examples provided. Missing significant information in SOQ. (0-4 point range)

Acceptable – Weight goals in contract are not met in fewer than half of the examples provided, and reasons for failure to meet are not linked to client requests. Missing minor information in SOQ. (5-7 point range)

In other words, to warrant an “Acceptable” score in the 5-7 point range, AB had the burden to provide all relevant information to demonstrate that it met the contract weight goals in at least three of the five projects listed in its SOQ. The five members of the selection committee gave AB the following scores: 0, 4, 4, 4, 5. As a result, four members of the panel were not persuaded that AB’s SOQ demonstrated performance meeting the contract weight requirements for at least 3 of the 5 identified contracts. Only one member found AB’s SOQ to demonstrate such performance.

In reviewing the record before the selection committee, I conclude that:

- a) AB met the weight standards in the Madrid contract;
- b) AB did not meet the weight standards in the Los Angeles contract;
- c) AB did not meet the weight standards in the San Francisco contract;
- d) The selection panel had a reasonable basis for questioning AB’s compliance with the weight standards in the Naples contract; and
- e) The selection panel had a reasonable basis for questioning AB’s compliance with the weight standards in the Milan contract.

As to the San Francisco contract, AB concedes that it delivered overweight vehicles but asserts that SFMTA is precluded from relying on this information because the SFMTA had agreed to waive penalties against AB arising from the overweight deliveries. AB’s argument fails for several reasons. First, the SFMTA’s agreement to waive penalties against AB to settle a dispute did not change the underlying facts, as the Closeout and Settlement Agreement between the City and County of San Francisco and AB recounts them. The San Francisco contract specifically required AB to deliver vehicles not to exceed 78,000 pounds. But AB delivered vehicles with an average weight exceeding that standard. Second, nothing in the City’s release of claims against AB addressed the future use of information about those facts or claims, and the release cannot reasonably be read to limit the SFMTA’s ability to rely on facts relating to its own prior experience with AB. Finally, in its SOQ, AB chose to rely on the San Francisco contract. AB could have included a different contract. The selection panel evaluated the information that AB presented. AB cannot selectively rely on its past performance for San Francisco only to the extent it is favorable to AB. For all these reasons, I reject AB’s arguments as to the San Francisco contract.

The record AB provided as to the Naples and Milan contracts did not on its face conclusively demonstrate compliance with the contract weight standards. Rather, the selection committee was required to interpret inconclusive and incomplete information.

Section 4.c.3.5 of the RFQ (page 6) states: “Weight compliance information shall include vehicle weight specified in the contract, and the final actual average weight of the vehicle.” In other words, the RFQ requested that weight performance be explained in terms of the underlying contract requirements for a full vehicle.

For the Naples project, AB submitted the following information:

Vehicle weight-contract:	100.000 kg full load (12.500 kg per axle)
Final actual average weight:	99.665 kg

As AB presented the information, it appears that the Naples contract specified weight in two ways: on a per vehicle basis and on a per axle basis. The AB SOQ provides vehicle delivery information only according to the vehicle standard – not according to the axle standard. A reasonable committee member could have questioned whether this omission signified that the delivered vehicles did not meet the per axle weight standard specified in the contract (e.g., for a vehicle with fewer than 8 axles).

Even if the Naples vehicles met the weight requirements of the contract, AB was required to demonstrate satisfactory weight compliance for *both* the Naples and Milan contracts to be scored in the acceptable range (i.e., for at least three of the offered contracts, including Madrid as discussed above).

For the Milan project, AB provided the following information:

Vehicle weight in contract:	12.5 ton/axle
Final actual average weight:	12.320 ton/axle max on M1 car

According to publicly available information that AB’s appeal letter confirms, there were “multiple and differing cars” making up the 42-car Milan order. This is not uncommon in the purchase of rail vehicles. The AB SOQ includes vehicle delivery information for only the M1 car, which is apparently not a cab car. A cab car would typically be heavier than other cars, and significant weight variations may arise among different kinds of trailing cars. A reasonable committee member could have questioned whether AB’s choice to submit weight qualification information as to only one of several car types signified that other cars did not meet contract weight requirements. Indeed, in reviewing AB’s protest and appeal letters, I note that AB still has not provided any information to document the axle delivery weight as to other cars.

## Conclusion

For the reasons discussed above, I find that as to all matters that AB raises in its protest and appeal, the selection committee’s conclusions were reasonable. I recommend that the SFMTA Board of Directors, at its hearing on this matter scheduled for September 17, 2013, uphold the selection panel’s findings. The time remaining before the SFMTA Board’s meeting on Tuesday, September 17, is AB’s last opportunity to provide the SFMTA with any written documentation that AB delivered cars that complied with all weight specifications under both the Milan and Naples contracts.

Sincerely,



**Edward D. Reiskin**  
**Director of Transportation**

**Attachment: Declaration of Ms. Ha Nguyen**

**cc: Mr. John Haley, SFMTA Director of Transit**  
**Ms. Trinh Nguyen, Project Manager**  
**Mr. Andrea Pepi, AnsaldoBreda SpA**  
**Mr. Bruno Siller Tasselli, AnsaldoBreda SpA**  
**Ms. Patrizia Nuti, AnsaldoBreda SpA**  
**Mr. Cristiano Torresi, AnsaldoBreda, Inc.**  
**Mr. Mauro Melani, General Manager AnsaldoBreda, Inc**  
**Ms. Julia Friedlander, SFMTA General Counsel**  
**Project File**

## Declaration of Ha Nguyen

I, Ha Nguyen, declare as follows:

1. I am currently employed by the City and County of San Francisco's Municipal Transportation Agency (SFMTA) as a Project Manager. I have been employed by SFMTA for over 14 years. I have been responsible for managing a number of multi-million dollar light rail construction and design projects.
2. As part of my duties, I served on the evaluation panel that evaluated the Statements of Qualification (SOQs) received by SFMTA in response to Request for Qualifications – Procurement of Light Rail Vehicles, Contract No. 2013-19 – LRV4 Procurement.
3. Among the SOQs I evaluated in response to this Request for Qualifications was the SOQ submitted by AnsaldoBreda. I am identified as "Panelist 4" on the scoresheets that I completed for my evaluation of the AnsaldoBreda SOQ, and which have been provided to AnsaldoBreda, including the "Form 7 Written Proposal Evaluation Form for Scoring SOQ Quantitative Evaluation (Scoring)" ("Form 7").
4. During the evaluation, I initially scored the Production Schedule Solutions criteria on the Form 7 for AnsaldoBreda's SOQ as a "7" but then crossed out that number and changed it to an "8."
5. Several days after the evaluation, I was asked to clarify my scoring of this criteria because the changed number was not clear when the scoresheets were copied. In order to clarify this point, I wrote and signed a note stating that I had changed the "7" to an "8." A copy of the note is attached to this declaration as Attachment 1.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: September 10, 2013

  
Ha Nguyen



Form 7  
 Written Proposal Evaluation Form for Scoring  
 SOQ Quantitative Evaluation (Scoring)

Name of Panelist : HA NGUYEN  
 Name of Prospective Qualifier : Analdo Breda

Information:

1. This form is required for each Prospective Qualifier.
2. Use Table 7.1 for Prospective Qualifier in single entity.
3. If needed, use Form 10 for more space in writing comments.

For Prospective Qualifier in single entity

Table 7.1

	Criteria	Scoring Range			Score	Comments
		E	A	U		
1	Schedule Adherence (20)	16-20	10-15	0-9	7	
2	Change Orders (10)	8-10	5-7	0-4	6	
3	Reliability Performance (20)	16-20	10-15	0-9	12	
4	Non-Car Delivery Items (5)	5	3-4	0-2	2	
5	Weight Compliance (10)	8-10	5-7	0-4	4	Fine on the overweight
6	Quality of Product (15)	12-15	8-11	0-7	5	
7	Managerial Approach (5)	5	3-4	0-2	4	
8	Production Schedule Solutions (15)	12-15	8-11	0-7	8	changed from 7 to 8.
	Total Score (100)					4