
TRANSBAY JOINT POWERS AUTHORITY

Board Policy No. 001

Category: Financial Matters

PROCUREMENT POLICY

The Transbay Joint Powers Authority (the "TJPA" or "Authority") is a joint powers agency organized and existing under the laws of the State of California. Pursuant to the Joint Powers Agreement creating the TJPA, dated April 4, 2001 (the "Agreement"), the TJPA has the authority to make and enter into contracts, to acquire real and personal property and to exercise all powers necessary and proper to carry out the provisions of the Agreement. The Joint Powers Agreement designates the City and County of San Francisco ("City") as Administrator, charged with executing the provisions of the Joint Powers Agreement and implementing programs undertaken by the Authority. With respect to the manner of exercising its powers, the TJPA is subject to the policies and procedures of the City.

The policies and procedures governing procurements of the TJPA derive from the City, as limited by applicable provisions of state and federal law. The TJPA intends to follow the contracting policies and procedures set forth in San Francisco Administrative Code Chapters 6 (Public Works Contracting), 21 (Acquisition of Commodities and Services), San Francisco Labor and Employment Code Article 131 (Nondiscrimination in Contracts), 132 (Nondiscrimination in Property Contracts), and other relevant provisions of the San Francisco Administrative Code and San Francisco Labor and Employment Code. The TJPA shall be responsible for enforcement of these provisions. In the event of any conflict between federal law and the laws of the City or this Procurement Policy, federal law shall supersede the City law and this Procurement Policy. In the event of any conflict between state law and the laws of the City or this Procurement Policy, state law shall supersede the City law and this Procurement Policy.

By accepting federal funding, the TJPA is obligated to comply with various federal regulations in its procurement of goods and services (e.g., 2 CFR Part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards) and Federal Transit Administration (FTA) Circular 4220.1F and its successors).

The Chief Financial Officer is the Contracting Officer for the TJPA. The Contracting Officer is responsible for implementing the requirements of this policy. The Chief Financial Officer is authorized to develop procedures that implement the procurement policies approved by the Board of Directors. If there is a change in a law for which TJPA has no discretion but to comply, said changes do not require approval of the Board of Directors. TJPA staff must follow the procurement procedures to ensure compliance with Board Policy No. 001- Procurement Policy.

I. Standards of Conduct for Procurements

- A. Competitive Procurements.** Except as provided under 2 CFR Part 200 and FTA Circular 4220.1F or its successors, procurements shall be conducted in a manner that ensures full and open competition.

TJPA must award contracts only to responsible contractors who possess the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to factors such as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

TJPA must maintain records that sufficiently detail the history of procurement. These records will include but are not necessarily limited to (1) rationale for the method of procurement, (2) selection of contract type, (3) contractor selection or rejection, and (4) the basis for the contract price. These record requirements are applicable to the original contracts as well as contract amendments and change orders.

- B. Conflict of Interest.** TJPA must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts.

The TJPA has adopted a Conflict of Interest Code, under which certain designated positions are required to disclose economic interests and are prohibited from participating in decisions that may have an effect on their financial interests. The terms and requirements of the Conflict of Interest Code are incorporated into this Policy by reference. All employees, including consultants or contractors, involved in procurement activities for the TJPA shall be subject to the disclosure requirements of the City's Conflict of Interest Code.

Further, no employee, officer, agent or Board member of the TJPA or its member agencies shall participate in the selection, award, or administration of a contract for the TJPA if a conflict of interest, real or apparent, would be involved. Such a conflict arises when any of the following has a financial or other interest in the firm selected for award: (1) the employee, officer, agent, or Board member; (2) any member of their immediate family; (3) his or her business partner or associate; or (4) an organization that employs, or is about to employ, any of the above. The determination of whether such an interest exists will be governed by California law, including Section 15.103 of the City's Charter; Article III, Chapter 2 of City's Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (Section 87100 et seq.); or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 et seq.), as may be amended from time to time.

- C. Gift Restrictions.** No officer, employee, agent or Board member of the TJPA shall solicit or accept gifts, gratuities, favors or anything of monetary value from TJPA contractors, potential contractors or parties to subagreements, except any gift that is not subject to the disclosure requirements of California's Political Reform Act, as may be amended from time to time.

- D. Collusion in Contracting.** There shall be no collusion between any potential respondent and/or any party or parties to whom a contract has been awarded with any member of the TJPA Board of Directors, TJPA staff, other consultants already

engaged by the TJPA, members of a selection committee, or any other party or parties in the submission of any offer or for the purpose of preventing an offer from being made in a TJPA procurement. There shall be no preferential treatment given by any member of the TJPA Board of Directors, TJPA staff, other consultants already engaged by the TJPA, members of a selection committee, or any other party or parties, or knowingly received by any party or parties in a TJPA procurement.

E. Communications Prohibition. Beginning on the date a procurement formally begins (e.g., an RFP is issued and made available to prospective respondents), there shall be no communications concerning the procurement between members of the TJPA Board of Directors, TJPA staff, other consultants already engaged by the TJPA, or members of the selection committee, and prospective respondents and their employees or agents, except as expressly authorized in the procurement documents. This restriction will end when the TJPA has provided respondents in the procurement notification of the TJPA staff's recommended contract award to the TJPA Board of Directors.

F. Organizational Conflicts of Interest. The TJPA shall not select contractors (1) who, because of other activities, relationships, or contracts, are unable, or potentially unable, to render impartial assistance or advice to the TJPA; (2) whose objectivity in performing contract work may be impaired; or (3) who have an unfair competitive advantage.

G. Ensuring Most Efficient and Economic Purchase. TJPA must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

TJPA is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

TJPA is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

H. Cost or Price Analysis. TJPA must perform a cost or price analysis for every procurement transaction to verify the reasonableness of the pricing and if applicable the adequacy of the competition. Moreover, the FTA requires a cost or price analysis in connection with every procurement action in excess of the Federal Simplified Acquisition Threshold including modifications.

Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for TJPA under 2 CFR 200 federal cost principles.

- I. Unreasonable Qualification Requirements.** TJPA shall not use unreasonable business requirements for bidders or offerors. TJPA shall not impose unnecessary experience requirements for bidders or offerors. TJPA shall not make noncompetitive awards to any person or firm on a retainer contract with the recipient if that award is not for the property or services specified for delivery under the retainer contract. TJPA shall not specify only a “brand name” product without allowing offers of “an equal” product, or allowing “an equal” product without listing the salient characteristics that the “equal” product must meet to be acceptable for award.
- J. Contracting with Small and Minority Business, Women’s Business Enterprises, and Labor Surplus Area Firms.** TJPA must take all necessary affirmative steps to ensure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps must include:
- i. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - ii. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
 - iii. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
 - iv. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
 - v. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce;
 - vi. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in this section; and
 - vii. Adhere to TJPA’s Disadvantaged Business Enterprise (DBE) and Small Business Enterprise (SBE) programs to ensure that DBEs and SBEs have an equal opportunity to receive and participate in contracts.
- K. Domestic Preference.** As appropriate and to the extent consistent with law, the TJPA should, to the greatest extent practicable under a federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.
- L. Contracting Restrictions:** TJPA is strictly prohibited from entering into any Cost Plus Percentage of Cost type of contract under any circumstances. TJPA may use a time-and-materials type contract only after a determination that no other contract is

suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time-and-materials type contract means a contract whose cost to a non-Federal entity is the sum of:

- a. The actual cost of materials; and
- b. Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

M. Sound and Complete Agreement. TJPA shall ensure that all contracts include provisions adequate to form a sound and complete agreement. TJPA's contracts must contain the applicable provisions described in Appendix II to 2 CFR Part 200 Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, as well as the applicable FTA Master Agreement, and FTA Circular 4220.1F.

N. Violations of Standards of Conduct. Violations of these standards of conduct may result in immediate determination that a respondent is an irresponsible contractor and disqualified from participating in procurements; determination that an awarded contract is null and void; and/or imposition of penalties, sanctions, or other disciplinary actions provided by federal, state, and local law.

II. General Standards for Procurements

A. Contract Administration. Procurement staff shall maintain a contract administration system that ensures that contractors' records are recent and in accordance with the contracting policies and procedures. TJPA staff must ensure the contractors perform in accordance with the terms, conditions and specifications of their contracts and to ensure that all purchases or services are received in a timely manner.

B. Review of Procurements. TJPA Procurement and Contract Staff shall review proposed procurements to ensure that they are handled in the most efficient and economical manner, without sacrificing quality and functionality.

C. Certification as to Availability of Funds. The Chief Financial Officer or their designee shall certify the availability of funds before notice to proceed with the contract is issued to the contractor. TJPA Procurement and Contract Staff must ensure the availability of the funds for all micro and small purchases resulting in a standalone purchase order.

- D. Contracts in Writing.** All purchases or other arrangements valued at over \$500 and intended to be binding shall be by formal, written contract and/or other contractual instrument, such as a purchase order.
- E. Contract Forms for Procurements.** The Contracting Officer, or their designee, with the assistance of legal counsel, is authorized to develop appropriate contract forms consistent with this policy.
- F. Reporting to Board.** The TJPA Board of Directors shall review on a quarterly basis the status of all purchase orders and other contracts over \$250,000 entered into by the TJPA and all pending Invitations for Bids/Requests for Proposals that have been issued by the Contracting Officer.
- G. Bid Documents.** Formal competitive bidding requires preparation of complete bid documents that are not unduly restrictive of competition and identify all requirements that must be fulfilled in order for the bid to be responsive as well as the factors being considered in evaluations, public advertisement, and award, if any, to the responsible bidder submitting the lowest responsive bid in conformance with federal, state and City requirements, as applicable. All formal competitive bid documents must be reviewed and approved by TJPA Procurement and Contract Staff and Contracting Officer before releasing to the public.
- H. Prequalification System/Solicitation Prequalification Criteria.** Prequalification lists are most used in procurements of property involving lengthy evaluations needed to determine whether it satisfies the recipient's standards. The FTA permits a recipient to prequalify people, firms, and property for procurement purposes under the following standards:
- i. **Lists.** The recipient ensures that all prequalification lists it uses are current.
 - ii. **Sources.** The recipient ensures that all prequalification lists it uses include enough qualified sources to provide maximum full and open competition.
 - iii. **Qualification Periods.** The recipient permits potential bidders or offerors to qualify during the solicitation period (from the issuance of the solicitation to its closing date.) FTA, however, does not require a recipient to hold a particular solicitation open to accommodate a potential supplier that submits property for approval before or during that solicitation. Nor must a recipient expedite or shorten prequalification evaluations of bidders, offerors, or property presented for review during the solicitation period. Prequalification should not be confused with reviews of technical qualifications-based procurements.
- I. Clear, Accurate, and Complete Specifications.** The following standards apply to solicitations:
- a. **Clear Descriptions.** A clear and accurate description of the technical

requirements for the material, product, or service to be procured is required.

- b. **Nonrestrictive Specifications.** In competitive procurements, the description may not contain features that unduly restrict competition. Notably, FTA may not finance procurements that use exclusionary or discriminatory specifications.
 - c. **Quality Requirements.** A description may include a statement of the qualitative nature of the material, product, or service to be procured and, when necessary, describe minimum essential characteristics and standards to which the property or services must conform if it is to satisfy the recipient's intended use.
 - d. **Preference for Performance Specifications.** The Common Grant Rule for governmental recipients advises the recipient that "detailed product specifications should be avoided if at all possible." The Common Grant Rule for non-governmental recipients advises the recipient to describe technical requirements in terms of "functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards".
 - e. **Brand Name or Equal.** When it is impractical or uneconomical to write a clear and accurate description of the technical requirements of the property or services to be acquired, a "brand name or equal" description may be used to define the performance or other salient characteristics of the property or services sought. The specific features or salient characteristics of the named brand which must be met by offerors of "an equal" proposal must be clearly stated.
- J. Sealed Bids** Sealed bidding is a generally accepted procurement method in which bids are publicly solicited, and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for bids, is lowest in price.
- K. Request for Proposals or Qualifications.** Competitive proposals or qualifications are a generally accepted procurement method when the nature of the procurement does not lend itself to sealed bidding and TJPA expects that more than one source will be willing and able to submit an offer or proposal.
- L. Evaluation of Options.** In awarding the contract that will include options, the following standards apply:
- a. **Evaluation Required.** In general, FTA expects TJPA to evaluate bids or offers for any option quantities or periods contained in a solicitation if it intends to exercise those options after the contract is awarded.

- b. **Evaluation Not Required.** TJPA need not evaluate bids or offers for any option quantities when TJPA determines that evaluation would not be in its best interests. An example of a circumstance that may support a recipient's determination not to evaluate bids or offers for option quantities is when the recipient is reasonably certain that funds will not be available to permit it to exercise the option.

M. Contract period of performance. The following standards must be applied to the determination of contract term.

- a. **General Standards.** The period of performance generally should not exceed the time necessary to accomplish the purpose of the contract. The recipient should also consider competition, pricing, fairness, and public perception. The recipient's procurement files should document its rationale for determining the performance period designated for each contract.
- b. **Federal Restrictions.** Except for procurements of rolling stock and replacement part contracts, which are limited by law to five (5) or seven (7) years, the recipient's other third-party contracts (such as property, services, leases, construction, revenue, and so forth) are not encumbered by Federal requirements restricting maximum periods of performance. Nevertheless, the duration of the recipient's other contracts must be reasonable.
- c. **City Restrictions.** In all Contracts for the construction of any Public Work or Improvement which involves the use of any funds furnished, given, or loaned by the government of the United States or the State of California, all laws, rules, and regulations of the government of the United States or the State of California or of any of its departments relative to the performance of such work and the conditions under which the work is to be performed, shall prevail over the requirements of San Francisco Administrative Code Chapter 6 when such laws, rules, or regulations are in conflict. For non-construction contracts, per Section 21.9 of the San Francisco Administrative Code, the initial term of the contract and conditions for renewal or extension are included in the Solicitation, which Solicitation shall not provide for renewals or extensions of the contract for a period in excess of 10 years from the date of the initial contract.

N. Time and Material Contracts. The FTA permits the use of time and material contracts only:

- a. After determining that no other contract type is suitable; and
- b. If the contract specifies a ceiling price that the contractor may not exceed except at its own risk.

O. Cost Plus Percentage of Cost. The FTA expressly prohibits the use of the cost

plus a percentage of cost method of contracting. The FTA also expressly prohibits the use of the percentage of construction cost method of contracting.

- P. Liquidated Damages Provisions.** TJPA may use liquidated damages if the Contracting Officer reasonably expects to suffer damages through delayed contract completion, or if weight requirements are exceeded, and the extent or amount of such damages are uncertain and would be difficult or impossible to determine. The rate and measurement standards must be calculated to reasonably reflect the recipient's costs should the standards not be met and must be specified in the solicitation and contract. The assessment for damages is often established at a specific rate per day for each day beyond the contract's delivery date or performance period. A measurement other than a day or another period of time, however, may be established if that measurement is appropriate, such as weight requirements in a rolling stock purchase. The procurement file should include a record of the calculation and rationale for the amount of damages established. Any liquidated damages recovered must be credited to the project account involved unless FTA permits otherwise.
- Q. Bonds.** The FTA requires bonds for all construction contracts exceeding the simplified acquisition threshold unless FTA determines that other arrangements adequately protect the Federal interest. California law also requires bonds for public works projects. FTA's bonding policies are as follows:
- a. **Bid Guarantee.** Each bidder is to provide a bid guarantee equivalent to 10 percent of its bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid to ensure that the bidder will honor its bid upon acceptance.
 - b. **Performance Bond.** In any contract in excess of \$25,000 a bidder or proposer on a public works project is required to obtain a performance bond for 100 percent of the contract price. A "performance bond" is obtained to ensure completion of the obligations under the third-party contract.
 - c. **Payment Bond.** In any contract in excess of \$25,000 a bidder or proposer on a public works project is required to obtain a standard payment bond for 100 percent of the contract price. A "payment bond" is obtained to ensure that the contractor will pay all people supplying labor and material for the third-party contract as required by law.
- R. Procurement of Recovered Materials.** TJPA and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of

competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

- S. Advance and Progress Payments.** Advance payments are payments made to a contractor before the contractor incurs contract costs. The recipient may use its local share funds for advance payments. However, if there is no automatic pre-award authority for its project, then advance payments made with local share funds before FTA assistance has been awarded, or before a letter of no prejudice has been issued or other pre-award authority has been provided, or before FTA approval for the specific advance payment has been obtained, are ineligible for reimbursement.

Progress payments are payments for contract work that has not been completed. The recipient may use FTA assistance to support progress payments provided the recipient obtains adequate security for those payments and has sufficient written documentation to substantiate the work for which payment is requested.

- T. Federal or Pass-Through Entity Review.** The non-Federal entity must make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the non-Federal entity desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

III. Methods of Procurement

The following are general guidelines used by the TJPA irrespective of the funding source for the procurement. If the procurement is eligible to be funded with federal funds, the TJPA will comply with all applicable federal contracting requirements.

Methods of Procurement	Requirement	Dollar Amount
Micro-Purchases	Only one price quotation is required	Up to and including \$20,000
Small Purchases (sealed bid or competitive proposals)	Must obtain at least three quotes or proposals	>\$20,000 and less than \$250,000
Formal Purchases (sealed bid or competitive proposals or qualifications)	Must be advertised/publicized and subject to full and open competition	> \$250,000
Non-Competitive Proposals	Must provide written sole/single source justification	> \$20,000

A. Procurement Transaction Type:

1. **Commodity:** means products, including materials, equipment and supplies, purchased by the TJPA.
2. **General Services:** means those services that are not Professional Services. General Services include, but are not limited to janitorial, security guard, pest control, and landscaping services.
3. **Professional Services:** means those services which require extended analysis, the exercise of discretion and independent judgement in their performance, and/or the application of an advanced, specialized type of knowledge, expertise, or training customarily acquired either by a prolonged course of study or equivalent experience in the field. Professional service providers include, but are not limited to, licensed professionals such as architects, engineers, and accountants, and non-licensed professionals such as software developers and financial consultants.
4. **Construction Services:** means contracts for public works or improvements. Construction Services include, but are not limited to outside temporary professional design, consultant or construction management services and construction services, architectural/engineering services pertaining to construction projects.

B. Procurement Method Guidelines:

1. **Micropurchases** -- up to and including \$20,000:
 - a. Must obtain at least one informal quote; must document that the price is fair and reasonable and how this determination was made.
 - b. Unless there is only one source for the item, do not purchase from just one vendor; attempt to obtain equitable distribution among qualified suppliers.
 - c. May be approved by the Contracting Officer or their designee if included in the TJPA Budget adopted by the Board of Directors.
 - d. Any modifications to a micropurchase that would exceed the \$20,000 threshold shall be treated as a new procurement.
2. **Small Purchases** -- over \$20,000 up to and including \$250,000:
 - a. Must solicit written quotes from a minimum of three vendors, if available. Must document that the price is fair and reasonable, and award shall be to the lowest responsive and responsible bidder.

- b. May be approved by the Contracting Officer or their designee if included in the TJPA Budget adopted by the Board of Directors.
- c. Modifications may be approved by the Contracting Officer or their designee and may not cumulatively increase the contract over \$250,000.

3. **Formal Purchases -- over \$250,000:**

- a. Must conduct the solicitation publicly. Award may be based on Low Bid or Best Value. A Low Bid solicitation is appropriate when obtaining the lowest price is the primary consideration when choosing between comparable goods and/or services. A Best Value solicitation is appropriate when factors other than price (e.g. quality, expertise) are also important.
- b. TJPA Procurement and Contract Staff is authorized to purchase the commodities or services required by the TJPA department or office.
- c. Must be approved by the Contracting Officer before presenting to the TJPA Board of Directors for approval.
- d. Must be approved by the TJPA Board of Directors.
- e. Any modification cumulatively increasing or decreasing the contract amount in excess of 10 percent of the contract amount last approved by the Board of Directors shall require Board approval. Any other modifications may be approved by the Executive Director or their designee.

C. Procurement by Noncompetitive Proposals (Sole Source)

- 1. Notwithstanding the provisions of the preceding sections, the TJPA is not required to engage in a competitive process when procuring materials, supplies, equipment, general services, consultant/professional services, or architectural/engineering services for which competitive solicitation would be infeasible, as determined by the Contracting Officer or their designee based on the criteria set forth in Section II(C)(2) below.
- 2. Noncompetitive or sole source procurement may be used only where the award of a contract is infeasible under competitive procedures and at least one of the following circumstances applies:
 - a. The goods or services are available only from a single source;
 - b. Item has design and/or performance features that are essential to the

- TJPA and no other source satisfies the TJPA's requirements;
 - c. Items are perishable foods;
 - d. Items are proprietary articles;
 - e. Reciprocal Agreements with Other Public and Non-Profit Agencies;
 - f. Software Support/Renewal/Upgrade of existing licenses or equipment;
 - g. There exists a declared public exigency or emergency which will not permit the delay accompanying competitive solicitation;
 - h. After solicitation of a number of sources, competition is determined inadequate; or
 - i. The procurement is federally funded and sole source procurement is authorized by the FTA.
3. TJPA Procurement and Contract Staff shall perform a cost analysis to determine that the contract amount of the sole source is fair and reasonable.
 4. Must be approved by the Contracting Officer.

D. Cooperative Purchasing

To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government, TJPA is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services.

Intergovernmental purchasing is authorized under this policy. The TJPA may participate in, sponsor, conduct, or administer a cooperative procurement agreement with other public bodies for the procurement of any supplies or services to increase efficiency and/or reduce expenses. Cooperative purchasing may include, but is not limited to, the practice referred to as 'piggybacking' as well as use of purchasing schedules established by other entities, including the federal General Services Administration, the State of California, and the City. All cooperative purchasing conducted under this policy shall be through contracts that were originally awarded through full and open competition. Competition requirements must be met with documented procurement actions using strategic sourcing, shared services, and other similar procurement arrangements.

E. Non-Purchasing Transactions

Purchasing items that do not meet the definitions of Commodities or General/Professional services under this Policy will be excluded from the Procurement Policy. Examples of non-purchasing purchases are membership dues; conference fees; regulatory fees; government licensing fees; federal, state, or regional parks and bridges fees; application fees; fines; and taxes.

IV. Invitations for Competitive Proposals or Qualifications

- A. Authorization; Evaluation Criteria.** TJPA's Contracting Officer, or their designee, may issue a request for Proposals, or request for qualifications, for the selection of Professional Service Contractors following consideration of the evaluation factors set forth in the request for Proposals, which may include cost, except as prohibited by law. TJPA may determine that it would be in the best interests of TJPA to acquire combined Commodities and Services or General Services by means of a request for Proposals or qualifications, rather than an invitation for Bids.
- B. Negotiation.** TJPA's Contracting Officer, or their designee, is authorized to negotiate terms and conditions, including price, with the highest-ranked Proposer. If the Contracting Officer cannot conclude a contract that, in the opinion of the Contracting Officer is in the TJPA's best interest, the Contracting Officer may terminate negotiations with the highest ranked Proposer. In the event that the Contracting Officer cannot conclude negotiations with the next highest-ranked Proposer on terms acceptable to the TJPA, then the Contracting Officer may negotiate with each successively ranked Proposer.
- C. Requests for Qualifications.** TJPA's Contracting Officer, or their designee, may issue a request for qualifications ("RFQ") to determine the qualifications of prospective Contractors for particular types of Commodities and/or Services to the TJPA.
- D. Prequalified Lists.** TJPA's Contracting Officer, or their designee, may maintain lists of prequalified contractors for Commodities and Services as follows:
1. Except as provided in subsection (2) below, prequalification may be for the following purposes:
 - a. maintaining a list of prequalified entities from which the Contracting Officer may issue a further Solicitation for future contracts as needed by the TJPA, or
 - b. the selection of the highest available ranked Contractor(s) based on ranking of responses to an RFQ.

2. For Contracts less than or equal to the Formal Purchases Amount, selection of a Contractor(s) for a particular contract may be made without the use of a further Solicitation provided that TJPA shall notify other prequalified list members for that contract and document the selection process. At a minimum, the written documentation shall address the following:
 - a. The Commodities and/or Services required to meet the TJPA's needs;
 - b. The proposed Contractor's unique qualifications or experience to provide the Commodities and/or perform the Services, or why the nature of the Commodities and/or Services requires use of the Contractor; and
 - c. The anticipated cost to the TJPA and determination that such cost will be in the best financial interest of the TJPA.

The TJPA shall maintain the selection documentation for at least three years after termination or expiration of the contract.

3. Except as provided below, prequalification shall be valid for not more than two years following the date of initial prequalification. Prequalification may be valid for not more than four years so long as both the following two conditions are met: A request for Proposals shall specify evaluation criteria for selection, and shall reserve the right to reject or cancel the request for Proposals in whole or in part.
 - a. The TJPA re-opens the list by reissuing the same RFQ within two years of the original RFQ; and
 - b. The TJPA uses the same panel of evaluators to score the responses to the RFQ.

Entities included on the list of prequalified entities pursuant to the original RFQ shall not be required to re-qualify under the re-issued RFQ, but may choose to submit updated information regarding their qualifications when the RFQ is re-issued. A list of prequalified entities may only be extended once under this subsection (D)(3) and may not be used for more than four years from the issuance of the original RFQ.

E. Content of Requests for Proposals. A request for proposal shall specify evaluation criteria for selection, and shall reserve the right to reject or cancel the request for proposal in whole or part.

V. DBE/SBE Program

With respect to federally eligible third-party contracts, the TJPA implements a Disadvantaged Business Enterprise (DBE) Program (Board Policy No. 010), and as such, commits to the participation of DBEs in TJPA contracting opportunities in accordance with 49 CFR Part 26, as may be amended from time to time. TJPA supplements its DBE Program with a Small Business Enterprise (SBE) Program (Board Policy No. 015). It is the intention of the TJPA to create a level playing field on which DBEs and SBEs can compete fairly for contracts and subcontracts relating to the TJPA's construction, professional services and procurement activities.

VI. Nondiscrimination

It is the policy of the TJPA to ensure nondiscrimination in the award and administration of any contract on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability, weight, height, or Acquired Immune Deficiency Syndrome or Human Immunodeficiency Virus (AIDS/HIV) status.

VII. Geographic Restrictions in Procurements

TJPA shall not specify in-state or local geographical preferences in its procurement activities. In procurements for architectural engineering (A&E) services, geographic location may be a selection criterion if an appropriate number of qualified firms are eligible to compete for the contract in view of the nature and size of the project. Section 25019 of the Infrastructure Investment and Jobs Act, Pub. L. 117-58, authorizes all recipients to implement a local or other geographical or economic hiring preference relating to the use of labor for construction of a project, including prehire agreements, subject to any applicable State and local laws, policies, and procedures and clauses below the simplified acquisition threshold and maximum open and free competition.

VIII. Disposal of Surplus Property and Equipment

"Surplus Property and Equipment" is defined as any furniture, equipment, materials, or supplies owned by the TJPA that the Contracting Officer or their designee determines is no longer needed or used by the TJPA (as a result of age, obsolescence, damage, change in procedures, because more costly to maintain than replace, or otherwise).

The Contracting Officer or their designee is delegated and shall have the authority to sell Surplus Property and Equipment as follows, based on the reasonable estimate of the market value of the Surplus Property and Equipment at the time of disposal:

- (1) Less than two thousand five hundred dollars (\$2,500): by any method the Contracting Officer or their designee deems reasonable and appropriate consistent with this section.

- (2) Greater than two thousand five hundred dollars (\$2,500): by online government auction service, public notice and written bid, or reputable public auction service.

Any proceeds from the sale of any Surplus Property and Equipment will be applied consistent with any grant requirements imposed as a condition of funding for the purchase of the item, and accounted for in accordance with TJPA Board Capitalization Policy for Capital Assets (as applicable) and Generally Accepted Accounting Principles.

If the TJPA is unable to sell Surplus Property and Equipment using the procedures above, or if the cost of identifying a buyer exceeds the estimated sale price of the item, the item may be donated to another governmental organization or tax-exempt organization, recycled, or discarded.

The Contracting Officer or their designee shall have the authority to exchange or trade in Surplus Property and Equipment for new supplies, materials or equipment needed by the TJPA, without further approval of the Board or publishing a notice of intent to do so.

TJPA Board members, employees, and agents are not permitted to purchase or receive Surplus Property and Equipment unless they purchase the item under a public auction process consistent with this section. Notwithstanding the foregoing, in no case may a TJPA Board member, employee, or agent purchase or receive Surplus Property and Equipment where such person made or participated in making the decision to procure the item in the first instance. Moreover, a TJPA Board member, employee, or agent may not participate in any decision related to the disposal of Surplus Property and Equipment if a conflict of interest, real or apparent, would be involved.

The Contracting Officer or their designee shall research the application of and conform any disposal to applicable grant funding requirements, including securing the grantor's approval prior to disposing of grant-funded items, if applicable. If state or federal law, grant funding requirements, or public safety concerns, renders inappropriate the disposition of an item of Surplus Property and Equipment in the manner set forth in this section, such item may be disposed of as required by law, or by any other method deemed appropriate by the Contracting Officer or their designee, regardless of the value of the item.

When original or replacement equipment acquired under a Federal award is no longer needed for the original project or program or for other activities currently or previously supported by a Federal awarding agency, except as otherwise provided in Federal statutes, regulations, or Federal awarding agency disposition instructions, the non-Federal entity must request disposition instructions from the Federal awarding agency if required by the terms and conditions of the Federal award. Disposition of the equipment will be made as follows, in accordance with Federal awarding agency disposition instructions:

- A. Items of equipment with a current per unit fair market value of \$5,000 or less may be retained, sold or otherwise disposed of with no further

responsibility to the Federal awarding agency.

B. Except as provided in § 200.312(b), or if the Federal awarding agency fails to provide requested disposition instructions within 120 days, items of equipment with a current per-unit fair market value in excess of \$5,000 may be retained by the non-Federal entity or sold. The Federal awarding agency is entitled to an amount calculated by multiplying the current market value or proceeds from sale by the Federal awarding agency's percentage of participation in the cost of the original purchase. If the equipment is sold, the Federal awarding agency may permit the non-Federal entity to deduct and retain from the Federal share \$500 or ten percent of the proceeds, whichever is less, for its selling and handling expenses.

C. The non-Federal entity may transfer title to the property to the Federal Government or to an eligible third-party provided that, in such cases, the non-Federal entity must be entitled to compensation for its attributable percentage of the current fair market value of the property.

D. In cases where a non-Federal entity fails to take appropriate disposition actions, the Federal awarding agency may direct the non-Federal entity to take disposition actions.

TJPA must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.