

**STAFF REPORT FOR CALENDAR ITEM NO.: 10**  
**FOR THE MEETING OF: December 11, 2025**

**TRANSBAY JOINT POWERS AUTHORITY**

**BRIEF DESCRIPTION:**

Approve the basis of contracting authority for the Civil and Tunnel Progressive Design-Build (40-CT) contract package prior to release of the Request for Proposals (RFP).

**BACKGROUND:**

**A. 40-CT Contract Development**

In July 2022, with the recommendation of the Executive Steering Committee (ESC), the TJPA Board approved Progressive Design-Build (PDB) delivery method for a single civil and tunnel contract, now identified as 40-CT.

The 40-CT procurement is planned to occur in two steps: (1) Request for Qualifications (RFQ) to prequalify proposers, followed by (2) Request for Proposals (RFP) to evaluate proposals and select a proposer.

In October 2023, after consideration of recommendations by both the Integrated Program Management Team (IPMT) and the Executive Steering Committee (ESC), the TJPA Board approved release of the 40-CT RFQ.

In response to the RFQ, four sets of qualifications were submitted and evaluated in accordance with TJPA's Procurement Policy and the RFQ. Three teams were shortlisted. The shortlist notifications were made in April 2024.

The Board's October 2023 approval to release the RFQ was expressly conditioned that any release of the RFP for 40-CT, or other DTX/The Portal construction-related procurements, be conditioned on further Board action after demonstrating full compliance with Governance Blueprint Stage Gate 1 for the applicable procurement. In May 2025, with the support of the IPMT and Executive Working Group (EWG) (the successor to the ESC), the TJPA Board found adequate compliance with the Governance Blueprint, Stage Gate 1 for release of the 40-CT RFP upon concurrence by key stakeholders and final approval by the TJPA Chief Financial Officer.

Over approximately the last eighteen months, TJPA staff has been preparing the 40-CT RFP package for release to the shortlist of prequalified teams. An integrated 40-CT procurement task team was assembled comprised of experts in procurement documents, general counsel, construction counsel, an insurance advisor, IPMT members, and core project staff. These team members have worked in multiple workshops to prepare 40-CT bid documents, including the RFP, draft contract, general requirements, and other supporting documentation.

**B. Procurement Provisions Specific to TJPA**

TJPA is a joint powers agency formed pursuant to state law, California Government Code sections 6500 et seq. California Government Code section 6509 requires for each joint powers

agency that its commonly held powers be exercised “subject to the restrictions upon the manner of exercising the power of one of the contracting parties, which party shall be designated by the [joint powers] agreement.” The Joint Powers Agreement forming TJPA at Section 4 provides: “Except as otherwise authorized or permitted by the Law and for purposes of, and to the extent required by Section 6509 of the Government Code of the State of California, the [TJPA] is subject to the restrictions upon the manner of exercising the powers of the City [and County of San Francisco] as specified in the Bylaws.” The TJPA Bylaws at Article III similarly provide: “[TJPA’s] exercise of its power under the Joint Powers Agreement ... is restricted to the extent required under Section 6509 of the Government Code of the State of California to the restrictions upon the manner of exercising power of the [City and County of San Francisco].”

The Joint Powers Agreement at Section 22 provides: “The [TJPA] hereby adopts the provisions of the Municipal Code of the City and County of San Francisco Chapters 12B, 12C and 12D of the San Francisco Administrative Code .... The [TJPA] shall comply with all restrictions and requirements prohibiting discrimination of any kind in employment and contracting under the San Francisco Administrative Code, Chapters 12B, 12C and 12D .... The [TPA] shall be only responsible for the administration and enforcement of such requirements.” Similarly, the TJPA Board has adopted Policy No. 001, Procurement Policy, which provides: “The TJPA intends to follow the contracting policies and procedures set forth in ... 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.”

After execution of the Joint Powers Agreement, the San Francisco Board of Supervisors: (1) recodified San Francisco Administrative Code 12B as San Francisco Labor and Employment Code Article 131; and (2) recodified Administrative Code 12C as San Francisco Labor and Employment Code Article 132 and, later, rescinded Article 132. After execution of the Joint Powers Agreement, the TJPA Board of Directors adopted Policy No. 010 and 015, which codified the TJPA’s own programs, policies, and procedures covering the subject matter in San Francisco Administrative Code Chapter 12D.

TJPA Board Policy No. 001, Procurement Policy, provides: “The TJPA intends to follow the contracting policies and procedures set forth in San Francisco Administrative Code Chapters 6 (Public Works Contracting), ... and other relevant provisions of the San Francisco Administrative Code .... The TJPA shall be responsible for enforcement of these provisions.”

Finally, TJPA Board Policy No. 001, Procurement Policy, provides: “The policies and procedures governing procurements of the TJPA derive from the City, as limited by applicable provisions of state and federal law. ... 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.”

## **BASIS OF CONTRACTING AUTHORITY:**

There are several independent sources of authority TJPA could rely on to enter a PDB form of construction contract for 40-CT, including:

- a. California Public Contract Code Section 22180 (Transit Progressive Design-Build Contracting), which authorizes a “local agency” to enter a PDB contract. It defines “local agency” as, among other things, “[a] local or regional agency responsible for the construction of transit projects.”
- b. California Public Contract Code Section 22185 (Local Agency Design-Build Contracting), which authorizes a “local agency” to enter a PDB contract. It defines “local agency” as “a city, county, city and county, or special district.”
- c. California Public Contract Code Section 22160, which authorizes a “local agency” to enter a PDB contract. It defines “local agency” as, among other things, “any joint powers authority ... or any other local or regional agency, responsible for the construction of transit projects.”
- d. San Francisco Administrative Code Section 6.61, Design-Build

After careful consideration, TJPA staff believes state law, particularly California Public Contract Code section 22180, is an optimal contracting authority for the 40-CT contract. In particular:

- TJPA believes its planned approach meets the requirements of the state law relative to the procurement process (including advertisement, prequalification, and shortlisting; single-entity design and construction; elements of the proposals; evaluation of the proposals; qualifications-based selection; and award); subcontractor procurement (including team member identification; and subcontractor bidding); contract requirements (including payment and performance bonds; errors and omissions insurance coverage; pre-construction services; agreement on guaranteed maximum price; scope of guaranteed maximum price; reversion and shared savings; off-ramp; retention); and other state law preconditions and limits (including number of PDB projects; minimum value of PDB projects; and adoption of an organizational conflict-of-interest policy for design-build procurements).
- TJPA believes the state law approach matches well with TJPA’s recommended approach for managing economic risk.
- TJPA believes the state law approach is consistent with federal law and expectations.
- TJPA believes the state law approach will be familiar to industry and the pre-qualified bidders for the 40-CT procurement.

Notwithstanding that, as a joint powers authority, TJPA follows the restrictions upon the manner of exercising power of the City and County of San Francisco, TJPA is authorized to choose to rely on a state law source of authority for the 40-CT contract.

And notwithstanding that the TJPA Board Procurement Policy specifies that the TJPA intends to follow the contracting policies and procedures set forth in San Francisco Administrative Code Chapters 6 and other relevant provisions of the San Francisco Administrative Code, the TJPA

Board has authority to deviate from the policy's intended approach in a particular case, at its discretion.

Additionally, TJPA staff carefully reviewed the provisions of San Francisco Code, including Administrative Code Chapter 6 and other provisions of the City's code outside the Administrative Code, and applied San Francisco Code provisions to the draft 40-CT contract to the extent the TJPA determined the subject matter is not already otherwise addressed in federal or state law or TJPA policy, and the subject matter is applicable and appropriate for the 40-CT contract. This approach is contemplated under TJPA's Joint Powers Agreement (which specifies the intention to apply the restrictions on the manner of exercising power applicable to the City "[e]xcept as otherwise authorized or permitted by the Law"); TJPA's Board Procurement Policy (which recognizes potential limits under state and federal law, and the order of priority in the event of conflict); and San Francisco Administrative Code Section 6.6(b) (which recognizes the order of priority on federal- or state-funded public works projects when federal or state laws, rules, or regulations are in conflict).

**NEXT STEPS:**

With the Board's approval today, staff will release the 40-CT RFP, including the draft contract and associated documents. Proposals will be submitted per the terms of the RFP. The proposals will be evaluated, followed by negotiations with the highest ranked team. The final form of proposed 40-CT contract will come back to the TJPA Board for approval.

**RECOMMENDATION:**

Approve the basis of contracting authority for the 40-CT contract package prior to release of the RFP.

**ENCLOSURES:**

1. Resolution

**TRANSBAY JOINT POWERS AUTHORITY  
BOARD OF DIRECTORS**

**Resolution No. \_\_\_\_\_**

WHEREAS, The Transbay Joint Powers Authority (TJPA) is a joint powers agency organized and existing under the laws of the State of California; and

WHEREAS, Pursuant to state law and the Joint Powers Agreement creating the TJPA, dated April 4, 2001, the TJPA has primary jurisdiction over and will implement the Transbay Program, including the portion of the Transbay Terminal/Caltrain Downtown Extension/Redevelopment Project commonly referred to as Phase 2/Downtown Rail Extension (DTX)/The Portal; and

WHEREAS, Pursuant to state law and the Joint Powers Agreement, the TJPA is authorized, in its own name, to do all acts necessary to fulfill the purposes of the Joint Powers Agreement, including, but not limited to, making, and entering into contracts; and

WHEREAS, Pursuant to the Joint Powers Agreement and the TJPA Bylaws, the TJPA has determined that it is subject to the restrictions upon the manner of exercising the powers of the City and County of San Francisco to the extent required by California Government Code section 6509; and

WHEREAS, The TJPA Board of Directors adopted Board Policy No. 001, Procurement Policy, which sets forth TJPA's intention generally to follow the contracting policies and procedures set forth in San Francisco Administrative Code Chapters 6 (Public Works Contracting) and other relevant provisions of the San Francisco Administrative Code; and

WHEREAS, In July 2022, the TJPA Board of Directors approved the use of a Progressive Design-Build (PDB) delivery method for a single civil and tunnel contract, now identified as 40-CT; and

WHEREAS, The 40-CT procurement is planned to occur in two steps: (1) Request for Qualifications (RFQ) to prequalify proposers, followed by (2) Request for Proposals (RFP) to evaluate proposals and select a proposer; and

WHEREAS, In October 2023, the TJPA Board approved release of the 40-CT RFQ; and

WHEREAS, In May 2025, the TJPA Board found adequate compliance with the Governance Blueprint, Stage Gate 1 for release of the 40-CT RFP upon concurrence by key stakeholders and final approval by the TJPA Chief Financial Officer; and

WHEREAS, There are several independent sources of authority TJPA could rely on to enter a PDB form of construction contract for 40-CT, including state law and San Francisco Administrative Code Section 6.61; and

WHEREAS, TJPA staff believes state law, particularly California Public Contract Code 22180, is an optimal contracting authority for the 40-CT contract for the reasons specified in the staff report presented herewith; and

WHEREAS, Notwithstanding that, as a joint powers authority, TJPA follows the restrictions upon the manner of exercising power of the City and County of San Francisco to the extent required by law, TJPA is authorized to choose to rely on a state law source of authority for the 40-CT contract; and

WHEREAS, Notwithstanding that the TJPA Board Procurement Policy specifies that the TJPA intends to follow the contracting policies and procedures set forth in San Francisco Administrative Code Chapters 6 and other relevant provisions of the San Francisco Administrative Code, the TJPA Board has authority to deviate from the policy's intended approach in a particular case, at its discretion; now, therefore, be it

RESOLVED, That the TJPA Board of Directors approves the staff recommended basis of contracting authority for the civil and tunnel Progressive Design-Build (40-CT) contract.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting on December 11, 2025.

---

Secretary, Transbay Joint Powers Authority