

**THIS STAFF REPORT COVERS CALENDAR ITEM NO. : 7.2
FOR THE MEETING OF: April 22, 2010**

TRANSBAY JOINT POWERS AUTHORITY

BRIEF DESCRIPTION: Approval of updated Board Policy No. 001, Procurement Policy, and Board Policy No. 002, Protest Procedures, and annual review of Board Policy No. 009, Investment Policy.

SUMMARY:

The TJPA Board approved Board Policy No. 001, Procurement Policy, and Board Policy No. 002, Protest Procedures, on November 24, 2003. At that time, TJPA was a subrecipient of federal funds under the San Francisco Municipal Transportation Agency (SFMTA) and SFMTA staff assisted the TJPA in various aspects of procurement, including establishing goals for Disadvantaged Business Enterprise (DBE) participation and processing invoices for payment.

The attached Board Policies No. 001 and 002 reflect that TJPA is now a direct recipient of federal funds, has its own DBE Program, and that TJPA staff now handle all aspects of procurement in-house. The majority of the updates to the policies are administrative clean up in nature. The only changes to dollar thresholds in the Procurement Policy reflect changes in Federal Transit Administration (FTA) and City and County of San Francisco (City) requirements, namely:

- The dollar threshold for micropurchases under FTA guidelines has increased from \$2,500 to \$3,000.
- The dollar threshold for construction agreements that may be approved without going to the Board is now \$400,000, per changes to the City Administrative Code.

The Policy continues to meet FTA requirements. The Policy describes the procedures and requirements for the procurement of (a) materials, equipment and supplies, (b) consultant/ professional services, (c) architectural/engineering services, and (d) construction services. The amount of \$100,000 remains as the threshold for bringing a contract for procurements of materials, equipment, supplies, consultant/ professional services, and architectural/engineering services to the Board for formal action. The Executive Director is currently and would continue to be authorized to make purchases and enter into contracts for these items up to \$100,000. The dollar threshold for Board approval of construction agreements would increase to \$400,000, as mentioned above.

The Policy also continues to differentiate between procurements that require a formal competitive process, namely a request for proposal or notice inviting bids, from those procurements that can be made more informally. The Policy also includes sections regarding conflicts of interest and the TJPA's commitment to a Disadvantaged Business Enterprise Program, all of which are required by federal grant requirements. Federal grant requirements also require that TJPA have protest procedures in place. No substantive changes are proposed to the protest procedures—the changes remove references to SFMTA staff and clarify who may submit a protest and the procedures for doing so. TJPA Legal Counsel has reviewed the proposed updates.

TJPA Board Policy No. 009, Investment Policy, requires an annual review by the TJPA Board. It is attached for this purpose, but no changes are proposed for this policy. It sets forth the scope of funds to be invested; establishes safety, liquidity and return on investment as primary objectives; and sets forth permitted investment instruments.

ENCLOSURES:

1. Board Policy No. 001, Procurement Policy – clean and redline versions
2. Board Policy No. 002, Protest Procedures – clean and redline versions
3. Board Policy No. 009, Investment Policy
4. Resolution approving updated Board Policies No. 001 and No. 002 and noting review of Board Policy No. 009

**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 the Joint Powers Agreement creating the TJPA, dated April 4, 2001 (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; and

WHEREAS, The Federal Transit Administration (FTA) requires that recipients of FTA grants adopt written policies for the solicitation, award and administration of third party contracts; and

WHEREAS, The TJPA adopted a Procurement Policy and Protest Procedures in conformance with federal, state and other legal requirements on November 24, 2003; and

WHEREAS, The TJPA wishes to revise these policies to delete references to non-TJPA staff handling procurements or protests and re-align dollar thresholds for Board approval with relevant federal and local requirements; and

WHEREAS, The TJPA is also required to adopt an Investment Policy to be in compliance with Generally Accepted Accounting Principles (GAAP) and to ensure that cash balances are safe, sufficiently liquid to meet cash flow needs and to maximize investment earning; and

WHEREAS, The TJPA adopted an Investment Policy in conformance with federal, state, and other legal requirements on February 16, 2006 and approved revisions to that policy on May 15, 2008; and

WHEREAS, The TJPA Investment Policy requires periodic review by the TJPA Board; now, therefore, be it

RESOLVED, That the TJPA Board adopts the revised Procurement Policy identified as Board Policy No. 001 and also adopts the revised Protest Procedures identified as Board Policy No. 002; and, be it further

RESOLVED, That the TJPA Board reviewed the Investment Policy identified as Board Policy No. 009 with no changes.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of April 22, 2010.

Secretary, Transbay Joint Powers Authority

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 Chapters 6 (Public Works Contracting), 12B (Nondiscrimination in Contracts), 12C (Nondiscrimination in Property Contracts), 21 (Acquisition of Commodities and Services), and other relevant provisions of the San Francisco Administrative Code. The TJPA shall be responsible for enforcement of these provisions.

By accepting federal funding, the TJPA is obligated to comply with various federal regulations in its procurement of goods and services (e.g., 49 CFR Part 18 (Common Grant Rule) and 49 CFR Part 26 (Disadvantaged Business Enterprises)) and Federal Transit Administration (FTA) Circular 4220.1F and its successors). 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.

I. General Standards

- A. **Competitive Procurements.** Except as provided under FTA Circular 4220.1F or its successors, procurements shall be conducted in a manner that ensures full and open competition.
- B. **Contract Administration.** Procurement staff shall maintain a contract administration system that ensures that contractors perform in accordance with the terms, conditions and specifications of their contracts and to ensure that all purchases are received in a timely manner. Staff shall maintain a written record of the history of every procurement. At a minimum, these records must include:
 - (a) the rationale for the method of procurement, (b) selection of contract type,

(c) an independent cost or price estimate, (d) reasons for contractor selection or rejection, (e) the basis for the contract price, and (f) a cost analysis (or price analysis, if appropriate). These record requirements are applicable to change orders as well as the original contracting process.

- C. Procedures.** Procurement staff shall employ procurement and accounting procedures consistent with the standards set forth in this policy and with federal, state and City requirements.
- D. Review of Procurements.** Staff shall review proposed procurements to ensure that they are handled in the most efficient and economical manner, without sacrificing quality and functionality. Staff shall avoid the purchase of unnecessary or duplicative items and shall consider consolidating or breaking out procurements to obtain a more economical purchase. There shall be no splitting of procurements to avoid competition.
- E. Certification as to Availability of Funds.** The Executive Director or his/her designee shall ensure that all contracts are certified by the Finance Coordinator as to the availability of funds before notice to proceed with the contract is issued to the Contractor.
- F. Responsible Firms.** The TJPA may only contract with persons, firms or entities that are responsible and possess the ability to perform successfully under the terms and conditions of the proposed procurement.
- G. Contracts in Writing.** All purchases or other arrangements valued at over \$2,500 and intended to be binding shall be by formal, written contract and/or other contractual instrument, such as a purchase order. A formal contract shall be used for all purchases over \$50,000.
- H. 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.
- I. Reporting to Board.** The Board of Directors shall review on a quarterly basis the status of all purchase orders and other contracts over \$25,000 entered into by the TJPA and all pending Invitations for Bids/Requests for Proposals that have been issued by the Executive Director. The Executive Director shall provide the Board with an explanation of the purpose of each contract and the funding source for each contract.

II. Methods of Procurement

The following are general guidelines used by the City for various types of procurements and shall be 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.

Type of Procurement	Micropurchase <i>(must obtain at least one informal quote)</i>	Small Purchase <i>(must obtain at least three quotes or proposals)</i>	Large Purchase <i>(must publish IFB or RFP)</i>
Materials, Supplies, Equipment	Up to \$3,000	> \$3,000 - \$50,000	> \$50,000
General Services	Up to \$3,000 or \$10,000	> \$3,000/10,000 - \$25,000	> \$25,000
Professional Services	Up to \$3,000 or \$10,000	> \$3,000/10,000 - \$25,000	> \$25,000
Architecture & Engineering	Up to \$3,000	> \$3,000 - \$100,000	> \$100,000
Construction	n/a	Up to \$400,000	> \$400,000

A. Procurement of Materials, Supplies, Equipment

1. **Micropurchases** -- up to and including \$3,000:
 - a. Must obtain at least one informal quote; must document that the price is fair and reasonable.
 - 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 Executive Director or his or her designee if included in the TJPA Budget adopted by the Board of Directors.
 - d. Any modifications to a micropurchase that would exceed the \$3,000 threshold shall be treated as a new procurement.

2. **Small Purchases** -- over \$3,000 up to and including \$50,000:
 - 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 Executive Director or his or her designee if included in the TJPA Budget adopted by the Board of Directors.
 - c. Modifications shall be approved by the Executive Director or his or her designee and may not cumulatively increase the contract over \$50,000.

3. **Large Purchases -- over \$50,000:**
 - a. Must publish notice requesting sealed bids. Award shall be to the lowest responsive and responsible bidder.
 - b. May be approved by the Executive Director if \$100,000 or less; must be approved by the Board of Directors of the TJPA if over \$100,000.
 - c. Any modification (increase or decrease) in excess of 10 percent of the original contract amount shall require Board approval. Any other modifications may be approved by the Executive Director.

B. Procurement of General Services¹:

1. **Micropurchases -- up to and including \$3,000 if federally eligible; up to and including \$10,000 if not federally eligible:**
 - a. Must obtain at least one informal quote; must document that the price is fair and reasonable.
 - 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 Executive Director or his or her designee if included in the TJPA Budget adopted by the Board of Directors.
 - d. Any modifications to a micropurchase that would exceed the applicable threshold shall be treated as a new procurement.
2. **Small Purchases -- over \$3,000/\$10,000 up to and including \$25,000:**
 - 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 Executive Director or his or her designee if included in the TJPA Budget adopted by the Board of Directors.
 - c. Modifications shall be approved by the Executive Director or his or her designee and may not cumulatively increase the contract over \$25,000.

¹ General services do not require extended analysis, the exercise of discretion and independent judgment in their performance, or particular, advanced or specialized knowledge, expertise or training. Examples include janitorial, security guard, landscaping and pest control.

3. **Large Purchases -- over \$25,000:**
 - a. Must publish notice requesting sealed bids. Award shall be to the responsible bidder submitting the lowest responsive bid.
 - b. May be approved by the Executive Director if \$100,000 or less; must be approved by the Board of Directors of the TJPA if over \$100,000.
 - c. Any modification in excess of 10 percent of the original contract amount shall require Board approval. Any other modifications may be approved by the Executive Director.

C. Procurement of Consultant/Professional Services²:

1. **Micropurchases -- up to and including \$3,000 if federally eligible; up to and including \$10,000 if not federally eligible:**
 - a. Must obtain one informal quote; must document that the price is fair and reasonable.
 - b. May be approved by the Executive Director or his or her designee if included in the TJPA Budget adopted by the Board of Directors.
 - c. Any modifications to a consultant contract that would exceed the applicable threshold shall be treated as a new procurement.
2. **Small Purchases -- over \$3,000/\$10,000 up to and including \$25,000:**
 - a. Must solicit written proposals from a minimum of three firms or individuals, if available, and award to the most qualified responsible consultant, with cost as a factor. Must document that the price is fair and reasonable.
 - b. May be approved by the Executive Director or his or her designee if included in the TJPA Budget adopted by the Board of Directors.
 - c. Modifications shall be approved by the Executive Director or his or her designee and may not cumulatively increase the contract over \$25,000.
3. **Large Purchases -- over \$25,000:**
 - a. Must publish notice requesting written proposals, and evaluate the

² Professional services are those services which require extended analysis, the exercise of discretion and independent judgment 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. These procurement procedures do not apply in the case of architectural and engineering services; see Section D.

proposals to determine the most qualified proposer. Such requests must state the qualitative factors that will be used to evaluate the proposals, along with the weight to be accorded to each factor. For all federally funded contracts, cost shall be considered during the evaluations. Negotiations shall be held with the highest-ranking responsible proposer. If an agreement cannot be reached, staff shall conduct negotiations with the next highest-ranking proposer.

- b. May be approved by the Executive Director if \$100,000 or less; must be approved by the Board of Directors of the TJPA if over \$100,000.
- c. Any modification cumulatively increasing or decreasing the contract amount or duration in excess of 10 percent shall require Board approval. Any other modifications or changes may be approved by the Executive Director or his or her designee.

D. Procurement of Architectural/Engineering (A&E) Services

1. **Micropurchases -- Up to and including \$3,000:**

- a. Must obtain one informal proposal from a qualified individual or firm; must document that the price is fair and reasonable.
- b. May be approved by the Executive Director or his or her designee if included in the TJPA Budget adopted by the Board of Directors.

2. **Small Purchases -- over \$3,000 up to and including \$100,000:**

- a. Must solicit written proposals from a minimum of three firms or individuals and negotiate with most qualified responsible offeror. Cost shall not be a factor when evaluating an A&E firm, but prior to award it must be documented that the price is fair and reasonable.
- b. May be approved by the Executive Director or his or her designee if included in the TJPA Budget adopted by the Board of Directors.
- c. Any modification cumulatively increasing or decreasing the contract amount or duration in excess of 10 percent shall require Board approval. Any other modifications or changes may be approved by the Executive Director or his or her designee.

3. **Large Purchases -- over \$100,000:**

The following approval procedures are based on Chapter 6 of the City's Administrative Code. Matters not covered in this Policy shall be handled as provided in Chapter 6.

- a. Must publish notice requesting a written qualification statement and written proposals. TJPA shall evaluate the proposals to determine the most qualified proposer. Such requests must state the qualitative factors that will be used to evaluate the proposals, along with the weight to be accorded to each factor. Cost shall not be a factor when evaluating an A&E firm. Negotiations shall be held with the highest-ranking proposer. If an agreement cannot be reached, staff shall conduct negotiations with the next highest-ranking proposer.
- b. The Board of Directors must approve the award of the contract.
- c. Any modification cumulatively increasing or decreasing the contract amount or duration in excess of 10 percent shall require Board approval. Any other modifications or changes may be approved by the Executive Director.

E. Procurement of Construction Services

The following approval procedures are based on Chapter 6 of the City’s Administrative Code. Matters not covered in this Policy shall be handled as provided in Chapter 6.

- 1. Construction Work up to and including \$400,000:
 - a. Must solicit written quotes from a minimum of three responsible and qualified contractors, if available. The Executive Director shall make every effort to solicit quotes from qualified DBEs and SBEs. 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 Executive Director or his or her designee if included in the TJPA Budget adopted by the Board of Directors.
 - c. Any modification cumulatively increasing or decreasing the contract amount or duration in excess of 10 percent shall require Board approval. Any other modifications or changes may be approved by the Executive Director.
- 2. Construction Work over \$400,000:
 - a. Must publish notice requesting sealed bids. Notice shall include date for public bid opening. Award, if made, shall be to responsible bidder submitting the lowest responsive bid.
 - b. Awards of contracts shall be by the Board of Directors.
 - c. Any modification cumulatively increasing or decreasing the contract amount or duration in excess of 10 percent shall require

Board approval. Any other modifications or changes may be approved by the Executive Director or his or her designee.

F. 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 Executive Director based on the criteria set forth in Section II(F)(2).
2. Non competitive 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 item is available only from a single source;
 - b. There exists a public exigency or emergency which will not permit the delay accompanying competitive solicitation;
 - c. After solicitation of a number of sources, competition is determined inadequate; or
 - d. The procurement is federally funded and sole source procurement is authorized by the FTA.
3. The Executive Director shall perform a cost analysis to determine that the contract amount of the sole source is fair and reasonable.

III. Contract Forms

The Executive Director, or his or her designee, with the assistance of legal counsel, is authorized to develop appropriate contract forms consistent with this policy.

IV. Standards of Conduct for Procurements

A. Conflict of Interest

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. The City has also adopted a Conflict of Interest Code, which is part of its Campaign and Governmental Conduct Code. All City employees 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 his/her 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 California's Political Reform Act (Government Code Section 87100, et seq.), Sections 1090, et seq. of the California Government Code; and Section § 15.103 and Appendix C, Section 8.105 of City's Charter, as may be amended from time to time.

B. 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.

C. Violations of Standards of Conduct

Violations of these standards of conduct shall be subject to penalties, sanctions, or other disciplinary actions provided by California law.

D. 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.

V. DBE Program; Geographic Restrictions; Nondiscrimination

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

TJPA shall not specify in-state or local geographical preferences in its construction, professional services and procurement activities.

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 ~~Authority~~ TJPA is subject to the policies and procedures of the City.

The policies and procedures governing procurements of the ~~Authority~~ TJPA derive from the City, as limited by applicable provisions of state and federal law. The ~~Authority~~ TJPA intends to follow the contracting policies and procedures set forth in Chapters 6 (Public Works Contracting), 12B (Nondiscrimination in Contracts), 12C (Nondiscrimination in Property Contracts), ~~12D (Minority/Women/Local Business Utilization) (except for federally funded contracts)~~, 21 (Acquisition of Commodities and Services), and other relevant provisions of the San Francisco Administrative Code. The ~~Authority~~ TJPA shall be responsible for enforcement of these provisions.

By accepting federal funding, the ~~Authority~~ TJPA is obligated to comply with various federal regulations in its procurement of goods and services (e.g., 49 CFR Part 18 (Common Grant Rule) and 49 CFR Part 26 (Disadvantaged Business Enterprises) and Federal Transit Administration (FTA) Circular 4220.1 ~~E-F and its successors~~). 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.

~~Until such time as the Authority hires its own procurement staff, procurements shall be handled with the assistance of personnel of the Municipal Transportation Agency of the City and County of San Francisco, which currently is the grantee of federal funds for use by the TJPA as subrecipient.~~

I. General Standards

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

- B. Contract Administration.** Procurement staff shall maintain a contract administration system that ensures that contractors perform in accordance with the terms, conditions and specifications of their contracts and to ensure that all purchases are received in a timely manner. Staff shall maintain a written record of the history of every procurement. At a minimum, these records must include: (a) the rationale for the method of procurement, (b) selection of contract type, (c) an independent cost or price estimate, (ed) reasons for contractor selection or rejection, and (ed) the basis for the contract price, and (f) a cost analysis (or price analysis, if appropriate). These record requirements are applicable to change orders as well as the original contracting process.
- C. Procedures.** Procurement staff shall employ procurement and accounting procedures consistent with the standards set forth in this policy and with federal, state and City requirements.
- D. Review of Procurements.** Staff shall review proposed procurements to ensure that they are handled in the most efficient and economical manner, without sacrificing quality and functionality. Staff shall avoid the purchase of unnecessary or duplicative items and shall consider consolidating or breaking out procurements to obtain a more economical purchase. There shall be no splitting of procurements to avoid competition.
- E. Certification as to Availability of Funds.** The Executive Director or his/her designee shall ensure that all contracts are certified by the ~~Chief Financial Officer~~ Finance Coordinator as to the availability of funds before notice to proceed with the contract is issued to the Contractor.
- F. Responsible Firms.** The ~~Authority-TJPA~~ may only contract with persons, firms or entities that are responsible and possess the ability to perform successfully under the terms and conditions of the proposed procurement.
- G. Contracts in Writing.** All purchases or other arrangements valued at over \$2,500 and intended to be binding shall be by formal, written contract and/or other contractual instrument, such as a purchase order. A formal contract shall be used for all purchases over \$50,000.
- H. Bid Documents.** Formal competitive bidding requires preparation of complete bid documents that ~~clearly are not unduly restrictive of competition and set identify forth~~ all requirements that must be fulfilled in order for the bid to be responsive as well as the factors being considered in evaluations, and public advertisement, and award, if any, to the lowest responsive and responsible bidder in accordance with federal, state and City requirements, as applicable.
- I. Reporting to Board.** The Board of Directors shall review on a quarterly basis the status of all purchase orders and other contracts over \$25,000 entered into by the ~~Authority-TJPA~~ and all pending Invitations for Bids/Requests for Proposals that have been issued by the Executive Director. The Executive Director shall

provide the Board with an explanation of the purpose of each contract and the funding source for each contract.

II. Methods of Procurement

The following are general guidelines used by the City for various types of procurements and shall be used by the Authority-TJPA irrespective of the funding source for the procurement. If the procurement is eligible to be funded with federal funds ~~are being used for the procurement~~, the Authority-TJPA will comply with all applicable federal contracting ~~limitations~~ requirements.

<u>Type of Procurement</u>	<u>Micropurchase</u> <i>(must obtain at least one informal quote)</i>	<u>Small Purchase</u> <i>(must obtain at least three quotes or proposals)</i>	<u>Large Purchase</u> <i>(must publish IFB or RFP)</i>
<u>Materials, Supplies, Equipment</u>	<u>Up to \$3,000</u>	<u>> \$3,000 - \$50,000</u>	<u>> \$50,000</u>
<u>General Services</u>	<u>Up to \$3,000 or \$10,000</u>	<u>> \$3,000/10,000 - \$25,000</u>	<u>> \$25,000</u>
<u>Professional Services</u>	<u>Up to \$3,000 or \$10,000</u>	<u>> \$3,000/10,000 - \$25,000</u>	<u>> \$25,000</u>
<u>Architecture & Engineering</u>	<u>Up to \$3,000</u>	<u>> \$3,000 - \$100,000</u>	<u>> \$100,000</u>
<u>Construction</u>	<u>n/a</u>	<u>Up to \$400,000</u>	<u>> \$400,000</u>

A. Procurement of Materials, Supplies, Equipment

1. **Micropurchases** -- up to and including ~~\$2,500~~3,000:
 - a. Must obtain at least one informal quote; must document that the price is fair and reasonable.
 - 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 Executive Director or his or her designee if included in the TJPA Budget adopted by the Board of Directors.
 - d. Any modifications to a micropurchase that would exceed the ~~\$2,500~~3,000 threshold shall be treated as a new procurement.
2. **Small Purchases** -- over ~~\$2,500~~3,000 ~~and~~ up to and including \$50,000:
 - a. Must solicit written quotes from a minimum of three vendors, if available. Must document that the price is fair and reasonable, and ~~A~~ award shall be to the lowest responsive and responsible bidder.

- b. May be approved by the Executive Director or his or her designee if included in the TJPA Budget adopted by the Board of Directors.
 - c. Modifications shall be approved by the Executive Director or his or her designee and may not cumulatively increase the contract over \$50,000.
3. **Large Purchases** -- over \$50,000:
- a. Must publish notice requesting sealed bids. Award shall be to the lowest responsive and responsible bidder.
 - b. May be approved by the Executive Director if \$100,000 or less; ~~Must~~ must be approved by the Board of Directors of the TJPA if over \$100,000; ~~Executive Director must approve procurements of \$100,000 or less.~~
 - c. Any modification (increase or decrease) in excess of 10% percent of the original contract amount shall require Board approval. Any other modifications may be approved by the Executive Director.

B. Procurement of General Services¹:

- 1. **Micropurchases** -- up to and including ~~\$2,500~~ \$3,000 if federally ~~funded~~ eligible; up to and including \$10,000 if not federally ~~funded~~ eligible:
 - a. Must obtain at least one informal quote; must document that the price is fair and reasonable.
 - 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 Executive Director or his or her designee if included in the TJPA Budget adopted by the Board of Directors.
 - d. Any modifications to a micropurchase that would exceed the applicable threshold shall be treated as a new procurement.
- 2. **Small Purchases** -- over \$3,000/~~\$10,000~~ ~~and~~ up to and including \$25,000:
 - 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

¹ General services do not require extended analysis, the exercise of discretion and independent judgment in their performance, or particular, advanced or specialized knowledge, expertise or training. Examples include janitorial, security guard, landscaping and pest control.

~~bidder. Award shall be to the lowest responsive and responsible bidder.~~

- b. May be approved by the Executive Director or his or her designee if included in the TJPA Budget adopted by the Board of Directors.
- c. Modifications shall be approved by the Executive Director or his or her designee and may not cumulatively increase the contract over \$25,000.

3. **Large Purchases** -- over \$25,000:

- a. Must publish notice requesting sealed bids. Award shall be to the responsible bidder submitting the lowest responsive bid.
- b. May be approved by the Executive Director if \$100,000 or less; must be approved by the Board of Directors of the TJPA if over \$100,000.
- ~~b. Must be approved by the Board of Directors of the TJPA if over \$100,000; Executive Director must approve procurements of \$100,000 or less.~~
- c. Any modification in excess of 10% percent of the original contract amount shall require Board approval. Any other modifications may be approved by the Executive Director.

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C. Procurement of Consultant/Professional Services²:

- 1. **Micropurchases** -- up to and including ~~\$2,500~~\$3,000 if federally ~~funded~~eligible; up to and including \$10,000 if not federally ~~funded~~eligible:
 - a. Must obtain one informal quote; must document that the price is fair and reasonable.
 - b. May be approved by the Executive Director or his or her designee if included in the TJPA Budget adopted by the Board of Directors.

² Professional services are those services which require extended analysis, the exercise of discretion and independent judgment 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. These procurement procedures do not apply in the case of architectural and engineering services; see Section D.

- c. Any modifications to a consultant contract that would exceed the applicable threshold shall be treated as a new procurement.
2. **Small Purchases** -- over ~~\$2,500~~\$3,000/\$10,000 ~~and~~ up to and including \$25,000:
- a. Must solicit written proposals from a minimum of three firms or individuals, if available, and award to the most qualified responsible consultant, with cost as a factor. Must document that the price is fair and reasonable.
 - b. May be approved by the Executive Director or his or her designee if included in the TJPA Budget adopted by the Board of Directors.
 - c. Modifications shall be approved by the Executive Director or his or her designee and may not cumulatively increase the contract over \$25,000.
3. **Large Purchases** -- over \$25,000:
- a. Must publish notice requesting written proposals, and evaluate the proposals to determine the most qualified proposer. Such requests must state the qualitative factors that will be used to evaluate the proposals, along with the weight to be accorded to each factor. For all federally funded contracts, cost shall be considered during the evaluations. Negotiations shall be held with the highest-ranking responsible proposer. If an agreement cannot be reached, staff shall conduct negotiations with the next highest-ranking proposer.
 - ~~b. The Board of Directors must approve the award of the contract if over \$100,000; Executive Director must approve the award if \$100,000 or less.~~
 - b. May be approved by the Executive Director if \$100,000 or less; must be approved by the Board of Directors of the TJPA if over \$100,000.
 - c. Any modification cumulatively increasing or decreasing the contract amount or duration in excess of 10 percent shall require Board approval. Any other modifications or changes may be approved by the Executive Director or his or her designee.

D. Procurement of Architectural/Engineering (A&E) Services

- 1. **Micropurchases** -- Up to and including ~~\$2,500~~\$3,000:
- a. Must obtain one informal proposal from a qualified individual or

firm; must document that the price is fair and reasonable.

- b. May be approved by the Executive Director or his or her designee if included in the TJPA Budget adopted by the Board of Directors.

2. **Small Purchases** -- over ~~\$2,500~~\$3,000; up to and including \$100,000:

- a. Must solicit written proposals from a minimum of three firms or individuals and negotiate with most qualified responsible offeror. Cost shall not be a factor when evaluating an A&E firm, but prior to award it must be documented that the price is fair and reasonable.
- b. May be approved by the Executive Director or his or her designee if included in the TJPA Budget adopted by the Board of Directors.
- c. Any modification cumulatively increasing or decreasing the contract amount or duration in excess of 10 percent shall require Board approval. Any other modifications or changes may be approved by the Executive Director or his or her designee.

3. **Large Purchases** -- over \$100,000:

The following approval procedures are based on Chapter 6 of the City's Administrative Code. Matters not covered in this Policy shall be handled as provided in Chapter 6.

- a. Must publish notice requesting a written qualification statement and written proposals, ~~and~~, TJPA shall evaluate the proposals to determine the most qualified proposer. Such requests must state the qualitative factors that will be used to evaluate the proposals, along with the weight to be accorded to each factor. Cost shall not be a factor when evaluating an A&E firm. Negotiations shall be held with the highest-ranking proposer. If an agreement cannot be reached, staff shall conduct negotiations with the next highest-ranking proposer.
- b. The Board of Directors must approve the award of the contract.
- c. Any modification cumulatively increasing or decreasing the contract amount or duration in excess of 10 percent shall require Board approval. Any other modifications or changes may be approved by the Executive Director.

E. Procurement of Construction Services

The following approval procedures are based on Chapter 6 of the City's Administrative Code. Matters not covered in this Policy shall be handled as provided in Chapter 6.

1. Construction Work up to and including \$400,000:
 - a. Must solicit written quotes from a minimum of three responsible and qualified contractors, if available. The Executive Director shall ~~select from contractors on lists created by the City for this purpose, including making~~ every effort to solicit quotes from qualified DBEs and SBEs, MBEs and WBEs, as applicable, on those lists. Must document that the price is fair and reasonable, and award shall be to the lowest responsive and responsible bidder. Award shall be to the lowest responsive and responsible bidder.
 - ~~b. May be approved by the Executive Director or his or her designee if included in the TIPA Budget adopted by the Board of Directors.~~
 - ~~b. The Executive Director shall approve the award of the contract if included in the TIPA Budget adopted by the Board of Directors.~~
 - c. Any modification cumulatively increasing or decreasing the contract amount or duration in excess of 10 percent shall require Board approval. Any other modifications or changes may be approved by the Executive Director.
2. Construction Work over \$400,000:
 - a. Must publish notice requesting sealed bids. Notice shall include date for public bid opening. Award, if made, shall be to the lowest responsible bidder submitting the lowest responsive bid.
 - b. Awards of contracts shall be by the Board of Directors.
 - c. Any modification cumulatively increasing or decreasing the contract amount or duration in excess of 10 percent shall require Board approval. Any other modifications or changes may be approved by the Executive Director or his or her designee.

F. Procurement by Noncompetitive Proposals (Sole Source)

1. Notwithstanding the provisions of the preceding sections, the ~~Authority~~ TIPA 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 Executive Director based on the criteria set forth in Section ~~II(FF)~~ II(FF)(2).
2. Non competitive 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 item is available only from a single source;
 - b. There exists a public exigency or emergency which will not permit the delay accompanying competitive solicitation;
 - c. After solicitation of a number of sources, competition is determined inadequate; or
 - d. The procurement is federally funded and sole source procurement is authorized ~~under federal law and guidelines~~ by the FTA.
3. The Executive Director shall perform a cost analysis ~~(or price analysis, if appropriate)~~ to determine that the contract amount of the sole source is fair and reasonable.

~~G. Discretion to Waive Competitive Process~~

~~The Board of Directors, or the Executive Director, for procurements under his or her authority, may waive the competitive requirements set forth in this Procurement Policy when permissible and to the extent allowable under Chapter 6 of the San Francisco Administrative Code or other applicable law. The circumstances allowing for such a waiver shall be evaluated on a case by case basis. The findings justifying the waiver must be documented by the Authority.~~

III. Contract Forms

The Executive Director, or his or her designee, with the assistance of legal counsel, is authorized to develop appropriate contract forms consistent with this policy.

IV. Standards of Conduct for Procurements

A. Conflict of Interest

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. The City has also adopted a Conflict of Interest Code, which is part of its Campaign and Governmental Conduct Code. All City employees 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 his/her 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 California's Political Reform Act (Government Code Section 87100, et seq.), Sections 1090, et seq. of the California Government Code; and Section §15.103 and Appendix C, Section 8.105 of City's Charter, as may be amended from time to time.

B. 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.

C. Violations of Standards of Conduct

Violations of these standards of conduct shall be subject to penalties, sanctions, or other disciplinary actions provided by California law.

D. Organizational Conflicts of Interest

The ~~Authority-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 ~~Authority-TJPA~~; (2) whose objectivity in performing contract work may be impaired; or (3) who have an unfair competitive advantage.

V. ~~DBE Program for Federally Assisted Third Party Contracts~~

With respect to federally ~~funded-eligible~~ third party contracts, the ~~Authority, as subrecipient to the MTA, shall participate as part of the MTA's-TJPA implements a~~ Disadvantaged Business Enterprise (DBE) Program (~~Board Policy No. 010~~), and as such, ~~shall commit~~ commits to the participation of DBEs in ~~Authority-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 ~~Authority-TJPA~~ to create a level playing field on which DBEs ~~and SBEs~~ can compete fairly for contracts and subcontracts relating to the ~~Authority's-TJPA's~~ construction, ~~procurement professional services~~ and ~~procurement professional services~~ 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

TJPA shall not specify in-state or local geographical preferences in its construction, professional services and procurement activities.

~~It is the policy of the Authority to ensure nondiscrimination on the basis of race, color, sex or national origin in the award and administration of federally-assisted contracts. It is also the policy of the Authority to ensure nondiscrimination 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 or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status).~~

TRANSBAY JOINT POWERS AUTHORITY

Board Policy No. 002

Category: Financial Matters

PROTEST PROCEDURES FOR THE BIDDING AND AWARD OF FEDERALLY ASSISTED THIRD PARTY CONTRACTS

1. Policy

The Transbay Joint Powers Authority (the "TJPA") complies with all procurement requirements for Federally-assisted third-party contracts and shall consider protests submitted in conformance with the procedure set forth in this Board Policy No. 002. These procedures shall be referenced in all Requests for Proposals (RFPs) and Invitations for Bid (IFBs).

2. Definitions

Award shall mean the resolution of the TJPA Board awarding a contract or execution by the Executive Director, as appropriate to the size and type of contract.

Award Process includes the pre-award, award and post-award phases of a negotiated procurement, an RFP or a sealed bid.

Bid includes the terms "offer" or "proposal" as used in the context of negotiated procurements, RFPs and sealed bids.

Bidder or Proposer means the prime bidder or proposer submitting a bid or proposal. TJPA will consider protests submitted only by a bidder or proposer.

Days refer to working days of the Transbay Joint Powers Authority (unless otherwise indicated).

Disadvantaged Business Enterprise or DBE is a for-profit, small business concern (1) that is at least fifty-one percent (51%) owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which fifty-one (51%) of the stock is owned by one or more such individuals; and (2) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

Federal Transit Administration (FTA) is an operating administration of the U.S. Department of Transportation.

Protest is a timely, written complaint by a bidder or proposer regarding a bid or the award process which arises prior to award and is formally communicated to the Executive Director, as provided below.

Small Business Enterprise or SBE is a small business concern that is certified under one of the following programs: California Unified Certification Program, California Department of General Services Office of Small and Disabled Veteran Business Enterprises, or the San Francisco Human Rights Commission.

TJPA is the Transbay Joint Powers Authority. The TJPA is responsible for the development, construction and operation of the San Francisco Transbay Terminal and Caltrain Downtown Extension projects.

3. Implementation

3.1 Protests Generally

A protest must be submitted to the TJPA Executive Director in writing and describe the basis for the protest with particularity.

3.2 Time

The TJPA will consider only timely protests, received within the following time limitations:

- For professional services contracts, no later than five (5) days following notification of proposed award.
- For construction contracts, no later than five (5) days following the bid opening.

If a protest is regarding contents of a bid specification, the protest must be submitted in conformance with the requirements of that bid specification, but no later than ten (10) days prior to the bid opening date.

3.3 Instructions for Submission

Protests shall be addressed to:

Executive Director
Transbay Joint Powers Authority
201 Mission Street, Suite 2100
San Francisco, CA 94105

The letter shall contain the protest description and shall be signed and dated. Telephoned or anonymous protests will not be considered.

3.4 Disadvantaged Business Enterprise (DBE) or Small Business Enterprise (SBE) Requirements

If the protest concerns responsiveness based on compliance with DBE or SBE requirements, the TJPA DBE/SBE Liaison Officer (DBELO/SBELO) shall review the protest. Regarding the issue of whether a bidder has met its DBE or SBE goal or demonstrated good faith efforts in

reaching any contract-specific DBE or SBE goal, the DBELO/SBELO's determination will be administratively final except when the DBELO/SBELO has determined that an apparent low bidder has failed to meet its goal or make the required good faith efforts. In that situation, the Administrative Reconsideration procedures in the TJPA's DBE and SBE Programs apply to requests for reconsideration from the apparent low bidder. The TJPA Board will not have jurisdiction to hear administrative appeals or requests for reconsideration of the DBELO/SBELO's or reconsideration official's decision on good faith efforts.

3.5 Issues Not Related to DBE or SBE Requirements

If a protest is regarding the outcome of a pre-qualification process, the appeal process in the request for qualifications package shall be followed.

If the protest concerns whether a bidder or proposer is responsible or whether a bid or proposal is responsive to the RFP or IFB (unrelated to DBE or SBE requirements), the TJPA may request a response from the affected bidder or proposer. The Executive Director shall issue a decision resolving the protest. The decision by the Executive Director shall be final as to the TJPA.

3.6 Final Action

The protester shall be notified in writing of the TJPA's decision regarding the protest and/or award of the contract.

The action of the TJPA is final. Subject to the provisions of Section 3.7, the protester may seek a remedy in State or Federal court, as appropriate, from the final action of the TJPA.

3.7 Protest to FTA

FTA may only entertain a protest that alleges that the TJPA (1) failed to have written protest procedures; (2) failed to follow its written protest procedures; or (3) failed to review a complaint or protest. A protest to FTA must be received by the cognizant FTA regional or Headquarters Office within five (5) working days of the date the protester knew or should have known of the violation. A protester must exhaust all administrative remedies with the TJPA before pursuing a protest with FTA.

TRANSBAY JOINT POWERS AUTHORITY

Board Policy No. 002

Category: Financial Matters

PROTEST PROCEDURES FOR THE BIDDING AND AWARD OF FEDERALLY ASSISTED THIRD PARTY CONTRACTS

1. Policy

The Transbay Joint Powers Authority (the "TJPA") complies with all procurement requirements for Federally-assisted third-party contracts and shall consider protests submitted in conformance with the procedure set forth in this Board Policy No. 002. In the event that any protest, discrepancies, or legal questions arise during the bidding and award process of federally assisted construction, public improvements, personal services, negotiated procurement and other major procurement contracts, the Executive Director shall review the protest and recommend its resolution to the Transbay Joint Powers Authority (TJPA).—These procedures shall be ~~incorporated into~~ referenced in all Requests for Proposals (RFPs) and ~~bid packages~~ Invitations for Bid (IFBs).

2. Definitions

Award shall mean ~~authorization by the~~ authorization by the resolution of the TJPA Board ~~for its staff to contract with a bidder or proposer awarding a contract or execution by the Executive Director, as appropriate to the size and type of contract.~~

Award Process includes the pre-award, award and post-award phases of a negotiated procurement, an RFP ~~and or~~ or a sealed bid.

Bid includes the terms “offer” or “proposal” as used in the context of negotiated procurements, requests for proposal and sealed bids.

Bidder or Proposer means the prime bidder or proposer submitting a bid or proposal. TJPA will consider protests submitted only by a bidder or proposer.

Days refer to working days of the Transbay Joint Powers Authority (unless otherwise indicated).

Disadvantaged Business Enterprise or DBE is a for-profit, small business concern (1) that is at least fifty-one percent (51%) owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which fifty-one (51%) of the stock is owned by one or more such individuals; and (2) whose management and daily business operations are controlled by one or more of the socially and economically disadvantage individuals who own it.

Federal Transit Administration (FTA) is an operating administration of the U.S. Department of Transportation.

~~**Municipal Transportation Agency (MTA)** is the agency of the City and County of San Francisco that has exclusive control for the management, operation and maintenance of the City's transit system, the San Francisco Municipal Railway. The MTA is also the grantee of federal funds that flow to the TJPA as subrecipient.~~

Protest is a timely, written complaint by a bidder or proposer regarding a bid or the award process which arises prior to award and is formally communicated to the Executive Director, as provided below.

~~**Post-Award Protest** is a complaint by a bidder or proposer when the TJPA awards a contract to other than the bidder or proposer recommended for award by TJPA staff.~~

~~**Small Business Enterprise or SBE** is a small business concern that is certified under one of the following programs: California Unified Certification Program, California Department of General Services Office of Small and Disabled Veteran Business Enterprises, or the San Francisco Human Rights Commission.~~

TJPA ~~means~~is the Transbay Joint Powers Authority. The TJPA is responsible for the development, construction and operation of the San Francisco Transbay Terminal and Caltrain Downtown Extension projects.

3. Implementation

3.1 Submit Protest~~Protests Generally~~

~~A protest must be submitted to the TJPA Executive Director in writing and describe the basis for the protest with particularity.~~

3.2 Time

~~A protest describing the nature of the disagreement must be submitted in writing to the TJPA will consider only timely protests, received within the following time limitations:~~

- ~~• For professional services contracts, no later than five (5) days following notification of proposed award. A post-award protest describing the nature of the disagreement must be submitted in writing to the TJPA no later than five (5) days following the Notification of Award of the contract. If the TJPA bid procedure requires submission of documents in separate phases and bidders may be qualified at the end of a phase prior to the final award, then protests regarding a phase of the procedure (including protests concerning documents received by bidders during the phase) must be submitted in writing with a description of the disagreement to the TJPA no later than five (5) days following receipt of notification of the results of that phase.~~
- ~~• For construction contracts, no later than five (5) days following the bid opening.~~

~~If a protest is regarding contents of a bid specification, the protest must be submitted no later than ten (10) days prior to the bid opening date.~~

3.3 Instructions for Submission

Protests shall be addressed to:

Executive Director

Transbay Joint Powers Authority

~~1 Dr. Carlton B. Goodlett Place, Room 448~~ 201 Mission Street, Suite 2100

San Francisco, CA 94105~~2~~

The letter shall contain the ~~project~~ protest description and shall be signed and dated. Telephoned or anonymous protests will not be considered.

3.42 Disadvantaged Business Enterprise (DBE) or Small Business Enterprise (SBE) Requirements

If the protest concerns responsiveness based on compliance with DBE or SBE requirements, the TJPA DBE/SBE Liaison Officer (DBELO/SBELO) shall review the protest. Regarding the issue of whether a bidder has met its DBE or SBE goal or demonstrated good faith efforts in reaching any contract-specific DBE or SBE goal, the DBELO/SBELO's determination will be administratively final except when the DBELO/SBELO has determined that an apparent low bidder has failed to meet its goal or make the required good faith efforts. In that situation, the Administrative Reconsideration procedures in the TJPA's DBE and SBE Programs apply to requests for reconsideration from the apparent low bidder. The TJPA Board will not have jurisdiction to hear administrative appeals or requests for reconsideration of the DBELO/SBELO's or reconsideration official's decision on good faith efforts.

~~If the protest involves meeting DBE requirements, the Contract Compliance Office (CCO) of the Municipal Transportation Agency shall review the protest. The CCO shall also send a copy to the TJPA General Counsel for information. The CCO shall review DBE requirements for the project, examine whether the protest has merit, and forward its decision to the Executive Director. Based on the examination, the Executive Director shall notify the protester, in writing, of the decision, responding at least generally to each material issue raised in the protest. The letter to the protester shall state that (a) the protester may contact the CCO to discuss the response, and the protester has the right to address the TJPA Board on the date when the matter is calendared to be heard if the CCO denies the appeal.~~

~~Regarding the issue of whether a bidder has met its DBE goal or demonstrated good faith efforts in reaching the contract-specific DBE goal, the CCO's determination will be administratively final except when the CCO has determined that an apparent low bidder has failed to meet its goal or make the required good faith efforts. In that situation, the procedures in the MTA's DBE Program apply to requests for reconsideration from the apparent low bidder. The TJPA Board will not have jurisdiction to hear administrative appeals or requests for reconsideration of the CCO's decision on good faith efforts.~~

3.5 Issues Not Related to DBE or SBE Requirements

If a protest is regarding the outcome of a pre-qualification process, the appeal process in the request for qualifications package shall be followed.

If the protest concerns whether a bidder or proposer is responsible or whether a bid or proposal is responsive to the RFP or IFB (unrelated to DBE or SBE requirements), the TJPA may request a response from the affected bidder or proposer. The Executive Director shall issue a decision resolving the protest. The decision by the Executive Director shall be final as to the TJPA.

~~If the protest concerns complaints regarding discrepancies in the bid documents, missing or required documentation, or the selection process, and is not related to DBE requirements, the Executive Director shall prepare a memorandum to the TJPA General Counsel requesting an opinion on the protest. The Executive Director shall inform the protester in writing of the recommendation, stating the reasons for the recommendation, and responding at least generally to each material issue raised in the protest. The Executive Director's letter to the protester shall state that (a) the protester may contact the Executive Director to discuss the response, and the protester has the right to address the TJPA Board on the date when the matter is calendared to be heard if the Executive Director denies the appeal.~~

3.3 Incorporate Legal Opinion/Recommendation

~~The Executive Director shall incorporate appropriate language reflecting the outcome of the protest in the calendar item and resolution for approval of the contract by the Board of Directors. However, in the event of a multi-phased bid procedure as described in Section 3.1 above, the protest may be considered by the Board of Directors prior to the meeting when final award is determined.~~

3.6 Final Action

The protester shall be notified in writing of the TJPA's decision regarding the protest and/or award of the contract.

The action of the TJPA is final. Subject to the provisions of Section 3.67, the protester may seek a remedy in State or Federal court, as appropriate, from the final action of the TJPA.

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6-53.7 Protest to FTA

FTA may only entertain a protest that alleges that the TJPA (1) failed to have written protest procedures; (2) failed to follow its written protest procedures; or (3) failed to review a complaint or protest. A protest to FTA must be received by the cognizant FTA regional or Headquarters Office within five (5) working days of the date the protester knew or should have known of the violation. A protester must exhaust all administrative remedies with the TJPA before pursuing a protest with FTA.

TRANSBAY JOINT POWERS AUTHORITY

Board Policy No. 009

Category: Financial Matters

INVESTMENT POLICY

I. Introduction

The purpose of this policy is to set forth the scope, objectives, standards of care, authorized financial institutions, permitted investment instruments and parameters, and reporting requirements for all investments made by the Transbay Joint Powers Authority (TJPA) and its Trustees. It is the policy of the TJPA to invest funds in a manner which will preserve capital, meet the daily cash flow demands of the TJPA, and provide investment return.

II. Governing Authority

The investment program shall be operated in conformance with federal, state, and other legal requirements including applicable provisions of Chapter 4 of Part 1 of Division 2 of Title 5 of the California Government Code (Sections 53600 et seq.).

III. Scope

This policy applies to the investment of all funds, excluding the investment of bond funds, and employees' retirement funds, which is outside the scope of this policy. The investment of bond proceeds shall be governed by the relevant bond documents. The investments will be managed to insure the safety of the portfolio by investing in high quality securities and by maintaining a mix of securities that will provide reasonable assurance that no single investment or class of investments will have a disproportionate impact on the total portfolio.

IV. Objectives

The primary objectives, in priority order, for the TJPA's investment activities are:

1. **Safety.** Safety of principal is the foremost objective of the investment program. Investments shall be undertaken in a manner that seeks to ensure the preservation of capital in the overall portfolio. To attain this objective, the TJPA will maintain a balance of no more than \$100,000 per money market account and invest funds above this amount that are not needed for immediate disbursement in the City and County of San Francisco's (City) investment pool. The \$100,000 limit is also applicable to investments in money market funds by TJPA Trustees. In addition to the safety provided by investing in high quality securities, the safety of the portfolio is enhanced in three ways by maintaining a prudent mix (i.e., diversity) of investments: 1) Spreading investments over different investment types minimizes the impact that any one industry/investment class can have on the portfolio; 2)

Spreading investments over multiple credits/issuers with an investment type minimizes the credit exposure of the portfolio to any single firm/institution; and, 3) Spreading investments over various maturities minimizes the risk of portfolio depreciation due to a rise in interest rates. The portfolio shall contain a sufficient number and diversity of marketable securities so that a reasonable portion of the portfolio can be readily converted to cash without causing a material change in the value of the portfolio. Limitation and eligibility as to specific investments are to be determined by the TJPA Chief Financial Officer, Executive Director, and Finance Manager, collectively.

2. **Liquidity.** The investment portfolio shall remain sufficiently liquid to meet all cash flow requirements that may be reasonably anticipated. To that end, investment in the City and County of San Francisco's investment pool requires only 24 hours notification prior to withdrawal of funds. The portfolio will maintain a "cash-flow generated" portfolio balance sufficient to cover specifically the one-month cash forecast, as well as generally, the six month prepared cash forecast.
3. **Return on Investment:** The investment portfolio shall be designed with the objective of attaining a market rate of return throughout budgetary and economic cycles, taking into account the investment risk constraints and liquidity needs. The TJPA can attain a higher rate of return investing in the City and County of San Francisco's investment pool or the State's Local Agency Investment Fund (LAIF), due to the large dollar value of the pools and the expertise of the respective Treasurers.

V. Standard of Prudence

In managing its overall portfolio, the TJPA shall observe the "Prudent Person Standard" as stated in California Government Code 53600.3. Investments shall be made with care, skill, prudence, and diligence under the circumstances then prevailing, including, but not limited to, the general economic conditions and the anticipated needs of the TJPA, that a prudent person acting in a like capacity, and with familiarity of those matters, would use to safeguard the principal and maintain the liquidity needs of the TJPA. Investment officers acting in accordance with state and local law and this investment policy and exercising due diligence shall be relieved of personal responsibility for an individual security's credit risk or market price changes, provided deviations from expectations are reported in a timely fashion and appropriate action is taken to control adverse developments.

VI. Delegation of Authority

Management's responsibility for the investment program is derived from the TJPA Board of Directors and is hereby delegated to the TJPA Chief Financial Officer or his or her designee. The Board may rescind the delegation pursuant to this section.

The following individuals are authorized to sign investment documents and/or execute cash transfers and make investments of the TJPA's funds:

- Executive Director or his/her designee

- Chief Financial Officer or his/her designee

All investment documents and cash transfer authorization forms shall be approved by two signature authorities from the above list.

VII. Ethics and Conflict of Interest

Officers and employees involved in the investment process will not engage in personal business activities that could conflict with the proper and lawful execution and management of the investment program, or that could impair their ability to make impartial decisions. Pursuant to the TJPA's Conflict of Interest code, employees shall disclose any material interests in financial institutions with which they conduct business. They shall further disclose any personal financial/investment positions that could be related to the performance of the TJPA's investment portfolio.

VIII. Authorized Financial Institutions and Dealers

The TJPA Chief Financial Officer shall establish and maintain a list of financial institutions and other financial services providers authorized to provide investment services. No public deposits will be made except in a qualified public depository as established by state law. All broker/dealers must be Primary Government Securities Dealers or top-ten banking underwriters of U.S. Agencies (according to Bloomberg Underwriter Rankings, or a similar ratings service). All broker/dealers and custodial Trustees must annually review and abide by this Investment Policy.

Transbay Joint Powers Authority will not do business with a firm which has, within any consecutive 48-month period following January 1, 1996, made a political contribution in an amount exceeding the limitations contained in Rule G-37 of the Municipal Securities Rulemaking Board, to the City & County of San Francisco Treasurer, any member of the TJPA Board, or any candidate for those offices.

Transbay Joint Powers Authority may choose a Trustee to hold custody of moneys gained by the sale of formerly State-owned land parcels, tax increment proceeds, and other moneys as deemed necessary by the Executive Director and the Chief Financial Officer. Moneys held by the Trustee shall be invested and reinvested by the Trustee solely at the direction of the TJPA in those certain investment securities listed in "Exhibit A" hereto entitled "Permitted Investments".

IX. Permitted Investment Instruments

In accordance with and subject to the restrictions in California Government Code Section 53601, the TJPA may invest in the following type of investments as described fully in Exhibit A below:

1. U.S. Treasury Obligations
2. State of California and California Local Agency Obligations
3. U.S. Agency Obligations
4. Bankers Acceptances
5. Commercial Paper (domestic)
6. Negotiable Certificates of Deposit

7. Repurchase Agreements
8. Medium-Term Notes
9. Money Market Mutual Funds
10. Collateralized Bank/Time Deposits
11. City & County of San Francisco Investment Pool
12. Local Agency Investment Fund (LAIF)

The maximum percentage share of investments in these instruments as a share of the TJPA's portfolio, credit quality and the maximum maturities of investments shall conform to the restrictions in California Government Code Section 53601 and shall be domestic investments only.

X. Ineligible Investments

The TJPA shall not invest funds in instruments not specified in Section IX above- Permitted Investment Instruments.

XI. Internal Controls

TJPA shall establish a system of internal controls, which shall be documented in writing. The internal controls shall be provided to and reviewed by the independent auditor. The controls shall be designed to prevent the loss of public funds arising from fraud, employee error, misrepresentation by third parties, unanticipated changes in the financial markets, or imprudent actions by employees and officers of the TJPA.

XII. Reporting Requirements

The TJPA Chief Financial Officer shall submit a list of investment transactions and an investment report to the TJPA Board of Directors on a quarterly basis. The report will include, at a minimum, investment types, issuer, maturity, par value, and dollar amount invested; market value as of the date of the report and the source of the valuation.

In addition, the investment report shall state compliance of the portfolio with the statement of investment policy and a statement noting the ability of TJPA to meet expenditure requirements for the next six months in accordance with California Government Code Section 53646 (b) (2) and (3).

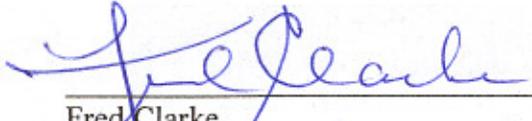
XIII. Social and Environmental Concerns

Investments are encouraged in entities that support community well-being through safe and environmentally sound practices and fair labor practices. Investments are encouraged in entities that support equality of rights regardless of sex, race, age, disability or sexual orientation. Investments are discouraged in entities that manufacture tobacco products, firearms or nuclear weapons. In addition, investments are encouraged in entities that offer banking products to serve all members of the local community, and investments are discouraged in entities that finance high-cost check-cashing and deferred deposit (payday-lending) businesses.

XIV. Investment Policy Review

TJPA's investment policy shall be adopted by resolution of the TJPA Board of Directors. This policy shall be reviewed annually at a regular meeting of the TJPA Board. Any modifications to this policy must be approved by resolution of the TJPA Board.

Approved by:



Fred Clarke
TJPA Interim Chief Financial Officer

5/14/08
Date



Maria Ayerdi
TJPA Executive Director

5/30/08
Date

EXHIBIT A

Permitted Investments

Per State Government Code (As of January 1, 2008)ⁱ

Investment Type	Maximum Maturity	Maximum Specified Percentage of Portfolio	Minimum Quality Requirements
U.S. Treasury Obligations	5 years	None	None
State of California and California Local Agency Obligations	5 years	10% ⁱⁱ	AA (S&P); Aa (Moody's); AA (Fitch)
U.S. Agency Obligations	5 years	None ⁱⁱⁱ	AAA (S&P); Aaa (Moody's); AAA (Fitch)
Bankers Acceptances	180 days	40% ^{iv}	A-1/P-1/F-1 ^v
Commercial Paper	270 days	25% of the Agency's Money? Not sure what this means—cash? ^v	A-1/P-1/F-1 ^v ; if the issuer has issued long-term debt it must be rated "A" without regard to modifiers ^{vi}
Negotiable Certificates of Deposit	3 years	30% ^{vii}	AA (S&P); Aa (Moody's); AA (Fitch)
Repurchase Agreements	90 days	20%	None
Medium-Term Notes ^{viii}	5 years	30% ^{ix}	AA (S&P); Aa (Moody's); AA (Fitch)
Money Market Mutual Funds	n/a	20% ^x	AAA (S&P); Aaa (Moody's); AAA (Fitch)
Collateralized Bank/Time Deposits	1 year	10% ^{xi}	None
City & County of San Francisco Equity in Pool ^{xii}	n/a	None	None
Local Agency Investment Fund (LAIF) ^{xiii}	n/a	None	None

Prohibited investments include securities not listed above, as well as inverse floaters, range notes, interest only strips derived from a pool of mortgages, and any security that could result in zero interest accrual if held to maturity.^{xiv}

See endnotes next page.

ⁱ Sources: Government Code Sections 16429.1, 53601, 53601.8, 53635, and 53638.

ⁱⁱ Maximum 5 percent per issuer

ⁱⁱⁱ Maximum 35 percent per issuer

^{iv} No more than 5 percent of the agency's money may be in Bankers Acceptances of any one commercial bank.

^v Maximum 5 percent of outstanding paper of any single issuer and maximum 5 percent of portfolio of any issuer.

^{vi} Issuing corporation must be organized and operating within the U.S. and have assets in excess of \$500,000,000.

^{vii} No more than 30 percent of the agency's total funds may be invested in CDs authorized under Sections 53601.8, 53635.8, and 53601(h) combined. Maximum 5 percent per issuer.

^{viii} "Medium-term notes" are defined in Government Code Section 53601 as "all corporate and depository institution debt securities with a maximum remaining maturity of five years or less, issued by corporations organized and operating with the U.S. or by depository institutions licensed by the U.S. or any state and operating within the U.S."

^{ix} Maximum 5 percent per issuer.

^x No more than 5 percent invested in any one mutual fund.

^{xi} Maximum 5 percent per issuer.

^{xii} Not a permitted investment for Trustee Accounts.

^{xiii} Not a permitted investment for Trustee Accounts.

^{xiv} Zero interest accrual means the security has the potential to realize zero interest depending upon the structure of the security. Zero coupon bonds and similar investments that start at a level below the face value are legal because their value does increase.

Glossary of Terms

U.S. Agencies: Federal agency securities and/or Government-sponsored enterprises.

Annual Financial Report: The official annual, audited financial report for the TJPA.

Bankers Acceptance (BA): A draft or bill of exchange accepted by a bank or trust company. The accepting institution guarantees payment of the bill, as well as the issuer.

Benchmark: A comparative base for measuring the performance or risk tolerance of the investment portfolio. A benchmark should represent a close correlation to the level of risk and the average duration of the portfolio's investments.

Broker: A broker brings buyers and sellers together for a commission.

Certificate of Deposit (CD): A time deposit with a specific maturity evidenced by a Certificate. Large-denomination CD's are typically negotiable.

Collateral: Securities, evidence of deposit or other property, which a borrower pledges to secure repayment of a loan. Also refers to securities pledged by a bank to secure deposits of public monies.

Dealer: A dealer, as opposed to a broker, acts as a principal in all transactions, buying and selling for his own account.

Depository Institutions: These institutions hold agency monies in the forms of certificates of deposit (negotiable or term), public time deposits and public demand accounts.

Discount: The difference between the cost price of a security and its maturity when quoted at lower than face value. A security selling below original offering price shortly after sale also is considered to be at a discount.

Discount Securities: Non-interest bearing money market instruments that are issued at a discount and redeemed at maturity for full face value, e.g., U.S. Treasury Bills.

Federal Credit Agencies: Agencies of the Federal government set up to supply credit to various classes of institutions and individuals, e.g., S&L's, small business firms, students, farmers, farm cooperatives, and exporters.

Federal Deposit Insurance Corporation (FDIC): A federal agency that insures bank deposits, currently up to \$100,000 per deposit.

Federal Home Loan Banks (FHLB): Government sponsored wholesale banks (currently 12 regional banks), which lend funds and provide correspondent banking services to member commercial banks, thrift institutions, credit unions and insurance companies. The mission of the FHLBs is to liquefy the housing related assets of its members who must purchase stock in their district Bank.

Federal National Mortgage Association (FNMA): FNMA, like GNMA, was chartered under Federal National Mortgage Association Act in 1938. FNMA is a federal corporation working under the auspices of

the Department of Housing and Urban Development (HUD). It is the largest single provider of residential mortgage funds in the United States. Fannie Mae, as the corporation is called, is a private stockholder-owned corporation. The corporation's purchases include a variety of adjustable mortgages and second loans, in addition to fixed-rate mortgages. FNMA's securities are also highly liquid and are widely accepted. FNMA assumes and guarantees that all security holders will receive timely payment of principal and interest.

Government National Mortgage Association (GNMA or Ginnie Mae): Securities influencing the volume of bank credit guaranteed by GNMA and issued by mortgage bankers, commercial banks, savings and loan associations, and other institutions. Security holder is protected by the full faith and credit of the U.S. Government. Ginnie Mae securities are backed by the FHA, VA or FmHA mortgages. The term "passthroughs" is often used to describe Ginnie Maes.

Liquidity: A liquid asset is one that can be converted easily and rapidly into cash without a substantial loss of value.

Money Market: The market in which short-term debt instruments (bills, commercial paper, bankers' acceptances, etc.) are issued and traded.

Primary Dealer: A group of government securities dealers who submit daily reports of market activity and positions and monthly financial statements to the Federal Reserve Bank of New York and are subject to its informal oversight. Primary dealers include Securities and Exchange Commission (SEC)-registered securities broker-dealers, banks, and a few unregulated firms.

Prudent Person Rule: An investment standard. In some states the law requires that a fiduciary, such as a trustee, may invest money only in a list of securities selected by the custody state – the so-called legal list. In other states the trustee may invest in a security if it is one which would be bought by a prudent person of discretion and intelligence who is seeking a reasonable income and preservation of capital.

Repurchase Agreement (RP or REPO): A holder of securities sells these securities to an investor with an agreement to repurchase them at a fixed price on a fixed date.

Safekeeping: A service to customers rendered by banks for a fee whereby securities and valuables of all types and descriptions are held in the bank's vaults for protection.

State and Local Government Investment Pools: The aggregate of all funds from political subdivisions that are placed in the custody of the local or State Treasurer for investment and reinvestment.

Treasury Bills: A non-interest bearing discount security issued by the U.S. Treasury to finance the national debt. Most bills are issued to mature in three months, six months or one year.

Treasury Bonds: Long-term coupon-bearing U.S. Treasury securities issued as direct obligations of the U.S. Government and having initial maturities of more than 10 years.

Treasury Notes: Medium-term coupon bearing U.S. Treasury securities issued as direct obligations of the U.S. Government and having initial maturities from two to 10 years.