

**STAFF REPORT FOR CALENDAR ITEM NO.: 8  
FOR THE MEETING OF: February 11, 2021**

**TRANSBAY JOINT POWERS AUTHORITY**

**BRIEF DESCRIPTION:**

Approval of updates to Board Policy No. 001, Procurement Policy.

**SUMMARY:**

The policies and procedures governing procurements of the TJPA derive from the City and County of San Francisco, as limited by applicable provisions of state and federal law. The TJPA Procurement Policy was last reviewed in April 2018. Staff recommends further updates to the Procurement Policy to implement federal contracting updates and recommendations of the City Controller's Office, as described below.

**EXPLANATION:**

The TJPA Board approved Board Policy No. 001, Procurement Policy, in 2003, and approved amendments to the policy in 2010 and 2018. The Procurement Policy ensures that TJPA follows a full and open competition in its procurement of goods and services. The Procurement Policy sets forth the general standards for procurement, methods for procurement, contract forms, standards of conduct for procurements, Disadvantaged Business Enterprise/Small Business Enterprise (DBE/SBE) program, and statements on non-discrimination and geographical restrictions.

Staff recommends updating the Procurement Policy to implement (1) federal contracting updates and (2) recommendations of the City Controller's Office.

Updates Based on Federal Guidance

Given the federal participation in funding the Transbay Program, TJPA's policies and procedures must adhere to certain federal requirements including the "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" (Uniform Guidance, 2 CFR Part 200). In 2018, the Federal Office of Management and Budget (OMB) issued memorandum OM-18-18, "Implementing Statutory Changes to the Micro-Purchase and the Simplified Acquisition Thresholds for Financial Assistance." This memorandum raises the threshold for micro-purchases under Federal financial assistance awards to \$10,000 and raises the threshold for simplified acquisitions to \$250,000 for all recipients.

The proposed changes to the TJPA Procurement Policy reflect these updates in federal guidance by increasing the threshold for micro-purchases to \$10,000 and increasing the threshold for large purchases to \$110,000. Although, the federal policy allows for a higher large purchase threshold of \$250,000, staff recommends limiting the TJPA policy for large purchases to the limits set by the City and County of San Francisco.

## Updates Based on City Controller Recommendations

The City Controller's office has engaged a review of certain aspects of the San Francisco Airport Commission's contract award processes and other public integrity matters. In conducting that review, the City surveyed certain procurement practices of other City Commissions and Boards (including the Port and SFMTA) as well as the TJPA. The Controller issued a report, Public Integrity Review: Ethical Standards for Contract Award Processes of the Airport Commission and Other Commissions and Boards (dated January 11, 2021). It confirms that the TJPA's procurement practices are similar to and generally aligned with the other surveyed entities.

The Controller recommended that City boards and commissions should amend their procurement policies to prohibit their members from communicating with potential bidders during the RFP process through the date of contract award. (Report, page 27 and 33). The TJPA's standard form of RFP already includes an express prohibition on communications during competitive selection. But, consistent with the Controller's recommendation, staff has proposed updating the Procurement Policy to also make this affirmative statement in the policy. The proposed change is a new subsection to the policy. The policy addition has a consequence of disqualification from the contracting process and penalties, sanctions, or disciplinary actions as provided by federal, state and local law.

The City Controller's Report also recommends that the City amend its laws "...to codify that city officials and employees shall not knowingly provide selective assistance to individuals or entities that confers a competitive advantage on a proposer or potential proposer for a city contract." Although this recommendation has not yet been implemented by the City, TJPA staff has proposed changes to the Procurement Policy to affirmatively state a prohibition on collusion in contracting. The proposed change is a new subsection to the policy. The policy addition has a consequence of disqualification from the contracting process and penalties, sanctions, or disciplinary actions as provided by federal, state and local law.

Finally, staff recommends making several formatting, editorial, and similar non-substantive edits to clarify existing practices and procedures and make language in the policy consistent throughout; no substantive change is intended by these clean-up edits.

No other changes to the Procurement Policy are proposed. TJPA Legal Counsel has reviewed the proposed updates.

### **RECOMMEDATION:**

Staff recommends changes to the Procurement Policy, as shown in the enclosed redline to the policy.

### **ENCLOSURES:**

1. Resolution approving updated Board Policy No. 001
2. Board Policy No. 001: Procurement Policy (clean and redline versions)

**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 in conformance with federal, state and other legal requirements on November 24, 2003; and

WHEREAS, The TJPA has periodically adopted revisions to the Procurement Policy, most recently in 2018; and

WHEREAS, Federal guidance issued by the Office of Management and Budget (OMB) authorizes increases to the thresholds for micro-purchases and large purchases. TJPA staff recommends updates to the Procurement Policy consistent with federal guidance but limited to be consistent with the City and County of San Francisco Code; and

WHEREAS, The TJPA staff recommends updates to the Procurement Policy to expressly prohibit collusion in contracting and prohibit communications during competitive selection; and

WHEREAS, The TJPA staff recommends revisions to the Procurement Policy to make formatting, editorial, and similar non-substantive edits to clarify existing practices and procedures and make language in the policy consistent throughout; now, therefore, be it

RESOLVED, That the TJPA Board adopts the revised Procurement Policy identified as Board Policy No. 001.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of February 11, 2021.

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Interim Secretary, Transbay Joint Powers Authority

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# TRANSBAY JOINT POWERS AUTHORITY

Board Policy No. 001

Category: Financial Matters

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## 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 Chief Financial Officers 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 TJPA 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 of Directors 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.

<b>Type of Procurement</b>	<b>Micropurchase</b> <i>(must obtain at least one informal quote)</i>	<b>Small Purchase</b> <i>(must obtain at least three quotes or proposals)</i>	<b>Large Purchase</b> <i>(must publish IFB or RFP)</i>
Materials, Supplies, Equipment	Up to \$10,000	> \$10,000 - \$110,000	> \$110,000
General Services	Up to \$10,000	> 10,000 - \$110,000	> \$110,000
Consultant/Professional Services	Up to \$10,000	> 10,000 - \$110,000	> \$110,000
Architecture & Engineering Services	Up to \$10,000	> \$10,000 - \$110,000	> \$110,000
Construction Services	Up to \$2,000	> \$2,000 - \$150,000	> \$150,000

**A. Procurement of Materials, Supplies, Equipment**

1. **Micropurchases** -- up to and including \$10,000:

- 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 \$10,000 threshold shall be treated as a new procurement.

2. **Small Purchases** -- over \$10,000 up to and including \$110,000:

- 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 may be approved by the Executive Director or his or her designee and may not cumulatively increase the contract over \$110,000.

3. **Large Purchases** -- over \$110,000:

- a. Must publish notice requesting sealed bids. Award shall be to the lowest responsive and responsible bidder.
- b. Must be approved by the Board of Directors of the TJPA.

- c. Any modification cumulatively increasing or decreasing the contract amount in excess of 10 percent of the contract amount last approved by the Board of Directors shall require Board approval. Any other modifications may be approved by the Executive Director or his or her designee.

**B. Procurement of General Services<sup>1</sup>:**

1. **Micropurchases** -- up to and including \$10,000:

- a. Must obtain at least one informal proposal from a qualified vendor; must document that the price is fair and reasonable.
- b. Unless there is only one source for the service, 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 \$10,000 threshold shall be treated as a new procurement.

2. **Small Purchases** -- over \$10,000 up to and including \$110,000:

- 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 may be approved by the Executive Director or his or her designee and may not cumulatively increase the contract over \$110,000.

3. **Large Purchases** -- over \$110,000:

- a. Must publish notice requesting sealed bids. Award shall be to the responsible bidder submitting the lowest responsive bid.
- b. Must be approved by the Board of Directors of the TJPA.
- c. Any modification cumulatively increasing or decreasing the

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<sup>1</sup> 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, landscaping and pest control.

contract amount or duration in excess of 10 percent of the contract amount or term last approved by the Board of Directors shall require Board approval. Any other modifications may be approved by the Executive Director or his or her designee.

**C. Procurement of Consultant/Professional Services<sup>2</sup>:**

**1. Micropurchases -- up to and including \$10,000:**

- a. Must obtain at least one informal proposal from a qualified individual of 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.
- c. Any modifications to a consultant contract that would exceed the \$10,000 threshold shall be treated as a new procurement.

**2. Small Purchases -- over \$10,000 up to and including \$110,000:**

- 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. Prior to award, 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 may be approved by the Executive Director or his or her designee and may not cumulatively increase the contract over \$110,000.

**3. Large Purchases -- over \$110,000:**

- 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.

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<sup>2</sup> 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.



- b. Must be approved by the Board of Directors of the TJPA.
- c. Any modification cumulatively increasing or decreasing the contract amount or duration in excess of 10 percent of the contract amount or term last approved by the Board of Directors shall require Board approval. Any other modifications 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 \$10,000:**

- a. Must obtain at least 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.
- c. Any modifications to a consultant contract that would exceed the \$10,000 threshold shall be treated as a new procurement.

**2. Small Purchases -- over \$10,000 up to and including \$110,000:**

- a. Must solicit written proposals from a minimum of three firms or individuals, if available, and negotiate with most qualified responsible offeror. Cost shall not be a factor when evaluating an A&E individual or 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. Modifications may be approved by the Executive Director or his or her designee and may not cumulatively increase the contract over \$110,000.

**3. Large Purchases -- over \$110,000:**

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 of the contract amount or term last approved by the Board of Directors shall require Board approval. Any other modifications may be approved by the Executive Director or his or her designee.

#### **E. Procurement of Construction Services**

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

1. **Micropurchases -- Up to and including \$2,000:**
  - a. Must obtain at least one informal quote 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.
  - c. Any modifications to a construction contract that would exceed the applicable threshold shall be treated as a new procurement.
2. **Small Purchases – over \$2,000 up to and including \$150,000:**
  - 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. Modifications may be approved by the Executive Director or his or her designee and may not cumulatively increase the contract over \$150,000.
3. **Large Purchases - over \$150,000:**
  - 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. Must be approved by the Board of Directors of the TJPA.
- c. Any modification cumulatively increasing or decreasing the contract amount or duration in excess of 10 percent of the contract amount or term last approved by the Board of Directors shall require Board approval. Any other modifications 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.

**G. Cooperative Purchasing**

Intergovernmental purchasing is authorized under this policy. The TJPA may participate in, sponsor, conduct, or administer a cooperative procurement agreement with other public bodies for the procurement of any supplies or services to increase efficiency and/or reduce expenses. Cooperative purchasing may include, but is not limited to, the practice referred to as 'piggybacking' as well as use of purchasing schedules established by other entities, including the federal General Services Administration, the State of California, and the City. All

cooperative purchasing conducted under this policy shall be through contracts that were originally awarded through full and open competition.

### **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. Collusion in Contracting**

There shall be no collusion between any potential respondent and/or any party or parties to whom a contract has been awarded with any member of the TJPA Board of Directors, TJPA staff, other consultants already engaged by the TJPA, members of a selection

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

#### **D. Communications Prohibition**

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

#### **E. Violations of Standards of Conduct**

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

#### **F. Organizational Conflicts of Interest**

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

### **V. DBE/SBE Program**

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

### **VI. Nondiscrimination**

It is the policy of the TJPA to ensure nondiscrimination in the award and administration of any contract on the basis of the fact or perception of a person's race, color, creed, religion, national

origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability, weight, height, or Acquired Immune Deficiency Syndrome or Human Immunodeficiency Virus (AIDS/HIV) status.

## **VII. Geographic Restrictions**

TJPA shall not specify in-state or local geographical preferences in its procurement activities.

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# TRANSBAY JOINT POWERS AUTHORITY

Board Policy No. 001

Category: Financial Matters

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## PROCUREMENT POLICY

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- 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~~ Chief Financial Officer as to the availability of funds before notice to proceed with the contract is issued to the ~~c~~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.
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- I. **Reporting to Board.** The TJPA 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 of Directors 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 (must obtain at least one informal quote)	Small Purchase (must obtain at least three quotes or proposals)	Large Purchase (must publish IFB or RFP)
Materials, Supplies, Equipment	Up to <del>\$3,000</del> <u>\$10,000</u>	> <del>\$3,000</del> <u>\$10,000</u> - <del>\$50,000</del> <u>\$110,000</u>	> <del>\$50,000</del> <u>\$110,000</u>
General Services	Up to <del>\$3,000 or</del> \$10,000	> <del>\$3,000</del> /10,000 - <del>\$25,000</del> <u>\$110,000</u>	> <del>\$25,000</del> <u>\$110,000</u>
Consultant/Professional Services	Up to <del>\$3,000 or</del> \$10,000	> <del>\$3,000</del> /10,000 - <del>\$25,000</del> <u>\$110,000</u>	> <del>\$25,000</del> <u>\$110,000</u>
Architecture & Engineering Services	Up to <del>\$3,000</del> <u>\$10,000</u>	> <del>\$3,000</del> <u>\$10,000</u> - <del>\$100,000</del> <u>\$110,000</u>	> <del>\$100,000</del> <u>\$110,000</u>
Construction Services	Up to \$2,000	> \$2,000 - \$150,000	> \$150,000

**A. Procurement of Materials, Supplies, Equipment**

1. **Micropurchases** -- up to and including \$10,000 ~~\$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 \$10,000 ~~\$3,000~~ threshold shall be treated as a new procurement.

2. **Small Purchases** -- over \$10,000 ~~\$3,000~~ up to and including \$50,000 ~~\$110,000~~:

- 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~~ may be approved by the Executive Director or his or her designee and may not cumulatively increase the contract over \$110,000 ~~\$50,000~~.

3. **Large Purchases** -- over \$110,000 ~~\$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 cumulatively increasing or decreasing the contract amount in excess of 10 percent of the ~~original~~ contract amount last approved by the Board of Directors shall require Board approval. Any other modifications may be approved by the Executive Director or his or her designee.

## B. Procurement of General Services<sup>1</sup>:

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 proposal from a qualified vendor; must document that the price is fair and reasonable.
  - b. Unless there is only one source for the service, 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 \$10,000~~ threshold shall be treated as a new procurement.
2. **Small Purchases** -- over ~~\$3,000~~ \$10,000 up to and including ~~\$25,000~~ \$110,000:
  - 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~~ may be approved by the Executive Director or his or her designee and may not cumulatively increase the contract over ~~\$25,000~~ \$110,000.

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<sup>1</sup> 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, landscaping and pest control.

3. **Large Purchases** -- over ~~\$110,000~~\$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 cumulatively increasing or decreasing the contract amount or duration in excess of 10 percent of the ~~original~~ contract amount or term last approved by the Board of Directors shall require Board approval. Any other modifications may be approved by the Executive Director or his or her designee.

**C. Procurement of Consultant/Professional Services<sup>2</sup>:**

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 proposal from a qualified individual of 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.
  - c. Any modifications to a consultant contract that would exceed the ~~applicable \$10,000~~ threshold shall be treated as a new procurement.
2. **Small Purchases** -- over ~~\$3,000~~\$10,000 up to and including ~~\$110,000~~\$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. Prior to award, 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~~may be approved by the Executive Director or

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<sup>2</sup> 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.

his or her designee and may not cumulatively increase the contract over ~~\$25,000~~\$110,000.

3. **Large Purchases** -- over \$110,000~~\$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. ~~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 of the ~~original~~ contract amount or term last approved by the Board of Directors shall require Board approval. Any other modifications 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 \$10,000~~3,000~~:

- a. Must obtain at least 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.
- c. Any modifications to a consultant contract that would exceed the ~~applicable \$10,000~~ threshold shall be treated as a new procurement.

2. **Small Purchases** -- over ~~\$3,000~~\$10,000 up to and including ~~\$100,000~~\$110,000:

- a. Must solicit written proposals from a minimum of three firms or individuals, if available, and negotiate with most qualified responsible offeror. Cost shall not be a factor when evaluating an A&E individual or 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 of the original contract amount shall require Board approval. Any other modifications may be approved by the Executive Director or his or her designee.~~ Modifications may be approved by the Executive Director or his or her designee and may not cumulatively increase the contract over \$110,000.

3. **Large Purchases -- over ~~\$100,000~~\$110,000:**

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 of the ~~original~~ contract amount or term last approved by the Board of Directors shall require Board approval. Any other modifications may be approved by the Executive Director or his or her designee.

**E. Procurement of Construction Services**

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

- 1. **Micropurchases -- Up to and including \$2,000:**
  - a. Must obtain at least one informal quote 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.

- c. Any modifications to a construction contract that would exceed the applicable threshold shall be treated as a new procurement.

2. **Small Purchases** – over \$2,000 up to and including \$150,000:

- 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.~~ Modifications may be approved by the Executive Director or his or her designee and may not cumulatively increase the contract over \$150,000.

3. **Large Purchases** - over \$150,000:

- 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~~ Must be approved by the Board of Directors of the TJPA.
- c. Any modification cumulatively increasing or decreasing the contract amount or duration in excess of 10 percent of the ~~original~~ contract amount or term last approved by the Board of Directors shall require Board approval. Any other modifications 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.

#### **G. Cooperative Purchasing**

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

### **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. Collusion in Contracting**

There shall be no collusion between any potential respondent and/or any party or parties to whom a contract has been awarded with any member of the TJPA Board of Directors, TJPA staff, other consultants already engaged by the TJPA, members of a selection committee, or any other party or parties in the submission of any offer or for the purpose of preventing an offer from being made in a TJPA procurement. There shall be no preferential treatment given by any member of the TJPA Board of Directors, TJPA staff, other consultants already engaged by the TJPA, members of a selection committee, or any other party or parties, or knowingly received by any party or parties in a TJPA procurement.

## **D. Communications Prohibition**

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

## **E. Violations of Standards of Conduct**

Violations of these standards of conduct may result in immediate determination that a respondent is an irresponsible contractor and disqualified from participating in



procurements; determination that an awarded contract is null and void; and/or imposition of ~~shall be subject to~~ penalties, sanctions, or other disciplinary actions provided by ~~California~~ federal, state, and local law.

**FD. 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/SBE Program**

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

**VI. Nondiscrimination**

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

**VII. Geographic Restrictions**

TJPA shall not specify in-state or local geographical preferences in its procurement activities.