

**STAFF REPORT FOR CALENDAR ITEM NO.: 9
FOR THE MEETING OF: October 12, 2023**

TRANSBAY JOINT POWERS AUTHORITY

BRIEF DESCRIPTION:

Approve the release of the Civil and Tunnel Progressive Design Build (40-CT) Request for Qualifications (RFQ), with the express condition that any release of the Request for Proposals (RFP) for 40-CT, or other DTX/The Portal construction-related procurements, be conditioned on further Board action after demonstrating full compliance with Governance Blueprint Stage Gate 1 for the applicable procurement.

BACKGROUND

The DTX/The Portal project governance is guided by the San Francisco Peninsula Rail Program Memorandum of Understanding (the MOU), effective June of 2020 by TJPA, Metropolitan Transportation Commission (MTC), the San Francisco County Transportation Authority (SFCTA), the Peninsula Corridor Joint Powers Board (Caltrain), the California High-Speed Rail Authority (CHSRA), and the City and County of San Francisco (Mayor's Office), and the Governance Blueprint for DTX/The Portal, adopted by the TJPA Board of Directors in August 2023.

The MOU included a DTX Summary Work Program with a number of discrete tasks. The last of these, Task 20, was to 'Start procurement tasks, as applicable based on final institutional agreement, selected project delivery method, and scoping. Task 20 further described that the task would be led by TJPA, conducted with concurrence from each of the signatory partners, and that the TJPA Board would take action to provide "Approval to begin procurement".

Prior actions by the TJPA Board have determined that TJPA would be the delivery agency and use a variety of delivery methods for construction contracts, and define the scope, cost, and schedule of the project. These determinations have been made through the conduct of prior work on the Governance Study, the Project Delivery Alternatives Study, and the Phasing Study and 20-Year Financial Plan, respectively. In particular, in July 2022, with the recommendation of the Executive Steering Committee (ESC), the TJPA Board approved Progressive Design-Build (PDB) for a single civil and tunnel contract.

The MOU also included Task 18 which required the development, in part, of "Detailed study to identify the governance structure to enable stakeholder alignment, effective mega-project delivery, oversight, independent strategic advice, and assurance."

In September 2022, the TJPA Board approved the Governance Study recommendations, which comprised a number of high-level recommendations for advancing the DTX/The Portal project. Follow up work tasks were also described.

At its August 2023 meeting, the TJPA Board approved a Governance Blueprint, the first of the follow up tasks. The Governance Blueprint further developed the framework of the study including:

- Delineation of anticipated policy decisions/decision types by project phase – focus on pre-procurement, procurement, and pre-construction, and on decisions with multi-party scale/impact.
- Governance structure organizational design and composition/reporting of bodies, including Integrated Management Team membership and mandate.
- Framework for delegated authorities; configuration/change management procedures and structure.
- Further definition of stage milestones (now referred to as “Stage Gates”), inputs, and non-TJPA agency decision requirements, process for periodic independent review and expert advice.
- Coordination of related tasks/agreements and alignment with project delivery implementation roadmap.

The ESC convened on September 22, 2023 to hear an information item on 40-CT RFQ readiness and the procurement schedule and process. Staff was requested to prepare a memo summarizing progress on procurement document development and project compliance with Stage Gate 1. The ESC reconvened at a special meeting on October 2 and unanimously recommended forwarding the recommendation to release the 40-CT RFQ to the TJPA Board for approval, noting that additional approvals were expected prior to release of successive procurement documents.

Of relevance to the decision to proceed with issuance of the 40-CT RFQ in October 2023, is the degree to which the project is compliant with Stage Gate 1 as defined in the Governance Blueprint. The following compliance assessment was presented to the ESC at their special meeting in October and deemed to be satisfactory for release of the 40-CT RFQ.

GOVERNANCE BLUEPRINT – STAGE GATE 1 REQUIREMENTS AND COMPLIANCE ASSESSMENT

The project currently is in the Pre-Procurement phase of the Governance Blueprint (see Attachment 2 Stage Gate diagram). The project is expected to unlock Stage Gate 1 to move to the Procurement and Enabling Program phase of the Governance Blueprint. This next phase is the initiation of procurement of the project’s major contracts, which are planned to begin with release of bid documents for the 40-CT Progressive Design-Build contract. The Blueprint anticipates that the project’s advancement through State Gate 1 would proceed under the existing MOU (with advancement through subsequent Stage Gates contemplated under a successor MOU).

The 40-CT procurement is planned to occur in two steps: (1) RFQ to prequalify proposers, followed by (2) RFP to evaluate proposals and select a proposer. TJPA staff is seeking approval to release the 40-CT RFQ in October 2023. This would initiate procurement of the TJPA’s first major contract. Thus, it is appropriate to evaluate the TJPA’s compliance with State Gate 1 requirements.

Stage Gate 1 Requirements:

To unlock Stage Gate 1, the Governance Blueprint considers the readiness of the following activities:

- Bid Documents Complete
- Governance Blueprint approved
- Entry to Federal Transit Administration (FTA) Engineering
- Initial set of Policy Documents
 - Baseline Project Definition
 - Baseline Schedule
 - Baseline Budget
 - Baseline Funding Plan
 - Baseline Risk Matrix
- Initial Third-Party Agreements

Stage Gate 1 Compliance Assessment:

TJPA staff have evaluated compliance with the State Gate 1 requirements for the proposed 40-CT procurement.

- Bid Documents – an integrated task team has been assembled comprised of experts in procurement documents, general counsel, construction counsel, an insurance advisor, self-selected Integrated Project Management Team (IPMT) members, and core project staff. The 40-CT RFQ has been under development since July. The requested action today would be authority to release the 40-CT RFQ.

40-CT RFP development is underway with work having commenced in September as the RFQ was nearing completion. The schedule for RFP completion is provided in Attachment 3 herein. In addition to the regular weekly meeting and semi-monthly IPMT meetings, a two-day workshop has been scheduled for October 31st and November 1st with the procurement team, including the IPMT. The schedule envisions bringing the RFP to the ESC in December of this year, and the TJPA Board of Directors in January 2024 for approval, prior to the RFP release planned for February 2024.

The status of other bid documents such as design plans and specifications are discussed below as part of the Policy Documents section.

Staff considers that the initial requirements of this input to Stage Gate 1 are provisionally met. Full compliance with this input will be demonstrated when the request to release the RFP is presented to the ESC and TJPA Board per the schedule above.

- Governance Blueprint Approval – The Governance Blueprint was approved by the TJPA Board of Directors at the August 2023 meeting. Staff considers the project is in full compliance with this Stage Gate input.
- Entry to FTA Engineering – TJPA completed submission of all documentation required for FTA evaluation of the request to enter Engineering and to provide a project rating on September 21, 2023. This was the culmination of several months of work with FTA and

the FTA Project Management Oversight Consultant (PMOC) to gain consensus on the Program Cost, Schedule, Risk Register, and a variety of project management documents.

With the submission of all required documentation for FTA's consideration, staff considers that the initial requirements of this input to Stage Gate 1 are provisionally met. Full compliance with this input is subject to FTA's decision regarding entry to Engineering later this year. FTA has advised TJPA that a decision regarding TJPA's entry to Engineering should be provided in December of this year, well before the planned February 2024 release of the 40-CT RFP.

- Initial set of Policy Documents – The project has generally established all necessary inputs to the initial set of Policy Baseline Documents. The Governance Blueprint ultimately calls for these inputs to be consolidated over time into a set of five specific Policy Baseline Documents, with these documents established by, and controlled at, the Board level. For purposes of the release of the 40-CT RFQ, staff considers the baseline requirement to be either fully or provisionally satisfied. The following describes the status of the existing inputs to the Policy Baseline:
 - Environmental Documents – With respect to the National Environmental Policy Act (NEPA), FTA issued an amended Record of Decision in July 2019 and in June 2023, concluded that no further environmental documentation under NEPA was required as a result of subsequent modifications to the project. With respect to the California Environmental Quality Act, the TJPA Board certified the Final Supplemental Environmental Impact Statement/Environmental Impact Report in December 2018 and approved an addendum thereto in January 2023. Staff considers that the project is in full compliance with this input.
 - Project Configuration – The DTX/The Portal 30% design plans were completed for the entire project, except for the 4th and King Yard Preparation scope, in October 2022. The IPMT participated in design reviews, comments, and resolution. The draft 4th and King Yard Preparation 30% design plans and basis of design were distributed in August 2023 for review and comment. Staff considers that the project is in full compliance with this input.
 - Design Requirements – The DTX/The Portal design criteria was completed in December 2022. It was developed in close coordination with Caltrain and California High-Speed Rail Authority and reviewed by the IPMT. Staff considers that the project is in full compliance with this input.
 - Service Plan – The Service Plan is established through an April 12, 2023 “Fleet Management Plan Technical Memo to Validate 4 TPH Services” prepared by DB Engineering (DB), and further established the service plan of 4 Caltrain trains per peak hour per direction through the Operations and Maintenance cost estimate as contained in the 20-Year Financial Plan. Additional prior studies by DB established that the DTX/Portal as currently designed has capacity to accommodate 8 Caltrain and 4 California High Speed Rail trains per peak hour per direction. Staff considers

that the project is in full compliance with this input.

- Master Schedule – A project Master Schedule was established consistent with the TJPA Board approval of the Accelerated Work Plan in April of 2021. The Master Schedule is updated monthly and published to the IPMT. The Master Schedule was reviewed and analyzed by the FTA PMOC and found to be “mechanically correct and fundamentally and reasonably sound.” The Master Schedule was the basis, in part, for the 20-Year Financial Plan adopted by the TJPA Board at its August 2023 meeting. Assuming TJPA receives a positive decision regarding entry to Engineering (expected in December of this year), staff intends to subsequently request the TJPA Board adopt the Master Schedule as the project Baseline Schedule. Staff considers that the initial requirements of this input to Stage Gate 1 are provisionally met. Full compliance with this input is subject to FTA’s decision regarding entry to Engineering later this year, and prior to the release of the RFP in February 2024.
- Program Budget – The Program Budget was reviewed and analyzed by the FTA PMOC at a May 2023 Risk Workshop, and during subsequent working session with the PMOC. TJPA and FTA have agreed upon a total Program Budget of approximately \$8.255 billion, inclusive of \$728.5 million of already constructed Train Box costs. The Program Budget was the basis, in part, for the 20-Year Financial Plan adopted by the TJPA Board at its August 2023 meeting in the amount of \$8.246 billion. The \$8.7M difference reflects the FTA PMOC’s consideration of the addition of the already sunk Train Box costs in its P65 level of confidence contingency calculation. Assuming TJPA receives a positive decision regarding entry to Engineering (expected in December of this year), staff intends to request the TJPA Board adopt the Program Budget as the project Baseline Budget. Staff considers that the initial requirements of this input to Stage Gate 1 are provisionally met. Full compliance with this input is subject to FTA’s decision regarding entry to Engineering later this year, and prior to the release of the RFP in February 2024.
- 20-Year Financial Plan – The 20-Year Financial Plan was approved by the TJPA Board at its August 2023 meeting. Since that approval, as described above, FTA has identified a small increase in the Program Budget. Additionally, changes in Community Facilities District Bond proceeds have been forecasted by the City of San Francisco. Finally, assuming a positive decision by FTA regarding TJPA’s request to enter Engineering, the FTA Capital Investment Grants dollar contribution will be fixed. This may, or may not, require changes to the Funding Plan elements of the 20-Year Financial Plan. Once these determinations are made, staff intends to request the TJPA Board adopt an updated 20-Year Financial Plan. Staff considers that the initial requirements of this input to Stage Gate 1 are provisionally met. Full compliance with this input is subject to FTA’s decision regarding entry to Engineering later this year, and prior to the release of the RFP in February 2024.
- Project Delivery Strategy – The Project Delivery approach was approved by the TJPA Board in July of 2022. Staff is considering certain modifications to the scope split between the CT-40 and Station Fit Out 60 SF contracts, and at Caltrain’s request, a

change in contract form for the 4th and King Yard, Track and Systems. These possible changes will be considered by the IPMT at a future meeting, and if appropriate, brought to the TJPA Board prior to release of the RFP in February 2024. Staff considers that the project is in full compliance with this input.

- Risk Register – The Risk Register for DTX/The Portal has been actively updated on a quarterly basis since September 2020, generally through special IPMT meetings. In February 2023, following a Quantitative Risk Workshop conducted by the IPMT, a Quantitative Risk Analysis Report was issued, which informed the project contingency value proposed by the TJPA. In May 2023, the FTA PMOC conducted its own Risk Workshop, resulting in an FTA recommended Program Budget. FTA recommend a small increase in the Program Budget (> 6%), much of which was connected to a proposed increase in forecast inflation, and an additional 6 months of schedule contingency. The IPMT continues to conduct regular risk workshops. Staff considers that the project is in full compliance with this input.
- Initial Third-Party Agreements – TJPA and the City and County of San Francisco Interagency Cooperative Agreement (ICA) has been fully approved and is being implemented. TJPA and Caltrain have adopted a Sitework (Railyard) Project Management Memorandum of Agreement and an Interim Agreement, both of which address scope, process, and compensation issues. TJPA and Caltrain continue to work on a Master Cooperative Agreement that will address the long-term funding, maintenance, and asset disposition issues associated with the project. Staff considers that the project is in full compliance with this input.

TJPA staff is seeking approval to issue the 40-CT RFQ. The RFQ begins the procurement by starting the necessary process of prequalifying eligible teams. TJPA staff proposes to return to the TJPA Board for approval prior to release of the 40-CT RFP, anticipated in January 2024. As described above, on or before TJPA staff seeks Board approval to release the RFP, the remainder of Stage Gate 1 items that currently are assessed as “conditionally” compliant are expected to be fully compliant. TJPA staff believes this approach satisfies the purpose and function of the State Gate framework as a means to test readiness to advance.

An alternative, however, would be for the TJPA Board to direct staff to hold the release of the RFQ until all of the items are fully compliant. Below staff provides a risk assessment of this alternate approach.

RISK ASSESSMENT OF HOLDING RFQ

Cost

At this early stage in the project, with virtually all the project cost in the future, delay costs are approximately \$263M for a one-year delay, assuming a 3.5% annual inflation rate, which may be higher or lower depending on market conditions. Rejecting the concept of provisional compliance with State Gate 1 and delaying issuance of the 40-CT RFQ until after the FTA decision on entry to Engineering would presumably incur a delay of at least two, and possibly five months, depending upon the timing of future

TJPA Board of Directors and other approvals as required under the relevant project Governance agreements.

There is an additional potential cost related to funding availability. Under the current federal administration, there are very significant federal dollars beyond those in the Capital Investment Grant program. Should DTX/The Portal be delayed, those available dollars will go to other projects that are proceeding, and not competitively available to TJPA. While there is no guarantee that DTX/The Portal will be awarded funding under those programs, once awards are made to other projects, a significant portion of potential funding will be lost.

Schedule

The current 40-CT contract has a schedule duration of 18 months for pre-construction services. In those 18 months, the 40-CT contractor will have to mobilize design and pre-construction staff, validate or propose changes to the 30% design, and advance the designs to ready-for-construction, negotiation of one or more construction Notice(s) to Proceed (NTP) with TJPA, and interface with the Track and Systems and Station Fit-Out designers and Contractors. Compression of this schedule is not practical given the amount of work that must be accomplished in this period of time, so delays in the issuance of the NTP will either result in use of schedule contingency before work begins or pushing out the 2032 target date for start of revenue service.

Reputational Risk

There is a balance with regard to reputational risk as related to when the procurement documents are released. On one hand, through a series of industry soundings, procurement outreach briefings, and larger format contractor briefings such as the one conducted on September 20, 2023, TJPA is forecasting the release of this procurement for over a year. Delaying its release could decrease contractor interest in the opportunity. However, releasing the RFQ on schedule but then needing to delay the release of the RFP could have a similar effect, although slight delays in the release of an RFP for projects of this magnitude are not uncommon.

There is some risk that FTA's anticipated December 2023 determination with regard to entry to Engineering could require some additional change to the project budget or schedule. This is judged to be a relatively minor risk given the concurrence reached with FTA on the project cost and schedule as documented in the FTA's Scope, Cost, Schedule, Risk and Contingency Review Report, August 2023.

There is risk with regard to the ability to fully fund both the Capital and Operating costs of the project. However, these are well understood and well documented in the 20-Year Financial Plan. Delay in proceeding with the RFQ will not mitigate this funding challenge and, in fact, increase it. TJPA is pursuing multiple funding sources in collaboration with partner agencies.

IPMT ENGAGEMENT AND INPUT

In accordance with TJPA procurement policies and good practice, IPMT members were asked to execute a Non-disclosure Agreement prior to engaging in detailed procurement document development discussions. IPMT members who executed this agreement were engaged as the RFQ was being developed and provided valuable suggestions and comments. The various meetings and communications are described below. IPMT comments were discussed and either adopted, tabled for consideration in the RFP, or deemed not in the best interest of the project.

As described above, the ESC unanimously recommends the TJPA Board approve the release of the 40-CT RFQ, with release of future procurement documents conditioned as described here.

NEXT STEPS

Assuming approval to proceed in accordance with the Master Schedule, staff will release the RFQ in October with Statements of Qualifications due in December. Staff will proceed with the IPMT to complete the 40-CT RFP through the weekly working group and workshop structures. A request to forward a positive recommendation regarding 40-CT RFP release to the TJPA Board will be brought to the ESC in December. This request will be predicated on a positive decision from FTA with respect to entry to Engineering and federal dollar contribution, and full compliance with Stage Gate 1 inputs. Assuming such compliance, and in accordance with the MOU and Governance Blueprint, staff intends to request authority to release the 40-CT RFP at the January 2024 TJPA Board meeting, and prior to release of the RFP in February 2024.

Development of the other contract RFQs and RFPs or Invitation for Bids, consistent with the Project Delivery Analysis Study results, will be developed and brought before the appropriate Policy Boards per the Governance Blueprint and TJPA Policies.

RECOMMENDATION:

Approve the release of the Civil and Tunnel Progressive Design Build (40-CT) RFQ with the express condition that any release of the RFP for 40-CT, or other DTX/The Portal construction-related procurements, be conditioned on further Board action after demonstrating full compliance with Governance Blueprint Stage Gate 1 for the applicable procurement.

ENCLOSURES:

1. Resolution
2. Stage Gate Diagram
3. Schedule for RFP completion

**TRANSBAY JOINT POWERS AUTHORITY
BOARD OF DIRECTORS**

Resolution No. _____

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

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

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

WHEREAS, On July 14, 2022, the TJPA Board of Directors approved the DTX Project Delivery approach. The approach includes, among other things, the use of a progressive design-build delivery method for the civil and tunnel scope (40-CT) of the Project; and

WHEREAS, The design-build method of project delivery, using a best value procurement methodology, can result in benefits such as reduced project costs, expedited project completion, and design features that are not achievable through the traditional design-bid-build method; and

WHEREAS, The DTX/The Portal project governance is guided by the Peninsula Rail Program Memorandum of Understanding (the MOU), adopted in June of 2020 by TJPA, Metropolitan Transportation Commission (MTC), the San Francisco County Transportation Authority (SFCTA), the Peninsula Corridor Joint Powers Board (Caltrain), the California High-Speed Rail Authority (CHSRA), and the City and County of San Francisco (Mayor's Office); and

WHEREAS, The MOU includes a DTX Summary Work Program which anticipates the TJPA Board would take action to provide "Approval to begin procurement"; and

WHEREAS, On August 10, 2023, the TJPA Board of Directors approved a Governance Blueprint for the project, including stage milestones (now referred to as "Stage Gates"); and

WHEREAS, The project is expected to unlock Stage Gate 1 to move to the Procurement and Enabling Program phase of the Governance Blueprint, which includes initiation of procurement of the project's major contracts, including the release of bid documents for the 40-CT contract; and

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

is seeking approval to issue the 40-CT. TJPA staff proposes to return to the TJPA Board for approval prior to release of the 40-CT RFP, anticipated in January 2024; and

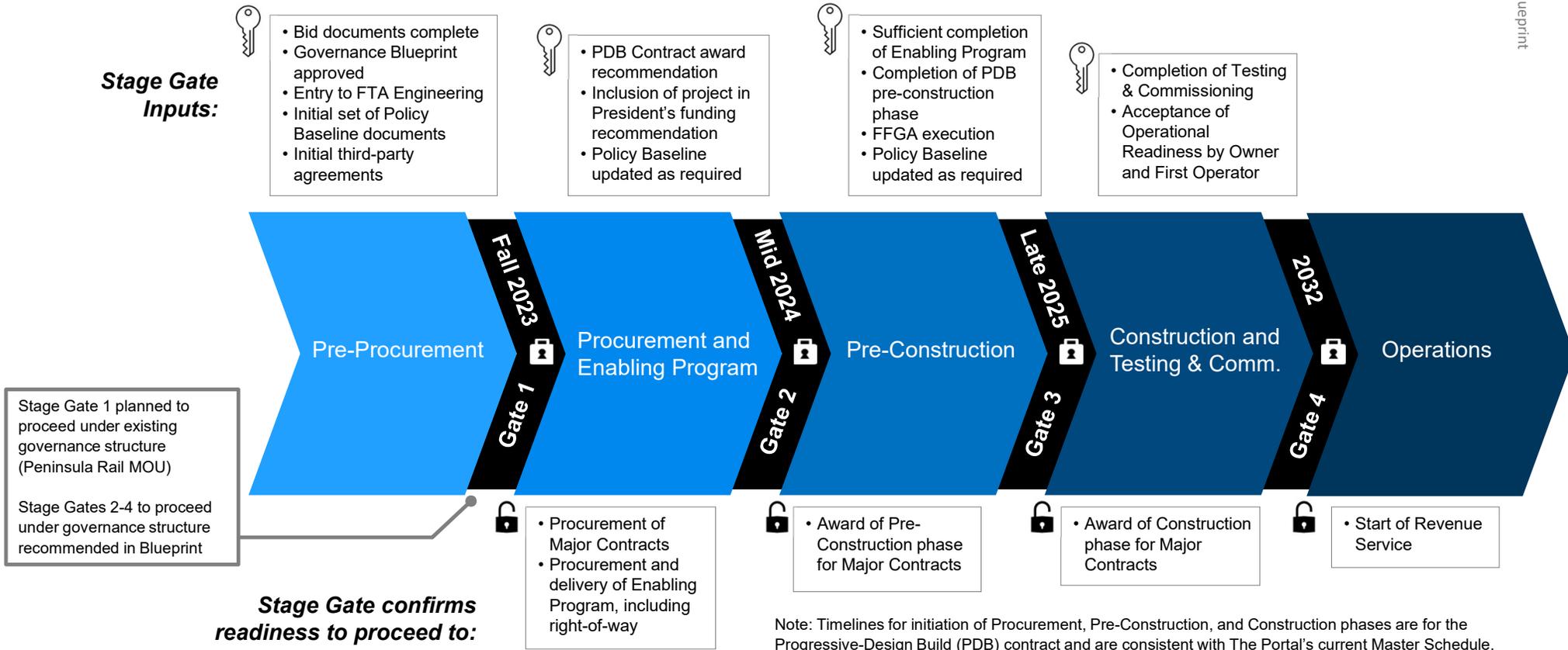
WHEREAS, As explained in detail in the accompanying staff report, TJPA staff have evaluated the agency's compliance with the Governance Blueprint State Gate 1 requirements for the proposed 40-CT procurement, and concluded that the agency is either fully-compliant, or provisionally compliant with a credible path to become fully-compliant prior to release of the 40-CT RFP; now, therefore, be it

RESOLVED, That the TJPA Board of Directors approves the release of the Civil and Tunnel Progressive Design Build (40-CT) RFQ, with the express condition that any release of the RFP for 40-CT, or other DTX/The Portal construction-related procurements, be conditioned on further TJPA Board action after demonstrating full compliance with the Governance Blueprint State Gate 1 for the applicable procurement.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting on October 12, 2023.

Secretary, Transbay Joint Powers Authority

Attachment 2. Stage Gate Framework



Next Steps

40-CT RFP Development and Approval Schedule

- Working Group Weekly
- Technical Workshop October 31 and November 1, 2023
- TJPA Board update October 12, 2023
- IPMT formal review November 28, 2023
- ESC Action December 15, 2023
- TJPA Board action January 11, 2024