
TRANSBAY JOINT POWERS AUTHORITY

Board Policy No. 002

Category: Financial Matters

PROTEST POLICY 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 procedures set forth in this Board Policy No. 002 for all of the agency's Formal Purchases. These procedures shall be referenced in all competitive bid documents (sealed bid, competitive proposal, or competitive qualifications) for Formal Purchases.

The Chief Financial Officer is the Contracting Officer for TJPA. The Contracting Officer is responsible for implementing the requirements of this policy. The Chief Financial Officer is authorized to develop procedures that implement the policies approved by the Board of Directors. TJPA staff must follow those procedures to ensure compliance with Board Policy No. 002 - Protest Policy.

If there is a change in a law for which TJPA has no discretion but to comply, said changes to this policy do not require prior approval of the Board of Directors.

2. Definitions

Award shall mean the action of the TJPA Board awarding a contract for a Formal Purchase.

Bid includes the terms "offer" or "proposal" or "qualifications" as used in the context of Formal Purchases.

Bidder includes the term "proposer" or entity seeking pre-qualification as used in the context of Formal Purchases, and means the prime bidder or prime proposer or prime contractor seeking pre-qualification.

Contracting Officer is a designated official who has authority to manage and oversee contracts and procurement activities on behalf of TJPA. That includes management and oversight of soliciting and evaluating bids, proposals, and qualifications, negotiating and awarding contracts, and administration and execution of the contracts.

Days refer to calendar days (unless otherwise indicated in this Policy or by TJPA in the solicitation materials, in its sole discretion).

Disadvantaged Business Enterprise or DBE is as defined in Board Policy No. 010 – DBE Program Plan

DBE/SBE Liaison Officer is as defined in Board Policy No. 010 – DBE Program Plan.

Formal Purchase is as defined in Board Policy No. 001 – Procurement Policy.

Interested Party is defined as an actual or prospective Bidder (actually known to TJPA) whose direct economic interest would be affected by an Award or by a failure to Award.

Protest is a timely, written complaint by a Bidder with standing regarding the solicitation process, pre-qualification process, or evaluation process submitted consistent with this Policy and any additional instructions provided by TJPA in its sole discretion.

Small Business Enterprise or SBE is as defined in Board Policy No. 015 – SBE Program Plan.

TJPA is the Transbay Joint Powers Authority.

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. TJPA will consider Protests submitted only by a prime Bidder.

3.2 Standing, Time, and Process

A Protest must meet the following standing, time, and process requirements:

3.2.1 Protests of the Solicitation Process Only actual or bona fide prospective Bidders in a solicitation for Formal Purchase have standing to Protest the solicitation process for that Formal Purchase.

A Protest of the solicitation process (i.e., related to the technical scope or specification, terms, conditions, or form of a solicitation) for Formal Purchase must be received by TJPA no later than ten (10) Days prior to the date established for opening of bids or receipt of proposals or qualifications. The Protest must conform in all respects to the requirements of this Policy and any additional instructions provided by TJPA in its sole discretion.

Upon receipt of such a Protest, the Contracting Officer shall notify all known Interested Parties of the receipt and nature of the Protest. Unless the Executive Director determines that delay will be prejudicial to the interest of TJPA or that the Protest patently lacks merit, the solicitation process will be extended, as necessary, pending resolution of the Protest.

Protests will be considered and either denied or sustained, in whole or in part, by TJPA in writing. A written decision will be transmitted to the protestor prior to the date established for opening of bids or receipt of proposals or qualifications. A notice of the decision will be provided to all actually known Interested Parties.

If the Protest is sustained, in whole or in part, the Contracting Officer may either (1) amend the solicitation to correct the solicitation process accordingly; or (2) cancel the solicitation in its entirety. If the solicitation is amended, the solicitation process will be extended, as necessary, to provide a reasonable opportunity for Bidders to revise their Bids to reflect the decision and correction to the solicitation process. If the Protest is denied, the solicitation may proceed on the published schedule (as may be amended by TJPA, in its sole discretion). Protests received by TJPA after the time periods specified above shall be considered untimely and may be denied on that basis, in TJPA's sole discretion.

3.2.2 Protests of the Pre-Qualification Process

TJPA may, in its sole discretion, conduct a process to pre-qualify Bidders in a Formal Purchase. Only actual Bidders that have submitted their qualifications in a solicitation for a Formal Purchase have standing to Protest the pre-qualification process for that Formal Purchase.

All Bidders will be notified of the intent to pre-qualify for a Formal Purchase. A Protest of the pre-qualification process must be received by TJPA no later than five (5) Days after the date the notice of intent to pre-qualify is sent to the Bidder. The protest must conform in all respects to the requirements of this Policy and any additional instructions provided by TJPA in its sole discretion.

Upon receipt of such a Protest, the Contracting Officer shall notify all Bidders of the receipt and nature of the Protest. The consideration of pre-qualification will be extended, as necessary, pending resolution of the Protests.

Protests will be considered and either denied or sustained, in whole or in part, by TJPA in writing. A written decision will be transmitted to the protestor prior to the date established for pre-qualification. A notice of the decision will be provided to all Bidders.

If the Protest is sustained, in whole or in part, the Contracting Officer may either (1) amend the pre-qualification to correct the pre-qualification process accordingly (which may include adding an additional pre-qualified Bidder); or (2) cancel the solicitation in its entirety. If the Protest is denied, the consideration of pre-qualification may proceed on the published schedule (as may be amended by TJPA, in its sole discretion). Protests received by TJPA after the time periods specified above shall be considered untimely and may be denied on that basis, in TJPA's sole discretion.

3.2.3 Protests of the Evaluation Process

Only actual Bidders that have submitted a Bid in a solicitation for a Formal Purchase have standing to Protest the evaluation process for that Formal Purchase.

All Bidders will be notified of the intent to Award for a Formal Purchase. Any Bidder whose Bid is valid at the time of the notice of intent to Award may Protest the recommended Award on one or more of the following grounds:

- a. That the recommended awardee does not meet the requirements of the solicitation; and/or
- b. That the Bid recommended for Award does not meet the criteria of the solicitation; and/or
- c. That the evaluation process conducted by TJPA is improper, illegal, or the decision to recommend Award is arbitrary and capricious.

A Protest of the evaluation process must be received by TJPA no later than five (5) Days after the date the notice of intent to Award is sent to the Bidder. The protest must conform in all respects to the requirements of this Policy and any additional instructions provided by TJPA in its sole discretion.

Upon receipt of such a Protest, the Contracting Officer shall notify all Bidders of the receipt and nature of the Protest. The consideration of Award will be extended, as necessary, pending resolution of the Protests.

Protests will be considered and either denied or sustained, in whole or in part, by TJPA in writing. A written decision will be transmitted to the protestor prior to the date established for consideration of Award. A notice of the decision will be provided to all Bidders.

If the Protest is sustained, in whole or in part, the Contracting Officer may either (1) amend the evaluation to correct the evaluation process accordingly; or (2) cancel the solicitation in its entirety. If the Protest is denied, the consideration of Award may proceed on the published schedule (as may be amended by TJPA, in its sole discretion). Protests received by TJPA after the time periods specified above shall be considered untimely and may be denied on that basis, in TJPA's sole discretion.

3.2.4 Generally Applicable

TJPA, in its sole discretion, may request a response from an Interested Party; request the protestor issue a reply to a response from Interested Parties; limit the scope of issues or topics to be addressed in such response and reply; limit the number of pages for responses and replies; request oral presentations from the protestor and any Interested Parties or conduct a formal or informal hearing; modify the time periods for consideration of the Protest; conduct independent research of the applicable law or facts; and take any other steps it deems prudent (including, where appropriate, deviation from this Policy) to evaluate and respond to the Protest.

3.3 Instructions for Submission

Protests shall be made in writing and delivered by hand delivery during TJPA's normal business hours or overnight delivery return receipt requested to:

Executive Director
 Transbay Joint Powers Authority
 425 Mission Street, Suite 250
 San Francisco, CA 94105

A copy shall be provided concurrently to the Contracting Officer.

3.4 Content of Protests

Protests shall contain the following minimum information:

- a. The name and address of the protestor and its relationship to the solicitation sufficient to establish that the Protest is being filed by an entity with standing.
- b. Contact information for the protestor's representative, including name, title, address, telephone, and e-mail addresses. If the representative is a third party, also include a statement indicating the relationship between the protestor and the third party.
- c. Identification of the Formal Purchase that is the subject of the Protest, and whether the Protest relates to the solicitation process, the pre-qualification process, or the evaluation process. If the Protest relates to the evaluation process, also include a reference to which of the grounds noted above support the Protest. If the Protest relates to DBE or SBE requirements, clearly indicate.
- d. A description of the nature of the Protest, referencing with specificity the portion(s) of the solicitation involved, and a complete discussion of the basis for the Protest, including all supporting facts, documents, or data.
- e. Identification of the provision(s) of any law, regulation, or other governance upon which the Protest is based.
- f. A statement of the specific relief requested.
- g. A affirmation by the protestor (if an individual) or by an owner or officer of the protestor (if not an individual) as to the truth and accuracy of the statements made in the Protest submittal.
- h. Signature and date by the protestor or its representative.

Oral or anonymous protests will not be considered.

3.5 Protests Related to 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.

3.6 Protests Not Related to DBE or SBE Requirements

If the Protest concerns any issue other than DBE or SBE requirements, the Executive Director shall issue a decision resolving the Protest. The decision by the Executive Director will be administratively final. Protestors and Interested Parties have no right to administrative appeal or request to the TJPA Board for reconsideration of the Executive Director's decision. The TJPA Board retains all of its existing authorities, however, including the authority to consider whether to Award a contract for a Formal Purchase. The protester may seek a remedy in State or Federal court, as appropriate, from the final action of TJPA.