



RESOLUTION APPROVING THE REVISED PROCUREMENT POLICY AND TRAVEL,  
CONFERENCE, TRAINING, AND BUSINESS EXPENSE REIMBURSEMENT POLICY

WHEREAS, The Transportation Authority develops and implements policies and procedures to organize and formalize agency activities, and to ensure compliance with current statutes and agency objectives; and

WHEREAS, It is the Transportation Authority's directive to review its Procurement Policy at least once every three years and Travel Policy periodically; and

WHEREAS, The Procurement Policy is designed to guide decisions pertaining to procurement, including the modes, methods, and procedures for acquiring the materials, equipment, and services necessary to carry out the operations of the Transportation Authority; and

WHEREAS, The Travel, Conference, Training, and Business Expense Reimbursement Policy (Travel Policy) establishes a set of policies relating to travel, conference, training, and business expenses, and establishes procedures for reimbursement of commissioners and employees; and

WHEREAS, The Procurement Policy and Travel Policy were last adopted by the Transportation Authority Board through Resolution 18-07; and

WHEREAS, At the request of Commissioner Ronen, Transportation Authority staff proposes to update the agency's Procurement and Travel Policies to align with Chapter 12X of the San Francisco Administrative Code, which prohibits staff travel and contracting in states that allow discrimination against lesbian, gay, bisexual, and transgender individuals or has restrictive abortion laws; and

WHEREAS, The recommended action would not have an impact on the



proposed Fiscal Year 2020/21 budget; and

WHEREAS, At its September 2, 2020 meeting, the Citizens Advisory Committee considered the proposed policy revisions and unanimously adopted a motion of support for the staff recommendation; now, therefore, be it

RESOLVED, That the Transportation Authority hereby adopts the revised Procurement Policy as presented in Attachment 1; and be it further

RESOLVED, That the Transportation Authority hereby adopts the revised Travel, Conference, Training, and Business Expense Reimbursement Policy as presented in Attachment 2; and be it further

RESOLVED, That the Executive Director is hereby authorized to communicate the policies to all relevant parties.

Attachments:

- Attachment 1 - Proposed Procurement Policy
- Attachment 2 - Proposed Travel, Conference, Training, and Business Expense Reimbursement Policy




The foregoing Resolution was approved and adopted by the San Francisco County Transportation Authority at a regularly scheduled meeting thereof, this 22nd day of September, 2020, by the following votes:

**Ayes:** Commissioners Fewer, Haney, Mandelman, Mar, Peskin, Preston, Ronen, Safai, Stefani, Walton, and Yee (11)

**Nays:** (0)

**Absent:** (0)

 9-25-20

Aaron Peskin  
Chair

Date

ATTEST:

 9/30/20

Tilly Chang  
Executive Director

Date



## **PROCUREMENT POLICY**

### **I. INTRODUCTION**

The Procurement Policy is designed to guide decisions pertaining to procurement, including the modes, methods and procedures for acquiring the materials, equipment and services necessary to carry out the operations of the San Francisco County Transportation Authority (Transportation Authority). This policy is intended to establish the manner in which all Transportation Authority procurement activities shall be conducted, and define the requirements and/or limitations for the Transportation Authority and those individuals, firms or agencies doing business with the Transportation Authority. It is intended to be consistent with the Transportation Authority's Administrative Code, the Proposition K Sales Tax Expenditure Plan (Expenditure Plan), federal and state regulations, and general prudent accounting and financial management practices.

### **II. SCOPE AND AUTHORITY**

The Procurement Policy applies to the operations of the Transportation Authority and is not applicable to the operations of any project sponsoring agencies of the Transportation Authority, unless otherwise specifically provided. The Transportation Authority may enter into an agreement to solicit and award contracts on behalf of a sponsoring agency, if requested and if it is determined to be in the best interest of the Transportation Authority and the sponsoring agency. The award of such contracts shall be for goods and services for programs or projects contained in the Expenditure Plan.

The Procurement Policy provides guidelines for procuring materials and supplies, professional and technical services, and lease and rental agreements. The Procurement Policy is separate from, but shall be applied in conjunction with, the Transportation Authority's Strategic Plan, adopted Fiscal Policy and Disadvantaged Business Enterprise (DBE) and Local Business Enterprise (LBE) Policy, as applicable. Overall policy direction shall be the responsibility of the Transportation Authority Board (Board). Responsibility for implementation of the Procurement Policy, and day-to-day responsibility and authority for structuring, implementing, and managing the Transportation Authority's policies, goals, and objectives, shall lie with the Executive Director. This Policy will be reviewed and updated as required or deemed advisable at least once every three years. Any changes to the policy are subject to approval by the Board at a public meeting.

### **III. PROCUREMENT PROCESS**

Open competition is the basis for efficient, economic and fair public procurement. It is the policy of the Transportation Authority to competitively bid the procurement of all goods and services, and to encourage small and local firms to do business with the Transportation Authority. All procurement activities are considered to be contractual obligations encompassing financial compensation in return for the rendering of specific goods and/or services. All procurements are to be negotiated on a fixed-price or cost plus fee basis.

#### **A. General Provisions**



All procurement transactions, regardless of purchasing methodology or dollar value, shall be conducted in a manner that maximizes open and free competition. Solicitation for offers, whether by an informal or formal bid process or through competitive negotiation shall:

1. incorporate a clear and accurate description of the technical requirements for the materials, product or services to be procured; and
2. clearly set forth all requirements which bidders must fulfill, and all other factors to be used in evaluating the proposals.

All bids or proposals must be submitted to and received at the location designated no later than the exact time and date stated in bid or proposal requirements, and must be date- and time-stamped and logged as received by Transportation Authority personnel. Bids or proposals received after the date and time deadline will be returned unopened and will be considered as disqualified. A bid or proposal may be withdrawn prior to bid or proposal opening for any reason by a bidder or his/her authorized representative, provided a written request to withdraw is received by the Transportation Authority prior to bid or proposal opening. After bid or proposal opening, a bid or proposal may be withdrawn only for material obvious error(s) and subject to written approval by the Executive Director.

The Transportation Authority reserves the right to modify and/or suspend any and all aspects, terms, conditions and requirements of any procurement, to obtain further information from any firm or person responding to the procurement, to waive any informality or irregularity as to form or content of the procurement document or any response thereto, to be the sole judge of the merits of the bids or proposals received, and to reject any or all bids or proposals for any reason provided that such actions are made in accordance with federal and state laws.

Contract awards shall be made only to responsive and responsible contractors that possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as compliance with public policy, record of past performance, and financial and technical resources. False statements in proposals will be a basis for disqualification. All contract awards shall be documented by written purchase order, written contract or written memorandum. Contracts, including all options therein, will generally be limited to a maximum period of five (5) years.

The Transportation Authority annual budget establishes the monetary limits for the procurement of goods and services subject to this Policy. All procurements, whether formal or informal, shall be in compliance with the Transportation Authority's non-discrimination policy, DBE/LBE Policy, if applicable, and any other Transportation Authority contracting policy in effect at the time of the procurement.

#### B. Conflict of Interest

No employee, officer or agent of the Transportation Authority shall participate in the procurement process, or in the award or administration of a contract, if such participation would result in a conflict of interest, real or apparent, as defined by state and federal laws. No employee, officer, or agent shall solicit or accept gratuities, favors or anything of monetary value from contractors, potential contractors or parties to sub-agreements. The Transportation Authority shall be subject to Articles 1 and 3 of Title 9, Chapter 7 of the California Government



Code and the regulations which implement those provisions as well as the San Francisco County Transportation Authority Conflict of Interest Code.

C. Informal Bid Process

Solicitations for goods and services that are anticipated to be equal to or less than \$75,000 may go through an informal Request for Proposal (RFP) or bid process. Quotes may be requested by telephone, via the Internet or through the mail from known qualified vendors or from current vendor catalogs and/or websites. Routine purchases in the amount of \$25,000 or less should be distributed equitably among qualified competitively priced suppliers, with consideration given to DBE/LBE utilization as applicable and as permitted by law. It is not permissible to segment the contract or use multiple solicitations for similar goods or services in order to circumvent the limitation for formal solicitation.

The informal bid or solicitation process shall include a minimum of three quotes from potential providers to ascertain that the proposed price is fair and reasonable. Transportation Authority files shall maintain support documentation demonstrating that a sufficient number of quotes were obtained.

Except in the case of an emergency, or a finding by the Board by two-thirds vote of all its voting members that, in its opinion, the supplies, equipment or materials may be purchased at a lower price in the open market, awards of contracts for supplies, equipment and materials in excess of \$25,000 shall be awarded to the lowest responsible and responsive bidder. Awards of contracts for supplies, equipment and materials not in excess of \$25,000 will generally be awarded to the lowest bidder after a competitive process, but other factors including but not limited to delivery date and known performance and, if applicable and permitted by law, DBE/LBE participation may be considered in selecting the vendor.

Awards of contracts for professional services, including legal, financial advisory, private architectural, landscape architectural, engineering, environmental, land surveying, or construction project management firms shall be on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required, and at a price that is fair and reasonable, in accordance with state and federal laws.

D. Formal Bid Process

Solicitation of goods and/or services that are anticipated to be in excess of \$75,000 shall be required to go through a formal Request for Proposal (RFP) or Invitation for Bid (IFB) process. An RFP process will also be used to procure professional and technical services as applicable in accordance with the provisions of California Government Code Section 4526 and applicable federal laws and regulations. Award of a contract for professional services will be qualifications-based and will consider multiple factors that will be clearly stated in the RFP, although price may be considered during the negotiation of the contract. Procurement for establishing an on-call or preapproved list of professional services providers shall be based on a qualifications-based process in accordance with state and federal law, and price may be taken into consideration when negotiating a contract with a firm selected from such a list to fulfill task orders.



For procurements anticipated to be in excess of \$75,000, an Invitation for Bids (IFB) process will be used to procure all supplies, equipment, or materials that are standard in nature, character, and quality; easily defined; and/or reasonably accessible in the open market. Award will be made to the lowest responsive and responsible bidder after competitive bidding, except in an emergency declared by the vote of two-thirds of the voting membership of the Board pursuant to California Public Utilities Code Section 131285. If, after rejecting bids received, the Transportation Authority, pursuant to California Public Utilities Code Section 131286, determines and declares by a two-thirds vote of the voting membership of the Board that, in its opinion, the supplies, equipment, or materials may be purchased at a lower price in the open market, the Transportation Authority may proceed to purchase these supplies, equipment, or materials in the open market without further observance of the provisions regarding contracts, bids, or advertisement.

Solicitation for offers in the formal bid process shall include the following:

1. A clear and accurate written description of the project scope and deliverables, and technical requirements for the materials, product, or service being procured;
2. Special conditions or restricting policies, policy goals such as DBE/LBE goals, if applicable, patents, liquidated damages and performance, bid or indemnification requirements;
3. Proposed timetable for the project or service;
4. General format requirements and number of copies/items (if applicable) to be delivered;
5. Date of pre-proposal conference, if applicable;
6. A clear definition of the evaluation criteria to be used in evaluating the bids or proposals; and
7. Date, time, and place for submission of final bids or proposals.

If a pre-proposal conference is held, a listing of those in attendance showing name(s) of attendees and agency or company represented shall be maintained in the resulting contract files.

Responses to RFPs for professional and technical services shall require identification of the bidders or proposer's key employees and subcontractors. Bidders or proposers shall be required to notify the Transportation Authority of any pending lawsuits or labor disputes that may interfere with the delivery of services.

Procurements in amounts greater than \$75,000 shall require a formal notice process including advertising requests for bids or proposals in local appropriate newspapers or other media outlets. Notice should occur with sufficient time to allow bidders or proposers reasonable time in which to respond. The term "reasonable time" may vary depending on the complexity of the proposed project. Thirty (30) calendar days shall be considered the standard time allotted in notification to potential bidders or proposers. More or less time may be allotted at the determination of the Executive Director.



RFPs and IFBs will be reviewed by a selection panel appointed by the Executive Director. The Executive Director may elect to assemble a separate cost evaluation panel to review cost proposals and evaluate cost assumptions. Based on their reviews and analysis, the selection panel and cost evaluation panel, if any, shall rank bids or proposals. The Executive Director will recommend to the Board award of a contract, based on the results of the procurement process and the recommendations the selection panel and cost evaluation panel, if any, to the bidder or proposer most advantageous to the Transportation Authority. In the case of IFBs, the Executive Director will recommend award to the lowest responsive and responsible bidder or proposer.

Copies of all correspondence, including negative response letters, copies of evaluation sheets/scores, and copies of all bids or proposals not being considered further shall be maintained in the files.

In the event that only a single bid or proposal is submitted, the Transportation Authority shall document its efforts in soliciting responses; and record the history of all correspondence, negotiations, including parties involved, etc. that took place with reference to the award of the resulting contract.

#### **IV. NONCOMPETITIVE NEGOTIATED AGREEMENTS (SOLE SOURCE)**

A noncompetitive, negotiated contract may be developed when special conditions arise. These types of agreements are defined as "Sole Source" agreements. Conditions under which noncompetitive, negotiated contracts may be acceptable include:

1. A unique commodity or specialized professional service is known to be available from only one vendor;
2. An emergency of such magnitude that cannot permit delay; or
3. Competition is determined to be inadequate after solicitation of a number of sources.

In these cases, the Transportation Authority will develop an adequate scope of work, evaluation factors and cost estimate, and conduct negotiations with the vendor to ensure a fair and reasonable cost. The Transportation Authority will document details of the special conditions and retain those details in the respective contract file for audit and grant review purposes.

#### **V. PROHIBITING CONTRACTING IN STATES THAT ALLOW DISCRIMINATION AGAINST LGBT INDIVIDUALS AND IN STATES WITH RESTRICTIVE ABORTION LAWS**

On October 14, 2016, through Ordinance 189-16, the City and County of San Francisco prohibited city contracting involving states that allow discrimination against lesbian, gay, bisexual and transgender individuals. This prohibition became effective on February 11, 2017. On August 9, 2019, through Ordinance 200-19, the City and County of San Francisco prohibited city contracting involving states with certain laws that restrict abortion access. This prohibition became effective January 1, 2020. The list of states banned from contracting under both Ordinances is known as the Covered State List and is maintained and updated by the City Administrator on at least a semiannual basis.





The Ordinances do not automatically apply to the Transportation Authority, since it is a separate governmental entity rather than a City department. In keeping with the public policy objectives leading to the City's adoption of the Ordinances, however, the Transportation Authority has adopted appropriate elements of the contracting prohibitions contained in the Ordinances, as further detailed below. Pursuant to this section, the Transportation Authority shall not: enter into a contract with a contractor that has its United States headquarters in a state on the Covered State List or where any or all of the work on the contract will be performed in a state on the Covered State List, unless it meets one or more of the exemption criteria detailed below.

This section shall not apply to contracts that meet one or more of the following circumstances:

1. The needed services are available only from one source, as supported by sufficient justification.
2. The contract is necessary to respond to an emergency which endangers the public health or safety.
3. There are no qualified responsive bidders or prospective vendors that comply with the requirement of this section; and the needed service, project or property is essential to the Transportation Authority or the public.
4. The public interest warrants the granting of an exemption due to potential adverse impact on services.
5. The services to be purchased are available under a bulk purchasing arrangement with a federal, state, or local government entity or a group purchasing organization; the purchase under such arrangement will substantially reduce the Transportation Authority's cost of purchasing such services, and the purchase under such arrangement is in the best interest of the Transportation Authority.
6. The services are planned to be funded in whole or in part by regional, state, federal, or private funding.
7. Application of this ban will violate or would be inconsistent with the terms or conditions of a grant or agreement with a public agency.

Additionally, this section shall not apply to contracts advertised, solicited, initiated, or executed prior to the effective date of this revised policy, including amendments to existing contracts and task orders under existing on-call contracts.

Application of this section does not apply to: (1) work performed on a contract by a subcontractor, subconsultant or supplier; or (2) the supply of off-the-shelf equipment.

Application of this section does not apply to procurements under on-call contracts, where on-call bench was established prior to the effective date of this revised policy.

If during the term of a contract, the contractor moves its headquarters, or the location from which it will provide services to the Transportation Authority, to a state on the Covered State List, such a move shall not constitute grounds to terminate the contract.

For the purposes of this section, "contract" means an agreement between the Transportation Authority and any person or entity that provides, at the expense of the Transportation Authority,



for public works, public improvements, commodities or services to be purchased, not including contracts for underwriting services for the purchase and sales of Transportation Authority bonds, notes, and other forms of indebtedness.

The Transportation Authority shall document any applicable contract exemption(s) and provide such documentation to the Executive Director prior to execution of the contract by the Transportation Authority, or prior to specific action by the Board authorizing award of the contract to the contractor, if applicable.

## **VI. PROCUREMENT PROTEST AND APPEAL PROCEDURES**

It shall be the policy of the Transportation Authority to have established protest procedures which shall apply to all procurements of supplies, equipment, and services. A copy of these policies and procedures shall be maintained in the Transportation Authority's offices for general inspection and review by the public. In addition, the Transportation Authority shall provide, upon request, a copy of these protest policies and procedures to all individuals, associations, corporations, and companies with which the Transportation Authority conducts business.

A bidder or proposer that has timely submitted a bid or proposal in response to a procurement of the Transportation Authority may file a protest asserting that the Transportation Authority has failed to follow applicable policies or procedures relative to seeking, evaluating, and/or awarding a contract or has failed to comply with relevant specifications or procedures contained in the bid documents or request for proposals. In order to file a protest, the protester must be an actual bidder or proposer whose direct economic interests would be affected by the award of a procurement contract or by the failure to award a procurement contract.

Such protests must be filed within the earlier of five (5) business days after (i) notice, actual or constructive, of the Transportation Authority's finding that the bidder or proposer's bid or proposal is not being considered further or (ii) an award of the contract by the Transportation Authority to another bidder or proposer.

A protest shall be deemed filed when the Transportation Authority actually receives the protest by mail or personal delivery. Failure to file a timely protest shall constitute a waiver of the right to file a protest under these procedures. Within five (5) business days of receipt of an untimely protest, the Transportation Authority shall notify the individual or entity that the protest was untimely and is being rejected. Such notice shall constitute the final decision of the Transportation Authority relative to the untimely protest.

All protests filed must be filed by an actual bidder or proposer responding to the procurement and must be in writing and include the following information:

1. Name of individual or entity filing protest;
2. Business address and telephone number of individual or entity;
3. Name and title of contact person;
4. Description of specific procurement and the action or decision being protested;
5. A clear and concise statement of the protest, including identification of:



- a. procedures or specifications contained in bid documents or request for proposals which were allegedly not complied with, or
  - b. specific instance(s) of Transportation Authority failure to follow its policies and procedures;
6. Detailed factual support for the protest, including relevant documents or correspondence;
  7. Desired resolution of the protest; and
  8. Dated signature of individual, or authorized representative of entity, filing the protest.

The Executive Director shall review and consider all stated concerns and issues alleged to be in non-compliance and issue a decision within five (5) business days of receipt of the protest. If the decision of the Executive Director is not satisfactory to the protesting party, the protesting party may appeal that decision to the Board. The appeal must be filed within five (5) business days of the date of the decision. The appeal must clearly state the basis for disputing the decision of the Executive Director.

The appeal shall be referred to the Board, which shall consider whether to accept the appeal and hold a hearing on the matter. If a majority of the Board does not wish to accept the appeal, the Board shall defer to the decision of the Executive Director as final.

If a majority of the Board agrees to accept the appeal and hold a hearing on the matter, the protesting party shall be notified of the hearing date and time, which shall be scheduled at the earliest convenience of the Board. At the hearing, the protesting party shall be allowed fifteen (15) minutes to present its case. The Transportation Authority staff shall then be allowed fifteen (15) minutes to present the Transportation Authority's case. The Board may extend these time periods at its discretion.

The Board shall review and act upon the appeal at its next regularly scheduled meeting unless it determines that additional time to consider the appeal is required. The Board shall issue written notification to the protester of its decision which shall constitute the final decision of the Transportation Authority.

## **VII. CONTRACT ADMINISTRATION**

No contractual obligations, administrative or capital, shall be assumed by the Transportation Authority in the excess of its ability to pay as defined by the adopted final budget and the Strategic Plan. Approval of the Board is required prior to the execution of any contract for the procurement of goods or professional services that authorizes payments that in the aggregate exceed \$75,000 in a fiscal year. The Executive Director is authorized to approve and execute all such contracts that authorize payments not in excess of \$75,000 per fiscal year, provided that the amounts are consistent with the adopted final budget, as amended in accordance with the Fiscal Policy for the current fiscal year or, in the event that the contract was not completed in a single fiscal year, the contiguous fiscal year(s). The Executive Director is authorized to amend contracts to extend time, to add or delete tasks of similar scope and nature, and to increase or reduce the total amount of the contract. The Executive Director may execute such amendments without prior Board approval, if the amount of the amendment does not exceed \$75,000.



All expenditures shall comply with all federal, state and local statutory requirements and other legal restrictions placed on the use of said funds. The Executive Director shall execute all contracts in conformance with the monetary limits established in the adopted final budget. The Executive Director and/or his/her designee has the responsibility for monitoring all contractual agreements for compliance with the terms and conditions established in the contract and for rendering payment upon completion of services or delivery of goods and materials as agreed.