Resolution No. 2023-14

Board of Directors, San Mateo County Transportation Authority
State of California

*** * ***

Adopting Revisions to the TA Procurement Policy

Whereas, the San Mateo County Transportation Authority (TA) is organized and established pursuant to the Bay Area County Traffic and Transportation Funding Act, set forth in the Public Utilities Code Sections 131000-131304, *et seq*.; and

Whereas, pursuant to Resolution Numbers 1989-6, 1996-8, and 2007-22, respectively, the TA adopted and amended a Professional Services Contract Policy and Professional Services Contract/Consultant Selection Procedures to govern professional service contracting; and

Whereas, on February 4, 2021, the TA Board of Directors (Board) adopted a Procurement Policy under Resolution No. 2021-5, which superseded the Professional Services Contract Policy and Professional Services Contract/Consultant Selection Procedures and aligned the TA with the San Mateo County Transit District (District) to promote the greatest economy and efficiency to the TA, and to maintain appropriate safeguards to preserve fairness and accountability in all of TA's procurement activities; and

Whereas, since that time, the number of projects and contracting costs have grown significantly, increasing the frequency with which staff must seek Board authorization for routine and relatively low value items that have already been described in the budget; and

Whereas, additionally, the TA Executive Director's delegated contract authority has fallen below some peer agencies; and

Whereas, staff recommends that the Board approve an updated Procurement Policy, attached hereto as Attachment A, in order to increase the Executive Director's delegated contracting authority, and to make other administrative revisions.

Now, Therefore, Be It Resolved that the Board of Directors of the San Mateo County Transportation Authority hereby approves the Procurement Policy, attached hereto as Attachment A, which supersedes the Procurement Policy adopted on February 4, 2021, pursuant to Resolution No. 2021-5; and

Be It Further Resolved that the Executive Director, or her designee, is authorized to take further actions as may be necessary to give effect to this resolution, including utilizing the San Mateo County Transit District's Procurement Manual, which may be revised by the District's General Manager/CEO from time to time.

Regularly passed and adopted this 1st day of June, 2023 by the following vote:

Ayes: Beach, Corzo, Mates, Mueller, Nagales, Romero, Medina

Noes: None

Absent: None

Rico E Medina
_____
Chair, San Mateo County Transportation Authority

Attest:

Nora Seamans
_____
Authority Secretary

ATTACHMENT A: PROPOSED PROCUREMENT POLICY

PROCUREMENT POLICY
SAN MATEO COUNTY TRANSPORTATION AUTHORITY

The San Mateo County Transportation Authority (TA) is organized and established pursuant to the Bay Area County Traffic and Transportation Funding Act, set forth in the Public Utilities Code §§131000-131304 (the "Act"). The San Mateo County Transit District (District) provides personnel, administrative, and operational support for the TA, and District staff generally provides all procurement support functions for both agencies in order to acquire such property, facilities, equipment, materials, supplies, and services as may be deemed necessary to carry out their duties.

The procedures governing procurements of the TA derive from state and federal law. By accepting state and federal funding, the TA is also obligated to comply with certain regulations in its procurement of goods and services. In the event of a conflict between the TA's Procurement Policy and state or federal law, such state or federal law will supersede this Procurement Policy.

This Procurement Policy provides a broad overview of the standards and methods that will guide the TA in obtaining goods and services. Wherever in this Procurement Policy the Executive Director is designated authority, such authority shall be understood to include the designee of the Executive Director.

A. Fundamental Principles of Ethical Procurement

The TA's procurement practices reflect its commitment to fundamental principles of ethical procurement, which are as follows:

1. Foster maximum open and free competition for TA Contracts;

2. Promote the greatest economy and efficiency in TA procurements;

3. Ensure adherence to proper standards of conduct by TA board members, officers and employees;

4. Maintain procurement policies and procedures that guarantee compliance with applicable state and federal laws and regulations;

5. Establish and maintain an arm's length relationship with all Contractors;

6. Treat all prospective Contractors, Consultants, and vendors, including Disadvantaged Business Enterprises (DBEs) and small businesses, in a fair and equitable manner; and

7. Provide guidance for remedy and resolution of Contract claims or disputes.

Based on these fundamental principles of ethical procurement and the general standards of public sector procurement, the following set of procurement and contracting policies have been developed.

B. Conflicts of Interest

No director, officer, employee or agent of the TA shall participate in any procedure, tasks, or decisions relative to initiation, evaluation, award, or administration of a contract if a conflict of interest, real or apparent, exists. Such a conflict of interest arises when (a) the director, officer, employee or agent, (b) any member of his or her immediate family, (c) his or her business associate, or (d) an organization which employs, or which is about to employ, any of the above described individuals has a financial or other interest in a firm that participates in a TA procurement process or that is selected for an award. The standards governing the determination as to whether such an interest exists are set forth in the Political Reform Act (§81000 *et seq.* of the California Government Code) and in §§1090, 1091, and 1091.5 of the California Government Code.

C. Methods of Procurement

1. All purchases and contracts, whether by informal bidding, formal bidding, or proposals, shall be made on a competitive basis to the greatest extent practicable.

2. The method of procurement, such as small purchases, informal bids or proposals, formal competitive bidding, requests for proposals, etc., shall be appropriate for the type of project or procurement and shall be in the best interest of the TA.

3. Formal competitive bidding should be used for construction, repair, maintenance, alteration, and similar work whenever the estimated expenditure for such work is more than $250,000. Alternative methods of procurement, such as a design build approach, may be utilized if in full compliance with all applicable requirements.

   For construction, repair, maintenance, alteration, and similar work where the estimated expenditure is $250,000 or less, the TA may use a negotiated contract or a purchase order.

4. Formal competitive bidding must be used when purchasing equipment, supplies, or materials is more than $75,000 (Public Utilities Code §131285).

5. An informal procurement method may be utilized for the purchase of materials, equipment, or supplies when the estimated expenditure is $75,000 or less, and for the purchase of services when the estimated expenditure is $250,000 or less. To the extent practicable, such a method shall involve obtaining a minimum of three quotations, either written or oral, that permit prices and other terms to be compared. The TA will undertake adequate outreach to ensure open and free competition, and that small businesses, including DBEs are afforded opportunities to submit quotations. To the extent practicable, the TA will strive to obtain at least one of the minimum of three quotations from a small business. The TA will utilize interested vendors based upon a review of trade sources, lists of certified DBEs and small businesses that have registered with the State, and vendors that have registered with the TA to receive notice of contract opportunities. When appropriate to ensure

satisfaction of the Fundamental Principles of Ethical Procurement set forth in Section A of this Policy, such solicitations shall be advertised by the TA. The TA's informal bidding procedures, using a lowest responsible bidder standard for bid comparison, will serve as the typical standard on which to base the purchase of materials, equipment, services, or supplies, unless it is determined in writing that it is in the TA's best interest to apply a "best value" approach. "Best value" means a process in which the overall combination of quality, price, and other elements such as reliability, standardization, vendor qualifications, warranty, life cycle costs, and sustainability issues are considered together to determine which proposal provides the greatest overall benefit to the TA.

6. Formal competitive proposals, which consider and evaluate factors in addition to price, will be used to retain professional and non-professional services when the estimated expenditure is more than $250,000. Specialized State and federal laws will apply to the procurement of architectural and engineering services as defined by applicable laws and regulations, regardless of the estimated expenditure.

7. The use of appropriate intergovernmental and cooperative agreements is encouraged in order to reduce duplicative effort and to achieve cost economies.

8. The TA may purchase items on the open market under the following conditions: (a) if the TA Board (i) rejects bids received in connection with a procurement of supplies, equipment, or materials requiring formal competitive bidding and (ii) determines and declares by a two-thirds vote of all of its voting members that, in its opinion, the supplies, equipment, or materials may be purchased at a lower price in the open market; under Public Utilities Code §131285; or (b) if the Board or the Executive Director, within the Executive Director's delegated procurement authority, has exercised discretion to waive the competitive process when permissible under applicable law and consistent with the fundamental principles of procurement set forth in this Policy; or (c) if no bids or proposals are received in response to a formal solicitation and market research indicates another procurement for the supplies, equipment, or materials will not render a different outcome. See Public Utilities Code §§131285 and 131286, and Section K "Discretion to Waive the Competitive Process" set forth below.

D. Procurement Documentation and Consideration of Bids and Proposals

1. Formal competitive bidding requires preparation of bid documents that clearly set forth all requirements which must be fulfilled in order for the bid to be responsive, advertisement in accordance with the law, and, once bids are received, an award, if made, to the lowest responsive and responsible bidder.

2. Formal competitive proposals, including the "best value" approach, require issuance of Requests for Proposals, which clearly set forth all the requirements, and state the qualitative factors, in addition to price, which will be used to evaluate and rank the Proposals. An award, if made, will be to the proposer receiving the highest consensus ranking, subject to successful negotiations with the TA.

3. Any and all bids, quotes or proposals may be rejected by the TA if it is in the TA's best interest to do so.

4. The TA may only contract with persons, firms or entities that are qualified and possess the ability to perform successfully under the terms and conditions of the proposed procurement.

E. Execution of Contract Documents

1. All TA contracts and amendments will be in writing and executed prior to beginning performance under the contract.

2. The Executive Director may execute all contracts on behalf of the TA that are duly approved within the Executive Director's authority. The Chairperson of the Board of Directors will sign contracts and leases that require approval by the Board, unless otherwise delegated to the Executive Director.

F. Disadvantaged Business Enterprise Program

Although the TA is not currently a direct recipient of federal funds, the TA will abide by all Disadvantaged Business Enterprise (DBE) subrecipient programs of its funding agencies. It is the policy of the TA to ensure nondiscrimination on the basis of race, color, sex or national origin in the award and administration of U.S. Department of Transportation assisted and TA contracts. It is the intention of the TA to create a level playing field on which DBEs can compete fairly for contracts and subcontracts to provide the TA's public works, supplies, equipment, materials, and services.

G. Protest Procedures

Bidders may protest contracts that are let through informal bidding, formal competitive bidding, or competitive negotiations. The Executive Director or designee is authorized to review and rule upon protests concerning contracts awarded within the Executive Director's procurement authority.

Protests for contracts not within the Executive Director's procurement authority will first be reviewed and ruled upon by the Executive Director or designee. Appeals of such determinations will be reviewed and acted upon by the Board of Directors upon recommendation by the Executive Director and the General Counsel. All protests will be processed in accordance with the written procedures set forth in the Procurement Manual.

H. Executive Director's Procurement Authority

1. The Executive Director is authorized to purchase supplies, equipment, services, and materials and to arrange for work in a manner consistent with this Procurement Policy and written procedures as may be developed from time to time. The Executive Director is authorized to execute agreements and expend funds for procurements and activities included within the TA's approved annual budget as

follows: (1) $250,000 or less for equipment, supplies, materials, and services, including for construction, repair, maintenance, alteration, and similar work.

2. The Executive Director is authorized to modify and otherwise administer all contracts on behalf of the TA. For all contracts, the Executive Director is authorized to issue contract change orders or amendments within any Board approved contingency. If the Board does not establish a contingency or in the event the contingency is exhausted, the Executive Director is authorized to issue contract change orders or amendments, except for public works contracts, for not more than $250,000 or up to 10% (cumulative) of the Contract Amount, whichever is greater. The "Contract Amount" is defined as the original Board approved contract amount, plus any Board-exercised or approved options, plus any Board-approved amendments. For public works contracts, the Executive Director's contract contingency amounts can be established only by the Board, and will be considered on an individual contract basis.

3. The Executive Director is authorized to designate staff to oversee and monitor procurements and may delegate its contracting authority set forth in the paragraph above. Such delegation(s) must be in writing, documented by the Director of Contracts and Procurement, and must specify defined monetary limits.

4. Only the Board may award (a) contracts for equipment, materials, supplies, and services, including for construction, repair, maintenance, alteration, and similar work in excess of $250,000. When the Board awards such contracts, it also delegates to the Executive Director the authority to execute the resulting agreement.

I. Emergency Contracts

For procurements requiring competitive bidding and/or Board approval, in case of any sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services, the Board hereby designates the Executive Director to take all necessary and proper measures in emergency conditions to maintain the TA's systems in operation. The Board also grants the Executive Director the authority to determine that there is insufficient time for competitive bidding and that public interest and necessity demand the immediate expenditure of public money to safeguard life, health, or property. If the Executive Director makes such a determination, the Executive Director may expend or enter into a contract involving the expenditure of any sum needed in such emergency without observance of the provisions requiring contracts, bids or notice. The Executive Director shall promptly report on the reasons and necessity for proceeding without a competitive solicitation for all materials, supplies and equipment which exceed $250,000 to the Board of Directors at the next scheduled Board meeting. Upon hearing the Executive Director's report, the Board shall determine, by a two-thirds vote, whether or not there is a need to continue the emergency action. The Board shall continue to evaluate the emergency action, determining whether or not the emergency procurement is still required, at every regularly scheduled meeting thereafter until the action is terminated. S*ee* Public Utilities Code §131285.

J. Cooperative Purchasing Agreements

To foster greater economy and efficiency, the TA may avail itself of federal, state and local intergovernmental agreements for procurement or use of common goods and services. Joint procurements, state cooperative purchasing programs, and assignment of existing contract rights ("piggyback" procurements) with other public agencies may be used when consistent with applicable state and federal statutory or grant requirements.

K. Discretion to Waive the Competitive Process

The Board of Directors or the Executive Director, in the case of procurements within the Executive Director's procurement authority, may waive the requirements for formal competitive bidding or other procedures set forth in this Policy when (1) permissible under applicable law; (2) a determination is made that the best interests of the TA are served thereby, and provided there is adequate documentation of the need for such material, supplies, equipment, public works or services; and (3) a determination is made that following competitive procedures would be unavailing and not in furtherance of the purposes of the competitive bidding statutes and the TA's Procurement Policy. These circumstances shall be evaluated on a case-by-case basis, in consultation with the legal staff, keeping in mind the Fundamental Principles of Ethical Procurement set forth in this Policy. The findings justifying the waiver must be documented in the record.

Regardless of the estimated cost of the procurement, the TA is not required to engage in the competitive bidding process when procuring materials, equipment, supplies or services for which there exists only a sole source of supply. If more than one distributor of a product or service is available, the product or service is not exempt from competitive bidding as a sole source, but may be exempt from competitive bidding as a single source with appropriate justification. A sole source decision is not permitted merely upon the grounds that the source demonstrates technical or administrative superiority, is the most convenient, or shows superior performance potential at lower costs. In all cases, staff must verify that the particular procurement meets the definition of a single or sole source, and a cost or price analysis must be performed to determine the fairness and reasonableness of the price. The single or sole source findings will be reviewed by the Director of Contracts and Procurement in consultation with legal staff, as needed. A written determination of the findings will be provided to the requestor for inclusion in the contract record.

L. Contract Administration

The TA shall administer all contracts to ensure that contractors conform with the terms, conditions, and specifications of all contracts and to ensure all purchases are received in a timely manner. Contract administration files shall contain documentation concerning the solicitation, contract costs, modifications and final disposition. All significant formal and informal communications on all contracts must be committed to written memoranda and promptly included in the contract file.

M. Disposal of Surplus Property

1. The Director of Contracts and Procurement shall approve the manner of disposition of surplus supplies, equipment, and materials. The Board of Directors shall approve

the disposition of any item having a fair market value greater than $250,000. In the event the surplus item to be disposed of was purchased with federal funds, the TA will comply with federal disposition requirements.

2. The method of sale or disposition of any surplus or scrap items shall depend upon the nature of the items. Such methods shall include: (1) transfer or sale to other public agencies, (2) trade-in as part of a new procurement, (3) sale by auction, advertisement for sealed bids, or negotiation, or (4) where appropriate, proper recycling, donation to a non-profit agency, or disposal.

N. Revenue Generating Contracts/Concessions

To the extent they are not otherwise governed by TA policies, concession agreements are contracts where the TA grants permission to use TA facilities or property to vendors to sell products or services, for which the TA receives a percentage of the proceeds and/or a flat rate of compensation. Generally, these arrangements are at no direct cost to the TA.

Where it is determined that a number of potential vendors are available to provide similar products or services, a competitive negotiations procedure should be followed, and award made to the highest ranked proposer, taking into consideration the economic return to the TA, quality of the product, service and experience of the vendor.

The Board of Directors shall approve revenue generating/concessions contracts that exceed $250,000 in value.

O. Implementation

This Policy sets forth the standards and methods to be followed by the TA in obtaining public works, supplies, materials, equipment, and services, and supersedes the Professional Services Contract Policy and Professional Services Contract/Consultant Selection Procedures, which were adopted pursuant to Resolution Numbers 1989-6 and 1996-8, respectively, and updated pursuant to Resolution Number 2007-22. The Executive Director shall have the authority to create, maintain and update as necessary the Procurement Manual that sets forth implementing guidelines and procedures consistent with applicable law, best procurement practices, and the Procurement Policy, and may make subsequent revisions if necessary to implement changes in applicable laws and regulations and best procurement practices such as FTA Best Practices Procurement Manual, Caltrans Local Assistance Procedures Manual, American Public Transit Association guidelines and standards, or other well accepted external references. Changes that represent a deviation from this Policy must be approved by the Board of Directors. All TA staff with responsibility for procurement activities shall be trained in, and adhere to, this Policy and the Procurement Manual.

Revised: Resolution No. 2023-14; June 1, 2023
Adopted: Resolution No. 2021-5; February 4, 2021

ATTACHMENT B: REDLINED PROPOSED PROCUREMENT POLICY

PROCUREMENT POLICY
SAN MATEO COUNTY TRANSPORTATION AUTHORITY

The San Mateo County Transportation Authority (TA) is organized and established pursuant to the Bay Area County Traffic and Transportation Funding Act, set forth in the Public Utilities Code ~~Sections~~ §§131000-131304 (the "Act"). The San Mateo County Transit District (District) provides personnel, administrative, and operational support for the TA, and District staff generally provides all procurement support functions for both agencies in order to acquire such property, facilities, equipment, materials, supplies, and services as may be deemed necessary to carry out their duties.

The procedures governing procurements of the TA derive from state and federal law. By accepting state and federal funding, the TA is also obligated to comply with certain regulations in its procurement of goods and services. In the event of a conflict between the TA's Procurement Policy and state or federal law, such state or federal law will supersede this Procurement Policy.

This Procurement Policy provides a broad overview of the standards and methods that will guide the TA in obtaining goods and services. Wherever in this Procurement Policy the Executive Director is designated authority, such authority shall be understood to include the designee of the Executive Director.

A. Fundamental Principles of Ethical Procurement

The TA's procurement practices reflect its commitment to fundamental principles of ethical procurement, which are as follows:

1. Foster maximum open and free competition for TA Contracts;
2. Promote the greatest economy and efficiency in TA procurements;
3. Ensure adherence to proper standards of conduct by TA board members, officers and employees;
4. Maintain procurement policies and procedures that guarantee compliance with applicable state and federal laws and regulations;
5. Establish and maintain an arm's length relationship with all Contractors;
6. Treat all prospective Contractors, Consultants, and vendors, including Disadvantaged Business Enterprises (DBEs) and small businesses, in a fair and equitable manner; and
7. Provide guidance for remedy and resolution of Contract claims or disputes.

Based on these fundamental principles of ethical procurement and the general standards of public sector procurement, the following set of procurement and contracting policies have been developed.

B. Conflicts of Interest

No director, officer, employee or agent of the TA shall participate in any procedure, tasks, or decisions relative to initiation, evaluation, award, or administration of a contract if a conflict of interest, real or apparent, exists. Such a conflict of interest arises when (a) the director, officer, employee or agent, (b) any member of his or her immediate family, (c) his or her business associate, or (d) an organization which employs, or which is about to employ, any of the above described individuals has a financial or other interest in a firm that participates in a TA procurement process or that is selected for an award. The standards governing the determination as to whether such an interest exists are set forth in the Political Reform Act (~~Section~~§81000 *et seq.* of the California Government Code) and in ~~Sections~~§§1090, 1091, and 1091.5 of the California Government Code.

C. Methods of Procurement

1. All purchases and contracts, whether by informal bidding, formal bidding, or proposals, shall be made on a competitive basis to the greatest extent practicable.

2. The method of procurement, such as small purchases, informal bids or proposals, formal competitive bidding, requests for proposals, etc., shall be appropriate for the type of project or procurement and shall be in the best interest of the TA.

3. Formal competitive bidding should be used for construction, repair, maintenance, alteration, and similar work whenever the estimated expenditure for such work is more than $250,000 ~~or more~~. Alternative methods of procurement, such as a design build approach, may be utilized if in full compliance with all applicable requirements.

   For construction, repair, maintenance, alteration, and similar work where the estimated expenditure is ~~less than~~ $250,000 or less, the TA may use a negotiated contract or a purchase order. ~~The TA's informal bidding procedures, using a lowest responsible bidder standard for bid comparison, will serve as the typical standard on which to base the purchase of materials, equipment, services or supplies, unless it is determined in writing that it is in the TA's best interest to apply a "best value" approach. "Best value" means a process in which the overall combination of quality, price, and other elements such as reliability, standardization, vendor qualifications, warranty, life cycle costs, and sustainability issues are considered together to determine which proposal provides the greatest overall benefit to the TA.~~

4. Formal competitive bidding must be used when purchasing equipment, supplies, or materials is more than $75,000 ~~and over~~(Public Utilities Code §131285).

5. An informal procurement method may be utilized for the purchase of materials, equipment, or supplies when the estimated expenditure is ~~less than~~ $75,000 or less, and for the purchase of services when the estimated expenditure is ~~less than $150,000~~$250,000 or less. To the extent practicable, such a method shall involve

obtaining a minimum of three quotations, either written or oral, that permit prices and other terms to be compared. The TA will undertake adequate outreach to ensure open and free competition, and that small businesses, including DBEs are afforded opportunities to submit quotations. To the extent practicable, the TA will strive to obtain at least one of the minimum of three quotations from a small business. The TA will utilize interested vendors based upon a review of trade sources, lists of certified DBEs and small businesses that have registered with the State, and vendors that have registered with the TA to receive notice of contract opportunities. When appropriate to ensure satisfaction of the Fundamental Principles of Ethical Procurement set forth in Section A of this Policy, such solicitations shall be advertised by the TA. The TA's informal bidding procedures, using a lowest responsible bidder standard for bid comparison, will serve as the typical standard on which to base the purchase of materials, equipment, services or supplies, unless it is determined in writing that it is in the TA's best interest to apply a "best value" approach. "Best value" means a process in which the overall combination of quality, price, and other elements such as reliability, standardization, vendor qualifications, warranty, life cycle costs, and sustainability issues are considered together to determine which proposal provides the greatest overall benefit to the TA.

6. Formal competitive proposals, which consider and evaluate factors in addition to price, will be used to retain professional and non-professional services when the estimated expenditure is ~~$150,000 or~~ more than $250,000. Specialized State and federal laws will apply to the procurement of architectural and engineering services as defined by applicable laws and regulations, regardless of the estimated expenditure.

7. The use of appropriate intergovernmental and cooperative agreements is encouraged in order to reduce duplicative effort and to achieve cost economies.

8. The TA may purchase items on the open market under the following conditions: (a) if the TA Board (i) rejects bids received in connection with a procurement of supplies, equipment, or materials requiring formal competitive bidding and (ii) determines and declares by a two-thirds vote of all of its voting members that, in its opinion, the supplies, equipment, or materials may be purchased at a lower price in the open market, under Public Utilities Code §131285; or (b) if the Board ~~of Directors,~~ or the Executive Director, within the Executive Director's procurement authority, has exercised discretion to waive the competitive process when permissible under applicable law and consistent with the fundamental principles of procurement set forth in this Policy, or (~~b~~c) if no bids or proposals are received in response to a formal solicitation and market research indicates another procurement for the supplies, equipment, services and materials will not render a different outcome. See Public Utilities Code ~~Section~~§§ 131285 and 131286, and Section K "Discretion to Waive the Competitive Process" set forth below.

D. Procurement Documentation and Consideration of Bids and Proposals

1. Formal competitive bidding requires preparation of bid documents that clearly set forth all requirements which must be fulfilled in order for the bid to be responsive, advertisement in accordance with the law, and, once bids are received, an award, if made, to the lowest responsive and responsible bidder.

2. Formal competitive proposals, including the "best value" approach, require issuance of Requests for Proposals, which clearly set forth all the requirements, and state the qualitative factors, in addition to price, which will be used to evaluate and rank the Proposals. An award, if made, will be to the proposer receiving the highest consensus ranking, subject to successful negotiations with the TA.

3. Any and all bids, quotes or proposals may be rejected by the TA if it is in the TA's best interest to do so.

4. The TA may only contract with persons, firms or entities that are qualified and possess the ability to perform successfully under the terms and conditions of the proposed procurement.

E. Execution of Contract Documents

1. All TA contracts and amendments will be in writing and executed prior to beginning performance under the contract.

2. The Executive Director may execute all contracts on behalf of the TA that are duly approved within the Executive Director's authority. The Chairperson of the Board of Directors will sign contracts and leases that require approval by the Board, unless otherwise delegated to the Executive Director.

F. Disadvantaged Business Enterprise Program

Although the TA is not currently a direct recipient of federal funds, the TA will abide by all Disadvantaged Business Enterprise (DBE)~~DBE~~ subrecipient programs of its funding agencies. It is the policy of the TA to ensure nondiscrimination on the basis of race, color, sex or national origin in the award and administration of U.S. Department of Transportation assisted and TA contracts. It is the intention of the TA to create a level playing field on which DBEs can compete fairly for contracts and subcontracts to provide the TA's public works, supplies, equipment, materials and services.

G. Protest Procedures

Bidders may protest contracts that are let through informal bidding, formal competitive bidding or competitive negotiations. The Executive Director~~,~~ or designee~~,~~ is authorized to review and rule upon protests concerning contracts awarded within the Executive Director's procurement authority.

Protests for contracts not within the Executive Director's procurement authority will first be reviewed and ruled upon by the Executive Director~~,~~ or designee. Appeals of such determinations will be reviewed and acted upon by the Board of Directors upon recommendation by the Executive Director and the General Counsel. All protests will be processed in accordance with the written procedures set forth in the Procurement Manual.

H. Executive Director's Procurement Authority

1. The Executive Director is authorized to purchase supplies, equipment, services, and materials and to arrange for work in a manner consistent with this Procurement Policy and written procedures as may be developed from time to time. The Executive Director is authorized to execute agreements and expend funds for procurements and activities included within the TA's approved annual budget as follows: (1) ~~up to $75,000~~ $250,000 or less for equipment, supplies, ~~and~~ materials, and ~~(2) up to $150,000 for~~ services, ~~and (2) up to $250,000~~including for construction, repair, maintenance, alteration, and similar work.

2. The Executive Director is authorized to modify and otherwise administer all contracts on behalf of the TA. For all contracts, the Executive Director is authorized to issue contract change orders or amendments within any Board approved contingency. If the Board does not establish a contingency or in the event the contingency is exhausted, the Executive Director is authorized to issue contract change orders or amendments, except for public works contracts, for not more than ~~up to~~ ~~$150,000~~$250,000 or up to 10% (cumulative) of the Contract Amount, whichever is greater. The "Contract Amount" is defined as the original Board approved contract amount, plus any Board-exercised or approved options, plus any Board-approved amendments. For public works contracts, the Executive Director's contract contingency amounts can be established only by the Board, and will be considered on an individual contract basis.

3. The Executive Director is authorized to designate staff to oversee and monitor procurements and may delegate its contracting authority set forth in the paragraph above. Such delegation(s) must be in writing, documented by the Director of Contracts and Procurement, and must specify defined monetary limits.

4. Only the Board may award (a) contracts for equipment, materials, supplies, and ~~equipment~~services ~~75,000 or more, (b) contracts for services of $150,000 or more, and (c) contracts~~ including for construction, repair, maintenance, alteration, and similar work in excess of $250,000 ~~or more~~. When the Board awards such contracts, it also delegates to the Executive Director the authority to execute the resulting agreement.

I. Emergency Contracts

For procurements requiring competitive bidding and/or Board approval, in case of any sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services, the

Board hereby designates the Executive Director to take all necessary and proper measures in emergency conditions to maintain the TA's systems in operation. The Board also grants the Executive Director the authority to determine that there is insufficient time for competitive bidding and that public interest and necessity demand the immediate expenditure of public money to safeguard life, health, or property. If the Executive Director makes such a determination, the Executive Director may expend or enter into a contract involving the expenditure of any sum needed in such emergency without observance of the provisions requiring contracts, bids or notice. The Executive Director shall promptly report on the reasons and necessity for proceeding without a competitive solicitation for all materials, supplies and equipment which exceed ~~$75,000~~$250,000 to the Board of Directors at the next scheduled Board meeting. Upon hearing the Executive Director's report, the Board shall determine, by a two-thirds vote, whether or not there is a need to continue the emergency action. The Board shall continue to evaluate the emergency action, determining whether or not the emergency procurement is still required, at every regularly scheduled meeting thereafter until the action is terminated. S*ee* Public Utilities Code ~~Section~~§131285.

J. Cooperative Purchasing Agreements

To foster greater economy and efficiency, the TA may avail itself of federal, state and local intergovernmental agreements for procurement or use of common goods and services. Joint procurements, state cooperative purchasing programs, and assignment of existing contract rights ("piggyback" procurements) with other public agencies may be used when consistent with applicable state and federal statutory or grant requirements.

K. Discretion to Waive the Competitive Process

The Board of Directors or the Executive Director, in the case of procurements within the Executive Director's procurement authority, may waive the requirements for formal competitive bidding or other procedures set forth in this Policy when (1) permissible under applicable law, (2) a determination is made that the best interests of the TA are served thereby, and provided there is adequate documentation of the need for such material, supplies, equipment, public works or services; and (3) a determination is made that following competitive procedures would be unavailing and not in furtherance of the purposes of the competitive bidding statutes and the TA's Procurement Policy. These circumstances shall be evaluated on a case-by-case basis, in consultation with the legal staff, keeping in mind the Fundamental Principles of Ethical Procurement set forth in this Policy. The findings justifying the waiver must be documented in the record.

Regardless of the estimated cost of the procurement, the TA is not required to engage in the competitive bidding process when procuring materials, equipment, supplies or services for which there exists only a sole source of supply. If more than one distributor of a product or service is available, the product or service is not exempt from competitive bidding as a sole source, but may be exempt from competitive bidding as a single source with appropriate justification. A sole source decision is not permitted merely upon the grounds that the source demonstrates technical or administrative superiority, is the most convenient, or shows superior performance potential at lower costs. In all cases, staff must verify that the particular procurement meets the definition of a single or sole source, and a cost or price analysis must be performed to determine the fairness

and reasonableness of the price. The single or sole source findings will be reviewed by the Director of Contracts and Procurement in consultation with legal staff, as needed. A written determination of the findings will be provided to the requestor for inclusion in the contract record.

L. Contract Administration

The TA shall administer all contracts to ensure that contractors conform with the terms, conditions, and specifications of all contracts and to ensure all purchases are received in a timely manner. Contract administration files shall contain documentation concerning the solicitation, contract costs, modifications and final disposition. All significant formal and informal communications on all contracts must be committed to written memoranda and promptly included in the contract file.

M. Disposal of Surplus Property

1. The Director of Contracts and Procurement shall approve the manner of disposition of surplus supplies, equipment, materials. The Board of Directors shall approve the disposition of any item having a fair market value greater than ~~$150,000~~$250,000. In the event the surplus item to be disposed of was purchased with federal funds, the TA will comply with federal disposition requirements.

2. The method of sale or disposition of any surplus or scrap items shall depend upon the nature of the items. Such methods shall include: (1) transfer or sale to other public agencies, (2) trade-in as part of a new procurement, (3) sale by auction, advertisement for sealed bids, or negotiation, or (4) where appropriate, proper recycling, donation to a non-profit agency, or disposal.

N. Revenue Generating Contracts/Concessions

To the extent they are not otherwise governed by TA policies, concession agreements are contracts where the TA grants permission to use TA facilities or property to vendors to sell products or services, for which the TA receives a percentage of the proceeds and/or a flat rate of compensation. Generally, these arrangements are at no direct cost to the TA.

Where it is determined that a number of potential vendors are available to provide similar products or services, a competitive negotiations procedure should be followed, and award made to the highest ranked proposer, taking into consideration the economic return to the TA, quality of the product, service and experience of the vendor.

The Board of Directors shall approve revenue generating/concessions contracts that exceed ~~$150,000~~$250,000 in value.

O. Implementation

This Policy sets forth the standards and methods to be followed by the TA in obtaining ~~goods~~public works, supplies, materials, equipment, and services, and supersedes the Professional Services Contract Policy and Professional Services Contract/Consultant Selection Procedures, which were adopted pursuant to Resolution Numbers 1989-6 and 1996-8, respectively, and updated pursuant to Resolution Number 2007-22. The Executive Director shall have the authority to create,

maintain and update as necessary the Procurement Manual that sets forth implementing guidelines and procedures consistent with applicable law, best procurement practices, and the Procurement Policy, and may make subsequent revisions if necessary to implement changes in applicable laws and regulations and best procurement practices such as FTA Best Practices Procurement Manual, Caltrans Local Assistance Procedures Manual, American Public Transit Association guidelines and standards, or other well accepted external references. Changes that represent a deviation from this Policy must be approved by the Board of Directors. All TA staff with responsibility for procurement activities shall be trained in, and adhere to, this Policy and the Procurement Manual.

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