

Resolution No. 2023-37

**Board of Directors, Peninsula Corridor Joint Powers Board
State of California**

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Adopting Revisions to the JPB Procurement Policy

Whereas, the Board of Directors (Board) of the Peninsula Corridor Joint Powers Board (JPB or Caltrain) last adopted a resolution granting authority to the Executive Director to execute grant agreements and similar contracts with a value of up to \$100,000 in 2016 (Resolution No. 2016-18), and in 2019, the Board authorized the Executive Director to execute contracts for goods and services with a value of up to \$150,000 (Resolution No. 2019-12); and

Whereas, Resolution No. 2016-18 applied to contracts and associated amendments including but not limited to funding agreements, grant agreements, memoranda of understanding, cooperative agreements, and interagency agreements. However, the resolution expressly excluded contracts for goods and services and transfers of real property; and

Whereas, Resolution No. 2019-12, included an updated procurement policy authorizing the Executive Director to execute agreements and expend funds for procurements and activities included within the JPB's approved annual budget for (1) up to \$150,000 for equipment, supplies, materials, and services, and (2) up to \$10,000 for public works; and

Whereas, pursuant to this policy, the Executive Director is authorized to issue contract change orders or amendments within any Board approved contingency for all contracts. If the Board does not establish a contingency, the Executive Director is authorized to issue contract change orders or amendments up to \$150,000 or up to 10% (cumulative), whichever is greater; and

Whereas, since that time, the number of projects, including projects in partnership with other public agencies, has grown significantly, increasing the frequency with which staff must present items to the Board for authorization of the execution of routine and relatively low value agreements that have already been described in the budget; and

Whereas, additionally, since the Board last adopted policies regarding the delegation of authority to the Executive Director for execution of contracts, contracting costs have increased considerably and the Caltrain's Executive Director's delegated contract authority has fallen below peer agencies; and

Whereas, staff recommends increasing the Executive Director's authority: (1) from \$100,000 to \$250,000 for funding agreements, grant agreements, memoranda of understanding, cooperative agreements, interagency agreements, and similar contracts; and (2) from \$150,000 to \$250,000 for contracts for equipment, supplies, materials and services as described in the Proposed Procurement Policy (ATTACHMENT A); and (3) from \$10,000 to \$250,000 for public works contracts. In addition, staff recommend that the Board authorize the Executive Director to execute amendments and change orders up to \$250,000 or 10% of the Board approved amount, whichever is greater; and

Whereas, this request reflects the high volume of contracts currently required to be approved by the Board; revising the policy will help to reduce the number contracts requiring consideration by the Finance Committee and Board. Staff will report to the Board regarding the execution of these contracts on a regular basis; and

Whereas, staff is taking similar revisions to the Procurement Policy to both the San Mateo County Transit District (SamTrans) Board of Directors and the San Mateo County Transportation Authority (TA) Board of Directors as well. If they vote to increase the contract authority of

SamTrans and TA staff, the proposed JPB policy would be consistent with the authority delegated by the SamTrans and TA Boards; and

Whereas, there is no budget impact associated with adopting a revised policy and staff is requesting this update to the policies on contract authority to permit the efficient and expeditious resolution of contracts and litigation for the agency.

Now, Therefore, Be It Resolved that the Board of Directors of the Peninsula Corridor Joint Powers Board hereby:

1. Increases the authority of the Executive Director or designee to execute funding agreements, grant agreements, memoranda of understanding, cooperative agreements, and interagency agreement and related amendments from \$100,000 to \$250,000;
2. Increases the authority of the Executive Director or designee to execute contracts for equipment, supplies, materials and services and related amendments from \$150,000 to \$250,000;
3. Increases the authority of the Executive Director or designee to execute public works contracts and related amendments from \$10,000 to \$250,000;
4. Increases the authority of the Executive Director or designee to issue and execute contract amendments and change orders up to and including \$250,000 or 10% of the Board approved amount, whichever is greater;
5. Adopts the Proposed Procurement Policy in Attachment A; and
6. Authorizes the Executive Director or designee to take any actions necessary to give effect to this resolution.

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

Ayes: Burt, Heminger, Medina, Mueller, Walton, Zmuda, Davis, Gee

Noes: None

Absent: Chavez



Chair, Peninsula Corridor Joint Powers Board

Attest:



JPB Secretary

ATTACHMENT A: PROPOSED POLICY CONTRACT AND PROCUREMENT AUTHORITY

PROCUREMENT POLICY PENINSULA CORRIDOR JOINT POWERS BOARD

The Peninsula Corridor Joint Powers Board (“JPB”) is organized pursuant to the Government Code Section 6500, *et seq.* and comprised of three member agencies, the City and County of San Francisco, the Santa Clara Valley Transportation Authority, and the San Mateo County Transit District (“District”). The District provides personnel, administrative, and operational support for the JPB 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 JPB derive from state law and federal law. By accepting state and federal funding, the JPB is also obligated to comply with certain regulations in its procurement of goods and services. More specifically, certain standards, regulations, and other requirements for grants to local governments issued by the United States Department of Transportation apply to the JPB in connection with contracts financed in whole or in part with federal funds. In the event of a conflict between the JPB’s Procurement Policy and state or federal law, such state or federal law shall supersede this Procurement Policy.

This Procurement Policy provides a broad overview of the standards and methods which will guide the JPB 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 JPB’s Procurement Policy and procurement practices reflect its commitment to fundamental principles of ethical procurement, which are as follows:

1. Foster maximum open and free competition for JPB Contracts;
2. Promote the greatest economy and efficiency in JPB procurements;
3. Ensure adherence to proper standards of conduct by JPB 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 an equal 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 JPB 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 JPB 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 JPB.
3. Formal competitive bidding must be used for construction, repair, maintenance, alteration, and similar work whenever the estimated expenditure for such work exceeds \$10,000 (or the current threshold set forth in California Public Contract Code Section 20331). Alternative methods of procurement, such as a design build approach, may be utilized if authorized by state law and in full compliance with all applicable requirements.
4. Formal competitive bidding should be used when purchasing equipment, supplies, services, or materials over \$250,000, but a “best value” approach may be used in circumstances where it is determined to be in the best interest of the JPB. “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 JPB. On a case by case basis, and in particular when a procurement involves a combination of goods and services, the JPB Procurement Office, in consultation with the Project Manager or the department issuing the solicitation, shall make the determination of whether a “best value” approach is in the best interest of the JPB. In such circumstances, the determination will be documented in writing and a formal competitive proposal process will be utilized.

5. An informal procurement method may be utilized for the purchase of materials, equipment or supplies when the estimated expenditure is between \$10,000 and \$250,000. 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 JPB will undertake adequate outreach to ensure open and free competition, and that small businesses, including Disadvantaged Business Enterprises are afforded opportunities to submit quotations. To the extent practicable, the JPB will strive to obtain at least one of the minimum of three quotations from a small business. The JPB 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 JPB to receive notice of contract opportunities. When appropriate to ensure satisfaction of the Fundamental Principles set forth in Section A of this Policy, such solicitations shall be advertised by the JPB. The JPB'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, or supplies, unless it is determined in writing that it is in the JPB's best interest to apply a "best value" approach, in which event, qualitative factors such as those set forth in paragraph C.4. above, in addition to price may be considered in making an award.
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 exceeds \$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 JPB may purchase items on the open market under the following conditions: (a)(i) if the JPB rejects bids received in connection with a procurement of materials, supplies and equipment requiring formal competitive bidding, and (ii) the Board of Directors determines and declares by a two-thirds vote of all its members that in its opinion the supplies, equipment and materials may be purchased at a lower price in the open market; 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 (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 §103223 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 JPB.
3. Any and all bids or proposals may be rejected by the JPB if it is in the JPB’s best interest to do so.
4. The JPB 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 JPB 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 JPB 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

The JPB is committed to a Disadvantaged Business Enterprise (“DBE”) Program for DBE participation in JPB contracting opportunities in accordance with 49 Code of Federal Regulations (CFR) Part 26, effective June 22, 2001, as may be amended. It is the policy of the JPB 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 JPB contracts. It is the intention of the JPB to create a level playing field on which DBEs can compete fairly for contracts and subcontracts to provide the JPB’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 services, supplies, equipment 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 JPB's approved annual budget as follows: (1) \$250,000 or less for equipment, supplies, materials, or services and (2) \$250,000 or less for public works.
2. The Executive Director is authorized to modify and otherwise administer all contracts on behalf of the JPB. 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, the Executive Director is authorized to issue contract change orders or amendments \$250,000 or less, or up to 10% of the Board approved amount (cumulative), whichever is greater. Calculation of the change order/amendment contingency authority (whether 10% or other percentage established by the Board) shall be based on the sum of those amounts specifically approved by the Board as follows: (1) the original contract amount, plus (2) any Board-exercised or approved options, plus (3) any Board-approved amendments.
3. The Executive Director is authorized to designate staff to oversee and monitor procurements and may delegate this contracting authority, which must be in writing, documented by the Director of Contracts and Procurement, and must specify defined monetary limits.
4. For award of contracts for materials, supplies and equipment or services over \$250,000, Board approval is required. For award of public works contracts over \$250,000, Board approval is required. The Board delegates to the Executive Director the signature authority for all such contracts for the purchase/lease of equipment, supplies, materials, and the procurement of services and public works.

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 JPB'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 bids to the Board of Directors at the next available meeting, provided that the Executive Director reports to the Board no later than 14 days after taking such emergency action. Upon hearing the Executive Director's report, the Board shall determine, by a four-fifths 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. See Public Contract Code §§ 20331 and 22050.

J. Cooperative Purchasing Agreements

To foster greater economy and efficiency, the JPB may avail itself of 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 JPB 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 JPB'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 District 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 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 JPB 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 all cases, disposition or sale of rolling stock shall require approval of the Board. In the event the surplus item to be disposed of was purchased with federal funds, the JPB 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 JPB policies, concession agreements are contracts where the JPB grants permission to use JPB facilities or property to vendors to sell products or services, for which the JPB receives a percentage of the proceeds and/or a flat rate of compensation. Generally, these arrangements are at no direct cost to the JPB.

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 JPB, 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 JPB in obtaining public works, supplies, materials, equipment, and services. Since 2004, the JPB has had in place a Board-

adopted Procurement Manual that sets forth implementing guidelines and procedures consistent with applicable law, best procurement practices, and the Procurement Policy. The Executive Director shall have the authority to maintain and update as necessary the Procurement Manual to give effect to this 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 JPB staff with responsibility for procurement activities shall be trained in, and adhere to, this Policy and the Procurement Manual.

Revised: Resolution No. 2023 -	June 1, 2023
Revised: Resolution No. 2019-12	April 4, 2019
Revised: Resolution No. 2017-11	March 2, 2017
Revised: Resolution No. 2010-11	February 4, 2010
Adopted: Resolution No. 2004-17	June 3, 2004