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# TRANSBAY JOINT POWERS AUTHORITY

Board Policy No. 002

Category: Financial Matters

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## PROTEST PROCEDURES FOR THE BIDDING AND AWARD OF FEDERALLY ASSISTED THIRD PARTY CONTRACTS

### 1. Policy

The Transbay Joint Powers Authority (the "TJPA") complies with all procurement requirements for Federally-assisted third-party contracts and shall consider protests submitted in conformance with the procedure set forth in this Board Policy No. 002. These procedures shall be referenced in all Requests for Proposals (RFPs) and Invitations for Bid (IFBs).

### 2. Definitions

**Award** shall mean the resolution of the TJPA Board awarding a contract or execution by the Executive Director, as appropriate to the size and type of contract.

**Award Process** includes the pre-award, award and post-award phases of a negotiated procurement, an RFP or a sealed bid.

**Bid** includes the terms "offer" or "proposal" as used in the context of negotiated procurements, RFPs and sealed bids.

**Bidder or Proposer** means the prime bidder or proposer submitting a bid or proposal. TJPA will consider protests submitted only by a bidder or proposer.

**Days** refer to working days of the Transbay Joint Powers Authority (unless otherwise indicated).

**Disadvantaged Business Enterprise or DBE** is a for-profit, small business concern (1) that is at least fifty-one percent (51%) owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which fifty-one (51%) of the stock is owned by one or more such individuals; and (2) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

**Federal Transit Administration (FTA)** is an operating administration of the U.S. Department of Transportation.

**Protest** is a timely, written complaint by a bidder or proposer regarding a bid or the award process which arises prior to award and is formally communicated to the Executive Director, as provided below.

**Small Business Enterprise or SBE** is a small business concern that is certified under one of the following programs: California Unified Certification Program, California Department of General Services Office of Small and Disabled Veteran Business Enterprises, or the San Francisco Human Rights Commission.

**TJPA** is the Transbay Joint Powers Authority. The TJPA is responsible for the development, construction and operation of the San Francisco Transbay Terminal and Caltrain Downtown Extension projects.

### **3. Implementation**

#### **3.1 Protests Generally**

A protest must be submitted to the TJPA Executive Director in writing and describe the basis for the protest with particularity.

#### **3.2 Time**

The TJPA will consider only timely protests, received within the following time limitations:

- For professional services contracts, no later than five (5) days following notification of proposed award.
- For construction contracts, no later than five (5) days following the bid opening.

If a protest is regarding contents of a bid specification, the protest must be submitted in conformance with the requirements of that bid specification, but no later than ten (10) days prior to the bid opening date.

#### **3.3 Instructions for Submission**

Protests shall be addressed to:

Executive Director  
Transbay Joint Powers Authority  
201 Mission Street, Suite 2100  
San Francisco, CA 94105

The letter shall contain the protest description and shall be signed and dated. Telephoned or anonymous protests will not be considered.

#### **3.4 Disadvantaged Business Enterprise (DBE) or Small Business Enterprise (SBE) Requirements**

If the protest concerns responsiveness based on compliance with DBE or SBE requirements, the TJPA DBE/SBE Liaison Officer (DBELO/SBELO) shall review the protest. Regarding the issue of whether a bidder has met its DBE or SBE goal or demonstrated good faith efforts in

reaching any contract-specific DBE or SBE goal, the DBELO/SBELO's determination will be administratively final except when the DBELO/SBELO has determined that an apparent low bidder has failed to meet its goal or make the required good faith efforts. In that situation, the Administrative Reconsideration procedures in the TJPA's DBE and SBE Programs apply to requests for reconsideration from the apparent low bidder. The TJPA Board will not have jurisdiction to hear administrative appeals or requests for reconsideration of the DBELO/SBELO's or reconsideration official's decision on good faith efforts.

### **3.5 Issues Not Related to DBE or SBE Requirements**

If a protest is regarding the outcome of a pre-qualification process, the appeal process in the request for qualifications package shall be followed.

If the protest concerns whether a bidder or proposer is responsible or whether a bid or proposal is responsive to the RFP or IFB (unrelated to DBE or SBE requirements), the TJPA may request a response from the affected bidder or proposer. The Executive Director shall issue a decision resolving the protest. The decision by the Executive Director shall be final as to the TJPA.

### **3.6 Final Action**

The protester shall be notified in writing of the TJPA's decision regarding the protest and/or award of the contract.

The action of the TJPA is final. Subject to the provisions of Section 3.7, the protester may seek a remedy in State or Federal court, as appropriate, from the final action of the TJPA.

### **3.7 Protest to FTA**

TJPA will notify the FTA expeditiously when it receives a protest and shall keep the FTA informed about the status of the protest. A protester must exhaust all administrative remedies with the TJPA before pursuing a protest with FTA. FTA may only entertain a protest that alleges that the TJPA (1) failed to have written protest procedures; (2) failed to follow its written protest procedures; or (3) failed to review a complaint or protest. A protest to FTA must be received by the cognizant FTA regional or Headquarters Office within five (5) working days of the date the protester knew or should have known of the violation.