

STAFF REPORT

SUBJECT: Update of the Livermore Amador Valley Transit Authority (LAVTA)
Procurement Policy

FROM: Tamara Edwards, Director of Finance

DATE: August 27, 2019

Action Requested

It is requested that the Finance and Administration Committee recommend that the LAVTA Board of Directors approve the LAVTA Procurement Policy in Resolution 25-2019.

Background

The existing procurement policy was adopted in 1992 and has been amended infrequently, most recently in 2006, to conform to changes in federal regulations. A review of this policy noted that several procurement policies and procedures were not up to date. Staff then requested that LAVTA Counsel, Michael Conneran, and Catharine Groves take this opportunity to review the existing agency Procurement Policy and provide comprehensive recommendations for changes based on updated laws and regulations, both state and federal.

Discussion

LAVTA Counsel has prepared the attached policy and resolution for Board consideration. The substantive changes are highlighted in the Resolution details:

1. Updating the policy to reflect an update in Federal Transit Administration (FTA) Procurement Policies and Procedures to reflect the most current direction; and
2. Changes in titles for current positions.
3. Changes the limit for micro purchases from \$3,000 to \$10,000 and small purchases from \$100,000 to \$250,000.

These changes reflect the changes in FTA regulations and are consistent with the policies of other agencies. Making these changes will decrease the amount of staff time spent on small and micro purchases while still maintain the integrity of the agency's procurement methods.

Next Steps

Staff requests that the Finance and Administration Committee recommend that the Board of Directors approve the updated Procurement Policy.

Recommendation

Staff requests that the Finance and Administration Committee recommend that the Board of Directors approve the updated Procurement Policy and resolution 25-2019

Attachments:

1. Resolution of the Board of Directors of the Livermore Amador Valley Transit Authority approving revised Procurement Policy.

RESOLUTION NO. ~~25-2019~~ 19-2006

* * *

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE LIVERMORE AMADOR
VALLEY TRANSIT AUTHORITY APPROVING REVISED PROCUREMENT POLICY,
INCLUDING AN INCREASE TO THE ~~GENERAL MANAGER~~ EXECUTIVE
DIRECTOR'S PROCUREMENT AUTHORITY MICRO-PURCHASE AND SMALL
PURCHASE THRESHOLDS**

WHEREAS, the County of Alameda and the cities of Dublin, Livermore, and Pleasanton (hereinafter "Member Jurisdictions") have formed the Livermore Amador Valley Transit Authority ("LAVTA"), a joint exercise of powers agency created under California Government Code Section 6500 et seq., for the joint exercise of certain powers to provide coordinated and integrated public transportation services within its service area; and

WHEREAS, LAVTA is authorized to acquire such property, facilities, equipment, materials, supplies and services as may be deemed necessary to carry out its duties; and

WHEREAS, LAVTA has an obligation to the population it serves to establish a procurement process that protects the public investment and is consistent, fair and equitable with all vendors and, with regard to the expenditure of federal funds, is in compliance with federal regulations, including Federal Transit Administration (FTA) Circular 4220.1EF, "Third Party Contracting Requirements;" and

WHEREAS, it is recommended that the thresholds for micro-purchases be increased from \$35,000 to \$10,000 and for small purchases from \$100,000 to \$250,000 in accordance with the U.S. Office of Management and Budget (OMB) memo OM-18-18 and FTA guidance ~~the monetary limit on the General Manager~~ Executive Director's authority to procure supplies, equipment, materials, construction and services should be increased to \$100,000 to improve overall efficiency in LAVTA's administration and operations, in keeping with the procurement authority delegated to the General Manager ~~Executive Directors~~ of a number of transit agencies in the greater San Francisco Bay Area; and

WHEREAS, the Board of Directors ~~desires to clarify the General Manager~~ Executive Director's authority to act in emergency conditions; and

~~WHEREAS, the Board of Directors finds and determines that whenever there is an emergency that requires immediate action to prevent or mitigate the loss or impairment of life, health, property or essential public services, as in the case of any great public calamity such as extraordinary fire, flood, storm, epidemic, earthquake, acts of terrorism or other natural or civil disaster, it is in the best interest of LAVTA to delegate the authority to the General Manager~~Executive Director to take all necessary and proper measures, including the authority to enter into emergency contracts consistent with the provisions of Public Contract Code Section 22050; and

WHEREAS, given the passage of time, it is desirable to update, clarify and streamline LAVTA's procurement procedures and policies to promote the greatest economy and efficiency to LAVTA, and to maintain appropriate safeguards to preserve fairness and accountability in all of LAVTA's procurement activities; and

WHEREAS, it is recommended that LAVTA staff and General Counsel prepare Procurement Procedures as necessary to be consistent with the revised Procurement Policy, current law, and best procurement practices.

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the Livermore Amador Valley Transit Authority hereby:

1. Approves LAVTA's revised Procurement Policy, a copy of which is attached and incorporated herein as Exhibit A, which the thresholds for micro-purchases be increased from \$53,000 to \$10,000 and for small purchases from \$100,000 to \$250,000~~increases the delegation of authority for the General Manager~~Executive Director to enter into contracts up to \$100,000 for LAVTA. This Procurement Policy replaces and supersedes LAVTA's "Purchasing Policies," adopted in 1992, ~~and updated on May 4, 1998~~ and September 11, 2006, in their entirety.
2. ~~Authorizes the General Manager~~Executive Director to take all necessary and proper measures in emergency conditions to safeguard life, health, property or the loss of essential public services, including the authority to enter into emergency contracts in accordance with the provisions of Public Contract Code Section 22050 and LAVTA's Procurement Policy.

3.2.____ Authorizes the ~~General Manager~~Executive Director or her/his designees to take further actions as may be necessary to give effect to this Resolution, including issuing and maintaining an updated Procurement Manual to reflect procurement procedures that are consistent with the revised Procurement Policy, current law, and best procurement practices.

APPROVED AND PASSED, this ~~9th~~11th day of ~~September~~September, 2019~~06~~.

Chair

~~Councilmember Steve Brozosky~~David Haubert,

ATTEST:

~~Michael Tree~~Barbara Duffy, ~~General Manager~~Executive Director

EXHIBIT A

PROCUREMENT POLICY LIVERMORE AMADOR VALLEY TRANSIT AUTHORITY

Adopted: _____

Livermore Amador Valley Transit Authority (“LAVTA”) is a joint exercise of powers agency established pursuant to California Government Code Section 6500, *et seq.* (the “Act”) to provide coordinated and integrated public transportation service with its member jurisdictions.

A. Introduction

The procedures governing LAVTA procurements derive from the joint powers agreement creating LAVTA, as well as state and federal law and regulations. By the terms of the joint powers agreement, LAVTA is subject to the powers and restrictions applicable to a general law city. In addition, by accepting state and federal funding, LAVTA is 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 and Federal Transit Administration (FTA) apply to LAVTA in connection with contracts financed in whole or in part with federal funds, including FTA Circular 4220.1FE, “Third Party Contracting Requirements.” In the event of a conflict between LAVTA’s Procurement Policy and local, state or federal law, the applicable provisions of such local, state or federal law shall supersede this Procurement Policy.

This Procurement Policy provides a broad overview of the standards and methods which will guide LAVTA in obtaining goods and services.

B. Goals

The LAVTA Procurement Policy is guided by five basic goals:

1. To promote the greatest economy and efficiency for LAVTA;
2. To provide safeguards to maintain a procurement system of quality and integrity;
3. To instill public confidence in the procurement process of LAVTA;
4. To ensure fair and equitable treatment for all vendors who seek to deal with LAVTA, including Disadvantaged Business Enterprises (“DBEs”); and
5. To ensure maximum open and free competition in the expenditure of public funds.

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

C. Code of Conduct/Conflicts of Interest

1. No director, officer, employee or agent of LAVTA shall participate in any procedure, task, or decision relative to the initiation, evaluation, award, or administration of a contract if a conflict of interest, real or apparent, exists. No employee, officer, or agent of the Authority shall participate in the selection or in the award of administration of a contract if a real or apparent conflict of interest would be involved. Such a conflict would arise when:
 - The director, employee, officer, or agent,
 - Any member of his immediate family
 - His or her partner or business associate, or
 - An organization that employs, or is about to employ, any of the above,has a financial or other interest in the firm selected for award.
2. Authority officers, employees, or agents will neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, potential vendors/contractors, or parties to sub-agreements.

This prohibition shall not be applicable to:

- An occasional non-pecuniary gift of insignificant value such as accepting food or refreshment of nominal value on infrequent occasions in the ordinary course of a luncheon or dinner business meeting or other meeting; or
- Unsolicited advertising or promotional material such as pens, pencils, note pads, calendars, or other business related items of nominal intrinsic value; or
- A gift, gratuity, favor, entertainment, loan, or other thing of value when the circumstances make it clear that an obvious long-standing social or family relationship rather than the business of the persons concerned is the motivating factor.

In addition to the above, the following special constraints will be used to guide employees directly involved in procurement through sensitive situations:

- Invitations received from vendors/contractors involved in a pending procurement for business lunches or dinners or parties should be politely refused. It is the Authority's policy to avoid any situation that might give the appearance of improper influence.
- Any offer of gratuities should be tactfully refused.

Employees should ask themselves the following questions if confronted with an ethical dilemma:

- Is my action legal? Ethical?
- Does my action comply with Authority Policy?

- Does my action appear inappropriate?
- Would I be embarrassed or compromised if my action became known publicly?

Specific standards governing conflicts of interest under state law are set forth in Sections 1090, 1091, and 1091.5 of the California Government Code and the California Political Reform Act (Cal. Gov't. Code §§81000 et seq.).

D. Methods of Procurement

1. All purchases and contracts, above the mMicro-pPurchase threshold of (\$105,000) shall be made on a competitive basis to the greatest extent practicable, whether by informal bidding, formal bidding or competitive proposals.
2. The method of procurement, such as micro-purchases, small purchases, informal bids or proposals, formal competitive bidding, requests for proposals, etc., shall be appropriate for the type of project or procurement shall conform to applicable state or federal law and regulations (including FTA Circular 4220.1E, as it may be amended) and shall serve the best interest of LAVTA.
3. Formal competitive bidding must be used for "constructionpublic projects" projects that involve contracts of \$5,000 or more. (Public Contract Code Sections 20162) The termA "public projectconstruction" ismeans: a project for the erection, improvement, painting, or repair of public buildings and works; work in or about streams, bays, waterfronts, embankments, or other work for protection against overflow; street or sewer work except maintenance or repair; or furnishing supplies or materials for any such project, including maintenance or repair of streets and sewers.
4. Formal competitive bidding ordinarily will be used for materials, supplies and equipment purchases over ~~\$400~~250,000, but competitive negotiations may be used in unusual circumstances if it is in the best interest of LAVTA.
5. Formal competitive proposals, which consider and evaluate factors in addition to price, will be used to retain professional services or specialized equipment over ~~\$400~~250,000.
6. The use of appropriate intergovernmental agreements is encouraged in order to reduce duplicative effort and to achieve cost economies.
7. Blanket Purchase Orders may be used to fill repetitive needs for materials and supplies.

E. 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, and advertisement in accordance with legal requirements. An award, if made, will be to the lowest responsive and responsible bidder.

2. The solicitation of formal competitive proposals requires 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 LAVTA. Where required by law, the initial selection of certain professionals will be based on factors other than cost.
3. Any and all bids or proposals may be rejected by LAVTA if it is in LAVTA's best interest to do so.
4. LAVTA seeks to contract with contractors who are trustworthy and are qualified and possess the ability to perform successfully under the terms and conditions of the proposed procurement.

F. Approval and Execution of Contract Documents

1. All LAVTA contracts and amendments will be in writing and executed prior to the initiation of performance under the contract.
2. The ~~General Manager~~Executive Director may execute all contracts on behalf of LAVTA that are duly approved within the ~~General Manager~~Executive Director's ~~Executive Directors~~ authority. The Chair of the Board of Directors will sign contracts and leases that require approval by the Board, unless authority is otherwise delegated to the ~~Executive Director~~General Manager~~Executive Director~~.
3. Legal Counsel must approve as to form all contracts over \$50,000 and all contracts that are formally bid, regardless of estimated value.

G. Disadvantaged Business Enterprise Program

LAVTA is committed to and has adopted a Disadvantaged Business Enterprise ("DBE") Program for DBE participation in LAVTA contracting opportunities in accordance with 49 Code of Federal Regulations (CFR) Part 26, effective March 4, 1999, as amended. It is the policy of LAVTA 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 LAVTA contracts. It is the intention of LAVTA to create a level playing field on which DBEs can compete fairly for contracts and subcontracts relating to LAVTA's construction, procurement and services activities.

H. General Manager~~Executive Director's~~ Procurement Authority

1. The ~~General Manager~~Executive Director is authorized to purchase supplies, equipment, materials and services or to arrange for work in a manner consistent with this Procurement Policy and written procedures as may be developed from

time to time. Provided sufficient funds are available within LAVTA's approved annual budget for such expenditures, the ~~General Manager~~Executive Director is authorized to execute agreements and expend funds for procurements and activities as follows: (1) up to \$100,000 for supplies, equipment, materials, services and construction or public works agreements, (2) up to \$100,000 for revenue-generation agreements, and (3) up to \$100,000 annual rent for leases and licenses of real or personal property in which LAVTA is a lessee or licensee, in which the term does not exceed three years. The Board of Directors will approve all contracts over \$100,000 or that otherwise exceed these limits.

2. The ~~General Manager~~Executive Director is authorized to administer all contracts on behalf of LAVTA. Provided sufficient funds are available in LAVTA's approved annual budget, the ~~General Manager~~Executive Director is authorized to approve the following: (a) for contracts up to \$100,000, contract change orders or amendments, cumulatively not to exceed \$25,000 and (b) contracts over \$100,000, contract change orders or amendments, cumulatively not to exceed ten percent (10%) of the original contract, and not to exceed \$50,000 for any single change order. The Board of Directors will approve all other change orders.
3. The ~~General Manager~~Executive Director is authorized to delegate to managers [~~correct term?~~] or other employees the responsibility and authority to approve purchases within the ~~General Manager~~Executive Director's procurement authority, which delegation must be in writing, include defined monetary limits; be consistent with this Procurement Policy and be subject to the rules and procedures in the Procurement Manual.
4. The ~~General Manager~~Executive Director will provide informational reports to the Administration & Budget Committee summarizing any contracts between \$50,000 and \$100,000 awarded within the ~~General Manager~~Executive Director's procurement authority.
5. The ~~General Manager~~Executive Director is authorized to issue and maintain a Procurement Manual that sets forth implementing guidelines and procedures consistent with this Procurement Policy, current law, and best procurement practices. All LAVTA staff with responsibility for procurement activities shall be trained in, and adhere to, this Procurement Policy and the Procurement Manual.

I. Protest Procedures

Bidders may protest contracts that are let through formal competitive bidding or competitive negotiations. The ~~General Manager~~Executive Director is authorized to review and determine protests concerning contracts awarded within the ~~General Manager~~Executive Director's procurement authority. Bid protests for all other contracts not within the ~~General Manager~~Executive Director's procurement authority will be reviewed and determined by the Board of Directors upon recommendation by the ~~General Manager~~Executive Director and Legal Counsel. All protests will be in accordance with LAVTA's adopted Protest Policy.

J. Contract Administration

LAVTA 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. Each contract file shall contain documentation concerning the contract administration, including, but not limited to, monitoring of the contract budget, change orders and final disposition. Undocumented actions on all contracts must be committed to written memoranda and promptly included in the contract file.

K. Emergency Contracts

In the case of an emergency that requires the immediate expenditure of public money to safeguard life, health, property, or the loss of essential public services as in the case of any great public calamity, such as extraordinary fire, flood, storm, epidemic, earthquake, acts of terrorism or other natural or civil disaster, the ~~General Manager~~Executive Director is authorized to take all necessary and proper measures, including the authority to enter into emergency contracts consistent with the provisions of Public Contract Code Section 22050. The ~~General Manager~~Executive Director may repair or replace a public facility, take any directly related and immediate action required by the emergency, and procure necessary equipment, services and supplies for those purposes, without giving notice for bids to let contracts upon the following conditions:

1. The ~~General Manager~~Executive Director will make a finding based on substantial evidence that the emergency will not permit delay resulting from a competitive bid and the action is necessary to respond to the emergency.
2. The ~~General Manager~~Executive Director will contact the Chair of the Board of Directors, if possible, for concurrence with the proposed emergency action.
3. The ~~General Manager~~Executive Director will report the emergency action and the findings supporting the action for review and ratification by the Board of Directors at a regular meeting of the Board of Directors held within fourteen (14) days of the action, or if no regular meeting is scheduled, within seven (7) days of the action at a special meeting of the Board of Directors. The Board will review the action at every regularly scheduled meeting thereafter until the action is terminated.
4. The ~~General Manager~~Executive Director will terminate any emergency contracting action that did not follow the Procurement Policy as soon as possible, and to the extent practicable, complete any remaining actions to respond to the emergency in accordance with the Procurement Policy.

L. Sole Source

Regardless of the estimated cost of the procurement, LAVTA is not required to engage in the competitive bidding process, either formal or informal, 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 is available, the product is not exempt from competitive bidding as a sole source. 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, LAVTA must verify that the particular procurement meets the definition of a sole source and LAVTA must perform a cost or price analysis to determine the reasonableness of the price of the sole source.

M. Intergovernmental Agreements

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. The use of intergovernmental agreements is permitted by the Federal Transit Administration and the California Public Contract Code to achieve cost economies and to reduce duplicative effort.

N. Discretion to Waive the Competitive Process

The Board of Directors, or the ~~General Manager~~Executive Director for procurements within the ~~General Manager~~Executive Director’s procurement authority, may waive the requirements for formal competitive bidding or other procedures set forth in this Procurement Policy when permissible under applicable law and when a determination is made that the best interests of LAVTA will be served, as follows:

1. Open Market Transactions. If LAVTA rejects bids received in connection with a procurement requiring formal competitive bidding, LAVTA may proceed with an open market purchase after it determines that the supplies, equipment and materials may be purchased at a lower price in the open market.
2. Waiver of Competitive Negotiations. When services are needed on an expedited basis and circumstances do not permit an RFP process, LAVTA may waive such procedures, provided there is adequate documentation of the need for such services. These circumstances shall be evaluated on a case-by-case basis, keeping in mind the fundamental principles of procurement set forth in this Procurement Policy.

3.—If no bids are received in connection with a procurement requiring formal competitive bidding, LAVTA may proceed with an open market purchase in certain circumstances if it is determined that the best interests of LAVTA will be served by such an approach. These circumstances shall be evaluated on a case-by-case basis and shall include such factors as the reasons why no bids were received, the availability of the supplies, equipment, or materials on the open market, and a price or cost analysis.

O. Disposal of Surplus Property

1. The ~~General Manager~~Executive Director shall determine the manner of disposition of surplus supplies, equipment and materials whose estimated value at the time of disposition does not exceed \$100,000. The Board of Directors shall approve the disposition of any item whose estimated value at the time of disposition is greater than \$100,000.

2. The method of sale or disposition of any surplus or scrap items shall depend upon the nature of the items. Such methods may 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 or disposal.