

CONTRACT APPROVAL DELEGATION AND REQUIREMENTS POLICIES

A. EXPENDITURE CONTRACTS

An Expenditure Contract is a written agreement issued in accordance with Administrative Codes Chapter 6 or Chapter 21, in which the SFMTA promises to compensate a contractor, vendor, lessor (landlord), licensor, or other public agency (excluding another City department) for goods received, services provided, construction services provided, possession or use of real property, use of intellectual property, systems maintenance, or other exchange of consideration for benefits received by the SFMTA, and amendments to such contracts. The Contract Amount is the net value of compensation to be paid a contractor, vendor, licensor or lessor, including the value of all approved contract amendments. The Contract Time is the period in which the contract requires the contractor to deliver or complete the services, construction, goods, intellectual property or real property as provided in the contract.

The SFMTA delegates to the Director of Transportation the authority to approve Expenditure Contracts as follows:

1. Professional Service Contracts.

Professional services are those services that require specialized or technical expertise, or a license, to perform the work.

a. Director of Transportation's Authority.

- (1) The Director of Transportation may approve any Expenditure Contract for Professional Services that is advertised and competitively bid in accordance with Administrative Code Chapter 21, where the sum of the Contract Amount of the base contract and value of all options listed in the contract do not exceed \$1,000,000. The term "Professional Services" shall have the same meaning as provided in Administrative Code Section 21.02, and shall also include non-construction services contracts, technology systems and software contracts that include configuration or customization services, and equipment procurements that include services other than warranty or maintenance.
- (2) The Director of Transportation may approve any Professional Services Contract as defined in the preceding paragraph, where the sum of Contract Amount of the base contract and all options listed in the contract are greater than \$1,000,000 but does not exceed \$5,000,000, provided that the following conditions are met:
 - (a) The SFMTA received at least two responsive proposals/bids from responsible proposers/bidders;
 - (b) The lowest responsive bid does not exceed 110 percent of the engineer's estimate of the cost of the work;
 - (c) All proposers/bidders are provided notice of the Director of Transportation's intention to award to the contract not less than five

business days prior to the date of award, which notice shall state the intended date of award, the names of all proposers/bidders and the scores and amounts of their proposals/bids, identifies the selected proposer/bidder, and informs proposers/bidders of their right to protest the award of the contract (which notice shall be concurrently posted on the SFMTA's website and provided to the SFMTA Board of Directors);

- (d) No proposer/bidder has lodged a protest against the award of the contract;
- (e) The award of the contract does not trigger CEQA or NEPA reporting or is otherwise not subject to CEQA or NEPA reporting requirements;
- (f) Project funding has been identified and secured (that is, the project's funding is not subject to a yet-to-be-approved full funding grant agreement).
- (g) The notice of intent to award the contract will be published on the SFMTA's website and sent to the members of the Board of Directors. A Board member may suspend the award by requesting within five days of receipt of notice that he or she requests that the Board review the contract at its next regular meeting.

b. Amendments to Professional Service Contracts.

- (1) **Original Contract Amounts up to \$1,000,000.** The authority given to the Director of Transportation is limited to cumulative increases totaling 25 percent of the base Contract Amount or \$500,000 (whichever is less) and 50 percent of the original Contract Time.
- (2) **Original Contract Amounts greater than \$1,000,000 and not exceeding \$5,000,000.** The authority given to the Director of Transportation is limited to cumulative increases totaling 25 percent of the original Contract Amount or \$1,000,000 (whichever is less) and 50 percent of the original Contract Time.
- (3) **Original Contract Amounts over \$5,000,000, but less than \$10,000,000.** The authority given to the Director of Transportation is limited to cumulative increases totaling 25 percent of the original Contract Amount and 50 percent of the original Contract Time, provided that the total amended Contract Amount is less than \$10,000.
- (4) **Amendments Subject to Charter Section 9.118.** The Director of Transportation may approve an amendment to a Professional Services Contract that was originally approved by the Board of Supervisors under Charter Section 9.118(b), provided the value of the amendment does not exceed \$500,000, and the total aggregate Contract Time does not exceed 10 years. Any contract or contract amendment submitted to the Board of Supervisors for approval must first be approved by the SFMTA Board of Directors.

c. Re-Delegation of Approval Authority of Professional Service Contracts.

Subject to the certification requirements stated in Section D.1, below, the Director of Transportation may delegate to any Division Director or other senior manager authority to approve Professional Services Contracts and amendments to those contracts as follows:

- (1) Original contracts with a Contract Amount not to exceed \$500,000;
- (2) Contract amendments modifying the Contract Amount, provided that the net value of all amendments does not exceed 50 percent of the original Contract Amount;
- (3) Contract amendments extending Contract Time, provided that the aggregate sum of all amendments does not to exceed 25 percent of the original Contract Time.

2. Real Property Lease and License Agreements – SFMTA as Lessee or Licensee.

a. Real Property Leases and Licenses – Original Agreement. A real property lease or license agreement in which the SFMTA is the lessee or the licensee is an expenditure contract. The Director of Transportation may approve any real property lease or license agreement in which the SFMTA is the lessee or licensee, provided that the total aggregate expenditure obligations of the SFMTA (that is, the Contract Amount of the original lease or license plus the value of all options listed in the agreement) do not exceed \$1,000,000 and the term of the lease or license does not exceed ten years.

b. Amending Real Property Leases and Licenses. The Director of Transportation may approve an amendment to a lease or license of real property (where the SFMTA is the lessee or licensee), as follows:

- (1) **Original Contract Amounts not exceeding \$1,000,000.** The authority given to the Director of Transportation is limited to cumulative increases totaling 25 percent of the base Contract Amount or 50 percent of the original term of the lease or license, not to exceed a total term of 114 months.
- (2) **Original Contract Amounts greater than \$1,000,000 and not exceeding \$5,000,000.** The authority given to the Director of Transportation is limited to cumulative increases totaling 25 percent of the original Contract Amount or \$1,000,000 (whichever is less) or 50 percent of the original term of the lease or license, not to exceed a total term of 114 months.
- (3) **Original Contract Amounts over \$5,000,000, but less than \$10,000,000.** The authority given to the Director of Transportation is limited to cumulative increases totaling 25 percent of the original Contract Amount or \$2,000,000 (whichever is less) or 50 percent of the original lease or license term, not to exceed a total Contract Amount of \$9,999,999 and a total term of 114 months.
- (4) **Agreements Subject to Charter section 9.118.** Board of Supervisors' approval must be obtained for any lease or license in which the SFMTA pays \$10,000,000

more in rent, or the term is ten years or more. Charter §§ 9.118(b), 9.118(c). Where the Board of Supervisors approved a real property agreement under Charter Section 9.118(c), the Board of Supervisors must also approve any modification of that agreement, irrespective of the quantum of the amount (rent) or term of the lease. Any lease, license, or amendment of such agreement submitted to the Board of Supervisors for approval must first be approved by the SFMTA Board of Directors.

3. Real Property Lease and License Agreements – SFMTA as Lessor or Licensor.

- a. A real property lease or license agreement is a revenue contract where the SFMTA is the lessor or the licensor.
- b. The Director of Transportation may approve any real property lease or license agreement and any amendment to such agreement, in which the SFMTA is the lessor or licensor, where the total aggregate revenues to the SFMTA (that is, the total value of funds received) is less than \$1,000,000, and the term of the lease or license is less than ten years.
- c. Board of Supervisors’ approval must be obtained for any lease or license in which the SFMTA receives more than \$1,000,000 in rent, or the term is ten years or more. Charter § 9.118(c). Where the Board of Supervisors approved a real property agreement under Charter Section 9.118(c), the Board of Supervisors must also approve any modification of that agreement, irrespective of the quantum of the amount (rent) or term of the lease. Any lease, license, or amendment of such agreement submitted to the Board of Supervisors for approval must first be approved by the SFMTA Board of Directors.

4. Construction Contracts

a. Director of Transportation’s Authority. A “Construction Contract” is an Expenditure Contract for the performance of a “Public Work,” as defined by Administrative Code Section 6.1. A Construction Contract does not include contracts for construction management services, architecture or engineering services (which are professional services). The Director of Transportation may award a Construction Contract to the responsible bidder that submitted the lowest responsive bid where the Contract Amount does not exceed \$5,000,000 and the following conditions are satisfied:

- (1) The SFMTA received at least two responsive bids from responsible bidders;
- (2) The winning bid does not exceed 110 percent of the engineer’s estimate of the cost of the work;
- (3) All bidders are provided notice of the Director of Transportation’s intention to award the contract not less than five business days prior to the date of award; the notice must identify the winning bidder, the intended date of award, the names of all bidders and the amounts of their bids, and inform bidders of their right to protest the award of the contract (which notice shall be concurrently posted on the SFMTA’s website and provided to the SFMTA Board of Directors);

- (4) No bidder has lodged a protest against the award of the contract;
- (5) The project to be constructed is listed in an approved Capital Project Improvement Program Plan and the costs of the project are included in the SFMTA's bi-annual budget;
- (6) The project to be constructed is categorically exempt from CEQA or NEPA reporting or is otherwise not subject to CEQA or NEPA reporting requirements;
- (7) Project funding has been identified and secured (that is, the project's funding is not subject to a yet-to-be-approved full funding grant agreement);
- (8) The contract work primarily concerns the maintenance of existing facilities, or maintenance of way or wayside facilities, and does not involve the construction of a new maintenance facility or transit line.
- (9) The notice of intent to award the contract will be published on the SFMTA's website and sent to the members of the Board of Directors. A Board member may suspend the award by requesting within five days of receipt of notice that he or she requests that the Board vote on the award of the contract at the Board's next regular meeting.

b. Amending Construction Contracts. The Director of Transportation may approve any change order or amendment to a Construction Contract as follows:

- (1) **Original Contract Amounts up to \$2,000,000.** The authority given to the Director of Transportation is limited to cumulative increases 25 percent of the original Contract Amount or \$500,000 (whichever is less) and 50 percent of the original Contract Time.
- (2) **Original Contract Amounts greater than \$2,000,000 and not exceeding \$5,000,000.** The authority given to the Director of Transportation is limited to cumulative increases totaling 25 percent of the original Contract Amount or \$1,000,000 (whichever is less) and 50 percent of the original Contract Time.
- (3) **Original Contract Amount greater than \$5,000,000 and less than \$10,000,000.** The authority given to the Director of Transportation is limited to cumulative increases totaling 25 percent of the original Contract Amount or \$2,000,000 (whichever is less) and 50 percent of the original Contract Time.
- (4) **Original Contract Amount greater than of \$10,000,000 and less than \$50,000,000.** The authority given to the Director of Transportation is limited to cumulative increases totaling 10 percent of the original Contract Amount, or \$2,500,000 (whichever is greater) and 25 percent of the original Contract Time.

- (5) **Original Contract Amount greater than \$50,000,000.** The authority given to the Director of Transportation is limited to cumulative increases totaling 10 percent of the original Contract Amount or \$5,000,000 (whichever is greater), and 25 percent of the original Contract Time.

c. Delegation to Subordinate Directors. Subject to the certification requirements stated in Section D.1, below, the Director of Transportation may delegate to the Division Director in charge of SFMTA construction projects or other Division Director responsible for oversight of a Construction Contract the authority to approve Construction Contracts and amendments to Construction Contracts, as follows:

- (1) Original contracts and task orders with a Contract Amount or task order amount not to exceed \$500,000;
- (2) Contract amendments, not to exceed 50 percent of the original Contract Amount or \$500,000, whichever is less;
- (3) Contract amendments extending Contract Time, not to exceed 25 percent of the original Contract Time or six months (whichever is greater).

4. Exigent Circumstances Contracts

a. Exigent Conditions are physical conditions of existing infrastructure that pose an actual or imminent and substantial threat to the SFMTA's performance of its transit and traffic control functions that if not promptly corrected may give rise to an "actual emergency". An "actual emergency," as defined in Administrative Code Section 6.60(c), is "a sudden, unforeseeable and unexpected occurrence involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of or damage to, life, health property or essential public services."

b. The Director of Transportation may approve an Expenditure Contract not to exceed \$5,000,000 to immediately address exigent circumstances and to correct conditions in transit vehicles, rail, wayside equipment, power traction systems, train control, radio and communications systems, safety systems, tunnels, maintenance facilities and yards, fueling systems, traffic control systems or other system or facility vital to the delivery of transit services that in the opinion of the Director of Transportation pose a substantial and imminent threat to the SFMTA's performance of its transit and traffic control functions.

c. As circumstances may allow and insofar as the Director of Transportation deems practicable, the SFMTA shall conduct a competitive process to select the contractor to perform the work. Where circumstances are so urgent that there is not time to conduct a competitive process to select a contractor, the SFMTA shall select a contractor with proven expertise and experience in the performing the work. The contractor may be compensated based on fair and reasonable time and materials costs plus negotiated fixed-fee or a negotiated fixed price.

d. The Director of Transportation shall obtain the concurrence of the Chairman of

the SFMTA Board of Directors before awarding a contract under this section. Within five business days of issuing a contract under this section, the Agency shall post a notice on the SFMTA's website of the award of the contract identifying the contractor, the Contract Amount, and a general description of the work to be performed, and an explanation of the exigent circumstances that required the contract be issued without full competitive bidding.

5. General Services and Commodities Contracts

a. The terms "General Services" and "Commodity" shall have the same meaning as defined in Administrative Code Section 21.02. A procurement of equipment, software or technology system that includes configuration, customization, business process analysis, or other services other than installation, maintenance or warranty services, shall be treated as a professional services procurement.

b. The Director of Transportation may approve any Expenditure Contract (including purchase orders) for the procurement of "General Services" and "Commodities," where the aggregate expenditure obligations of the SFMTA (that is, the sum Contract Amount of the original contract and all amendments) is less than \$10,000,000. The SFMTA shall procure General Services and Commodities using competitive bidding or procedures that accord with requirements of Administrative Code Chapter 21 and other applicable ordinances of general application. The SFMTA may also procure General Services and Commodities through the City Purchaser.

c. Subject to the certification requirements stated in Section D.1, below, the Director of Transportation may delegate authority to approve Expenditure Contracts, including purchase orders, and amendments to such agreements, for the procurement of General Services and Commodities as follows:

- (1) To the SFMTA's Chief Financial Officer, original contracts and contract amendments for procurements administered by the Purchaser, where the sum of the Contract Amount of the original contract and all amendments does not exceed \$10,000,000;
- (2) To the SFMTA's Controller, original contracts and contract amendments for procurements administered by the City Purchaser, where the aggregate Contract Amount of an original contract and all amendments does not exceed \$4,000,000;
- (3) To the SFMTA's Manager of Contracts and Procurement, original contracts and contract amendments for procurements administered by the City Purchaser, where the aggregate Contract Amount of an original contract and all amendments does not exceed \$2,000,000;
- (4) To the SFMTA Senior Manager of Revenue or other senior manager responsible for the management of fare revenues and sale of transportation information, fare and parking payment media), agreements for the sale or distribution of transportation information and fare and parking payment

media, where the commissions to be paid under such agreements are not expected to exceed \$250,000 in any fiscal year.

Procurements of General Services or Commodities that the SFMTA administers itself (that is, without the assistance of the City Purchaser) shall be administered in the same manner as Professional Services procurement, as set forth in Section 1.b., above.

c. The Director of Transportation or his or her designee may approve an amendment to an Expenditure Contract for General Services or Commodities that is subject to Charter Section 9.118(b), provided that the sum of the original Contract Amount and all amendments to the contract does not exceed \$500,000. Any contract or contract amendment submitted to the Board of Supervisors for approval must first be approved by the SFMTA Board of Directors.

B. REVENUE CONTRACTS

1. A Revenue Contract is an agreement under which the SFMTA will receive rent, lease payments, license fees, advertising revenues, profit sharing, grants, and other revenue or compensation.

2. The Director of Transportation is authorized to approve Revenue Contracts and modifications of such agreements where the aggregate sum of the anticipated revenues (or estimated value) of the agreement and all amendments does not require Board of Supervisors approval under Charter Section 9.118(a), (that is, where the anticipated revenues from the contract are less than \$1,000,000 over its Contract Time, including all option or extension periods, and the Contract Time is less than ten years).

3. Subject to the certification requirements stated in Section D.1, below, the Director of Transportation may re-delegate authority to approve Revenue Contracts and amendments to Revenue Contracts to the SFMTA's Chief Financial Officer, Division Directors and senior managers who are responsible for the subject matter of the contract, as follows:

- a. Original contract or task order with a Contract Amount not to exceed \$500,000;
- b. Contract amendments with cumulative increases of 50 percent of the original Contract Amount, not to exceed \$500,000;
- c. Contract amendments extending Contract Time, not to exceed 25 percent of the original Contract Time, and not to exceed 10 years total Contract Time (that is, the sum of the Contract Time stated in the original contract and all extensions of time).

C. MISCELLANEOUS AGREEMENTS

1. **Taxi Medallion Sales and Taxi Medallion Surrender Agreements.** DOT is authorized to approve contracts for the sale of taxi medallions up to \$250,000, and is authorized to sign agreements for the surrender of taxi medallions for a payment by SFMTA to the permit holder not to exceed \$200,000, in accordance with Transportation Code Section 1116(b). A Taxi Medallion sales agreement is a Revenue Contract subject to the requirements of Section B, above. An agreement to surrender a Taxi Medallion in exchange for payment from SFMTA is an Expenditure Contract that is subject to the requirements of Section A, above. Subject to the certification requirements stated in Section D.1, below, the Director of Transportation may delegate to the Taxi and Accessible Services Division Director the authority to approve agreements for the sale and surrender of Taxi medallions, subject the limits stated in this Section.
2. **Grant Agreements.** The Director of Transportation is authorized to approve applications for grant funds, to approve agreements to accept and expend grant funds, and to transfer grants funds to a public agency that will be a sub-recipient of said grant funds, and indemnify the grantor. Subject to the certification requirements stated in Section D.1, is further authorized to delegate said authority as provided in Section B.2, above.
3. **Art Contracts Administered by the Arts Commission.** The Director of Transportation is authorized to approve Expenditure Contracts for artist design services, artwork fabrication, and acquisition of finished art (Art Contract) for SFMTA capital projects that are funded by the FTA. An Art Contract that is approved by the Arts Commission does not require SFMTA Board approval. Subject to the certification requirements stated in Section D.1, below, the Director of Transportation may delegate approval of Art Contracts to the Director of Capital Projects and Construction.
4. **Gifts.** The Director of Transportation is authorized to accept gifts to the SFMTA of any value and approve contracts to transfer ownership of those gifts to the SFMTA, subject to City ordinances and requirements of general application.
5. **Indemnity Agreements.**
 - a. The Director of Transportation is authorized to approve contracts that require the SFMTA to indemnify another public agency, where the City Attorney and the City's Risk Manager advise that the work to be performed by or services to be received from the public agency does not pose undue risk to the SFMTA, and that the SFMTA's potential liability under such indemnity agreement will likely not exceed \$2,000,000. Indemnity agreements that, in the opinion of the City Attorney or Risk Manager, are likely to expose the SFMTA to liability greater than \$2,000,000 shall be submitted to the SFMTA Board for approval.
 - b. It is the policy of the SFMTA that the Agency shall not indemnify private entities, except as necessary to achieve policy and program goals of paramount importance. A contract with a private entity that provides the SFMTA less than full indemnity covering the Agency's liability for third party claims shall be submitted to the SFMTA Board for approval.
6. **Waiver or Reduction of Special Damages Indemnity.** The Director of Transportation is authorized to waive or limit a contractor's liability for consequential damages and

incidental damages (aka, special damages) in an Expenditure Contract if the Director of Transportation determines that such waiver or limitation accords with the factors set out in Administrative Code Section 21.23.

7. **Nondisclosure Agreements.** As long as the SFMTA's potential liability arising from such agreements does not exceed \$1,000,000, the Director of Transportation is authorized to execute non-disclosure agreements that accord with applicable public records laws for the following purposes. (1) use of experimental or new technology under a license agreement as part of a pilot project; (2) participation in studies and projects for development of transit, planning and transportation technologies where nondisclosure is a requirement of participation in the project or of project funding. Subject to the certification requirements stated in Section D.1, below, the Director of Transportation may delegate the authority granted under this section to the Division Director responsible for the contract.
8. **Media Licenses.** The Director of Transportation is authorized to approve license agreements for the use of SFMTA vehicles, real property, intellectual property and trademarks for television, motion picture, advertising and other media purposes. Subject to the certification requirements stated in Section D.1, below, the Director of Transportation may delegate the authority granted under this section to the Division Director for Communications or (for the use of real property) to a senior manager in charge of real estate. Any license for filming, photography or other activities along SFMTA right-of-way, in SFMTA facilities or on a transit vehicle that may interfere with the Agency's transit operations requires the written approval of the Director of Transit Services.
9. **Fare Media Procurement.** The Director of Transportation is authorized to delegate to the Chief Financial Officer or the Manager of Revenue the authority to approve and execute agreements for the sale or distribution of fare media and fare cards where the commissions to be paid under such agreements are not expected to exceed \$250,000 in any calendar year.

D. ADDITIONAL CONTRACTING AUTHORITY AND REQUIREMENTS

1. **Certification of Delegated Authority.** The Director of Transportation shall present to the SFMTA Board Secretary a completed original delegation of authority letter for each person to whom the Director of Transportation delegates contract approval authority. The SFMTA Board Secretary shall review the delegation letter and certify their conformance with the Contract Times and conditions of this policy. A delegation of authority shall be in effect when certified by the SFMTA Board Secretary.
2. **Same Manner Approvals.** Where City ordinance specifies that a modification to a contract shall be approved "in the same manner" as the underlying (original) contract was awarded, the Director of Transportation is authorized to approve such contract amendments and may delegate that authority, in accordance with the authority delegated under this Policy.
3. **Approval by Counterparts.** Where so provided in a contract, the SFMTA and the contractor may execute a contract in counterparts, including electronically transmitted counterparts.

4. **SFMTA Board Approval of Agreements that are Subject to Board of Supervisors' Approval.** Any contract, lease or other agreement that is subject to Board of Supervisors' approval, or amendment to such agreement, and any Request for Proposals that precedes such contract, lease or other agreement that is subject to Board of Supervisors approval, must first be approved by the SFMTA Board of the Directors.
5. **City Attorney Approval Required.** All contracts, task orders, and contract amendments to which the SFMTA is party shall be in writing, and shall be approved as to form by the City Attorney's Office.
6. **Exercise of Options.** The Director of Transportation is authorized to exercise options to extend the Contract Time of any contract by written notification to the contractor, provided that the Contract Time extension(s) and value of the option(s) to be exercised are expressly set forth in the contract and were approved as part of the original contract. All other options to extend a contract shall be treated as a contract amendment subject to the requirements and limitations stated in this Policy. The Director of Transportation may delegate authority to exercise contract options to the Division Director responsible for the implementation and oversight of the contract.
7. **Substitution or Termination of DBE, SBE and LBE Subcontractors.** Substitution or termination of a subcontractor that is a Disadvantaged Business Enterprise, Small Business Enterprise, or Local Business Enterprise shall require the approval of the Director of Transportation.
8. **Parking Authority.** The policies and procedures stated in this Policy shall also apply to the contracts of the Parking Authority of the City and County of San Francisco that the SFMTA administers under the agreement between the SFMTA and the Parking Authority, dated October 18, 2007, approved by SFMTA Board Resolution No. 07-171 and Parking Authority Commission Resolution No. 07-173.

E. CONTRACT BIDDING, AWARD, AND CLOSE-OUT REQUIREMENTS

1. **Invitations for Bids and Proposals.** The Director of Transportation is authorized to issue without further action of the SFMTA Board requests for proposals and invitation for bids for contracts that will not require Board of Supervisors' approval under Charter Section 9.118. Subject to the certification requirements stated in Section D.1, below, the Director of Transportation is authorized to delegate that authority to a Division Director or senior manager, including the authority to amend and to re-issue and re-advertise competitive solicitations. The Director of Transportation shall notify the SFMTA Board of Directors when the Agency releases an Invitation for Bids or Request for Proposals.
2. **Sole Source Approvals.** The Director of Transportation is authorized to approve the selection of a vendor, service provider, or contractor as a sole-source procurement applying the factors set out in City ordinances, policies approved by the SFMTA Board and, when applicable, federal procurement requirements. The Director of Transportation shall not re-delegate authority granted by this section.
3. **Rejection of Bids and Proposals.** The Director of Transportation is authorized to reject any or all proposals or bids, and is authorized to reissue and re-advertise such requests for proposals and invitation for bids and other competitive solicitations. Subject to the certification requirements stated in Section D.1, below, the Director of Transportation

may delegate the authority granted under this section to the Division Director responsible for the contract or the work to be performed under the contract.

4. Determination that Bidder Is Not Responsible.

- a. Determination.** The Director of Transportation is authorized to determine that an actual or potential bidder or proposer for a SFMTA or Parking Authority contract is “Not Responsible.” A bidder or proposer may be deemed Not Responsible if the bidder or proposer: (1) does not meet specified experience, expertise, demonstrated ability, financial capacity, or other requirements stated in an Invitation for Bid (IFB) or Request for Proposals (RFP) or other contract bid or solicitation documents; or, (2) lacks attributes of trustworthiness; or, (3) otherwise does not have the ability, financial or other capacity, or other attributes necessary to satisfactorily perform the work described in the IFB or RFP or other contract bid or solicitation documents. In making such determination, the Director of Transportation may consider information provided in the bid or proposal, past projects on which the proposer or bidder has worked for the City or other entities, references, financial and revenue statements, insurance and bond capacity, history of claims, history of requested change orders, past or existing litigation, or any other information concerning the bidder or proposer that the Director of Transportation determines is relevant to the performance of the work.
- b. Notice.** The determination that a bidder or proposer is Not Responsible for a contract shall be communicated to the bidder or proposer in writing, and shall provide the bidder or proposer reasonable time (not less than five business days) to submit written argument challenging that determination.
- c. Due Process.** The Director of Transportation is further authorized to implement such procedures at the City Attorney may recommend to provide due process to any bidder or proposer determined to be Not Responsible. Such due process must provide a bidder or proposer deemed Not Responsible with the information on which the Agency based its determination, and an opportunity to present written argument and evidence (including witness statements) challenging such evidence or determination prior to award of the contract. Such procedures shall not require the Director of Transportation or any City employee or policy body to convene an in-person hearing, adhere to formal evidentiary procedures, hear the oral testimony of witnesses, allow cross-examination of witnesses, or provide an administrative appeal of the Agency’s determination that the bidder or proposer is Not Responsible. The determination that a bidder or proposal is Not Responsible applies only to the contract at issue, and is not a general debarment.
- d. Delegation.** Subject to the certification requirements stated in Section D.1, below, the Director of Transportation is authorized to delegate the authority granted under this section to the Division Director responsible for the contract to be awarded or the work to be performed under that contract.

5. Determination that a Bid or Proposal Is Not Responsive.

- a. Definition.** A bid or proposal may be determined to be “Not Responsive” if it does not meet one or more substantive requirements concerning the content a bid or proposal or fails to meet submittal process requirements for that are stated in an Invitation for Bid (IFB) or Request for Proposals (RFP) or other contract solicitation documents.
 - b. Determination.** The Director of Transportation is authorized to determine that a bid or proposal for a SFMTA contract is Not Responsive based solely on the Director of Transportation’s (or his or her designees’) review of the documents the proposer or bidder submitted with the proposal or bid. The Agency may determine that an error or missing information in a bid or proposal is minor or not material, and waive the requirement that such information be submitted with the bid or proposal, if that incorrect or missing information would not be considered as selection criteria or would not otherwise be considered in the Agency’s review of the proposal or bid. In such case, the Agency may waive such error or missing information, and evaluate the bid or proposal. If selected, the bidder or proposer shall provide the corrected or missing (immaterial) information prior to contract award.
 - c. Opportunity to Challenge.** A determination that a bid or proposal is Not Responsive shall be communicated to the bidder or proposer in writing, and shall provide the bidder or proposer reasonable time (not less than five business days) prior to award of the contract to submit written argument challenging that determination. The Director of Transportation is authorized to implement such procedures as he or she deems necessary to provide a bidder or proposer whose bid or proposal is determined to be Not Responsive an opportunity to object and challenge that determination in writing. Such procedures shall not require the Director of Transportation or any City employee or policy body to convene any hearing, adhere to formal evidentiary procedures, hear the oral testimony of witnesses, allow cross-examination witnesses, or provide an administrative appeal of the Agency’s determination that the bid or proposal is not responsive.
 - d. Delegation.** Subject to the certification requirements stated in Section D.1, below, the Director of Transportation may delegate the authority granted under this Section 5 to the Division Director responsible for the contract to be awarded or the work to be performed under that contract.
- 6. Final Acceptance of Work; Release of Retention.** The Director of Transportation is authorized to grant final acceptance to work performed under a contract where the Director of Transportation (or his or her designee) determines that the contractor has satisfactorily completed the work as required by the contract. The Director of Transportation is authorized to approve release of retention, and issue such approvals and determinations as necessary to closeout a contract. Subject to the certification requirements stated in Section D.1, below, the

Director of Transportation may delegate the authority granted under this section to the Division Director responsible for the contract.

F. QUARTERLY REPORTING

Every 90 days, the Director of Transportation shall provide a written report to the SFMTA Board, which shall be posted to the SFMTA website, identifying:

1. All contracts awarded by the Director of Transportation in the preceding 90 days, including the name of the contractor, the amount and Contract Time of the contract, and a summary description of the work to be performed.
2. All Requests for Information, Requests for Qualifications, Requests for Proposals, and Invitations for Bid (for low bid contracts) the SFMTA has issued in the preceding 90 days.
3. Commodity and General Services Contracts awarded pursuant to Section A.5 of this Resolution, for amounts greater than \$2,000,000.
4. Each quarterly report shall be posted on the SFMTA's website when it is provided to the SFMTA Board of Directors.