



Foothill Transit

SPECIAL EXECUTIVE BOARD MEETING

West Covina, CA

Friday, March 29, 2024



Foothill Transit

Foothill Transit MISSION

To be the premier public transit provider committed to:

SAFETY

COURTESY

QUALITY

RESPONSIVENESS

EFFICIENCY

INNOVATION



Foothill Transit VALUES

SAFETY

We educate, encourage, and endorse a strong culture of safety at all levels of the organization, valuing the responsibility entrusted in us by the communities that we serve.

RESULTS

We value the achievement of organizational goals and initiatives as defined in our business plan and involving all levels of the organization.

INTEGRITY

We are committed to high ethical standards based on accountability, honesty, respect, transparency, and a high level of fiscal responsibility.

GRATITUDE

We are a team united in thankfulness for each other; we express gratitude for our many opportunities by investing our time and energy in our community and industry, and through the open expression of appreciation.

DIVERSITY

We create an environment rich with talented people and differing viewpoints, valuing the unique perspectives that everyone brings.

TEAM MEMBERS

Our team members are the key to Foothill Transit's success and we are committed to supporting them through education, development, and recognition.

COMMUNICATION

We value and are committed to open honest respectful discussion which is responsive, informative, and constructive.

SUSTAINABILITY

We embrace sustainability because it benefits all aspects of our business while helping our communities by protecting the environment through measured and responsible stewardship of resources.



Foothill Transit

Executive Board Meeting AGENDA

SPECIAL EXECUTIVE BOARD MEETING
8:00 AM, MARCH 29, 2024
Foothill Transit Administrative Office
2nd Floor Board Room
100 South Vincent Avenue
West Covina, CA 91790

1. CALL TO ORDER
2. ROLL CALL: MEMBERS BOYER, CALAYCAY, MOSS, SHEVLIN, STERNQUIST
3. CONFIRMATIONS OF AGENDA BY CHAIR AND CHIEF EXECUTIVE OFFICER
4. PRESENTATIONS
 - 4.1. Introduction of Foothill Transit Business Partners
5. PUBLIC COMMENT

CONSENT CALENDAR: Items 6 through 19 are consent items which may be received and filed and/or approved by the board in a single motion. If any member of the Executive Board wishes to discuss a consent item, please request that the item be pulled for further discussion and potential action.

6. APPROVAL OF MINUTES FOR THE REGULAR MEETING OF JANUARY 26, 2024 AND STRATEGIC PLANNING WORKSHOP OF MARCH 1, 2024 - CHRISTINA

Public Comment: Any individual may request to address the Executive Board at this time. Public comments are allowed only during the Public Comment portion of the agenda. Speakers may speak only once for up to 3 minutes total time during which they may address both on- and off- agenda items. If there are any public hearings scheduled, individuals will be given an additional opportunity to comment under said items. Speakers are not permitted to yield their time to another speaker. Note: ACTION MAY BE TAKEN ON ANY ITEM IDENTIFIED ON THE AGENDA.

The public may view and obtain all written information supporting this agenda provided to the board both initially and supplementary prior to the meeting by calling (626) 931-7300 extension 7204, emailing board.secretary@foothilltransit.org, or at the agency's offices located at 100 S. Vincent Ave., Suite 200, West Covina, CA 91790. Documents, including PowerPoint handouts, distributed to Board Members by staff or Board Members at the meeting will simultaneously be made available to the public upon request.



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7. MARCH 2024 PROCUREMENT MONTHLY REPORT

Recommended Action: Receive and file the Procurement Monthly Report for March 2024.

8. RESOLUTION FOR THE LOW CARBON TRANSIT OPERATIONS PROGRAM

Recommended Action: Adopt the following resolution: Resolution No. 2024-01: Authorization for the Execution of the Low Carbon Transit Operations Program (LCTOP) Project "Foothill Transit Hydrogen Fuel Cell Bus Deployment" in the Amount of \$1,227,926 (Attachment A).

In accordance with the Americans with Disabilities Act of 1990, if you require a disability-related modification or accommodation to attend or participate in this meeting, including auxiliary aids or services, please contact the Chief Executive Officer's office at (626) 931-7300 extension 7204, at least 48 hours prior to the meeting.

If you require translation services, please contact the Chief Executive Officer's office at (626) 931-7300 extension 7204, at least 48 hours prior to the meeting.

Si necesita servicios de traducción, comuníquese con la oficina del Director Ejecutivo llamando al (626) 931-7300, extensión 7204, al menos 48 horas antes de la reunión.

若需要翻譯服務，請在會議前至少48小時聯絡執行長辦公室（626）931-7300分機7204

Nếu quý vị yêu cầu dịch vụ dịch thuật, vui lòng liên hệ với văn phòng Giám Đốc Điều Hành theo số (626) 931-7300, số máy lẻ 7204, ít nhất 48 giờ trước cuộc họp

Kung kailangan mo ng serbisyong pagsasalin, mangyaring makipag-ugnayan sa tanggapan ng Punong Ehekutibong Opisyal sa numerong (626) 931-7300 ekstensyon 7204, hindi bababa ng 48 oras bago ang pagpupulong

번역 서비스가 필요한 경우, 회의가 시작되기 최소 48시간 전에 (626) 931-7300 내선 7204번으로 최고경영자실에 연락하십시오.

通訳／翻訳サービスが必要な際は、ミーティング48時間前までに、CEO/最高経営責任者事務所までに連絡してください。CEO事務所
連絡先：（626）931-7300内線7204

اگر به خدمات ترجمه نیاز دارید، لطفاً دست کم 48 ساعت قبل از شروع جلسه با دفتر مدیر عامل به شماره تلفن (626) 931-7300 داخلی (626) 931-7300 تماس بگیرید

ច្បាប់ ឧបករណ៍បំប្លែងភាសាសំឡេង ឬ ការបកប្រែភាសា ត្រូវតែទាក់ទងជាមួយការិយាល័យនាយកក្នុងរយៈពេលយ៉ាងតិច 48 ម៉ោង មុនការប្រជុំ
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ប្រសិនបើលោកអ្នកត្រូវការសេវាកម្មបកប្រែភាសា សូមទាក់ទងការិយាល័យនាយកក្នុងរយៈពេលយ៉ាងតិច 48 ម៉ោងមុនការប្រជុំ (626) 931-7300
លេខក្នុងបន្ត 7204, ដែលមានរយៈពេលយ៉ាងតិច 48 ម៉ោងមុនការប្រជុំ

في حالة الحاجة لخدمات الترجمة، يرجى الاتصال بمكتب الرئيس التنفيذي على رقم الهاتف (626) 931-7300 (الرقم الداخلي 7204) وذلك قبل 48 ساعة على الأقل من الاجتماع

หากคุณต้องการบริการล่าม โปรดติดต่อสำนักงานประธานเจ้าหน้าที่บริหารที่ (626) 931-7300 ต่อ 7204 อย่างน้อย 48 ชั่วโมงก่อนการประชุม



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9. RESOLUTION ADOPTING CHANGES TO THE EXECUTIVE BOARD AND GOVERNING BOARD MEETING SCHEDULE FOR 2024

Recommended Action: Adopt Resolution 2024-02 (Attachment A) adopting changes to the Executive Board and Governing Board Meeting Schedule for 2024 (Attachment B), and adopting the start time of 8:00 a.m. for Executive Board and Governing Board meetings.

10. APPOINTMENT OF Foothill TRANSIT TREASURER

Recommended Action: Adopt Resolution No. 2024-03 (Attachment A) designating the Chief Executive Officer as the Foothill Transit Treasurer.

11. Foothill TRANSIT CLAIMS AND LEGAL MATTERS POLICY

Recommended Action: Adopt the revised Foothill Transit Board Policy related to claims, lawsuits, and handling of legal documents.

12. Foothill TRANSIT FINANCIAL INTEREST DISQUALIFICATION POLICY

Recommended Action: Adopt the proposed Financial Interest Disqualification Policy.

13. DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM UPDATE

Recommended Action: Adopt Foothill Transit's revised FFY 2022 - FFY 2024 DBE Program (Attachment A).

14. PROPOSED PROCUREMENT POLICIES AND PROCEDURES MANUAL REVISIONS

Recommended Action: Adopt the proposed Procurement Policies and Procedures Manual revisions.

15. TRANSPORTATION FUND EXCHANGE - CITY OF SAN GABRIEL

Recommended Action: Authorize the Chief Executive Officer to execute an assignment agreement with the City of San Gabriel to exchange Foothill Transit general use funds for Proposition A Transportation Local Return funds.

16. TRANSPORTATION FUND EXCHANGE - CITY OF TEMPLE CITY

Recommended Action: Authorize the Chief Executive Officer to execute an assignment agreement with the City of Temple City to exchange Foothill Transit general use funds for Proposition A Transportation Local Return funds.



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17. Foothill Transit Employee Compensation Policy Update

Recommended Action: Approve the annual update to the Employee Compensation Policy including two recommended changes to the policy as follows: Provide a one-time merit-based compensation adjustment of 5% for staff who have successfully met their annual goals. Increase the employee reimbursement for out of pocket medical expenses from the current level of \$20,000 to \$30,000.

18. Financial Stability Policy Fiscal Year 2025 Financial Strategies

Recommended Action: Approve the annual Financial Stability Policy update to include the FY2025 financial strategies for budget planning.

19. Authorization to Amend Contract for Special Counsel Services

Recommended Action: Authorize the CEO to execute Amendment No. 7 to Contract No. 19-037.1 with Thompson Coburn LLC in an amount not to exceed \$100,000 for additional special legal services in Fiscal Year 2024 and exercise the first five-year option.

REGULAR AGENDA:

20. Zero Emission Bus and Joint Procurement Funding

Recommended Action: Receive and file the report on Zero Emission Bus and Joint Procurement Funding.

21. Fare Capping

Recommended Action: Receive and file report on a new form of fare collection methodology known as fare capping.

22. Proposed Fiscal Year 2025 Initiatives

Recommended Action: Approve the proposed FY2025 Business Plan Initiatives.

23. Chief Executive Officer Comment

24. Board Member Comment

25. Adjournment



Foothill Transit

**STATEMENT OF PROCEEDINGS FOR THE
REGULAR MEETING OF THE
FOOTHILL TRANSIT EXECUTIVE BOARD**

**FOOTHILL TRANSIT ADMINISTRATIVE OFFICE
2ND FLOOR BOARD ROOM
100 S. VINCENT AVENUE
WEST COVINA, CALIFORNIA 91790**

**Friday, Month Date, 2024
9:45 a.m.**

DRAFT

1. CALL TO ORDER

The meeting was called to order by Chair Moss at 9:51 a.m.

2. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was recited at the Governing Board Meeting held prior to the Executive Board Meeting.

3. ROLL CALL

Roll call was taken by Christina Lopez, Board Secretary.

Present: Member Gary Boyer, Member Corey Calaycay, Member Cynthia Sternquist, Vice Chair Becky Shevlin, Chair Cory Moss

4. CONFIRMATION OF AGENDA BY CHAIR AND CHIEF EXECUTIVE OFFICER

After discussion, by Common Consent, the Chair and Chief Executive Officer confirmed the agenda as presented.

5. PRESENTATIONS

5.1. Introduction of Foothill Transit Business Partners

Keolis Vice President, Business Development Sandy Hill addressed the Executive Board.

6. **GENERAL PUBLIC COMMENT**

No members of the public addressed the Foothill Transit Executive Board.

CONSENT CALENDAR

There was no Public Comment on Consent Calendar items 7 through 14. Item 12 was pulled for presentation by Member Boyer, and item 14 was pulled for presentation by Member Calaycay.

7. **APPROVAL OF MINUTES FOR THE SPECIAL MEETING OF NOVEMBER 3, 2023**

Motion by Member Calaycay, second by Vice Chair Shevlin, to approve.
Motion carried 5-0.

8. **JANUARY 2024 PROCUREMENT MONTHLY REPORT**

Recommendation: Receive and file the Procurement Monthly Report for January 2024.

Motion by Member Calaycay, second by Vice Chair Shevlin, to receive and file. Motion carried 5-0.

9. **EQUAL EMPLOYMENT OPPORTUNITY POLICY**

Recommendation: Adopt the revised Foothill Transit Equal Employment Opportunity (EEO) Policy (Attachment A).

Motion by Member Calaycay, second by Vice Chair Shevlin, to adopt. Motion carried 5-0.

10. **AUTHORIZATION TO AWARD SOLE SOURCE CONTRACT EXTENSION FOR COMPUTER AIDED DISPATCH AND AUTOMATIC VEHICLE LOCATION SYSTEM MAINTENANCE AND SUPPORT AGREEMENT**

Recommendation: Authorize the Chief Executive Officer to enter into a sole source agreement with Avail Technologies, Inc. in the amount of \$2,205,283 over a five-year period for maintenance and support services of Foothill Transit's SMARTBus System. The contract will consist of a five-year base term with the option to terminate for convenience at any point in the term.

Motion by Member Calaycay, second by Vice Chair Shevlin, to approve.
Motion carried 5-0.

11. **AUTHORIZATION TO AWARD SOLE SOURCE CONTRACT FOR PLANNING SOFTWARE UPGRADE AND MAINTENANCE AGREEMENT**

Recommendation: Authorize the Chief Executive Officer to enter into a sole source contract in the amount of \$753,535 with Giro, Inc. to upgrade Foothill Transit's existing Hastus scheduling software and maintenance agreement.

Motion by Member Calaycay, second by Vice Chair Shevlin, to approve.
Motion carried 5-0.

12. **AUTHORIZATION TO AWARD CONTRACT FOR 12 BATTERY ELECTRIC DOUBLE-DECK BUSES**

Recommendation: Authorize the Chief Executive Officer to negotiate final terms and conditions and enter into a Contract No. 24-055 with Alexander Dennis in the amount of \$21,096,000.00 for the purchase of 12 42ft. double-deck battery electric transit buses.

Director of Maintenance and Vehicle Technology Roland Cordero provided an overview of the Alexander Dennis Enviro EV500 double deck bus. He stated that the bus has a range of up to 300 miles, and will serve the Silver Streak bus line. Mr. Cordero introduced Alexander Dennis Vice President of North America Jason Steinbrun who addressed the Executive Board.

Motion by Member Calaycay, second by Vice Chair Shevlin, to approve.
Motion carried 5-0.

13. **AUTHORIZATION TO AWARD CONTRACT FOR STATE ADVOCACY SERVICES**

Recommendation: Authorize the Chief Executive Officer to award a contract and enter into an Agreement with Platinum Advisors for State Advocacy Services in the amount of \$390,000.00 plus reimbursable, reasonable incidental expenses incurred for rendering services. The contract term is for a total of five years, consisting of a base agreement of three years and two one-year options.

Motion by Member Calaycay, second by Vice Chair Shevlin, to approve.
Motion carried 5-0.

14. **AUTHORIZATION TO AWARD CONTRACT FOR ARCADIA IRWINDALE OPERATIONS AND MAINTENANCE FACILITY TRANSIT SERVICES**

Recommendation: Authorize the Executive Director to award a contract to Transdev Services, Inc. for transit operations and maintenance services at Foothill Transit's Arcadia facility. The contract term will be four years. The projected fifty-one month life of the contract is \$350,561,427.

Director of Customer Service and Operations Ali Shokatian reported on the procurement process, evaluation process, pricing, and on the winning proposer's background. Mr. Shokatian introduced Transdev Chief Operating Officer Lauren Skiver who addressed the Executive Board. Ms. Skiver introduced Transdev Regional Vice President Doug Geis who addressed the Executive Board.

Staff responded the comments and questions by members of the Executive Board.

Motion by Member Calaycay, second by Vice Chair Shevlin, to approve. Motion carried 4-0. Member Sternquist recused herself from voting on this item.

REGULAR AGENDA

15. **CHIEF EXECUTIVE OFFICER COMMENT**

Comments by Mr. Doran J. Barnes, Chief Executive Officer, Foothill Transit.

Mr. Barnes reported the following:

- The Strategic Planning Workshop is scheduled to take place on March 1, 2024 at 8:00 a.m.

16. **BOARD MEMBER COMMENT**

Comments by Members of the Foothill Transit Executive Board.

- Member Sternquist stated she missed the video that is played prior to the start of board meetings.

There was no Public Comment related to Closed Session items 17 and 18. The Executive Board recessed into Closed Session at 10:15 a.m.



17. **CLOSED SESSION: CONFERENCE WITH LEGAL COUNSEL—EXISTING LITIGATION** Government Code § 54956.9(d)(1)
Name of Case: *Julian Bryant, et al. v. City of Pomona, Foothill Transit, et al.*
Los Angeles Superior Court Case No. 19STCV46308

18. **CLOSED SESSION: CONFERENCE WITH LEGAL COUNSEL—EXISTING LITIGATION** Government Code § 54956.9(d)(1)
Name of Case: *Jordan Danielle Turner*
Los Angeles Superior Court Case(s) No. 23PSR001943, No. 23PSR001963

The Executive Board reconvened at 11:07 a.m.

19. **CLOSED SESSION REPORT**

General Counsel Darold Pieper reported that there were no reportable actions.

20. **ADJOURNMENT**

Adjournment for the January 26, 2024 Foothill Transit Executive Board Meeting.

There being no further business, the Foothill Transit Executive Board meeting adjourned at 11:08 a.m.



Foothill Transit

**STATEMENT OF PROCEEDINGS FOR THE
STRATEGIC PLANNING WORKSHOP OF THE
FOOTHILL TRANSIT EXECUTIVE BOARD**

**DOUBLETREE
555 FOOTHILL BLVD.
CLAREMONT, CALIFORNIA 91711**

**Friday, March 1, 2024
8:00 a.m.**

DRAFT

1. CALL TO ORDER

The meeting was called to order by Chair Moss at 8:11 a.m.

2. ROLL CALL

Roll call was taken by Christina Lopez, Board Secretary.

Present: Member Gary Boyer, Member Corey Calaycay, Member Dr. John Lloyd (Alternate), Vice Chair Becky Shevlin, Chair Cory Moss

Absent: Cynthia Sternquist

3. PUBLIC COMMENT

No members of the public addressed the Foothill Transit Executive Board.

4. STRATEGIC PLANNING WORKSHOP

Peter Stark, Facilitator

Mr. Stark, representing Peter Barron Stark & Associates, Inc., workshop facilitator, greeted attendees, and provided opening statements covering the overall emphasis of the workshop.

In addition, Mr. Stark gave an overview of Executive Board and staff member interviews conducted in February 2024.

Staff provided verbal presentations on the past, current history, and status of the following topics:

Financial Forecast

Budget and Grants Manager Jorge Quintana presented the operating and capital financial forecast.

Federal Legislative Program

Director of Government Relations Yoko Igawa introduced Foothill Transit federal advocate Jan Powell, who presented a federal legislative update.

State Legislative Program

Director of Government Relations Yoko Igawa introduced Foothill Transit state advocate Steve Wallauch, who presented a state legislative update.

Frequent Network

Director of Planning Joe Raquel presented on the proposed Frequent Network Line 492 Pilot. The board advised staff to advance with presenting the Line 492 Pilot to the Governing Board, with April implementation and with outreach scheduled for the summer.

Governing Board Survey on Meeting Start Times

Board Secretary Christina Lopez presented the results of a survey conducted of the Governing Board regarding the start times of Governing Board Meetings. Based on the results, staff will be recommending that the Executive Board revise the 2024 meeting schedule, so that the start times for Governing Board and Executive Board meetings be changed to 8:00 a.m.

Board Stipend Policy Review

As required by the Executive Board and Governing Board Members Stipend Policy, Board Secretary Christina Lopez presented the annual review of the stipend policy. No changes to the policy are being recommended.

5. **ACTION ITEM: CONTRACT AWARD FOR 19 BUS PROCUREMENT**

Recommendation: Authorize the CEO to enter into a contract for the purchase of 19 transit buses including making progress payments. Provide direction regarding if these should be Fuel Cell Electric Buses (FCEB) or Compressed Natural Gas (CNG) powered buses, or some combination of the two technologies.

Roland Cordero, Director of Maintenance and Vehicle Technology, presented this item.

Mr. Cordero presented an overview of each option under consideration. The cost to purchase 19 fuel cell buses would be \$22.2 million, cost for CNG buses would be \$13.6 million, and the cost for a mixed fleet of 10 fuel cell and 9 CNG buses would be \$20.6 million. Staff responded to comments and questions from members of the Executive Board.

Motion by Member Calaycay, second by Vice Chair Shevlin, to approve authorizing the purchase of 19 fuel cell electric buses. Motion carried 4 (Calaycay, Shevlin, Moss, Lloyd) - 1 (Boyer).

6. **CLOSED SESSION: PUBLIC EMPLOYEE PERFORMANCE EVALUATION**
(Gov't Code § 54957)
Title: Chief Executive Officer

There was no Public Comment on Closed Session item 6.

The Board recessed into Closed Session at 12:53 p.m.

7. **CLOSED SESSION REPORT**

The Executive Board reconvened at 1:45 p.m.

General Counsel Darold Pieper reported that there were no reportable actions.

8. **ADJOURNMENT**

Adjournment for the March 1, 2024 Foothill Transit Strategic Planning Workshop.

There being no further business, the Foothill Transit Strategic Planning Workshop adjourned at 1:45 p.m.



March 29, 2024

To: Executive Board

Subject: **March 2024 Procurement Monthly Report**

Recommendation

Receive and file the Procurement Monthly Report for March 2024.

Awarded Procurements:

Since the previous month's Executive Board meeting on January 26, 2024, there have been four awards of agreements over \$100,000.00 but below the Executive Board's approval threshold of \$250,000.00.

- AlxTel, Inc. was awarded Contract No. 24-043 for the provision of software licenses and support for virtual desktop infrastructure. The Independent Cost Estimate for this solicitation was \$118,575.49 and based on the manufacturer's suggested retail price. The contract is in the amount of \$42,317.50, and was the lowest price of the ten respondents to the solicitation.
- Keolis Transit Services Inc. was awarded Amendment No. 1 Contract No. 23-001 to the provision of operations and maintenance services at the Pomona Operations & Maintenance Facility. The Independent Cost Estimate for this work was \$282,000.00. The amendment is in the amount of \$200,000.00 over the remaining three and half years of the contract due to a need to increase insurance coverage at the Pomona O&M Facility following the acceptance and commencement of operational use of the facility's hydrogen fueling infrastructure. The final amendment price was negotiated by the parties.
- United Site Services of California, Inc. was awarded Contract No. 24-017 for the provision of portable restrooms and wash station at Foothill Transit's downtown bus layover facility for two years. The Independent Cost Estimate for this solicitation was \$126,622.07 and based on previous bids received for the same services. The contract is in the amount of \$28,932.15, and was the lowest price of the five respondents to the solicitation.



- Saitech, Inc. was awarded Contract No. 24-048 for the provision of network switch hardware. The Independent Cost Estimate for this solicitation was \$177,263.67 and based on the manufacturer's suggested retail price. The contract is in the amount of \$95,814.61, and was the lowest price of the twelve respondents to the solicitation.

Upcoming Procurements:

Since the previous month's Executive Board meeting, the Procurement Department has initiated three procurements over \$100,000.00 but below the Executive Board's approval threshold of \$250,000.00.

- Request for Quotes 24-074 for the provision of licenses, hardware, maintenance and support for data back-up systems. The Independent Cost Estimate for this solicitation is approximately \$181,529.00. The solicitation was released on March 13th, with anticipated award occurring in early April.
- Request for Quotations 24-078 for bus radio installation. The Independent Cost Estimate for this solicitation is \$105,000.00 for installation services on buses at both the Arcadia/Irwindale and Pomona Operating and Maintenance facilities. The solicitation was released on March 7th, with anticipated award occurring in early April.
- Invitation for Bids 23-053 for lighting and electrical maintenance services. The Independent Cost Estimate for this solicitation is \$104,256.00 for two years of maintenance and as needed repair service at the Foothill Transit Administrative Office. The solicitation was released in late January and five bids were received by March 7th, with anticipated award occurring in early April.

Sincerely,

Christopher Pieper
Director of Procurement

Doran J. Barnes
Chief Executive Officer



March 29, 2024

To: Executive Board

Subject: **Resolution for the Low Carbon Transit Operations Program**

Recommendation

Adopt the following resolution:

Resolution No. 2024-01: Authorization for the Execution of the Low Carbon Transit Operations Program (LCTOP) Project “*Foothill Transit Hydrogen Fuel Cell Bus Deployment*” in the Amount of \$1,227,926 (Attachment A).

Analysis

The Low Carbon Transit Operations Program (LCTOP) was established by the California Legislature in 2014 to provide operating and capital assistance for transit agencies to reduce greenhouse gas emissions and improve mobility, with a priority on serving disadvantaged communities. This program is designed to fund capital or operating projects that a) reduce greenhouse gases; b) increase transit ridership; and, c) benefit disadvantaged communities. Of all the State programs designed to reduce greenhouse gases from transportation, the LCTOP is unique because of its focus on transit agencies, its formulaic funding structure, and the eligibility of projects to fund transit operations. Through this program, Foothill Transit is eligible to submit an allocation request.

With the Board’s authorization, Foothill Transit will request operating funds to support the deployment of hydrogen fuel cell buses currently operating on Lines 291 and 486. The proposed project for LCTOP will fund about half a year of fueling for hydrogen buses in FY2025.

Attachment A is the proposed resolution for authorization for the execution of the certifications and assurances and authorized agent forms for this LCTOP project.



Budget Impact

This resolution will enable Foothill Transit to submit an allocation request in the amount of \$1,227,926, which will fund fueling costs for the hydrogen fuel cell buses.

Sincerely,

Michelle Lopes Caldwell
Director of Finance & Treasurer

Doran J. Barnes
Chief Executive Officer

Jorge Quintana
Budget and Grants Manager

Board Resolution

RESOLUTION #2024-01

AUTHORIZATION FOR THE EXECUTION OF THE
CERTIFICATIONS AND ASSURANCES AND AUTHORIZED AGENT FORMS
FOR THE LOW CARBON TRANSIT OPERATIONS PROGRAM (LCTOP)
FOR THE FOLLOWING PROJECT(S):

“Foothill Transit Hydrogen Fuel Cell Bus Deployment” in the Amount of
\$1,227,926

WHEREAS, Foothill Transit is an eligible project sponsor and may receive state funding from the Low Carbon Transit Operations Program (LCTOP) for transit projects; and

WHEREAS, the statutes related to state-funded transit projects require a local or regional implementing agency to abide by various regulations; and

WHEREAS, Senate Bill 862 (2014) named the Department of Transportation (Department) as the administrative agency for the LCTOP; and

WHEREAS, the Department has developed guidelines for the purpose of administering and distributing LCTOP funds to eligible project sponsors (local agencies); and

WHEREAS, Foothill Transit wishes to delegate authorization to execute these documents and any amendments thereto to Joyce Rooney, Director of Finance; Jorge Quintana, Budget and Grants Manager; John Xie, Controller.

WHEREAS, Foothill Transit wishes to implement the following LCTOP project(s) listed above,

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of Foothill Transit that the fund recipient agrees to comply with all conditions and requirements set forth in the Certification and Assurances and the Authorized Agent documents and applicable statutes, regulations and guidelines for all LCTOP funded transit projects.

NOW THEREFORE, BE IT FURTHER RESOLVED that Joyce Rooney, Director of Finance; Jorge Quintana, Budget and Grants Manager; John Xie, Controller be authorized to execute all required documents of the LCTOP program and any Amendments thereto with the California Department of Transportation.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of Foothill Transit that it hereby authorizes the submittal of the following project nomination(s) and allocation request(s) to the Department in FY2023-2024 LCTOP funds for \$1,227,926:

Project Name: *Foothill Transit Hydrogen Fuel Cell Bus Deployment*

Short description of project:

Foothill Transit will deploy zero-emission hydrogen fuel cell buses onto lines 486 and 291 to provide zero-emission transit service.

Amount of LCTOP funds requested: \$1,227,926

Benefit to a Priority Populations: Operating zero-emission hydrogen fuel cell buses on Lines 291 and 486 will benefit the disadvantaged communities within the Foothill Transit service area including the Cities of Pomona, La Puente, and El Monte. Operating zero-emission hydrogen fuel cell buses on these lines will provide greater mobility and increased access to clean transportation for disadvantaged community residents.

Amount to benefit Priority Populations: \$1,227,926

Adoption: PASSED AND ADOPTED at a meeting of the Executive Board held on March 29, 2024, by the following vote:

AYES:

NOES:

ABSTAIN:

Cory Moss, Chair

APPROVED AS TO FORM:
Darold D. Pieper, Attorney at Law

ATTEST:
Christina Lopez, Board Secretary

By: _____
Darold Pieper, General Counsel

By: _____
Board Secretary



March 29, 2024

To: Executive Board

Subject: **Resolution Adopting Changes to the Executive Board and Governing Board Meeting Schedule for 2024**

Recommendation

Adopt Resolution 2024-02 (Attachment A) adopting changes to the Executive Board and Governing Board Meeting Schedule for 2024 (Attachment B), and adopting the start time of 8:00 a.m. for Executive Board and Governing Board meetings.

Analysis

The Executive Board adopted Resolution 2023-02, The Executive Board and Governing Meeting Schedule for 2024, at their November 3, 2023 meeting. Meeting start times for 2024 were set at 8:30 a.m. for Governing Board meetings, and 9:45 a.m. for Executive Board meetings. At the January 26, 2024 Governing Board meeting, members expressed concern over meeting attendance and requested that a survey be conducted regarding Governing Board meetings start time.

Based on the Governing Board feedback received from the survey, and further discussion regarding the survey results held at the Executive Board Strategic Planning workshop, it was determined an earlier start time would benefit members of both the Executive Board and Governing Board. The time set for both meetings would be 8:00 a.m. On months that both boards are scheduled to meet, both meetings will be called to order at 8:00 a.m., and the Executive Board Meeting will be immediately recessed until the conclusion of the Governing Board Meeting.

If adopted, the updated meeting schedule will be emailed to Governing Board members and member cities staff.

Sincerely,

Christina Lopez
Board Secretary

Doran J. Barnes
Chief Executive Officer

RESOLUTION NO. 2024-02

A RESOLUTION OF THE EXECUTIVE BOARD OF FOOTHILL TRANSIT ADOPTING CHANGES TO THE 2024 EXECUTIVE BOARD AND GOVERNING BOAR MEETINGS SCHEDULE

The Executive Board of Foothill Transit does resolve as follows:

1. Findings. The Executive Board hereby finds and declares the following:

A. The Joint Exercise of Powers Agreement governing Foothill Transit requires that the dates of the regular meetings of the Governing Board and Executive Board be fixed by resolution.

B. On November 3, 2023, the Executive Board adopted Resolution 2023-02 fixing the dates for the 2024 Executive Board and Governing Board Meetings, which included later start times for the meetings.

C. The later start times may affect a quorum for the Governing Board and Executive Board meetings, and therefore the start times for the Governing Board and Executive Board Meetings are being revised.

2. Action.

A. The Executive Board adopts the revised 2024 Executive and Governing Board Meetings Schedule attached as Attachment B.

3. Adoption. PASSED AND ADOPTED at a meeting of the Executive Board held on March 29, 2024, by the following vote:

AYES:

NOES:

ABSTAIN:

CORY MOSS, CHAIR

ATTEST:

CHRISTINA LOPEZ, BOARD SECRETARY

APPROVED AS TO FORM:

DAROLD PIEPER, GENERAL COUNSEL

By: _____

By: _____



Attachment B

2024 Executive Board & Governing Board Meetings Schedule

January 2024	Friday, January 26 at 8:30 a.m. – Governing Board Meeting Friday, January 26 at 9:45 a.m. – Executive Board Meeting
February 2024	No Meetings scheduled in February
March 2024	Friday, March 1 at 8:00 a.m. – 3:00 p.m. – Strategic Planning Workshop, Location TBD Friday, March 29 @ 8:30 8:00 a.m. – Governing Board Meeting Friday, March 29 @ 9:45 8:00 a.m. – Executive Board Meeting
April 2024	Friday, April 26 at 8:30 8:00 a.m. – Executive Board Meeting
May 2024	Friday, May 31 at 8:30 8:00 a.m. – Annual Governing Board Meeting Friday, May 31 at 9:45 8:00 a.m. – Executive Board Meeting
June 2024	Friday, June 28 at 8:30 8:00 a.m. – Executive Board Meeting
July 2024	No meetings scheduled in July
August 2024	Friday, August 30 at 8:30 8:00 a.m. – Governing Board Meeting Friday, August 30 at 9:45 8:00 a.m. – Executive Board Meeting
September 2024	Friday, September 27 at 8:30 8:00 a.m. – Executive Board Meeting
October 2024	Friday, October 25 at 8:30 8:00 a.m. – Governing Board Meeting Friday, October 25 at 9:45 8:00 a.m. – Executive Board Meeting
November 2024	No meetings scheduled in November
December 2024	Friday, December 13 at 8:30 8:00 a.m. – Executive Board Meeting

Revised:
Adopted: 11/03/2023



March 29, 2024

To: Executive Board

Subject: **Appointment of Foothill Transit Treasurer**

Recommendation

Adopt Resolution No. 2024-03 (Attachment A) designating the Chief Executive Officer as the Foothill Transit Treasurer.

Analysis

The role of the Treasurer at Foothill Transit is to ensure that all financial affairs are managed prudently and in accordance with approved policies and procedures. My employment contract requires me to “...*be responsible for the accuracy of bills and vouchers upon which money is paid; have charge of the books and accounts of Foothill, and provide regular reports to the Executive Board...*” From a practical standpoint, I already serve as the Treasurer for the organization

Budget Impact

This action will not result in a change to the budget as all of the aforementioned duties and responsibilities are already being functionally performed by Foothill Transit staff.

Sincerely,

Doran J. Barnes
Chief Executive Officer

Attachment

RESOLUTION NO. 2024-03

**A RESOLUTION OF THE EXECUTIVE BOARD OF Foothill TRANSIT
APPOINTING THE DIRECTOR OF FINANCE AS THE TREASURER**

The Executive Board of Foothill Transit does resolve as follows:

1. **Findings.** The Executive Board hereby finds and declares the following:

A. California Government Code Section 6505.5 requires Foothill Transit to designate an individual to fill the office of Treasurer and Auditor, while Section 6505.6 provides that an employee of Foothill Transit may fill either office.

B. Section 3.E of the Foothill Transit Joint Exercise of Powers Agreement provides that the Executive Board may designate the Treasurer and Auditor.

C. The Executive Board desires to appoint the Chief Executive Officer, an employee of Foothill Transit, as its Treasurer.

D. The Executive Board desires to continue to appoint an outside certified public accounting firm as its Auditor.

2. **Action.**

A. The Chief Executive Officer is hereby appointed as the Treasurer of Foothill Transit, and this appointment shall remain in full force and effect until such time, if any, as the Executive Board may amend or rescind this Resolution.

3. **Adoption.** PASSED AND ADOPTED at a meeting of the Executive Board held on May 29, 2024, by the following vote:

AYES:

NOES:

ABSTAIN:

APPROVED AS TO FORM:
Darold D. Pieper, Attorney at Law

By: _____
Darold Pieper, General Counsel

Cory Moss, Chair

ATTEST:
Christina Lopez, Board Secretary

By: _____
Secretary



March 29, 2024

To: Executive Board

Subject: **Foothill Transit Claims and Legal Matters Policy**

Recommendation

Adopt the revised Foothill Transit Board Policy related to claims, lawsuits, and handling of legal documents.

Analysis

As a public agency created pursuant to Government Code section 6500 by a Joint Powers Authority agreement, Foothill Transit can sue or be sued. All claims for money or damages against Foothill Transit are governed by Part 3 (commencing with section 900) and Part 4 (commencing with section 940) of the Government Code (the Tort Claims Act). Government Code section 935 authorizes Foothill Transit to adopt local claims procedures for claims that are not governed by any other statutes or regulations.

Foothill Transit's fixed route bus transit services are provided by two experienced operators. The contracts require complete hold harmless, defense, and indemnification of Foothill Transit for all claims and actions asserting personal injury damages or property losses, which arise from bus operations. The contract specifically provides the contractor "shall investigate, handle, respond to, provide defense for, and defend any such claims, at its sole expense, and shall bear all other costs and expenses related thereto, whether or not it is alleged or determined that the Contractor was negligent, and without regard to whether such claim is groundless, false, or fraudulent." The contract terms also provide "Foothill Transit will not hold harmless or indemnify the Contractor for any liability whatsoever."

Recently, staff and Counsel agreed to update the attached Board Policy, which was last reviewed by the Executive Board in 1998. The Adoption of the revised policy and internal procedures will continue to allow Foothill Transit to process tort claims, lawsuits, and all legal documents in a timely manner, reducing legal costs and potential exposure.



Budget Impact

Foothill Transit's current budget includes funding for the legal services required to update this Board Policy.

Sincerely,

John Curley
Chief of Safety and Security

Doran J. Barnes
Chief Executive Officer

Christina Lopez
Board Support Services Manager



DRAFT

Attachment A

Foothill Transit

Claims & Legal Matters Policy	Policy No: ADM1998-001R1
	Revised:
	Page: 1 of 6

Purpose and Background

To establish procedures for the filing of claims and institution of claims and lawsuits, and for handling process servers or individuals serving other legal documents.

As a public agency created pursuant to Government Code section 6500 by a joint powers authority agreement, Foothill Transit can sue or be sued. All claims for money or damages against Foothill Transit are governed by Part 3 (commencing with section 900) and Part 4 (commencing with section 940) of the Government Code (the Tort Claims Act). Government Code section 935 authorizes Foothill Transit to adopt local claims procedures for claims that are not governed by any other statutes or regulations.

Procedures

1. Claims and Actions Against Foothill Transit

Any and all claims for money or damages against Foothill Transit must be presented to, and acted upon, in accordance with the following procedures. Compliance with these procedures is a prerequisite to any court action, unless the claim is governed by statutes or regulations, which expressly release the claimant from the obligation to comply with this policy and the claims procedures set forth in Government Code 900 et seq.

1.1 Form of Claims

All claims must be presented to the Foothill Transit Board Secretary. Please use the form entitled "Claim For Damages" available on the Foothill Transit web site as an attachment to this Policy or upon request to the Foothill Transit Board Secretary.



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Attachment A

Foothill Transit

Claims & Legal Matters Policy	Policy No: ADM1998-001R1
	Revised:
	Page: 2 of 6

1.2 Time Limitations

1.2.1 Claims for money or damages relating to a cause of action for death, injury to person or personal property, or growing crops, shall be presented to the Board not later than six (6) months after the accrual of the cause of action (Government Codes 905 and 911.2).

1.2.2 Claims for money or damages as authorized in Government Code 905 that are not included in Paragraph 1.2.1 above shall be filed not later than one year from the date the cause of action accrues (Government Codes 905 and 911.2).

1.2.3 Claims for money or damages specifically excepted from Government Code 905 shall be filed not later than six (6) months after the accrual of the cause of action (Government Codes 905, 911.2, and 935).

1.3 Late Claims

1.3.1 Claims under "Time Limitations" Paragraphs 1.2.1 and 1.2.3 above, which are filed outside the specified time limitations, must be accompanied by an application to file a late claim. Such claim and application to file a late claim must be filed not later than one year after the accrual of the cause of action. If a claim is filed later than the specified time limitation and is not accompanied by an application to file a late claim, the Board or Chief Executive Officer ("CEO") may, within forty-five (45) days, give written notice that the claim was not filed timely and that it is being returned without further action.



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Attachment A

Foothill Transit

Claims & Legal Matters Policy	Policy No: ADM1998-001R1
	Revised:
	Page: 3 of 6

1.3.2 The application shall state the reason for the delay in presenting the claim. The Board or CEO shall grant or deny the application within forty-five (45) days after it is presented. By mutual agreement of the claimant and the Board, such forty-five (45) day period may be extended by written agreement made before the expiration of such period. If the Board does not take action on the application within forty-five (45) days, it shall be deemed to have been denied on the forty-fifth (45th) day unless such time period has been extended, in which case it shall be deemed to have been denied on the last day of the period specified in the extension agreement.

1.3.3 If the application to present a late claim is denied, the claimant shall be given notice as required by Government Code section 911.8 (Government Codes 911.3, 911.4, 911.6, 911.8, 912.2, and 935).

1.4 Delivery and Form of Claim

1.4.1 A claim, any amendment thereto, or an application for leave to present a late claim shall be deemed presented when delivered to the office of the Board Secretary or deposited in a post office, sub-post office, substation, or mail chute or other like facility maintained by the U.S. Government in a sealed envelope properly addressed to Board Secretary, FOOTHILL TRANSIT, 100 S. Vincent Avenue, Suite #200, West Covina, CA 91790 offices with postage paid (Government Codes 911.4, 915, and 915.2).



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Attachment A

Foothill Transit

Claims & Legal Matters Policy	Policy No: ADM1998-001R1
	Revised:
	Page: 4 of 6

1.4.2 Claims must contain the information set forth in Section 910 and 910.2 of the Government Code (Government Codes 910, 910.2, and 910.4).

1.5 Notice of Claim Insufficiency

The CEO shall cause all claims to be reviewed for sufficiency of information. The CEO or designee may, within twenty (20) days of receipt of claim, either personally deliver or mail to claimant a notice stating deficiencies in the claim presented. If such notice is delivered or sent to claimant, the Board or the CEO shall not act upon the claim until at least fifteen (15) days after such notice is sent (Government Codes 910.8, and 915.4).

1.6 Amendments to Claim

Claims may be amended within the above time limits or prior to final action by the Board or the CEO, whichever is later, if the claim, as amended, relates to the same transaction or occurrence, which gave rise to the original claim.

1.7 Action on Claim

1.7.1 If the Board or the CEO acts properly to reject the claim, the claimant has only six (6) months from such rejection to commence a lawsuit. If the Board and the CEO take no action, the claim is deemed rejected after forty-five (45) days from Foothill Transit's receipt of the claim, but the claimant has two (2) years to commence a suit against Foothill Transit. The notice of rejection must comply with requirements of Government Code 913 unless the claim has no address on it.



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Attachment A

Foothill Transit

Claims & Legal Matters Policy	Policy No: ADM1998-001R1
	Revised:
	Page: 5 of 6

- 1.7.2 If the claim is filed late and not accompanied by an application for leave to present a late claim, then the Board or the CEO must notify the claimant that no action was taken due to the claim being filed late.

- 1.7.3 Within forty-five (45) days after the presentation or amendment of a claim, or upon such further time as may be allowed pursuant to Government Code 915.2, the Board or the CEO shall take action on the claim. This time limit may be extended by written agreement before the expiration of the forty-five (45) day period or before legal action is commenced or barred by legal limitations. The CEO or designee shall transmit to the claimant a notice of action taken. If no action is taken by the Board or the CEO, the claim shall be deemed to have been rejected (Government Code 945.6).

- 1.7.4 The Board delegates to the CEO the authority to take action on claims including allowing or disallowing late claims, agreeing to extend the claim response deadline, and settling claims in an amount not exceeding fifty thousand dollars (\$50,000) (Government Code 935.4). The CEO may delegate the responsibility for signing and sending all notices required by this policy.

2. Acceptance of Garnishments, Wage Attachments, Summons & Complaints

- 2.1 Foothill Transit Board Secretary will accept service of a summons and complaint upon Foothill Transit and/or any Board members being sued in their official capacity as a member of Foothill Transit Board of Directors.



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Attachment A

Foothill Transit

Claims & Legal Matters Policy	Policy No: ADM1998-001R1
	Revised:
	Page: 6 of 6

- 2.2 In compliance with California Civil Code of Procedure 415.20, Foothill Transit Board Secretary will also accept service of a summons and complaint upon one of its employees at its offices under the substituted services of process method provided for in that statute.
- 2.3 Whenever Foothill Transit, as employer, is served with a garnishment and wage attachment, the server should be instructed to present such document to Foothill Transit's Board Secretary.

Revision History:

Revised:

Adopted: February 27, 1998

Effective: February 27, 1998



OFFICIAL USE ONLY
(Date/Time Stamp)

Foothill Transit

CLAIM FOR DAMAGES

1. Claims for death or injury to persons or personal property must be filed not later than six months after the occurrence. (Government Code §911.2)
2. Claims for any other cause of action (ex: contracts and real property) must be filed not later than one year after the occurrence. (Government Code §911.2)
3. Attach separate sheets, if necessary, to give full details and **sign each accompanying sheet.**

Claim must be mailed or delivered to (Gov. Code §915a):

Foothill Transit
Office of the Board Secretary
100 S. Vincent Avenue, Suite #200
West Covina, CA 91790

*Required fields per Government Code §910.

Other fields are optional, but will assist Foothill Transit in determining whether the claim has merit.

*Name of Claimant(s)				
*Home Address	*City	*State	*Zip	Home or Cell Phone No.
*Provide address to which Claimant desires notices to be sent. If same as above, leave blank.				
1. *How did the indebtedness, obligation, injury, damage or loss occur? Provide all details.				
2. Provide date, time and location of incident/occurrence.				
*Date:	Time:	*Location:		
What was the route, bus, or license number? (*IMPORTANT*)				
3. *What particular act or omission by Foothill Transit, its employees, or contractors do you claim caused the indebtedness, obligation, injury, damage or loss? Provide names, if known.				
4. *What indebtedness, obligation, injury, damage or loss do you claim resulted? (If your claim involves property damage to a vehicle, include license, year, make and model of vehicle.)				

5. For personal injury claims, if eligible for Medicare, the following information is required pursuant to Section 111 of the Medicare, Medicaid and SHIP Extension (MMSEA) Act of 2007:		
Date of Birth:	Social Security Number:	Medicare Beneficiary Number <i>(if applicable)</i> :
6. *What is the total amount of money you are seeking to recover? (Check one of the boxes below.)		
<input type="checkbox"/>	The total amount claimed is less than or equal to \$10,000.	
<input type="checkbox"/>	The total amount claimed is more than \$10,000, but not over \$25,000; jurisdiction rests in Superior Court (Limited Civil).	
<input type="checkbox"/>	The total amount claimed is more than \$25,000; jurisdiction rests in Superior Court (Unlimited Civil).	
7. *If the claim is less than or equal to \$10,000, give the PRESENT AMOUNT you claim for each item of indebtedness, obligation, injury, damage or loss and basis of the computation (ex: bills, receipts, invoices, etc.). Please attach documents.		
8. *Give the ESTIMATED AMOUNT you claim for each item of prospective (future) indebtedness, obligation, injury, damage or loss as far as you know. Give basis of the computation.		
9. Provide name of insurance company and contact information for insurance agent. Provide amounts of insurance payments you have received, if any.		
10. Provide name and address of witnesses, doctors and hospitals, if applicable.		
Name:	Address:	Phone Number:

WARNING: IT IS A CRIMINAL OFFENSE TO FILE A FALSE CLAIM (Penal Code § 72; Insurance Code § 556.1)			
I have read the matters and statements made in the above claim and I know the same to be true of my own knowledge, except as to those matters stated upon information or belief and as to such matters, I believe the same to be true. I certify under penalty of perjury that the foregoing is TRUE and CORRECT.			
Name of Agent <i>(if on behalf of Claimant)</i>			
Address of Agent		City	State Zip
Office Phone Number	Fax Number	Cellular Phone Number	
*Signature of Claimant <i>(or Agent)</i>			Date

NOTE: Is this Claim being submitted on behalf of a Class (i.e., more than one person)? If so, pursuant to Government Code §910, please attach to this claim, on a separate sheet, the applicable information for each Claimant.



March 29, 2024

To: Executive Board

Subject: **Foothill Transit Financial Interest Disqualification Policy**

Recommendation

Adopt the proposed Financial Interest Disqualification Policy.

Analysis

Foothill Transit has adopted procurement policies and procedures that are consistent with federal regulations and the laws of the State of California. In preparation for the 2024 FTA Triennial Review updates to the Procurement Policies and Procedures Manual have been proposed to enhance and clarify language covering federal and state requirements for the code of conduct and conflict of interest. Resultant of those changes, best practices include adopting a separate policy to outline procedures required under California law.

The policy formally sets out standards and procedures already in place for disqualifying individuals from participating in contract decisions in which they are deemed to have a financial interest. The policy language mirrors California law which requires public officials and employees to disqualify themselves from making, participating in the making, or using their official position to influence the making of contract decision.

Budget Impact

The proposed adoption of the Financial Interest Disqualification Policy will not impact the budget.

Sincerely,

Christopher Pieper
Director of Procurement

Doran J. Barnes
Chief Executive Officer

Attachment



Foothill Transit

Financial Interest Disqualification Policy	Policy No: PRO2024-001
	Revised:
	Page: 1 of 3

Purpose and Background

To establish standards and procedures for disqualifying individuals from participating in contract decisions in which they are deemed to have a financial interest.

Under California law, Foothill Transit public officials and employees must disqualify themselves from making, participating in the making, or using their official position to influence the making of contract decision.

Requirements and Standards

1. Requirements for Disqualification

Foothill Transit public officials and employees must disqualify themselves from making, participating in the making, or using their official position to influence the making of any decision in which the official or employee has (1) a financial interest or (2) other significant interest, such as a present or potential employment interest in the selection, award, or administration of a contract or subcontract.

2. Standards for Disqualification

A Foothill Transit official or employee (an “official”) has a financial interest in a decision to be made by Foothill Transit if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on any of the following:

- 2.1 The official.
- 2.2 A member of the official’s immediate family (defined as the official’s spouse and dependent children).
- 2.3 A business entity in which the official has a direct or indirect investment worth \$2,000 or more, or in which the official is a director, officer, partner, trustee, employee, or holds any position of management.



Foothill Transit

Financial Interest Disqualification Policy	Policy No: PRO2024-001
	Revised:
	Page: 2 of 3

- 2.4 Real property in which the official has an interest worth \$2,000 or more.
- 2.5 Any source of income, except gifts or loans by a commercial lending institution made in the regular course of business on terms available to the public without regard to the official's status, totaling \$500 or more in value provided or promised to, or received by, the official within the 12 months prior to the time the decision is made.
- 2.6 Any donor or giver of a gift or gifts totaling in excess of the then current gift limit under Government Code § 89503 provided or promised to, or received by, the official with the 12 months prior to the time when the decision is made.

Indirect investment or interest means any investment or interest owned by the spouse or dependent child of the official, by an agent on behalf of the official, or by a business entity or trust in which the official, the official's agents, spouse, and dependent children own directly, indirectly, or beneficially a 10-percent interest or greater.

The **materiality of a financial effect** on an official's financial interest is determined in accordance with sections 18702.1 through 18702.5 of the FPPC Regulation.

Whether a financial effect is **reasonably foreseeable** is determined in accordance with section 18701 of the FPPC Regulation.

Disqualification Procedures

1. Prohibited Participation

A Foothill Transit official, including employees, with a disqualifying conflict of interest may not make, participate in making, or use his or her position to influence a governmental decision. This includes participating in internal meetings or discussions involving the subject of the decision, and presenting before the Executive Board or Governing Board and discussing it with a member of those boards.



Foothill Transit

Financial Interest Disqualification Policy	Policy No: PRO2024-001
	Revised:
	Page: 3 of 3

2. Recusal From Board Meetings

A Foothill Transit board official who is disqualified, by reason of a present or potential conflict of interest, from a decision of Foothill Transit relating to an agenda item under consideration at a Foothill Transit public meeting, shall recuse themselves from the decision by doing all of the following:

- 2.1 Publicly identify the financial or other significant interest(s) giving rise to the conflict of interest in sufficient detail to be understood by the public. This identification must be made immediately prior to consideration of the agenda item at the public meeting and must be oral and be part of the public record.
- 2.2 Publicly recuse themselves from discussing or voting on the agenda item.
- 2.3 Leave the room until after the discussion, vote, or other disposition of the matter is concluded.

A Foothill Transit board official who is disqualified, by reason of a present or potential conflict of interest, from any other decision of Foothill Transit shall recuse themselves from the decision by doing all of the following:

- 2.4 Disclose the financial or other interest orally or in writing.
- 2.5 Ensure that official's presence is not counted toward any necessary quorum.
- 2.6 Leave the room when the decision is considered and do not knowingly obtain or review a recording or any other non-public information regarding the decision (applicable to closed sessions).

Revision History:

Adopted

Effective



March 29, 2024

To: Executive Board

Subject: **Disadvantaged Business Enterprise (DBE) Program Update**

Recommendation

Adopt Foothill Transit’s revised FFY 2022 - FFY 2024 DBE Program (Attachment A).

Analysis

United States Department of Transportation (DOT) regulations stipulate that FTA recipients of planning, capital, and/or operating assistance that will have contracting opportunities (excluding transit vehicle purchases) with those funds exceeding \$250,000 in a Federal fiscal year, must have an approved DBE program. The DBE Program is to be updated whenever there are any significant changes to the program or updates to the mandatory Federal requirements.

The attached policy provides these necessary updates by clarifying certain administrative aspects of the program, providing clarification on the agency’s use of the FDIC’s Minority Depository Institution List and staff responsibilities, as well as designating LaShawn King Gillespie as the Disadvantaged Business Enterprise Liaison Officer.

Foothill Transit’s DBE Program goal for the FFY 2025 - FFY 2027 triennial period will be presented to the Executive Board for consideration at an upcoming meeting following the guidelines presented in this program.

Budget Impact

Costs related to implementation of this policy are included in the Foothill Transit FY24 budget.

Sincerely,

LaShawn King Gillespie
Deputy Chief Executive Officer

Doran J. Barnes
Chief Executive Officer

Michelle Lopes Caldwell
Director of Finance and Treasurer



Foothill Transit
Going Good Places

Disadvantaged Business
Enterprise (DBE) Program
FFY 2022 - FFY 2024

Rev. March 29, 2024

POLICY STATEMENT

Foothill Transit has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. Foothill Transit has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of Foothill Transit to ensure that DBEs as defined in Part 26 have an equal opportunity to receive and participate in DOT-assisted contracts. It is also our policy:

1. To ensure nondiscrimination in the award and administration of DOT-assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in DOT-assisted contracts;
6. To promote the use of DBEs in all types of federally-assisted contracts and procurement activities.
7. To assist the development of firms that can compete successfully in the market place outside the DBE Program.
8. To provide appropriate flexibility in establishing and providing opportunities for DBEs.

Foothill Transit's Deputy Chief Executive Officer has been delegated as the DBE Liaison Officer. In that capacity, the Deputy Chief Executive Officer is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by Foothill Transit in its financial assistance agreements with the Department of Transportation.

Foothill Transit has disseminated this policy statement to the Foothill Transit Executive Board and throughout our organization. We have distributed this statement to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts.

This policy statement is included in the Executive Board agenda on a triennial basis for consideration with the approval of the agency DBE goal. This policy statement is also contained on the Foothill Transit website where DBE and non-DBE businesses may view possible contracting opportunities. The availability of this this statement is/will be advertised along with the DBE goal in local business newspapers. Foothill

**Foothill Transit
DBE Program
FFY 2022- FFY 2024**



Transit also maintains relationships with various local and regional business associations in the area and will provide this policy statement to those organizations for publication and/or distribution.

Doran J. Barnes
Chief Executive Officer

Date

GENERAL PROVISIONS

Definitions (49 CFR 26.5)

Foothill Transit will adopt the definitions contained in Section 26.5 for this program.

Non-Discrimination Requirements (49 CFR 26.7)

Foothill Transit will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin.

In administering its DBE program, Foothill Transit will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE program with respect to individuals of a particular race, color, sex, or national origin.

Record Keeping Requirements (49 CFR 26.11)

Foothill Transit will report DBE participation on a semi-annual basis. These reports will reflect payments actually made to DBEs on DOT-assisted contracts.

Foothill Transit will maintain a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on DOT-assisted contracts. The purpose of this requirement is to allow use of the bidders' list approach to be used in calculating overall goals. The bidders' list will include the name, address, DBE or non-DBE status, age, and annual gross receipts of firms.

We will collect bidders list information in the following ways:

- Foothill Transit's online vendor database for solicitations where registrants may submit DBE status.
- Contract clause requiring prime bidders to report information on firms who provide them with quotes on subcontracts.

We will keep a complete application package for each certified firm and all affidavits of no-change, change notices, and on-site reviews.

Assurances (49 CFR 26.11)

Foothill Transit has signed the following assurances, applicable to all DOT-assisted contracts and their administration:

Assurance: 26.13(a)

Foothill Transit shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. The recipient's DBE Program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to Foothill Transit of its failure to carry out its approved program, the Department may impose sanction as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*).

The DBELO or his/her designee will review all DOT-assisted contracts and subcontracts before execution to ensure that the following clause is placed in every DOT-assisted contract and subcontract:

The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible.

ADMINISTRATIVE REQUIREMENTS

Policy Statement (49 CFR 26.23)

The Policy Statement is set forth on the first page of this program.

DBE Liaison Officer (DBELO) (49 CFR 26.25)

We have designated the following individual as our DBE Liaison Officer:

LaShawn King Gillespie
100 S. Vincent Ave.
Suite 200
West Covina, CA 91790
626.931.7206
lgillespie@foothilltransit.org

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that Foothill Transit complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the Chief Executive Officer concerning DBE program matters. An organization chart displaying the DBELO's position in the organization is found in Attachment 1 to this program.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO has a staff of four to assist in the administration of the program. The duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments within which DOT-assisted contracting opportunities exist or may exist to set overall annual goals.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals attainment, if applicable) and identifies ways to improve progress.
6. Analyzes Foothill Transit's progress toward attainment and identifies ways to improve progress.

7. Participates in pre-bid meetings.
8. Advises the CEO\governing body on DBE matters and achievement.
9. Plans and participates in DBE training seminars.
10. Acts as liaison to the Uniform Certification Process in California.
11. Provides outreach to DBEs and community organizations to advise them of opportunities.

DBE Financial Institutions (49 CFR 26.27)

It is the policy of Foothill Transit to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contract to make use of these institutions. We have made the following efforts to identify and use such institutions:

While we have identified Minority Financial Institutions by checking the Federal Reserve website, we have not been able to confirm their status as economically disadvantaged. Consistent with the direction provided by the FTA in its March 1, 2016 compliance review of Foothill Transit's DBE Program, Foothill Transit encourages the use of institutions identified on the FDIC's Minority Depository Institutions List¹ with the understanding provided by the FTA that the entry of social disadvantage is a sufficient criterion for identifying DBE financial institutions.

Information on the availability of such institutions can be obtained from the DBE Liaison Officer. All DOT-assisted procurements will include information directing interested parties to the Federal Reserve's website for a listing of Minority Banking Institutions and encouraging them to make use of these institutions when possible.

Prompt Payment Mechanisms (49 CFR 26.29)

The DBELO or his/her designee will review all DOT-assisted contracts and subcontracts before execution to ensure that the following or an equivalent clause is placed in every DOT-assisted contract:

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contract receives from Foothill Transit. The prime contractor agrees further to return any retainage payments to each subcontractor within 30 days after the subcontractors work is

¹ Available at: <https://www.fdic.gov/regulations/resources/minority/mdi.html> (last visited February 27, 2024).

satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of Foothill Transit. This clause applies to both DBE and non-DBE subcontracts.

Monitoring Payments to DBEs

Foothill Transit includes the following or an equivalent clause in each DOT-assisted prime contract:

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contract receives from Foothill Transit. The prime contractor agrees further to return any retainage payments to each subcontractor within 30 days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of Foothill Transit. This clause applies to both DBE and non-DBE subcontracts.

The DBELO or his/her designee will review each of the Contractor's subcontracts with DBEs to ensure that the appropriate contract provisions are included.

Foothill Transit engages the services of a Federal labor compliance consultant to audit records and ensure that timely payments are made and that retainage is returned to subcontractors within 30 days of the subcontractor's work being completed.

Foothill Transit's DBELO or his/her designee makes regular, random visits to job sites for DOT-assisted projects on which primes indicate that there is DBE participation to ensure that DBEs are actually performing the work. Foothill Transit's labor compliance consultant reviews records to ensure that payments are being made to those DBEs.

DBE Directory (49 CFR 26.31)

Foothill Transit's Contract Opportunities page on its website directs vendors and potential vendors to the Caltrans Disadvantaged Business Enterprise System² so that they are able to identify all firms eligible to participate as DBEs. This resource lists the firm's name, address, phone number, date of the most recent certification, and the type of work the firm has been certified to perform as a DBE.

Overconcentration (49 CFR 26.31)

² Available at: <https://caltrans.dbesystem.com/> (last visited February 27, 2024).

Foothill Transit's analysis of its contracting opportunities over the past three years indicates that DBEs have performed work in a variety of disciplines including, but not limited to landscaping, elevator construction and installation, paving, trucking, and materials testing and the amount of work performed in those disciplines is not concentrated in any one area.

With each federally-assisted contract award, Foothill Transit will continue to monitor and analyze whether the type of contracts/subcontracts awarded to DBEs suggest an overconcentration in particular fields. After the award of each federally-assisted contract, Foothill Transit will: (1) review the level of DBE participation anticipated for that contract; (2) identify the applicable NAICS code(s) for the participating DBEs; (3) determine the extent to which other DBEs within the same NAICS codes have participated (or are participating) in federally-assisted contracts on which work is being or has been performed within the previous three years; and (4) compare the percentage and volume of DBE firms within those NAICS codes with the overall participation and volume of all firms within those NAICS codes in the applicable geographic area to determine whether overconcentration is occurring.

If overconcentration is found to exist, Foothill Transit will inform the Federal Transit Administration of Foothill Transit's determination, encourage DBEs within the area of overconcentration to expand into other fields, and enhance its communication with its prime contractors and its outreach within the network of DBE vendors to address the overconcentration. These efforts will be documented by the DBELO.

Business Development Programs (49 CFR 26.35)

Foothill Transit's small business development program is discussed below.

Monitoring and Enforcement Mechanisms (49 CFR 26.37)

Foothill Transit will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26.

1. We will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 49 CFR 26.109.
2. We will consider similar action under our own legal authorities, including responsibility determinations in future contracts. Attachment 3 lists the legal authorities and contract remedies available to us in the event of non-compliance with the DBE regulation by a participant in our procurement activities.



3. We will also provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is actually performed by the DBEs. This will be accomplished by regular visits to jobsites and interviews of the personnel performing work.
4. We will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

Small Business Development Mechanisms (49 CFR 26.39)

Foothill Transit fosters participation of small business concerns in projects resulting from procurement activities by implementing multiple strategies, including strategies suggested in Section 26.39(b) of Title 49 of the Code of Federal Regulations.

1. On prime contracts not having contract goals, we require the prime contractor to provide subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform, rather than self-performing all the work involved.
2. In multi-year design-build contracts or other large contracts (e.g., for “megaprojects”) we require bidders or proposers on the prime contract to specify elements of the contract or specific subcontracts that are of a size that small businesses, including DBEs, can reasonably perform.
3. To meet the portion of our overall goal we project to meet through race-neutral measures, we ensure that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform.
4. We identify alternative acquisition strategies and structuring procurements to facilitate the ability of consortia or joint ventures consisting of small businesses, including DBEs, to compete for and perform prime contracts.

SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Prohibition on Set-Asides or Quotas (49 CFR 26.43)

Foothill Transit does not use set-asides quotas in any way in the administration of this DBE program.

Development of Overall Goals (49 CFR 26.45)

A description of the methodology to calculate the overall goal and the goal calculations can be found in Attachment 4 to this program.

In accordance with 49 CFR 26.45(f), Foothill Transit will submit its overall goal to DOT on August 1 at three-year intervals in accordance with the schedule established by FTA. This section of the program will be updated every three years.

Step 1: Determining Base Figure for Relative Availability of DBEs. Foothill Transit will, among other efforts, consult with agencies and organizations such as Los Angeles Metro, Latino Business Association, San Gabriel Regional Chamber of Commerce, the Southern California Minority Business Development Council to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and Foothill Transit's efforts to establish a level playing field for the participation of DBEs.

Following this consultation, we will publish a notice of the proposed overall goal, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at our principal office for 30 days following the date of the notice, and informing the public that Foothill Transit and DOT will accept comments on the goals for 30 days from the date of the notice. This notice will be published using a variety of means, including but not limited to Foothill Transit's website and through classified ads placed in the San Gabriel Valley News, the Inland Valley Daily Bulletin, Excelsior, Sing Tao, Downtown News, and the Los Angeles Times, as well as through our procurement portal at PlanetBids. The notice will include addresses to which comments may be sent and addresses (including offices and websites) where the proposal may be reviewed.

Our overall goal submission to DOT will include a summary of information and comments received during this public participation process and our responses.

We will begin using our three-year overall goal on October 1 of the calendar year following the August 1 submission to FTA, unless we have received other instructions from DOT. If we establish a goal on a project basis, we will begin using our goal by the time of the first solicitation for a DOT-assisted contract for the project.

Shortfall Analysis (49 CFR 26.47)

At the end of any DBE year in which Foothill Transit does not achieve its DBE goal as reflected for that year in Foothill Transit's Triennial DBE Goal, Foothill Transit will perform a Shortfall Analysis. The DBELO will conduct this Shortfall Analysis within two (2) months of the close of the DBE year.

The Shortfall Analysis will analyze, in detail, the reasons for the difference between the DBE goal for that year and the actual DBE participation for that year. The Shortfall Analysis will take into account any efforts previously undertaken by the agency to achieve the DBE Goal. To increase the likelihood that Foothill Transit will achieve its DBE Goal in future years, the DBELO will develop an action plan which will include:

1. Outreach to vendors who were invited to participate in Foothill Transit's contracting opportunities to identify the reasons for their non-participation, and
2. Investigate and utilize other available resources and methods to encourage DBE participation in future contracting opportunities.

Transit Vehicle Manufacturers Goals (49 CFR 26.49)

Foothill Transit will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, to certify that it has complied with the requirements of Sections 26.49(b) and (c) of Title 49 of the Code of Federal Regulations. Alternatively, Foothill Transit may, at its discretion and with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of the TVM complying with this element of the program.

Prior to awarding any federally-funded TVM contract, Foothill Transit will verify that the TVM awardee has fulfilled its requirement to submit a DBE goal methodology and complied with the TVM's DBE Program in accordance with the requirements of Section 26.49(a). In addition, Foothill Transit will notify the Federal Transit Administration within 30 days of making an award of a federally-funded contract to a TVM along with the name of the TVM and the dollar amount of the award.

Breakout of Estimated Race-Neutral & Race-Conscious Participation (49 CFR 26.51(a)-(c))

The breakout of estimated race-neutral and race-conscious participation can be found in Attachment 5 to this program. This section of the program will be updated when the goal calculation is updated and is likely to be revised once Foothill Transit implements the findings of a disparity study, if it is determined that a disparity study is appropriate.

Contract Goals (49 CFR 26.51(d)-(g))

Once Foothill Transit implements the findings of a disparity study, Foothill Transit will use contract goals to meet any portion of the overall goal Foothill Transit does not project being able to meet using race-neutral means. Contract goals will be established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of our overall goal that is not projected to be met through the use of race-neutral means.

We will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. We need not establish a contract goal on every such contract, and the size of contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBEs to perform the particular type of work.)

We will express our contract goals as a percentage of *total amounts of a DOT-assisted contract*.

Once Foothill Transit implements the findings of any disparity study it conducts, the following or equivalent Bid Specification language will be included:

The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of the Foothill Transit to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this contract will be conditioned upon satisfying the requirements of this bid specification. These requirements apply to all bidders/offerors, including those who qualify as a DBE. A DBE contract goal of ____ percent has been established for this contract. The bidder/offeror shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26 (Attachment 1), to meet the contract goal for DBE participation in the performance of this contract.

The bidder/offeror will be required to submit the following information: (1) the names and addresses of DBE firms that will participate in the contract; (2) a description of the work that each DBE firm will perform; (3) the dollar amount of the participation of each DBE firm participating; (4) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal; (5) Written confirmation from the DBE that it is participating in the contract as provided in the commitment made under (4); and (5) if the contract goal is not met, evidence of good faith efforts.

Good Faith Efforts Procedures (49 CFR 26.53)

Demonstration of Good Faith Efforts (26.53(a) & (c))

The obligation of the bidder/offeror is to make good faith efforts. The bidder/offeror can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts. Examples of good faith efforts are found in Appendix A to Part 26.

The following personnel are responsible for determining whether a bidder/offeror who has not met a contract goal has documented sufficient good faith efforts to be regarded as responsive.

We will ensure that all information is complete and accurate and adequately documents the bidder/offeror's good faith efforts before we commit to the performance of the contract by the bidder/offeror.

Information to be submitted (26.53(b))

Foothill Transit treats bidder/offeror compliance with good faith efforts requirements as a matter of responsiveness.

Each solicitation for which a contract goal has been established will require the bidders/offerors to submit the following information:

1. The names and addresses of DBE firms that will participate in the contract;
2. A description of the work that each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
5. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
6. If the contract goal is not met, evidence of good faith efforts.

Administrative reconsideration (26.53(d))

Within two (2) business days of being informed by Foothill Transit that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official:

LaShawn King Gillespie
100 S. Vincent Ave.
Suite 200

**Foothill Transit
DBE Program
FFY 2022- FFY 2024**



West Covina, CA 91790
626.931.7206
lgillespie@foothilltransit.org

The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts.

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with our reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do. We will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

Good Faith Efforts when a DBE is replaced on a contract (26.53(f))

Foothill Transit will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the contract goal. We will require the prime contractor to notify the DBE Liaison Officer immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

In this situation, we will require the prime contractor to obtain our prior approval of the termination and/or the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts.

If the contractor fails or refuses to comply in the time specified, our contracting office will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, the contracting officer may issue a termination for default proceeding.

Counting DBE Participation (49 CFR 26.55)

We will count DBE participation toward overall and contract goals as provided in 49 CFR 26.55.

SUBPART D - CERTIFICATION STANDARDS

Certification Process (49 CFR 26.61-26.73)

Foothill Transit will use the certification standards of Subpart D of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. We will rely on certification decisions of the California Unified Certification Program. However, Foothill Transit will consider the facts as a whole.

For information about the certification process or to apply for certification, firms should contact:

Office of Civil Rights
Attn: Certification Branch
PO Box 942874, MS 79
Sacramento, CA 94274
(916) 324-1700

Or:

Micah F. Scott
(MY-Kaa)
Small Business Liaison
Caltrans - District 7 (Los Angeles/Ventura)
(213) 310-2543
<https://dot.ca.gov/programs/civil-rights/dsbl-contact-list>

Certification application forms and documentation requirements are found at <https://dot.ca.gov/programs/civil-rights/dbe-certification-information>. Assistance is available at DBE.Certification@dot.ca.gov or at (916) 324-1700.

SUBPART E - CERTIFICATION PROCEDURES

Unified Certification Programs (49 CFR 26.81)

Foothill Transit is the member of a Unified Certification Program (UCP) administered by California Department of Transportation (CalTrans). The UPC will meet all of the requirements of this section. The following is a description of the UCP:

The California Unified Certification Program (CUCP) provides “one-stop shopping” certification services to small, minority and women businesses seeking to participate in the United States Department of Transportation (USDOT) Disadvantaged Business Enterprise (DBE) Program. Certification services are offered to businesses seeking to obtain either DBE or airport concessionaire disadvantaged business enterprise (ACDBE) status.

As mandated by USDOT in the DBE Program, Final Rule 49 Code of Federal Regulations (CFR), Part 26, all public agencies that receive USDOT federal financial assistance must participate in a statewide unified certification program. These public agencies, commonly referred to as “recipients” of USDOT funds, include municipalities, counties, special districts, airports, transit agencies, and the State Department of Transportation (Caltrans).

The California Unified Certification Program (CUCP) went into effect on January 1, 2002. It is a “One-Stop Shopping” certification program that eliminates the need for a DBE or ACDBE firm to obtain certifications from multiple agencies within the State. A business certified as a DBE or ACDBE through the CUCP is automatically accepted by all USDOT recipients in California.

The CUCP is charged with the responsibility of overseeing the certification activities performed by various certifying agencies, and compiling and maintaining a single Statewide database of certified DBEs. The Database is intended to expand the use of DBE and ACDBE firms by maintaining complete and current information on those businesses and the products and services they can provide to all USDOT recipients in California. Select the “Directory” link on the top to access the Statewide database.

The CUCP certifying agencies are responsible for certifying DBE firms. You only need to apply for DBE certification at one agency. If your firm meets the General Criteria for DBE certification as provided on the Application Package, submit your completed application, along with the requested documentation, to one of the Certifying Agencies serving the geographical area where your firm has its principal place of business.

Procedures for Certification Decisions (49 CFR 26.83)

“No Change” Affidavits and Notices of Change (26.83(j))

We require all DBEs to inform us, in a written affidavit of any change in its circumstances affecting its ability to meet size, disadvantaged status, ownership or control criteria of 49 CFR Part 26 or of any material changes in the information provided with Foothill Transit’s application for certification.

We also require all owners of all certified DBEs to submit, in a written affidavit, on the anniversary date of their certification, a “no change” affidavit meeting the requirements of 49 CFR 26.83(j). The text of this affidavit is the following:

I swear (or affirm) that there have been no changes in the circumstances of [*name of DBE firm*] affecting its ability to meet the size, disadvantaged status, ownership, or control requirements of 49 CFR Part 26. There have been no material changes in the information provided with [*name of DBE*]’s application for certification, except for any changes about which you have provided written notice to Foothill Transit under 26.83(j). [*Name of firm*] meets Small Business Administration (SBA) criteria for being a small business concern and its average annual gross receipts (as defined by SBA rules) over the firm’s previous three fiscal years do not exceed \$16.6 million.

We require DBEs to submit with this affidavit documentation of the firm’s size and gross receipts.

We will notify all currently certified DBE firms participating in Foothill Transit’s procurements of these obligations by contacting the firms and requesting submission of the “no change” affidavit through an email and/or regular mail request. Additionally, all firms identified in Foothill Transit’s bidders’ list will be asked to submit the affidavit via email notification annually. This notification will inform DBEs that to submit the “no change” affidavit, their owners must swear or affirm that they meet all regulatory requirements of Part 26, including personal net worth. Likewise, if a firm’s owner knows or should know that he or she, or the firm, fails to meet a Part 26 eligibility requirement (e.g. personal net worth), the obligation to submit a notice of change applies.

Interstate Certification (49 CFR 26.85)

Foothill Transit will rely on the CUCP to properly consider, evaluate and process certification applications based upon any firm’s DBE certification from a state other than California.

Removal of a DBE’s Eligibility (49 CFR 26.87)

In the event we propose to remove a DBE’s certification, we will forward our proposal to the CUCP.

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SUBPART F - COMPLIANCE AND ENFORCEMENT

Information, Confidentiality, Cooperation (49 CFR 26.109)

We will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law as applicable in the State of California.

The statement below is included in all Requests for Proposals (RFPs):

The Proposals received become the exclusive property of Foothill Transit. At such time as a contract award is made by Foothill Transit, all Proposals submitted in response to this RFP shall become a matter of public record and shall be regarded as public records, with the exception of those elements of each Proposal which are trade secrets as that term is defined in California Government Code 6254.7 and which are so marked as "TRADE SECRET," "CONFIDENTIAL" or "PROPRIETARY." Foothill Transit shall not in any way be liable or responsible for the disclosure of any such records or portions thereof, including, without limitation, those so marked if disclosure is deemed required by law or by an order of a court. Proposals that indiscriminately identify all or most of the Proposal as exempt from disclosure without justification may be found technically unacceptable.

The statement below is included in all Invitations for Bids (IFBs):

The Bids received become the exclusive property of Foothill Transit. At such time as Foothill Transit publishes its Executive Board Agenda containing a recommended action concerning a contract award, all Bids submitted in response to this IFB shall become a matter of public record and shall be regarded as public records, with the exception of those elements of each Bid which are trade secrets as that term is defined in California Government Code 6254.7 and which are so marked as "TRADE SECRET," "CONFIDENTIAL" or "PROPRIETARY." Foothill Transit shall not in any way be liable or responsible for the disclosure of any such records or portions thereof, including, without limitation, those so marked if disclosure is deemed required by law or by an order of a court. Bids that indiscriminately identify all or most of the Bid as exempt from disclosure without justification may be found technically unacceptable.

Notwithstanding any contrary provisions of state or local law, we will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than DOT) without the written consent of the submitter.

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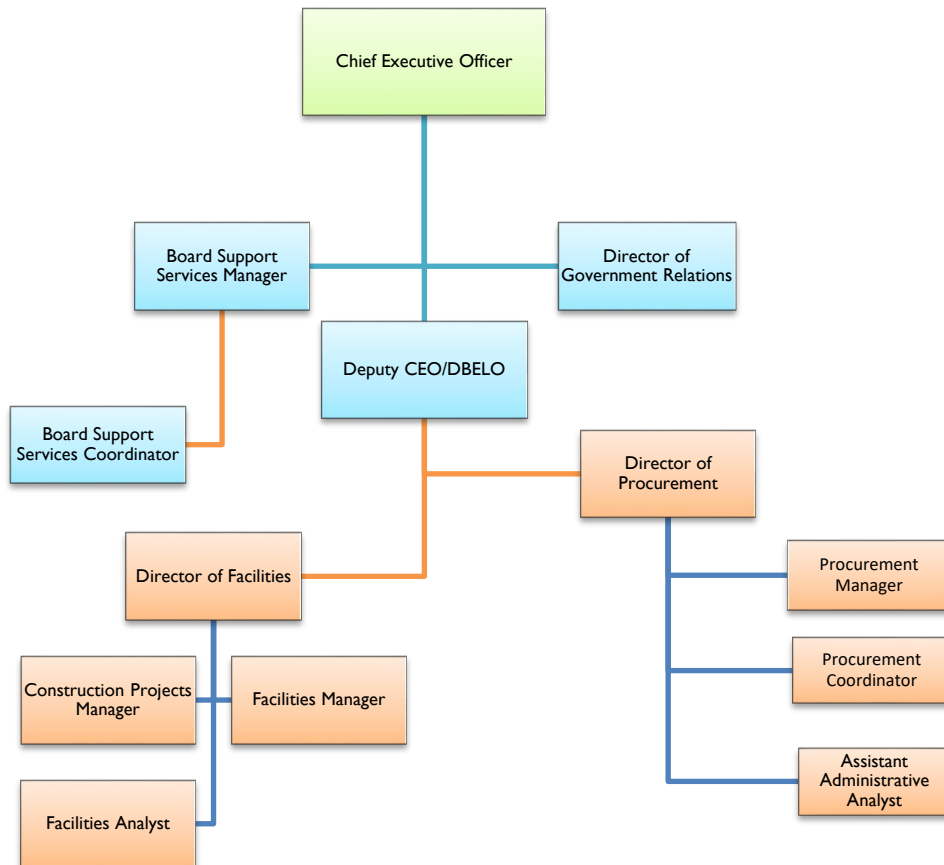


ATTACHMENTS

Attachment 1	Organizational Chart
Attachment 2	DBE Directory
Attachment 3	Monitoring and Enforcement Mechanisms
Attachment 4	Overall Goal Calculations
Attachment 5	Breakout of Estimated Race-Neutral & Race-Conscious Participation
Attachment 6	Form 1 & 2 for Demonstration of Good Faith Efforts
Attachment 7	Certification Application Forms
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Attachment 9	Regulations: 49 CFR Part 26

Attachment 1

Foothill Transit Organizational Chart





Foothill Transit
DBE Program
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Attachment 2

Please reference the California Department of Transportation DBE database:
[Caltrans - Disadvantaged Business Enterprise System \(dbesystem.com\)](https://dbesystem.com)

Attachment 3

Monitoring and Enforcement Mechanisms

Foothill Transit will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26.

The following regulations, provisions, and contract remedies are available to Foothill Transit in the event of non-compliance with the DBE regulations by a contractor in its procurement activities:

1. DBE:

- A. Foothill Transit has established a DBE Program pursuant to 49 C.F.R. Part 26. The requirements and procedures of Foothill Transit's DBE Program are hereby incorporated by reference into this Contract. Failure by any Party to carry out Foothill Transit's DBE Program procedures and requirements or applicable requirements of 49 C.F.R. Part 26 shall be considered a material breach of this Agreement, and may be grounds for termination of this Agreement, or other such appropriate administrative remedy. Each Party shall ensure that compliance with Foothill Transit's DBE Program shall be included in any and all sub-agreements entered into which arise out of or are related to this Agreement.
- B. The Contractor agrees that it will take necessary and reasonable steps to ensure that DBEs as defined in 49 C.F.R. Part 26 have a fair opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this Contract.

The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible.

The Contractor agrees that it will adapt and use the race-neutral means identified in 49 C.F.R. 26.51(b) as appropriate for application to services under this Contract and will, to the maximum extent feasible, undertake these means of encouraging race neutral participation in the performance of its work. Each subcontract the Contractor signs with a sub-contractor will include the above statement.

- C. The Contractor will be required to demonstrate that it has undertaken “good faith efforts” to achieve DBE participation as that term is defined in Section 26.5 of Title 49 of the Code of Federal Regulations and in accordance with the guidance provided in Appendix A to Part 26 of Title 49. The Contractor’s failure to make good faith efforts shall be considered a material breach of the Agreement, and may give rise to certain administrative penalties and proceedings, including, but not limited to, those set forth in 49 C.F.R. 26.107.

2. Prompt Payment:

- A. Within thirty (30) calendar days from receipt by Foothill Transit of an invoice for each payment described in this Section and upon notification to the Contractor by Foothill Transit that Contractor has performed the professional services necessary for payment, Foothill Transit will pay Contractor the amount due. Neither payment of amounts due by Foothill Transit nor acceptance of any such payment by the Contractor shall constitute a waiver of any claim for errors or omission in invoices or payments.
- B. The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contract receives from Foothill Transit. The prime contractor agrees further to return any retainage payments to each subcontractor within 30 days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of Foothill Transit. This clause applies to both DBE and non-DBE subcontracts.

3. Performance Requirement:

- A. The Contractor shall, at all times during the term of the Contract, perform all of its professional services in accordance with appropriate prevailing professional practice standards; and shall furnish all labor, supervision, material and supplies necessary therefor. Notwithstanding the provision of any drawings, technical specifications or other data by Foothill Transit, the Contractor shall have the responsibility of supplying all items and details required to perform the professional services specified in this Contract.

- B. The Contractor shall perform all of its professional services in its own name and as an independent Contractor, and not in the name of, or as an agent for, Foothill Transit. Under the terms of the Contract, the Contractor is an independent contractor and has and retains full control and supervision of the services performed by and full control over the employment and direct compensation and discharge of all persons, other than Foothill Transit representatives, assisting in the performance of its services. The Contractor agrees to be solely responsible for all matters relating to wages, hours of work, and working conditions and payment of employees, including compliance with social security, all payroll taxes and withholdings, unemployment compensation, and all other requirements relating to such matters. The Contractor agrees to be responsible for its own acts and those of its subordinates, employees, and any and all sub-Contractors during the term of the Contract.
- C. The Contractor shall prepare, complete, and submit to Foothill Transit the necessary reports, plans, specifications and the supporting data required to complete the Scope of Work set forth in this Contract.

4. Indemnification:

- A. The Contractor agrees to indemnify, defend, indemnify and hold harmless Foothill Transit against any claims, losses, costs, liability or damages in any way related to a claim that Foothill Transit is violating federal, state or local laws, or any contractual provisions, relating to copyrights, trade names, licenses, franchises, patents or other means of protecting interests in products or inventions. The Contractor shall bear all costs arising from the use of patented, copyrighted, trade secret or trademarked materials, equipment, devices or processes used on or incorporated in the services provided and Works produced under this Agreement. In case such materials, equipment, devices or processes are held to constitute an infringement and their use is enjoined, the Contractor, at its expense, shall: (a) secure for Foothill Transit the right to continue using the materials, equipment, devices or processes by suspension of any injunction or by procuring a license or licenses for Foothill Transit; or (b) modify the materials, equipment, devices, or processes so that they become non-infringing. This covenant shall survive the termination of this Agreement.

5. Disputes:

- A. Any dispute between the Contractor and Foothill Transit relating to the implementation or administration of the Contract shall be resolved in accordance with this Section.
- B. The Parties shall first attempt to resolve the dispute informally in meetings or communications between the Contractor and Foothill Transit's Representative.

If the dispute remains unresolved 15 days after it first arises, the Contractor may request that Foothill Transit's Representative issue a recommended decision on the matter in dispute. Foothill Transit's Representative shall issue the recommended decision in writing and provide a copy to the Contractor.

- C. The recommended decision of Foothill Transit's Representative will become final unless, within 15 days of receipt of such recommended decision, the Contractor submits a written request for review to the Foothill Transit Chief Executive Officer. In connection with any such review, the Contractor and Foothill Transit's Representative shall be afforded an opportunity to be heard and to offer evidence on the issues presented. If the dispute remains unresolved after review by the Foothill Transit Chief Executive Officer, either party may seek resolution through referral to non-binding mediation. If such mediation is unsuccessful, either party may seek judicial resolution of the dispute in an appropriate Court of the State of California. Any party seeking resolution through the Courts of the State of California must, as a condition precedent to the commencement of litigation, demonstrate that it has made a good faith effort to resolve the dispute through the use of non-binding mediation.
- D. Pending final resolution of a dispute under this Section, the Contractor shall proceed diligently with performance in accordance with the Contract and the recommended decision of Foothill Transit's Representative.

6. Subcontracting:

- A. The Contractor will not enter into any subcontract except with the prior review and written approval of Foothill Transit. The Contractor shall be fully responsible for all work performed by any sub-Contractor.
- B. Any approval of a subcontract shall not be construed as making Foothill Transit a party to such subcontract, giving the sub-Contractor privity of contract with Foothill Transit, or subjecting Foothill Transit to liability of any kind to any sub-Contractor.
- C. All subcontracts will incorporate in full all appropriate conditions and terms as set forth in this Contract.

7. Compliance with Laws and Permits

In any of the following cases, Foothill Transit shall have the right to cancel the Contract without expense to Foothill Transit: (1) the Contractor is guilty of misrepresentation; (2) the Contract is obtained by fraud, collusion, conspiracy, or other unlawful means; or (3) the Contract conflicts with any statutory or constitutional provision of the State of California or the United States. This Section shall not be construed to limit Foothill Transit's right to terminate the Contract for convenience or default, as provided in Sections 18 and 19, respectively.

8. Cancellation of Contract:

In any of the following cases, Foothill Transit shall have the right to cancel the Contract without expense to Foothill Transit: (1) the Contractor is guilty of misrepresentation; (2) the Contract is obtained by fraud, collusion, conspiracy, or other unlawful means; or (3) the Contract conflicts with any statutory or constitutional provision of the State of California or the United States. This Section shall not be construed to limit Foothill Transit's right to terminate the Contract for convenience or default, as provided in Sections 18 and 19, respectively.

9. Termination for Default:

- A. Subject to the provisions of subsection C of this Section, Foothill Transit may terminate the whole or any part of the Contract in any one of the following circumstances:
- (1) If the Contractor fails to provide the services in the manner required by the Contract;
 - (2) If the Contractor fails to perform any of the provisions of the Contract in accordance with its terms; or
 - (3) If the Contractor fails to make progress in the prosecution of the work under the Contract so as to endanger such performance.
- B. In the event that Foothill Transit terminates the Contract in whole or in part as provided in Subsection A of this Section, Foothill Transit may procure, upon such terms and in such manner as Foothill Transit may deem appropriate, supplies or services similar to those so terminated. The Contractor shall be liable to Foothill Transit for costs associated with the termination of the Contract, the procurement of replacement services by Foothill Transit, any excess costs of such similar supplies or services, and any increase in the total Contract cost as a result of the procurement of services from the date of termination to the expiration date of the original Contract. The Contractor shall continue the performance of the Contract to the extent not terminated under the provisions of this Section. Any disputes arising under this Section that cannot be resolved by the Contractor and Foothill Transit are subject to resolution pursuant to Section 11.



- C. If Foothill Transit determines that an event of default under this Section has occurred, it shall immediately notify the Contractor in writing and provide the Contractor with thirty (30) days in which to provide a plan to cure such default including a timetable for accomplishing the cure. Foothill Transit must approve the plan and the timetable, which approval shall not be unreasonably withheld. If the Contractor fails to cure in accordance with its plan and timetable, Foothill Transit may declare the Contractor to be in default and terminate the Contract in whole or in part.

- D. Except as otherwise provided, settlement of claims by the Contractor under this termination Section shall be in accordance with the provisions set forth in 48 C.F.R. Part 49, as amended from time to time.

10. False or Fraudulent Statement and Claims:

By executing this Contract the Contractor acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose penalties under the program Fraud Civil Remedies Act of 1986, as amended (31 U. S. C. 3801 et seq.), and implementing Department of Transportation regulations set forth at 49 C.F.R. Part 31.

Attachment 4

Section 26.45: Overall Goal Calculation

Amount of Goal

1. Foothill Transit's overall goal for the following time period 2022 - 2024 is the following: Four (4) percent of the Federal financial assistance we will expend in DOT-assisted contracts, exclusive of FTA funds to be used for the purchase of transit vehicles.
2. \$15,135,000 is the dollar amount of DOT-assisted contracts that Foothill Transit expects to award during FFY 2022 - 2024. This means that Foothill Transit has set a goal of expending \$605,400 with DBEs on these projects during these fiscal years.

Methodology used to Calculate Overall Goal

STEP ONE:

- Projects on which federal funds are expected to be invested during FFY 2022 through FFY 2024 were identified.
 - In-depot hydrogen fueling station
 - Cal Poly Pomona Bronco Mobility Hub
- The various disciplines to be utilized on each project were listed
- The federal investment on each discipline within each project was estimated and listed
- The NAICS codes associated with each discipline was identified and listed
- For each project and NAICS code, a weighting factor was calculated based on the federal financial investment as a percentage of the overall federal financial investment for all of the listed projects
- The relative availability of DBEs by NAICS codes was then calculated by:
 - Identifying the number of DBEs available in Los Angeles County under each of the relevant NAICS codes in the most current list of DBE Certified firms on the Caltrans website
 - Identifying the number of firms (DBE and non-DBE) in the Los Angeles County catchment area available to perform work in each discipline
 - Calculating relative availability as the ratio of the number of DBE firms available in each NAICS code to the number of all firms available in each NAICS code
- The weighted base figure of five (5) percent was calculated by multiplying the weighting factors by the relative availability for each Project and NAICS code and then summing the weighted base figures.

STEP TWO:

- A comparison was made between the projects undertaken in the previous three-year period and those to be undertaken in the upcoming three-year period. The upcoming projects are similar to past projects and utilize many of the same disciplines as in prior years.
 - FFY 2019 – FFY 2021 Projects: Transit Center and Park & Ride Construction; Park & Ride surface lot development; Electric Bus charging station construction
 - FFY 2022 – FFY 2024 Projects: Transit Center Construction; Hydrogen Fuel Cell Bus infrastructure construction
- Because the upcoming projects are similar to those undertaken recently, the median DBE past participation (2.17%) on contracts completed during the last three years and the relative availability of ready, willing and able DBEs in the appropriate NAICS codes were considered and averaged in with the weighted base figure calculated in Step One to determine the DBE Program Goal of four percent for FFY 2022 – FFY 2024.
- The Step 2 adjustment appears reasonable in light of the significant construction activity in and around downtown Los Angeles that is currently occurring and projected to continue through the next several years.

Public Participation

We published our goal information using a variety of means, including but not limited to Foothill Transit’s website and through classified ads placed in the San Gabriel Valley News, the Inland Valley Daily Bulletin, Excelsior, Sing Tao, Downtown News, and the Los Angeles Times, as well as through our procurement portal at PlanetBids.

We received comments from these individuals or organizations: No comments were received

Summaries of these comments are as follows: n/a

Our responses to these comments are: n/a

Attachment 5

Section 26.51: Breakout of Estimated

Race-Neutral & Race Conscious Participation

Foothill Transit will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation. Foothill Transit uses the following race-neutral means to increase DBE participation:

Encourage participation of DBE's in pre-bid conferences

Outreach to DBE trade associations to provide information on Foothill Transit contracting opportunities

Solicit support of DBE trade associations to distribute bid announcements including bid specifications.

Encourage DBE's to discuss their capabilities with prime contractors at pre-bid conferences.

We estimate that, in meeting our overall goal of 4%, we will obtain 4% from race-neutral participation.

As a transit agency operating in California and covered by the decision of the U.S. Court of Appeals for the Ninth Circuit in the case of *Western States Paving Co., Inc. v. Washington State DOT*, Foothill Transit will not adopt race-conscious measures of DBE participation prior to the implementation of a disparity study.

In order to ensure that our DBE program will be narrowly tailored to overcome the effects of discrimination, if we use contract goals we will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual DBE participation (see 26.51(f)) and we will track and report race-neutral and race conscious participation separately. For reporting purposes, race-neutral DBE participation includes, but is not necessarily limited to, the following: DBE participation through a prime contract a DBE obtains through customary competitive procurement procedures; DBE participation through a subcontract on a prime contract that does not carry DBE goal; DBE participation on a prime contract exceeding a contract goal; and DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

We will maintain data separately on DBE achievements in those contracts with and without contract goals, respectively.



Foothill Transit
DBE Program
FFY 2022- FFY 2024

Attachment 6

Forms 1 & 2 for Demonstration of Good Faith Efforts

FORM 1: DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION

The undersigned bidder/offeror has satisfied the requirements of the bid specification in the following manner (please check the appropriate space):

_____ The bidder/offeror is committed to a minimum of _____% DBE utilization on this contract.

_____ The bidder/offeror (if unable to meet the DBE goal of _____%) is committed to a minimum of _____% DBE utilization on this contract a submits documentation demonstrating good faith efforts.

Name of bidder/offeror's firm: _____

State Registration No. _____

By _____ Title _____
(Signature)



FORM 2: LETTER OF INTENT

Name of bidder/offeror's firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Name of DBE firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____

Description of work to be performed by DBE firm:

The bidder/offeror is committed to utilizing the above-named DBE firm for the work described above. The estimated dollar value of this work is \$ _____.

Affirmation

The above-named DBE firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above.

By _____
(Signature) (Title)

If the bidder/offeror does not receive award of the prime contract, any and all representations in this Letter of Intent and Affirmation shall be null and void.

Foothill Transit
DBE Program
FFY 2022- FFY 2024



Attachment 7

Certification Application Forms - N/A



Attachment 8

Procedures for Removal of DBE's Eligibility

In the event we propose to remove a DBE's certification, we will forward our proposal to the CUCP.

Foothill Transit
DBE Program
FFY 2022- FFY 2024



Attachment 9

Regulations: 49 CFR Part 26



March 29, 2024

To: Executive Board

Subject: **Proposed Procurement Policies and Procedures Manual Revisions**

Recommendation

Adopt the proposed Procurement Policies and Procedures Manual revisions.

Analysis

Foothill Transit has adopted procurement policies and procedures that are consistent with federal regulations and the laws of the State of California. The purpose of these policies and procedures is to set forth the procurement methods and establish standards for obtaining Goods and Services, including Public Works Construction Projects, and Architectural/Engineering services necessary for the delivery of Foothill Transit's service. These procedures include guidelines for the solicitation, award, and administration of formally advertised contracts, as well as the selection, negotiation, award, and administration of competitively negotiated contracts.

The Executive Board adopted the current version of the Foothill Transit Procurement Manual in September 2023. The Procurement Manual documents Foothill Transit's procurement policies. As federal and state guidelines change, the Procurement Manual must sometimes be updated to reflect these changes.

The proposed changes to the Foothill Transit Procedures reflect clarifications to federal and state regulations and enhancements of existing language, and do not significantly impact existing Foothill Transit procedures. A redlined version of the policies and procedures manual is included as Exhibit A.

The following revisions to the Procurement Policies and Procedures Manual are proposed:

1. Update to Include Clarifications with Federal and State Requirements
Enhances existing language to further align with current federal and state regulations pertaining to standards of conduct and conflict of interest to fully clarify requirements subject review in the 2024 FTA Triennial Review.



Budget Impact

The proposed revisions to the Foothill Transit Procurement Policies and Procedures Manual will not impact the budget.

Sincerely,

Christopher Pieper
Director of Procurement

Doran J. Barnes
Chief Executive Officer

Attachment



Foothill Transit
Going Good Places

**Procurement
Policies and Procedures
Manual**

~~September 2023~~ March 2024

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INTRODUCTION

Foothill Transit has major responsibilities, which include the operation of a public transportation system and the planning, design, and programming of transportation projects. All contracts are awarded by Foothill Transit by its own procurement office, which is responsible for identifying the needs of Foothill Transit and originating the procurement package for supplying those needs.

Foothill Transit receives funding from both the Federal government and the state. Therefore, Foothill Transit adopts procurement policies and procedures that are consistent with Federal regulations and the laws of the State of California. These procedures apply to all procurements irrespective of the source of the funds. Specific requirements for procurements funded by the Federal Transit Administration (FTA) are so identified. These procedures also apply to any revenue contract, the primary purpose of which is to either generate revenues in connection with a transit-related activity or to create business opportunities utilizing an FTA-funded asset.

The purpose of these policies and procedures is to set forth the procurement methods and establish the applicable standards for obtaining goods and services, including construction, professional, and Architectural/Engineering services, necessary for the operation of Foothill Transit's transit service. These procedures include guidelines for the solicitation, negotiation, award or selection, and administration of all contracts.

The procurement procedures are designed to:

- Instill public confidence in the procurement process of Foothill Transit.
- Ensure fair and equitable treatment for all vendors who seek to deal with Foothill Transit.
- Ensure maximum open and free competition in the expenditure of public funds.
- Provide the safeguards to maintain a procurement system of quality and integrity.

The methods by which the foregoing are implemented are described in detail in the remainder of this document and the attachments hereto.

The procurement process is ongoing throughout the fiscal year. During budget preparation, each department head should identify, to the extent possible, all goods and services that will need to be procured during the upcoming fiscal year (July 1 - June 30).

CHAPTER I – LEVELS OF APPROVAL

Every procurement requires two determinations at the outset:

- (1) The **method of procurement** applicable to the procurement at issue; and
- (2) The **level of approval** required for (a) issuance of the solicitation document and (b) contract award.

The **method of procurement** is determined by the type and anticipated (and actual) cost of the goods or services being procured. There are three general categories of methods of procurement: (1) Informal (which includes Micro Purchases and Small Purchases); (2) Formal (which includes IFBs/Sealed Bids and RFPs/Competitive Proposals); and (3) Noncompetitive Procurements. Goods or services being procured through a cooperative purchasing agreement (such as the California Multiple Award Schedule (CMAS)) or on a pre-approved non-competitive basis (such as through the sole source process) do not require a “method of procurement” determination. The anticipated cost of the procurement is established by independent cost estimate and must take into account the cost of the base term and all options requested in the solicitation. A procurement must meet the requirements, by type and cost, of the chosen method of procurement at *both* the solicitation phase and the award phase.

The **level of approval** is also determined by the type and anticipated and actual cost of the goods or services being procured. For purposes of determining the applicable level of approval, the cost of the procurement takes into account only the cost of the base term requested in the solicitation and/or proposed for award.

The following approval levels apply to the foregoing determinations:

A. Goods and Services

Procurement of services, supplies, or other property, **except for** Architectural and Engineering services and public works/construction projects.

<i>Price Threshold</i>	<i>Method of Procurement</i>	<i>Required Approval Level</i>
Less than \$10,000*	Micro Purchase	Department Heads
\$10,000-\$19,999	Small Purchase	Department Heads
\$20,000-\$250,000*	Small Purchase	Chief Executive Officer
Greater than \$250,000	RFP or IFB	Executive Board

* Federal regulations permit recipients of Federal funds to use the stated thresholds.

Foothill Transit Procurement Policies and Procedures

Please note that Department Heads are not authorized to delegate their approval authority.

B. Architectural and Engineering Services

Procurement of professional consultants for engineering, architectural, land surveying, or other support services, such as program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping, or related services as it relates to research, planning, development, design, construction, alteration, or repair of real property.

<i>Price Threshold</i>	<i>Method of Procurement</i>	<i>Required Approval Level</i>
Less than \$20,000	RFQ	Department Heads
\$20,000 - \$250,000	RFQ	Chief Executive Officer
Greater than \$250,000	RFQ	Executive Board

C. Public Works (Including Construction) Projects

Procurement of labor and/or materials for construction or other public works projects.

For the purposes of this section, public works are defined in Article 3.5 of the California Public Contract Code, which requires that any public works project over \$6,500 be done by contract after competitive bidding. Public work projects include construction of any building or facility and any painting or repairs to any building or facility. Cal. Pub. Cont. Code 20121, 20122. (Note that the California Labor Code broadly defines “public works” for purposes of prevailing wage laws. State prevailing wage requirements apply to public works in excess of \$1,000, regardless of whether such “public works” also fit the definition provided in Public Contract Code 20121.)

<i>Price Threshold</i>	<i>Method of Procurement</i>	<i>Required Approval Level</i>
Less than \$6,500	Small Purchase	Department Heads
\$6,500 - \$250,000	IFB	Chief Executive Officer
Greater than \$250,000	IFB	Executive Board

D. Sole Source

Procurements accomplished through solicitation or acceptance of a proposal from only one available source or solicitation of a number of sources in which competition is determined inadequate.

<i>Price Threshold</i>	<i>Method of Procurement</i>	<i>Required Approval Level</i>
Less than \$20,000	Sole Source	Department Heads
\$20,000-\$250,000	Sole Source	Chief Executive Officer
Greater than \$250,000	Sole Source	Executive Board

E. Change Orders and Amendments

Any amendments and/or individual change orders will be approved at the same price threshold as the underlying contract (e.g., a change order of between \$20,000 and \$250,000 must be approved by the Chief Executive Officer; a change order of over \$250,000 must be approved by the Executive Board), except in the following circumstances:

1. When the cumulative value of all amendments or change orders to a contract is at or exceeds \$20,000, the amendment or change order responsible for meeting or exceeding the \$20,000 threshold and all future individual amendments or change orders that increase the cost for that contract must be approved by the Chief Executive Officer.
2. When the cumulative value of all amendments or change orders to a contract exceeds \$250,000, the amendment or change order responsible for exceeding the \$250,000 threshold and all future individual amendments or change orders that increase the cost for that contract must be approved by the Executive Board (e.g., if there have been four change orders for a contract totaling \$240,000, and there is a fifth change order for \$11,000, the fifth change order and all future change orders must be approved by the Executive Board).
3. For contracts with an Executive Board-approved value of over \$5,000,000, the Chief Executive Officer is authorized to approve individual change orders with a value equal to five percent (5%) or less of the Board-approved contract value. When the cumulative value of all change orders for such contracts exceeds five percent (5%) of the Board-approved contract value, the change order responsible for exceeding the five percent (5%) threshold and all future individual change orders for that contract must be approved by the Executive Board.
4. Amendments to an Executive Board-approved contract that implement changes that are specifically set forth in the contract or any prior amendment to

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the contract (i.e., escalator clause) or that are a result of a separate Board action (i.e., approval of Foothill Transit's Business Plan and Budget) may be approved by the Chief Executive Officer, and the value of such amendments do not count toward the cumulative value of amendments or change orders to the contract.

5. For on-call contracts (contracts requiring the issuance of task orders), the addition of each task order scope by amendment will be approved at the level of approval required for the value of the task order at issue (e.g., a task order for \$15,000 may be approved by a department head; a task order of \$50,000 must be approved by the Chief Executive Officer) where the value of the individual task order at issue is below \$250,000. For task orders with an individual value at or above \$250,000, approval of the Executive Board is required. The cumulative value rules set forth in (1)-(3) above do not apply to amendments of on-call contracts.

6. Administrative amendments to an Executive Board-approved contract may be approved by the Chief Executive Officer, provided that such amendments do not have any impact on the overall contract value. Examples include but are not limited to changes in contractor notification information, changes in key personnel and required updates to contract clause language.

F. Delegations

Except as otherwise provided in these procedures and specifically in this Chapter related to levels of approval, all rights, powers, duties, and authorities relating to the procurement of supplies, services, and construction vested in the Chief Executive Officer are hereby delegated to the Deputy Chief Executive Officer.

Except as provided in these procedures, all rights, powers, duties, and authorities delegated to the Deputy Chief Executive Officer are, in turn, delegated to the Director of Procurement.

The Director of Procurement may delegate approval to the Director of Procurement's staff as necessary. Approvals allowed only to the Chief Executive Officer, Deputy Chief Executive Officer, or the Director of Procurement may not be delegated, provided, however, that the Chief Executive Officer may delegate signature authority to the Deputy Chief Executive Officer.

The Executive Board is specifically authorized to execute approval authorized at any level.

The Chief Executive Officer and/or the Deputy Chief Executive Officer are specifically authorized to execute approvals delegated to the Director of Procurement.

CHAPTER II – POLICIES

Foothill Transit is governed by a five-member Executive Board. Among other duties, Foothill Transit's Executive Board is responsible for establishing policies to guide the operation of Foothill Transit. It is in that capacity that the Board adopted a set of procurement policies. These policies serve as a base upon which procurement procedures can be developed.

Foothill Transit's Board has adopted related policies which serve to guide procurement activities. Those policies are summarized in this Section.

A. Revision of Procurement Procedures

The Director of Procurement is responsible for updating and clarifying these procurement procedures on an as-needed basis. All substantive changes to procurement policies shall be reviewed and approved by the Executive Board.

B. Standards of Conduct and Conflict of Interest Policies

There will be uniform and equitable application of the Standards of Conduct of Foothill Transit involving all activities associated with the procurement of goods and services. ~~This section defines responsibility to~~ All Foothill Transit Governing Board members, employees, and agents engaged in the selection, award, or administration of contracts are responsible for identify-identifying and prevent preventing a real-or-apparentpresent or potential conflicts of interest.

1. Conflict of Interest

No Governing Board Member, ~~or employee, or agent~~ of Foothill Transit shall participate in the selection, award, or administration of a contract if a present or potential conflict of interest, ~~real-or-apparent~~, would be involved.

Such a conflict is determined in accordance with the Conflict of Interest Code adopted by the Foothill Transit Executive Board. Such a conflict would arise when a Governing Board Member, Foothill Transit employee, Foothill Transit agent, an immediate family member or partner of a Governing Board Member or Foothill Transit employee, any of the foregoing persons, or an entity or organization that employs or is about to employ any person that has a relationship with any of the foregoing persons or an immediate family or partner of any of the foregoing persons, has a present or potential financial or other significant interest, such as a present or potential employment interest, in the selection, award, or administration of a contract or subcontract.

Any individual who believes such a conflict exists is:

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- a. Required to report the conflict as provided in the Foothill Transit Conflict of Interest Code.
- b. Prohibited from engaging in any activities involving the contract or subcontract, including the selection, award or administration of such contract or subcontract, in which the individual has a present or potential financial or other significant interest. In cases where there may be such an interest, either direct or indirect, there is a responsibility to report in writing such interest to the Executive Board.

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Anyone who violates these provisions is subject to penalties, sanctions, or other disciplinary actions as permitted by state or local law or regulations. If anyone fails to report such interest, he or she will be subject to any disciplinary proceeding deemed appropriate by Foothill Transit, including possible dismissal.

Governing Board members and employees of Foothill Transit shall be subject to the conflict of interest laws of the State of California. Anyone who violates the standards of the law shall be subject to the penalties, sanctions, or other disciplinary actions provided for therein.

~~In addition,~~ Foothill Transit will disclose in writing any potential conflict of interest to the Federal Transit Administration or other United States Department of Transportation component making a financial assistance award to Foothill Transit in accordance with applicable Federal awarding agency policy.

2. Gratuities, Kickbacks, and Contingent Fees

No Governing Board member, ~~or~~ employee, or agent of Foothill Transit shall solicit, demand, or accept from any person, contractor, potential contractor, or potential subcontractor anything of a monetary value, including gifts, gratuities, and favors except as the receipt and reporting of gifts is permitted by The Political Reform Act (California Government Code Section 81000, *et seq.*). Anyone failing to adhere to the above will be subject to any disciplinary proceeding deemed appropriate by Foothill Transit, including possible dismissal.

3. Confidential Information

No Governing Board member ~~nor~~ or employee of Foothill Transit shall use confidential information for his or her actual or anticipated personal gain, or the actual or anticipated personal gain of any other person related to them by blood, marriage, or by common commercial or financial interest. Anyone failing to adhere to the above will be subject to any disciplinary proceeding deemed appropriate by Foothill Transit, including possible dismissal.

4. Organizational Conflict of Interest

It is the policy of Foothill Transit to avoid taking an action that might result in or create the appearance of an organizational conflict of interest.

An organizational conflict of interest occurs (A) where a contractor is unable, or potentially unable, to render impartial assistance or advice to Foothill Transit due to activities, relationships, contracts, or circumstances (financial or otherwise) which may impair the contractor's objectivity; (B) a contractor has an unfair competitive advantage through receipt of or obtaining access to nonpublic information; or (C) during the performance of an earlier contract or the conduct of a procurement, the contractor has established the ground rules for the solicitation or selection of the services or goods to be acquired by developing or drafting specifications, requirements, statements of work, evaluation factors, solicitations, or similar documents.

Based on this policy:

- a. Reference in Procurement Documents. Foothill Transit shall specify or otherwise reference the policy concerning organizational conflicts of interest found herein in all procurement documents, including but not limited to those for Federally-funded projects and activities, design-build projects, and procurements for design-build related activities (*i.e.*, engineering services, inspection, or technical support in the administration of the design-build projects).
- b. Pre-Award Disclosure. Foothill Transit shall require every vendor to certify the absence of, or disclose to Foothill Transit, any real or apparent organizational conflict of interest at the time of submission of the vendor's bid, proposal, or offer. If a disclosure is necessary, Foothill Transit shall require the vendor to describe in detail why it believes, in light of the interest(s) identified, that performance of the proposed contract can be accomplished in an impartial and objective manner or why the identified interest otherwise does not afford the vendor an unfair competitive advantage. Foothill Transit shall further require that the disclosure include all relevant facts concerning any past, present, or planned interests that may present an organizational conflict of interest. The refusal to provide the disclosure or certification, or any additional information required, may result in disqualification of the vendor for award.
- c. Review of Pre-Award Disclosure. Foothill Transit's contracting officer shall review the disclosure and may request additional information from the vendor. All information given by the vendor, and any other relevant information known to Foothill Transit, shall be used to determine whether an award to the vendor may create an organizational conflict of interest. If any organizational conflict of

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interest is found to exist, Foothill Transit may (1) disqualify the vendor or (2) determine that it is otherwise in the best interest of Foothill Transit to contract with the vendor and include appropriate provisions to mitigate or avoid such conflict in the contract awarded.

- d. Post-Award Disclosure. After award, conflict of interest guidelines and policies shall continue to be monitored and enforced. Foothill Transit shall include contract provisions in every contract that require the contractor to make an immediate and full disclosure of any organizational conflicts of interest, real or apparent, that could not reasonably have been known or discovered prior to contract award, which include those that may have arisen after contract award. The disclosure shall include a full description of the organizational conflict(s) and a description of the action(s) the contractor has taken, or proposes to take, to avoid or mitigate the organizational conflict. Foothill Transit may terminate the contract for cause if Foothill Transit determines that the conflict has not been adequately avoided or mitigated or for convenience if it is otherwise in Foothill Transit's best interest to terminate. If a non-disclosure or misrepresentation of or concerning an organizational conflict is discovered after award of a contract, Foothill Transit may terminate the contract for cause.
- e. Procurements Involving Environmental Documents. In any procurement based or relying on environmental documents prepared by, or in concert with, contractor or consultant support, the procurement documents shall contain a notice identifying which companies and consultants contributed to the documents.

5. Mandatory Disclosures – Federal Awards

Foothill Transit shall timely disclose in writing all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting a Federal award to the Federal Transit Administration or other applicable Federal awarding agency.

C. Purchasing Policies

1. Equal Employment Opportunity/Affirmative Action

All procurement documents issued by Foothill Transit shall require all interested vendors to certify:

- a. That the vendor does not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, age, creed, disability, or national origin;

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- b. That the vendor is in compliance with all Executive Orders and Federal, State, and local laws regarding fair employment practices and non-discrimination in employment; and
- c. That the vendor agrees to demonstrate positively and aggressively the principle of equal opportunity in employment.

2. Disadvantaged Business Enterprise

a. General Policy

The Executive Board of Foothill Transit has determined as a matter of policy that whenever Federal funds are used to support a procurement, disadvantaged business enterprises (DBEs), as defined in 49 C.F.R. Part 26, shall have the opportunity to compete fairly for contracts financed in whole or in part with Federal funds. Accordingly, and as required by 49 C.F.R. Section 26.13, each such prime contract entered into by Foothill Transit (and each subcontract a prime contractor enters into with a subcontractor) must include the following assurance:

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of U.S. DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as Foothill Transit deems appropriate.

b. Contract Goals

Foothill Transit's DBE Liaison Officer shall be responsible for determining whether to establish a DBE goal for each Federally-assisted contract. The setting of DBE contract goals shall be consistent with the provisions of 49 C.F.R. §§ 26.51(c) through (f).

c. Contractor Compliance

Proposers and bidders must take necessary and reasonable steps to ensure that DBEs have a fair opportunity to participate in the proposed contract and/or subcontracts. If a proposer or bidder qualifies as a certified DBE or is joint venturing with a certified DBE, a copy of the DBE certification(s) and a description of the dollar value of the proposed work that it intends to perform with its own forces, together with a statement of the percentage interest in the contract held by a joint venturer DBE must be submitted with its proposal or

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bid. If a proposer or bidder intends to utilize DBE subcontractors, it must identify the subcontractors in its proposal or bid and set forth the percentage value of the work to be performed by the subcontractors utilizing the "Designation of Subcontractors" and "Designation of DBE Subcontractors" forms that are included with each invitation for bids or request for proposals, as appropriate.

In the event that Foothill Transit has established a DBE goal for a contract, each proposer or bidder must, prior to contract award, document that it has obtained sufficient DBE participation to meet the contract's goal or document that it has made adequate good faith efforts to meet the goal, even though it did not succeed in obtaining enough DBE participation to do so. In instances in which DBE subcontractors are utilized to meet a contract goal, a successful proposer will be required to submit documentation with its initial proposal as a matter of responsibility and a bidder will be required to submit documentation with its sealed bid as a matter of responsiveness. In addition to the information on the "Designation of DBE Subcontractors" form, this documentation must include (1) written documentation of the proposer's or bidder's commitment to use identified DBEs; and (2) written confirmation from the DBE that it is participating in the contract.

d. Good Faith Efforts

When a proposer or bidder indicates that it cannot meet a contract goal, its submitted documentation must also include evidence of good faith efforts undertaken by the proposer or bidder to achieve DBE participation sufficient to meet the goal. For purposes of determining the adequacy of those efforts Foothill Transit shall be guided by Appendix A to 49 C.F.R. Part 26.

e. Tracking Participation

Foothill Transit shall require contractors to submit monthly reports identifying payments made to DBE firms.

f. Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Areas

Foothill Transit shall take all necessary affirmative steps to assure that minority businesses, women's businesses, and labor surplus area firms are used when possible. If contractors award subcontracts, Foothill Transit shall require that they take all necessary affirmative steps to assure such firms are used when possible.

g. Prompt Payment to Subcontractors

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Foothill Transit shall include in all contracts a requirement that the prime contractor pay its subcontractors on a timely basis. Foothill Transit shall include an obligation in contracts requiring the contractor to comply with laws and regulations, including but not limited to 49 C.F.R. § 26.29, which requires the contractor to pay subcontractors for satisfactory performance not later than 30 days from the contractor's receipt of payment from Foothill Transit and, if applicable, CA Bus & Prof Code § 7108.5 and CA PCC § 10262.5, which require the contractor to pay subcontractors for satisfactory performance not later than 7 days from the contractor's receipt of payment from Foothill Transit.

3. Veterans Employment

Foothill Transit shall require contractors working on a capital project funded using Federal assistance to give a hiring preference, to the extent practicable, to veterans (as defined in 5 U.S.C. § 2108) who have the requisite skills and abilities to perform the construction work required under the contract. This requirement shall not be understood, construed, or enforced in any manner that would require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

4. Cooperative Procurement

When circumstances warrant, Foothill Transit may attempt to fill requirements through a cooperative purchasing agreement with the State of California, the County of Los Angeles, or other appropriate public or private cooperative procurement agency.

5. Open Competition Required

All procurement transactions will be conducted in a manner providing full and open competition. Some situations considered to be restrictive of competition include, but are not limited to:

- a. Unreasonable requirements placed on firms in order for them to qualify to do business.
- b. Unnecessary experience and excessive bonding requirements.
- c. Noncompetitive pricing practices between firms or between affiliated companies.
- d. Noncompetitive award to any person or firm on retainer contracts.

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- e. The specification of only a brand name product without listing its salient characteristics and not allowing an equal product to be offered.
- f. Exclusionary or discriminatory specifications.
- g. Any arbitrary action in the procurement process.

The Director of Procurement will monitor each procurement and document all of the steps taken during the procurement to ensure that there are no arbitrary actions taken during the procurement process, and that each procurement document includes all requirements expected of bidders or offerors.

If Foothill Transit establishes any list(s) of prequalified persons, firms, or products to use in acquiring goods and services, Foothill Transit shall ensure that such lists are current and include enough qualified sources to ensure maximum open competition.

6. Efficient and Economic Purchases

The Director of Procurement will review all proposed procurements to ensure that there are no purchases of unnecessary or duplicative items; and to determine whether it is necessary and/or appropriate to consider consolidating or breaking out procurements to obtain more economical purchases. The Director of Procurement will, in consultation with the Director of Finance, examine major procurements to determine if it is in Foothill Transit's best interest to enter into a capital lease rather than to make a purchase.

7. Public Records Act and Brown Act

Ownership of Records – All Proposals, Bids, or Offers received in response to a procurement become the exclusive property of Foothill Transit, except questionnaires and/ or financial statements submitted as part of a proposal, bid, or offer, in accordance with California Public Utilities Code § 99154. Such questionnaires and financial statements shall be returned to vendors not selected for contract award by Foothill Transit within thirty (30) days after the earlier of approval of award to the successful vendor by Foothill Transit's Executive Board or contract award, if Executive Board approval is not required.

Marking of Documents – Vendors shall clearly designate and mark information deemed confidential, proprietary, or trade secret consistent with California Government Code § 6254.7(d). Proposals, Bids, or Offers that indiscriminately identify all or most of the proposal, bid, or offer as exempt from disclosure without justification (a) will not be sufficient and shall not

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bind Foothill Transit in any way whatsoever and (b) may be eliminated from competition for the procurement.

Public Records –

a. All Proposals, Bids, or Offers submitted in response to the procurement shall become a matter of public record and shall be regarded as public records, with the exception of those elements of each proposal, bid, or offer which are: (i) trade secrets as that term is defined in California Government Code § 6254.7(d) and which are so marked as trade secret, confidential, or proprietary; and (ii) any questionnaires and/or financial statements required and deemed to not be public records and not open to public inspection pursuant to California Public Utilities Code § 99154, at the earlier of the time a recommendation for contract award is made to the Executive Board or a contract is awarded by Foothill Transit.

b. Foothill Transit will not disclose information in a Proposal, Bid, or Offer marked proprietary, confidential, or trade secret unless required to do so by law or legal process; provided, however, Foothill Transit may disclose such information to its legal and financial advisors as it deems necessary or appropriate. Foothill Transit shall not in any way be liable or responsible for the disclosure of any such records or portions thereof, including, without limitation, those so marked as confidential, proprietary, or trade secret, if disclosure is deemed required by law or by an order of a court.

c. If a contract award requires Executive Board approval, all Proposals, Bids, or Offers submitted in response to the procurement shall be held on file and be made available to the Executive Board for in-person review in the manner described in section 7.a. above. If the Chief Executive Officer determines that information marked as trade secret, confidential, or proprietary should be considered by the Executive Board, the Chief Executive Officer shall recommend that the Executive Board hold a closed session to consider and discuss the information. If any of the Executive Board Members deem it necessary to consider confidential, proprietary, or trade secret information not included in the public version of the documents, the Executive Board Member shall seek a closed session for all members to consider the information.

8. Term Limitations

Rolling Stock and Replacement Parts Procurements

The Director of Procurement will ensure that the term of rolling stock and replacement-part procurements, including the exercise of options, funded with Federal funds will not exceed five (5) years. If Foothill Transit procures rolling stock through a cooperative agreement, Foothill Transit shall obtain a copy of the original agreement and verify that the term of that agreement

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was for a total period of not more than five years and also that the initial term was not more than two years and had no more than three one-year extensions/options.

Other Procurements

The duration of other contracts must be based on sound business judgment and should contain contract terms no longer than necessary to accomplish the purpose of the contract. For Federally funded contracts that have a term that exceeds five years, Foothill Transit's Director of Procurement shall ensure that the procurement file includes a justification for the period of performance.

9. Revenue Contracts

With the exception of real property lease agreements, Foothill Transit does not enter into any revenue-producing contracts. Contracts with local municipalities wherein Foothill Transit is reimbursed for goods and/or services provided are not considered revenue contracts.

10. Escrow/Surety Deposits

When it becomes necessary for Foothill Transit to place funds in excess of \$500,000 into an escrow account or other form of performance security for the purchase of land, buildings, and other major assets, Foothill Transit will require the agency holding and or requesting these funds to guarantee interest earning at a minimum rate equal to 80% of the current LAIF rate. In the event this rate cannot be guaranteed, Foothill Transit will:

(1) Guarantee payment within four working days from the day the funds are requested, with the obligation to compensate all related parties to the transaction for actual costs incurred if payment is received after the four working days;

(2) Secure a certificate of deposit (CD) in Foothill Transit's name in the amount of the required escrow/security deposit and surrender the CD to the agency requiring the deposit; or

(3) Select an escrow agent that will guarantee Foothill Transit an interest earning rate that is acceptable based on the terms and conditions at the time of the purchase.

It will be at Foothill Transit's option to select option 1, 2, or 3.

11. Demonstration Projects for Innovative Products, Approaches, or Technologies

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It is in Foothill Transit's best interest to consider proposals for demonstration (pilot) projects. A demonstration project is a short-term, carefully planned, pilot exercise designed to test and evaluate the feasibility and application of an innovative product, approach, or technology not currently used by Foothill Transit. Demonstration projects will allow Foothill Transit to observe and analyze effectiveness and efficiency of the innovative product, approach, or technology without a large commitment of resources. Demonstration projects may be initiated by an unsolicited proposal or by Foothill Transit on its own initiative. A demonstration project may result in a procurement if Foothill Transit determines that the piloted product, approach, or technology should be fully implemented at Foothill Transit.

Demonstration projects may be considered for goods or services. Demonstration projects shall not be considered for public works/construction (as defined in Article 3.5 of the California Public Contract Code) projects or for projects involving Architectural and/or Engineering services. Demonstration projects shall not be considered in connection with Federal funding unless such funding is specifically authorized for use on such demonstration project.

12. Media Buying Policy

It is in Foothill Transit's best interest to facilitate the timely purchase of communications media to meet Foothill Transit's advertising and related media needs by exempting such purchases from the standard procurement process. Media procurements require geographically and demographically targeted exposure to reach Foothill Transit's ridership, potential ridership, and interested parties. Potential media outlets typically only touch upon one geographic region, i.e., local newspapers, or one demographic, i.e., language-based advertising, and as such, are uniquely capable of reaching Foothill Transit's desired audience.

- a. Foothill Transit may facilitate media procurements by authorizing a designated Media Buyer to conduct competitive solicitations for such procurements in a manner consistent with media industry practices. The Media Buyer shall be an outside professional services consultant obtained through the standard procurement process. The Media Buyer shall be responsible for obtaining and analyzing bids from media outlets, negotiating rates and "bonus" space or time, recommending the most efficient and cost-effective media choices to Foothill Transit Communications personnel, and placing media orders on behalf of Foothill Transit with the written approval of the Director of Marketing and Communications.
- b. Media procurements shall be initiated by the Director of Marketing and Communications or his or her designee.

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- c. Media procurements conducted without the services of a designated Media Buyer shall be treated as sole source procurements not requiring a justification form.
- d. The purchase of classified advertising of procurement and recruitment notices is excepted and is not affected by this policy.

13. Recovered Materials – Federal Funds

Foothill Transit and its contractors shall comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.

14. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment

In accordance with 2 C.F.R. 200.216, Foothill Transit shall not use Federal loan or grant funds to extend or renew a contract to procure or obtain, or enter into a new contract to procure or obtain, covered telecommunications equipment. Such covered telecommunications equipment includes (i) any equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of the company or corporation); (ii) equipment that will serve public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, and is video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of the corporation or companies); and (iii) any equipment produced by other entities specified by Federal agencies in accordance with 2 C.F.R. 200.216. Further, Foothill Transit shall not use Federal loan or grant funds to extend or renew a contract to procure or obtain, or enter into a new contract to procure or obtain, systems that use covered telecommunications equipment as a substantial or essential component of any system or as critical technology of any system or covered services. Such covered services are telecommunications or video surveillance services provided by the above-named entities or services provided by others and that use covered telecommunications equipment.

15. Preference for U.S. Products and Services

a. Buy America Requirements. When acquiring rolling stock, steel, iron, or manufactured products using FTA funds or for an FTA-funded project, Foothill Transit will comply with all applicable statutes and regulations implementing the FTA's Buy America requirements. Those statutes and regulations include provisions found at 49 U.S.C. 5323 and 49 C.F.R. Parts 661 and 663. Foothill Transit will also include applicable Buy

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America requirements in all contracts and other subawards under such projects.

b. Build America, Buy America Act Requirements. When Federal financial assistance is used for infrastructure projects, construction materials used in the project are subject the Build America, Buy America Act, Pub. L. 117-58, div. G, tit. IX, §§ 70911 – 70927 (2021), as implemented by the U.S. Office of Management and Budget, the U.S. Department of Transportation, and FTA.

c. Cargo Preference. Foothill Transit shall comply with all applicable statutes and regulations implementing the shipping requirements of 46 U.S.C. 55305 and U.S. Maritime Administration Regulations “Cargo Preference – U.S.-Flag Vessels” at 46 C.F.R. Part 381. Foothill Transit will also include applicable Cargo Preference requirements in all contracts and other subawards.

d. Fly America. Foothill Transit shall comply with the air transportation requirements of Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974, as amended 49 U.S.C. 40118 and U.S. General Services Administration regulations, “Use of United States Flag Air Carriers” at 41 C.F.R. 301.10-131 through 301-10.143. Foothill Transit will also include applicable Fly America requirements in all contracts and other subawards.

e. Limitation on Certain Rolling Stock Procurements. Foothill Transit will comply with the limitation on certain rolling stock procurements at 49 U.S.C. 5323(u).

16. Restrictions on Lobbying and Contacts

a. Restrictions on Lobbying and Contacts with Foothill Transit Board. Upon the issuance of a solicitation and until the date of the award of the contract, Foothill Transit shall prohibit persons and entities (including bidders/offerors, prospective bidders/offerors, prospective subcontractor, prospective subconsultant, or subcontractor, subconsultant or team member of the bidder/offeror, or officer, employee, representative, agent of any of the forgoing persons or entities) from contacting any member of the Foothill Transit Governing Board or his or her personal staff through any means whatsoever, or engaging in any discussion with such Foothill Transit Board member or his or her personal staff, regarding the solicitation, the evaluation or selection process, or the contract award. Any such contact shall be grounds for the disqualification of the bidder/offeror.

b. Restrictions on Lobbying and Contacts with Foothill Transit Staff. Upon the issuance of a solicitation and until the date of the award of the contract, Foothill Transit shall also require the persons and entities

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described in (a) above to limit their communication with Foothill Transit employees to a written clarification and amendment process. During that time period, any such person or entity is precluded from having any communications regarding the solicitation, the evaluation or selection process, or the award of the contract with Foothill Transit employees other than Foothill Transit's procurement staff. Any such unauthorized communication shall be grounds for the disqualification of the bidder/offeror.

D. Procurement History

An accurate written account of each procurement will be maintained by the Procurement Department, and the Director of Procurement will ensure that it is included in the official procurement file. The Project Manager will complete a Procurement Initiation Form for each procurement action, including new procurements and all contract amendments, to initiate the procurement process. A record of procurement actions, i.e., Procurement History, will be initiated for all Invitation for Bids, Request for Proposals, Request for Qualifications, and Sole Source procurements. Procurement history documentation will be updated as a procurement progresses and will be retained as a historical record of the procurement. Procurement history includes, but is not limited to:

1. Rationale for the Method of Procurement

The type of procurement to be used for a given project will be determined at the outset of the project through consultation between the Project Manager and the Director of Procurement. A written justification for the procurement type selected will be developed including a completed Procurement Decision Matrix.

2. Contract Type

The rationale for selecting the contract type (such as fixed price, cost reimbursement, or time and materials) will be developed by the Project Manager, Director of Procurement and Counsel, and will be recorded by the Director of Procurement. Foothill Transit shall select the contract type in accordance with the requirements and prohibitions stated in Chapter VI, Section L.

3. Contractor Selection

Reasons for contractor selection or rejection will be fully documented, including, but not limited to, evaluation criteria, responsiveness to the requirements of the solicitation, responsibility, or cost. The Director of Procurement will fully document the selection process.

4. Cost or Price Evaluation

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The cost of potential contracts will be evaluated and documented by the Project Manager and compared to the Independent Cost Estimate required under Chapter III, Subchapter N. The Director of Procurement will ensure that a cost or price analysis is completed as required under Chapter III, Subchapter O. The Director of Procurement will ensure that documentation of the cost or price analysis is included in the procurement file.

E. Internal Controls – Federal Awards

Foothill Transit shall establish, maintain, and evaluate its internal procurement and contract management controls to provide reasonable assurance that Foothill Transit is managing its Federal awards in compliance with Federal law and the terms and conditions of the award. Foothill Transit's controls shall also safeguard personally identifiable and sensitive information.

F. Federal Awarding Agency Review

Foothill Transit shall comply with the requirements of 2 C.F.R. 200.325 regarding Federal awarding agency review of technical specifications on proposed procurements and pre-procurement review of procurement documents on all Federally-funded procurements, unless exempt under Federal regulation.

G. Record Collection, Transmission, Storage, Retention and Access

Whenever practicable, Foothill Transit shall collect, transmit, and store Federal award-related information in open and machine-readable formats (*i.e.*, searchable .pdf files) rather than in closed formats or on paper.

Foothill Transit shall maintain financial records, supporting documents, statistical records, and all other records pertinent to a Federal award for a period of three years from the date of submission of the final expenditure report or, for Federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the Federal awarding agency or pass-through entity in the case of a subrecipient.

Foothill Transit shall provide FTA, Inspectors General, the Comptroller General of the United States, and any pass-through entity (if applicable), or any of their authorized representatives, the right of access to any documents, papers, or other records of Foothill Transit which are pertinent to a Federal award, in order to make audits, examinations, excerpts, and transcripts, in accordance with applicable Federal regulations.

H. Responsible Contractor

Before awarding a contract, Foothill Transit shall determine that a prospective contractor is responsible. Bidders, offerors, or proposers may be asked to provide any information required to determine the responsibility of the prospective contractor.

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1. A responsible contractor is one who meets the standards set forth below:
 - a. Has adequate financial resources, or the ability to obtain such resources as required during performance of the contract.
 - b. Has a satisfactory record of integrity and business ethics.
 - c. Is neither debarred nor suspended from State or Federal programs.
 - d. Is able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing business commitments.
 - e. Is in compliance with applicable licensing and tax laws and regulations.
 - f. Has a satisfactory record of performance. The contractor must have sufficient key personnel with adequate experience, a parent firm (if appropriate) with adequate resources and experience, and key subcontractors with adequate experience and past performance. The contractor must have sufficient past experience in carrying out similar work with particular attention to management approach, staffing, timeliness, technical success, budgetary controls, and other specialized considerations as described in Foothill Transit's solicitation. Contractors who are, or have been seriously deficient in current or recent contract performance, when the number of contracts and the extent of deficiency of each are considered, is presumed to be non-responsible. Documented past unsatisfactory performance will ordinarily be sufficient to justify a finding of non-responsibility.
 - g. Is otherwise qualified and eligible to receive an award under applicable laws and regulations. In addition, the contractor's integrity and compliance with public policy will be examined.
 - h. Has the necessary organization, experience, operational controls, and technical skills, or the ability to obtain them.
 - i. Has the necessary production, construction, and technical resources, equipment, and facilities, or the ability to obtain them.
 - j. Is registered with appropriate entities so that contractor is eligible to receive public funds. This includes, but is not limited to, public works contractor registration with the California Department of Industrial Relations.
2. Evaluation of the responsibility of prospective contractors may be made based upon the following sources:

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- a. A list of debarred, suspended, or ineligible firms or individuals. The Federal System for Award Management, Foothill Transit's debarment list, or other system(s) as determined by Federal, state or local governments, will be examined to determine if a prospective contractor has been debarred or suspended.
 - b. From the prospective contractor's bids and proposals, replies to questionnaires, financial data such as balance sheets, profits and loss statements, cash forecasts, and financial histories of the contractor and affiliated concerns; current and past production records, list of tools, equipment, and facilities, written statements or commitments concerning financial assistance and subcontracting arrangements.
 - c. Publications, including credit ratings, trade and financial journals, and business directories and registers may also be used.
 - d. References such as suppliers, subcontractors, customers of the prospective contractor, banks and financial institutions, commercial credit agencies, other government agencies, purchasing and trade associations, and better business bureaus and chambers of commerce.
 - e. Documented past performance on contracts with Foothill Transit.
 - f. Appropriate websites containing information concerning the responsibility of prospective contractors.
 - g. If appropriate, it will be determined, through utilization of the California State Licensing Board website, whether a prospective contractor possesses required licenses.
 - h. If appropriate, prospective contractors will be required to provide financial information to determine if the contractor has financial resources adequate to perform the contract, or the ability to obtain them.
 - i. The past performance of prospective contractors will be checked by contacting references using a list of standard questions, and responses will be documented.
 - j. In certain cases, such as bus procurements, site visits may be conducted to validate the manufacturing capabilities of the prospective contractor.
3. The Director of Procurement in consultation with the Project Manager will be responsible for preparing the responsibility findings and will ensure that documentation of the findings is included in the procurement file.

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4. The Director of Procurement will ensure that no contract is recommended for award nor signed until the contractor has been determined to be responsible.
5. The Director of Procurement will ensure that a pre-approved form is utilized and completed by the Procurement Department for each procurement action undertaken by Foothill Transit. The Director of Procurement will also ensure that the completed form is included in the procurement file.

CHAPTER III – PROCUREMENT PROCEDURES

Subchapter A – Procurement by Micro Purchases

A micro purchase is an informal procurement method used for acquiring goods or services (excluding public works projects) that total \$10,000 or less. Foothill Transit has deemed this micro-purchase threshold to be appropriate based on Federal requirements, state requirements, potential risks to Foothill Transit, these procurement procedures, and typical Foothill Transit purchases. Purchases that total \$10,000 or less may be made without obtaining competitive quotations if it is determined by the Department Head that the price to be paid is fair and reasonable. The Department Head will document the basis for this determination.

Micro purchases should be distributed equitably among qualified suppliers, and the splitting of purchases to avoid the requirements of competition above the micro purchase threshold is prohibited. The Director of Procurement has the authority to review micro purchases to ensure that such purchases are being distributed among qualified suppliers and are not being split to avoid competition requirements.

Micro purchases made with purchase cards must conform to these policies and procedures as well as any other procedures that Foothill Transit establishes for such purchases.

Subchapter B – Small Purchases

A small-purchase procurement is an informal procurement method used for acquiring (i) public works (including construction) projects valued at \$6,500 or less; or (ii) goods or services that exceed \$10,000 but do not exceed \$250,000. Foothill Transit has deemed these small-purchase thresholds to be appropriate based on Federal requirements, state requirements, potential risks to Foothill Transit, these procurement procedures, and typical Foothill Transit purchases.

Foothill Transit shall obtain written quotations from an appropriate number of vendors to provide adequate competition. Based on Foothill Transit’s long history of procurements, it has determined that obtaining quotations from three (3) vendors will generally provide adequate competition. If the Department Head determines that more or fewer quotes is necessary for adequate competition, the Department Head shall provide information on the basis for that determination in the procurement file. The responsibility for soliciting quotations rests with the Procurement Department. Appropriate documentation, including a list of the vendors contacted, the quotes received, and a determination by the Procurement Department that the price is fair and reasonable (supported by a cost or price analysis) will be included in the Procurement File. If the lowest priced vendor is not chosen, the documentation will include a technical justification for the selection of other than the lowest-priced vendor. Foothill Transit may not divide or reduce the size of a procurement to avoid additional procurement requirements applicable to larger acquisitions.

Foothill Transit’s use of small-purchase procedures does not affect its obligation to include certain provisions in the subject contract. Foothill Transit will review each contract proposed for award under these procedures to confirm it includes clauses required by state and Federal law and regulation.

Subchapter C – Invitation for Bids (IFB)

A. General

An Invitation for Bids (IFB), also called a sealed-bid procurement, is a formal procurement method used for acquiring public works (including construction) projects valued at \$6,500 or more, and, if appropriate, purchases of goods and services whose cumulative value will exceed \$250,000. The IFB process is coordinated by the Director of Procurement.

B. Use

The IFB method of procurement is employed when all of the following apply:

1. A clear and accurate description of the technical requirements for the material, product, or service to be procured is available in a manner that provides for full and open competition.
2. Two or more responsible and otherwise qualified suppliers/sources are willing and able to compete effectively for the contract.
3. The procurement lends itself to a firm, fixed-price contract. A firm fixed-price contract is usually awarded in writing to the lowest responsive and responsible bidder, but a fixed price incentive contract or inclusion of an economic price adjustment provision can be appropriate. When specified in the procurement documents, factors such as transportation costs and life cycle costs affect the determination of the lowest bid. Payment discounts are used to determine the low bid only when prior experience indicates that such discounts are typically taken.
4. Selection of the successful bidder can be made on the basis of price and those price-related factors listed in the solicitation including, but not limited to, transportation costs, life cycle costs, and discounts expected to be taken.
5. Discussions with one or more bidders after bids have been submitted are expected to be unnecessary because award of the contract will be made based on price and price-related factors alone.

C. Scope of Work and Specifications

The Project Manager shall provide the Director of Procurement with the scope of work and/or specifications for each solicitation. The following general rules apply to scopes of work and specifications:

1. A common basis for bidding must be provided. Specifications and scopes of work should set out the minimum essential characteristics and standards of the items or services to be procured. Whenever possible, the expected

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quality of services to be provided or the performance characteristics of the item should be specified.

2. Specifications and scopes of work should not call for features or quality levels which are not necessary to meet the bid requirements.
3. All optional items should be identified by the Project Manager, and the procurement documents should set forth the expected needs and the manner in which the related bid prices will be considered.
4. In order to foster free and open competition, specifications may not require a "brand name" product without allowing an "or equal" product to be offered. When it is impractical or uneconomical to write a clear and accurate description of the technical requirements of the goods or services required, a "brand name or equal" description may be used to define the performance or other salient characteristics of the goods or services sought. The specific features or salient characteristics of the named brand which must be met by offerors of "an equal" bid must be clearly stated.
5. Because standard specifications and requirements allow for more efficient operations and result in lower prices, they should be used wherever suitable. Maximum use should be made of industry, Federal, State, and local government specifications and requirements.

D. Issuance of IFB

The Executive Board must approve the issuance of an Invitation for Bids (IFB) when the estimated cost of the project or base term for goods or services exceeds \$250,000. The Project Manager shall prepare the Board Report seeking authorization to issue the IFB. The Board Report may include a draft of the IFB existing at the time of the preparation of the Board Report. All IFBs will be prepared by the Procurement Department and will be advertised on Foothill Transit's website in sufficient time prior to the date set for bid closing. The Director of Procurement will ensure that the IFB is made available to an adequate number of qualified sources to ensure fair and open competition. Notice of IFBs for public works/construction projects also must be published in a newspaper of general circulation, including, but not limited to trade publications, in sufficient time prior to the date set for bid closing. The notice must include the following minimum information:

1. A general description of the services or goods to be purchased.
2. Where to obtain a copy of the IFB.
3. The location, day, and time of the Pre-Bid Conference (if one is scheduled).
4. The location, last day, and hour bids will be accepted (deadline).

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5. The Bid Acceptance Period.
6. Whether Federal funds are being used for the procurement.

E. IFB Packet

The Director of Procurement or designee will coordinate the release of the IFB packet. The IFB packet will include the following:

1. Instructions To Bidders – General instructions concerning the bid format, pre-contractual expenses, contract conditions, pre-bid conferences, and other information including language stating that because bids can at times be ambiguous, Foothill Transit reserves the right to request additional information before making an award and also reserves the right to seek clarification from any bidder about any statement in its bid that Foothill Transit finds ambiguous.
2. Submittal Documents (Bid Forms) – Required forms to be completed by the bidder and submitted with the bid.
3. Exhibits – These can be documents that display key facts, specifications, maps, report formats, and other important information to clearly define the goods or services needed in order for the bidders to properly respond to the IFB.
4. Contract Terms – These are the general terms and conditions and other provisions (e.g., contract time, special terms of the resulting contract; any modifications to general terms and conditions; milestones; and special payments procedures) that will form the basis of the contract between Foothill Transit and the successful bidder.
5. Specifications and/or Scope of Work – Each IFB will contain specifications and/or a scope of work prepared by the Project Manager that provides a clear and accurate description of the technical requirements for the materials, products, or services being procured. The specifications and/or scope of work should only state the actual minimum needs of Foothill Transit and be developed in a manner designed to promote full and open competition. At a minimum, the specifications and/or scope of work should address the following areas:
 - a. The specific goods or objectives of the contemplated work.
 - b. A detailed description of the necessary characteristics of the goods or the work to be performed outlining various tasks or phases of work, and defining the limits of the proposed project.

- c. A proposed delivery schedule.

F. Control Record

1. A control record will be maintained by the Procurement Department as IFB packets are distributed to prospective bidders. The control record profiles the following information:
 - a. Date and time IFB packets are distributed.
 - b. Names and addresses of bidders receiving bid invitations and attending pre-bid conferences.
2. The control record has two primary purposes:
 - a. Serves as a mailing list for the issuance of addenda.
 - b. Provides a record for verification in cases of vendor protests and other issues.

G. Pre-Bid Conference

A pre-bid conference may be used as a means of briefing prospective bidders and explaining specifications and requirements to them as early as possible after the IFB has been issued and before the bids are opened. The pre-bid conference will not be used as a substitute for amending a defective or ambiguous IFB. Unless otherwise specified in the IFB documents, attendance by potential bidders is not mandatory. The list of attendees will be issued to prospective bidders.

The pre-bid conference shall be chaired by the Director of Procurement or designee and shall follow the format below:

1. Discussion on basic requirements such as instructions to the bidders, funding, contract type, and specific points that should be addressed in each bid response.
2. Discussion on the participation requirements for disadvantaged business enterprises (DBE), if applicable.
3. Discussion on the specifications and/or scope of work. The Project Manager should be available to answer technical questions.
4. Provide project schedule.

H. Addenda to Invitation for Bids

If after issuance of an IFB, but before the time set for opening of bids, it becomes necessary to make changes in quantities, specifications, opening dates, etc., or to

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correct or clarify a defective or ambiguous IFB, such changes shall be accomplished by the issuance, in writing, of an addendum to the IFB. Before issuing an addendum to an IFB, the period of time remaining until the time set for bid submittal and the need for extending this time must be considered. If a material change, addition, or deletion to the IFB is being made, and less than 72 hours are remaining until bid opening, the scheduled bid opening time must be extended by at least 72 hours. Such notification should be confirmed in the addendum. The addendum shall be sent to each prospective bidder to whom the IFB was furnished or to any prospective bidder who attended any site visit and/or pre-bid conference and shall provide:

1. Addendum number and date.
2. Number, date, and the title of the IFB concerned.
3. Clearly stated changes made in the IFB and the extension of the opening date, if applicable.
4. Instructions to bidders for acknowledging receipt of the addendum and information concerning the effect of failure to acknowledge and return the addendum.

I. Cancellation of IFB

IFBs shall not be canceled unless cancellation is clearly in Foothill Transit's interest (i.e., where there is no longer a requirement for the material or service, or where amendments to the IFB would be of such magnitude that a new invitation is desirable). When an IFB is canceled, bids which have been received shall be returned unopened to the bidders and a notice of cancellation shall be sent to all prospective bidders to whom IFBs were issued.

The notice of cancellation shall identify the IFBs; briefly explain the reason the IFB is being canceled; and, where appropriate, assure prospective bidders that they will be given an opportunity to bid on any re-solicitation of bids or any further requirements for the type of material or service involved.

If the IFB is canceled before the time for bid openings, this fact shall be recorded in the control file, with a statement of the number of entities invited to bid and the number of bids received.

J. Receipt of Bids

Bids shall be submitted so as to be received at the location designated in the IFB not later than the exact time set for the receipt of bids. The only acceptable evidence to establish the time of receipt at Foothill Transit's offices is the time/date stamp of Foothill Transit, which shall be placed on the bid wrapper immediately upon receipt. The Foothill Transit staff person receiving the bid shall sign the exterior of the bid package to verify the date and time received and person

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receiving the bid. The timeliness of bids is the sole responsibility of the bidder. Bids received after the date and time specified in the IFB shall be considered late and shall not be considered for evaluation. Late Bids shall be returned to the sender unopened.

K. Withdrawal of Bids

Any bidder may withdraw its bid, either personally or by written request received by Foothill Transit, at any time prior to the time fixed for the receipt of the bids. Negligence on the part of a bidder in preparing its bid confers no right of withdrawal of the bid after such bid has been opened. Following bid opening, no bid may be withdrawn for the time period specifically set forth in each IFB.

L. Bid Opening

Upon receiving the bids, it is the Director of Procurement or designee's responsibility to record their receipt and keep them unopened and secure, except as stated below.

Prior to bid opening, information concerning the identity and number of bids received shall be made available only to Foothill Transit representatives who have a proper need for such information, as determined by the Director of Procurement.

Unidentified bids may be opened solely for the purpose of identification and then only by the Director of Procurement. If a sealed bid is opened by mistake or for purposes of identification, the Director of Procurement shall immediately write on the envelope an explanation of the opening, the date and time opened, and the IFB number. The Director shall sign the envelope. Bids opened by mistake or for identification purposes shall be resealed in the envelope and no information contained therein shall be disclosed prior to the public bid opening.

The Director of Procurement or designee shall decide when the time set for bid opening has arrived and shall so declare to those present.

All bids received prior to the time set for receipt shall then be publicly opened and when practical, read aloud by the Director of Procurement or designee to the persons present. The bids received shall be recorded. If it is impractical to read the entire bid, as where many items are involved, the total amount of the bid shall be read.

A second Foothill Transit representative shall be present to witness the opening and reading of the bids and, along with the Director of Procurement or designee, shall sign the recording document to verify its accuracy.

The original of each bid shall be carefully safeguarded, particularly until the abstract of bids has been made and its accuracy verified.

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The original bid form shall not be allowed to pass out of the hands of the Procurement Department. The original bids may not be removed from the Procurement Department office except for official review and evaluation by Foothill Transit Counsel. A copy of each bid must be maintained in Foothill Transit's procurement files in lieu of such originals for the interim period.

All bids will be open to public review in accordance with the provisions of Paragraph C.7 of Chapter II. The results of the bid opening will be posted on the Foothill Transit website at the same time that all bidders are notified of Foothill Transit's proposed award of a contract to the lowest responsive and responsible bidder. All bids, including attachments and photographic images or reproductions of time-stamped packages, shall be retained for the official files.

M. Recording of Bids

The IFB number, bid opening date and time, general description of the procurement item, names of bidders, prices bid, and any other information required for bid evaluation shall be entered on the official Foothill Transit record and shall be available for public inspection. When the items are too numerous to warrant the recording of all bids completely, an entry shall be made of the IFB number, opening date and time, general description of the procurement items, and the total price bid where definite quantities are involved.

The official record shall be completed as soon as practical after bids have been opened and read aloud. The Director of Procurement shall be responsible for maintaining files of these records and abstracts and will post the tabulation of bids on the Foothill Transit website within a reasonable time period after bid opening.

The IFB file shall show the distribution that was made and the date thereof. The names and addresses of prospective bidders requesting the IFB who were not included on the original solicitation list shall be added and made a part of the record.

N. Tabulation of Bids

Bids shall be evaluated on the basis of responsiveness and responsibility indicated in the IFB. Award shall be made to the bidder submitting the lowest bid, unless Foothill Transit determines that the bid is not responsive and/or the bidder is found to be not responsible.

O. Mistakes in Bids

1. General. Technicalities or minor irregularities in bids are waived if the Director of Procurement determines that waiver is in Foothill Transit's best interest. The Director of Procurement shall either give a bidder an opportunity to cure any deficiency resulting from a technicality or minor irregularity in its bid or waive the deficiency if it is to Foothill Transit's advantage to do so.

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2. Mathematical Errors. Errors in extension of unit prices or in mathematical calculations shall be corrected by Foothill Transit prior to award. In all cases of errors in mathematical computation, the unit prices shall not be changed.
3. Mistakes Discovered Before Opening. A bidder can correct mistakes discovered before the time and date set for bid opening by withdrawing the original bid and submitting a new bid prior to the time and date set for bid opening.
4. Confirmation of Bid. If the Director of Procurement knows or has reason to conclude that a mistake has been made, the bidder shall be requested to confirm the bid. Situations in which confirmation will be requested include obvious, apparent errors on the face of the bid, or a bid unreasonably lower than the other bids submitted. If the bidder alleges mistake, the bid will be corrected or withdrawn if any of the following conditions are met:
 - a. If the mistake and the intended correction are clearly evident on the face of the bid document, the bid shall be corrected to the intended correct bid and must not be withdrawn. Examples of mistakes that may be clearly evident on the face of the bid document are typographical errors, errors in extending unit prices, transposition errors, and arithmetical errors.
 - b. A bidder will be permitted to withdraw a low bid if:
 - i. A mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident; or
 - ii. The bidder submits proof of evidential value, which clearly and convincingly demonstrates that a mistake was made.
 - c. Determination Required. When a bid is corrected or withdrawn, or correction or withdrawal is denied, the Director of Procurement shall prepare a determination showing that the relief was granted or denied.

P. Minor Irregularities in Bids

1. A minor irregularity is one which is merely a matter of form and not of substance or pertains to some immaterial or inconsequential defect or variation in a bid from the exact requirement of the solicitation. If such a situation exists, the correction of the irregularity or waiver of the requirement will be made if it would not be prejudicial to other bidders.
2. A defect or variation in a bid is considered immaterial and inconsequential when its significance as to price, quantity, quality, or delivery is trivial.

3. The Director of Procurement shall either give the bidder an opportunity to cure any deficiency resulting from minor informality or irregularity in a bid, or waive the deficiency, whichever is to the advantage of Foothill Transit.

Q. Multiple or Alternate Bids

Unless requested in the solicitation, multiple or alternate bids will not be accepted. However, if a bidder clearly indicates a base bid, it shall be considered for award as though it were the only bid submitted by the bidder. These provisions shall be set forth in the solicitation and, if multiple or alternate bids are allowed, it shall specify their treatments.

R. Analysis of Limited Bid Response

If less than three bids have been received, the Director of Procurement may examine the reasons for the small number of bids received. The purpose of this examination is to ascertain whether the small number of responses is attributable to an absence of any of the prerequisites of formal advertising. A price or cost analysis may be performed to establish the reasonableness of the bid price before an award is made.

S. Rejection of All Bids

1. Any time prior to the bid opening date and time, Foothill Transit may cancel or postpone the bid opening, or cancel the IFB in its entirety.
2. Preservation of the integrity of the competitive bid system dictates that after bids have been opened, award must be made to that responsible bidder who submitted the lowest responsive bid, unless there is compelling reason to reject all bids and cancel the IFB.
3. Every effort shall be made to anticipate changes in a requirement prior to the date of bid opening and to notify all prospective bidders of any resulting modification or cancellation, thereby permitting bidders to change their bids and preventing unnecessary disclosure of bid prices.
4. As a general rule, after opening, an IFB should not be canceled and re-advertised due solely to increased requirements for the items being procured. Award should be made on the IFB and the additional quantity should be treated as a new procurement.
5. IFBs may be canceled after opening but prior to award, and all bids rejected, where such action is consistent with Federal and State procurement regulations. A written determination must be included in the IFB file stating that cancellation is in the best interest of Foothill Transit for reasons such as the following:

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- a. Inadequate, ambiguous, or otherwise deficient specifications were cited in the IFB.
 - b. The supplies or services are no longer required.
 - c. The IFB did not provide for consideration of all factors of cost to Foothill Transit.
 - d. Bids received indicate that the needs of Foothill Transit can be satisfied by a less expensive item differing from that on which bids were received.
 - e. All otherwise acceptable bids received are at unreasonable prices.
 - f. The bids were not independently arrived at in open competition, were collusive, or were submitted in bad faith. Such situation must be substantiated and may be reported to Foothill Transit's Counsel.
 - g. The bids received did not provide competition that was adequate to ensure reasonable prices. A price or cost analysis may be used to establish the reasonableness of prices.
6. When it is determined to reject all bids, Foothill Transit shall notify each bidder that all bids have been rejected and state the reason for such action.

T. Rejection of Individual Bids

1. Any bid which fails to conform to the essential requirements of the IFB, such as specifications, delivery schedule, warranty, or the required bid documents, shall be rejected as non-responsive.
2. A bid shall be rejected where the bidder imposes conditions that modify requirements of the IFB. For example, bids may be rejected in which the bidder:
 - a. Attempts to protect himself against future changes in conditions such as increased costs, if a total price to Foothill Transit cannot be determined for bid evaluation.
 - b. Fails to state a price and in lieu thereof states that price shall be "price in effect at time of delivery."
 - c. States a price but qualifies such price as being subject to "price in effect at time of delivery."
 - d. Where not authorized by the IFB, conditions or qualifies the bid by stipulating that the bid is to be considered only if, prior to date of

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award, bidder receives (or does not receive) award under a separate procurement.

- e. Limits rights of Foothill Transit under any contract clause.
 - f. Fails to comply with all of the requirements of the IFB.
3. Bids received from any person or firm debarred or ineligible shall be rejected if the period of debarment or ineligibility has not expired.
 4. Low bids received from firms determined to be not responsible pursuant to Federal or State procurement regulations shall be rejected in accordance with the procedures set forth in this Chapter.
 5. A bid may be rejected if a bid guarantee is required and a bidder fails to furnish it in accordance with the requirement of the invitation for bids.
 6. The originals of all rejected bids, and any written findings with respect to such rejections, shall be preserved in the file relating to the procurement.
 7. After submitting a bid, if a bidder transfers all of his assets or that part of his assets related to the bid during the period between the bid opening and the award, the transferee may not take over the bid, thus Foothill Transit may reject the bid.

U. Award of the Contract

Unless all bids are rejected, award shall be by written notice, within the time for acceptance specified in the bid or extension thereof, to the responsible and responsive bidder whose bid, conforming to all the material terms and conditions of the IFB, is the lowest in price.

When award is made to other than the lowest bidder, the lowest bidder will be notified in writing by Foothill Transit of any evidence reflecting upon the responsibility of the bidder and affording the bidder the opportunity to rebut such evidence and present evidence of qualifications to perform the contract.

If Executive Board approval is not required, Foothill Transit will notify all unsuccessful bidders of its intent to award a contract to the successful bidder at the same time it notifies the successful bidder. If Executive Board approval is required, Foothill Transit will notify the recommended successful bidder and the unsuccessful bidders of the recommendation at the same time as the publication of the Board agenda.

Notification to successful and unsuccessful bidders will be made by over-night delivery or email. Bid security of an unsuccessful bidder will be returned or otherwise made available for return in a reasonable period of time, but in no event

shall that security be held by Foothill Transit beyond 60 days from the time the award is made, except with the consent of the affected bidder.

V. Final Award

If Executive Board approval is required for award, the Project Manager shall prepare the Board Report, in consultation with the Director of Procurement. The report shall describe the procurement and bid evaluation process and include a bid tabulation chart of all bidders and prices received and describe the services or goods being procured.

Executive Board approval of the award, if required, shall authorize the Chief Executive Officer to negotiate final terms and conditions and enter into an agreement with the successful bidder. The contract will be reviewed by Counsel who will ensure that the contract will not include any terms or conditions to be negotiated in the future. The Director of Procurement will ensure that any contract addressing such terms and/or conditions will not be signed. The Director of Procurement will ensure that the contract is signed at the approval level required in these procedures.

Each contract will be signed by Foothill Transit and the contractor. As used in this Policy and Procedures Manual, the word "signed" shall be deemed to include original "wet" ink signatures and portable document format (.pdf) or electronic signatures.

If wet ink originals are obtained, the Procurement Department will maintain an original of the contract for the procurement file and if requested by the contractor, will distribute one original to the contractor. Copies will be distributed to Counsel, the procurement file, and the Project Manager and, if necessary, to the contractor.

Prior to signing a contract containing only a .pdf or electronic signature of the contractor, Foothill Transit shall ensure that the contract includes language confirming that .pdf or electronic signatures are permissible and have the same force and effect as originals for all purposes. If the contract does not contain this language, Foothill Transit shall ensure that the contract and each amendment or modification thereto is signed with a wet-ink signature.

W. Project Completion

All original documentation related to each procurement such as the IFB, Bid, control record, board report, background data, bid tabulation chart of all bidders and prices received, meeting reports/notes, as well as the logs documenting bid opening dates and bid receipt dates will be submitted to the Director of Procurement for storage when the file becomes inactive. For audit purposes, complete files will be maintained for a minimum of four years after the project is closed out and completed unless a different time period is mandated by a funding entity.

Subchapter D – Request for Proposals (RFP)

A. General

A Request for Proposals (RFP) is a formal procurement method used for acquiring services (see Subchapter E for the procurement of Architectural and Engineering services) or when conditions are not appropriate for the use of an IFB. The latter is generally the case when the goods or services to be acquired are described in a performance or functional specification; or if described in detailed technical specifications, other circumstances such as the need for discussions or the importance of basing contract award on factors other than price alone are present. RFPs are generally used for the purchase of services such as lease agreements, maintenance and service contracts, rental contracts and professional service contracts. The RFP process is coordinated by the Director of Procurement.

B. RFP Contents

The RFP process is a competitive negotiated procurement process that requires evaluation of offerors' proposed costs and understanding of the contract performance requirements in accordance with established evaluation criteria. The competitive negotiated procurement process does not require award to the lowest-priced offeror. An RFP generally includes:

1. Project background.
2. Purpose of the engagement.
3. General firm qualifications desired.
4. Specifications and/or scope of work.
5. Project schedule.
6. Proposal requirements.
7. Criteria for selection.
8. Payment terms.

C. Issuance of RFP

The Executive Board must approve the issuance of a Request for Proposals (RFP) when the estimated cost of the project or base term for goods or services exceeds \$250,000. The Project Manager shall prepare the Board Report seeking approval of the issuance of the RFP. The Board Report may include a draft of the RFP existing at the time of the preparation of the Board Report. All RFPs will be prepared by the Procurement Department and will be advertised on Foothill Transit's website in sufficient time prior to the date set for proposal receipt. The

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Director of Procurement will ensure that the RFP is made available to an adequate number of qualified sources to ensure fair and open competition. The notice must include the following minimum information:

1. A general description of the services or goods to be purchased.
2. Where to obtain a copy of the RFP.
3. The location, day, and time of the Pre-Proposal Conference (if one is held).
4. The location, last day, and hour proposals will be accepted (deadline).
5. Whether Federal funds are being used for the procurement.

D. RFP Packet

The Director of Procurement or designee will coordinate the release of the RFP packet. The RFP packet will include the following:

1. Instructions To Proposers – General instructions concerning the proposal format, pre-contractual expenses, contract conditions, pre-proposal conferences, and other information, including, but not limited to language stating that because offers can at times be ambiguous, Foothill Transit reserves the right to request additional information before making an award and also reserves the right to seek clarification from any proposer about any statement in its offer that Foothill Transit finds ambiguous. Foothill Transit may require proposers to raise exceptions to the contract terms on penalty of waiver of such exceptions during contract negotiation.
2. Attachments – Required forms to be completed by the proposer and submitted with the proposal.
3. Exhibits – These can be documents that display key facts, specifications, maps, report formats, and other important information to clearly define the goods or services needed in order for the proposers to properly respond to the RFP.
4. Contract Terms – These are the general terms and conditions and other provisions (e.g., contract time, special terms of the resulting contract; any modifications to general terms and conditions; milestones; and special payments procedures) that will form the basis of the contract between Foothill Transit and the successful Proposer.
5. Specifications and/or Scope of Work – Each RFP will contain specifications and/or a scope of work prepared by the Project Manager that provides a clear and accurate description of the technical requirements for the materials, products, or services being procured. The specifications and/or scope of work should only state the actual minimum needs of Foothill

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Transit and be developed in a manner designed to promote full and open competition. At a minimum, the specifications and/or scope of work should address the following areas:

- a. The specific goods or objectives of the contemplated work.
- b. A detailed description of the necessary characteristics of the goods or the work to be performed outlining various tasks or phases of work, and defining the limits of the proposed project.
- c. A requirement for periodic reporting or progress on the project if the procurement involves consultant or professional services.
- d. A proposed delivery schedule.

E. Control Record

1. A control record will be maintained by the Procurement Department as RFP packets are distributed to prospective proposers. The control record profiles the following information:
 - a. Date and time RFP packets are distributed.
 - b. Names and addresses of vendors receiving the RFP and attending the pre-proposal conference.
2. The control record has two primary purposes:
 - a. Serves as a mailing list for the issuance of addenda.
 - b. Provides a record for verification in cases of vendor protests and other issues.

F. Pre-Proposal Conference

1. A pre-proposal conference may be used as a means of briefing prospective proposers and explaining complicated specifications and requirements to them as early as possible after the RFP has been issued and before the proposals are received. The pre-proposal conference will not be used as a substitute for amending a defective or ambiguous RFP. Unless otherwise stated in the RFP documents, attendance by prospective proposers is not mandatory. The list of attendees will be issued to all prospective proposers.
2. The pre-proposal conference shall be chaired by the Director of Procurement or his or her designee and shall follow the format below:

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- a. Discuss basic requirements such as instructions to the proposers, funding, contract type, evaluation criteria, and specific points that should be addressed in each proposal.
- b. Discuss the participation requirements for disadvantaged business enterprises (DBE), if applicable.
- c. Discuss the specifications and/or scope of work. The Project Manager should be available to answer technical questions.
- d. Conclude by announcing when and where the proposals are due and by restating any specific limits on proposals (page length, etc.).

G. Addenda to the RFP

1. If after issuance of the RFP, but before the time set for receipt of proposals, it becomes necessary to make changes in quantities, specifications, delivery schedules, opening dates, etc. or to correct or clarify a defective or ambiguous RFP, such changes shall be accomplished by issuance, in writing, of an addendum to the RFP. Before issuing an amendment to an RFP, the period of time remaining until the time set for proposal submittal and the need for extending this time must be considered. Where only a short time remains, consideration should be given to notifying prospective proposers of an extension of time by email or telephone. Such notification should be confirmed in the addendum. The addendum shall be sent to each prospective proposer to whom the RFP was furnished or who attended any site visit and/or pre-proposal conference.
2. Any information given to a prospective proposer concerning an RFP shall be furnished promptly to all other prospective proposers as an addendum to the RFP if such information is necessary to proposers in submitting proposals or if the lack of such information would be prejudicial to uninformed proposers. No award shall be made on the RFP unless such addendum has been issued in sufficient time to permit all prospective proposers to consider such information in submitting or modifying their proposals.
3. The RFP will indicate that Foothill Transit is not bound by any oral representations, clarifications, or changes made in the written specification by Foothill Transit's employees, unless such clarification or change is provided to potential proposers in written addendum form from Foothill Transit.
4. Each addendum issued to an RFP shall:
 - a. Be serially numbered and dated.
 - b. Include the number, date, and a description of the RFP at issue.

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- c. Clearly state the changes made in the RFP and the extension of the due date, if any.
- d. Include instructions to proposers for acknowledging receipt of the addendum and information concerning the effect of failure to acknowledge or return the addendum.

H. Cancellation of the RFP

RFPs shall not be canceled unless cancellation is clearly in Foothill Transit's interest (i.e., where there is no longer a requirement for the service, or where addenda to the RFP would be of such magnitude that a new RFP is desirable). When an RFP is canceled, proposals which have been received shall be returned unopened to the proposers and a notice of cancellation shall be sent to all prospective proposers to whom RFPs were issued.

The notice of cancellation shall identify the RFP number; briefly explain the reason the RFP is being canceled; and, where appropriate, assure prospective proposers that they will be given an opportunity to propose on any re-solicitation or any further requirements for the type of service involved.

I. Receipt of Proposals

Proposals shall be submitted so as to be received at the location designated in the RFP not later than the exact time set for the receipt of proposals. The only acceptable evidence to establish the time of receipt at Foothill Transit's offices is the time/date stamp of Foothill Transit which shall be placed on the proposal wrapper immediately upon receipt. The Foothill Transit staff person receiving the proposal shall sign the exterior of the proposal package to verify the date and time received and person receiving the proposal. The timeliness of proposals is the sole responsibility of the proposer.

J. Withdrawal of Proposals

Any proposer may withdraw its proposal, either personally or by written request received by Foothill Transit, at any time prior to the time fixed for the receipt of the proposals. Negligence on the part of a proposer in preparing its proposal confers no right of withdrawal of the proposal after such proposal has been opened. The RFP shall set forth the time period within which proposals must remain open following the date set for receipt of proposals. Unless justified by the circumstances of a particular procurement, the RFP shall provide that proposals remain open for a period of 120 days following the date set for receipt of proposals.

K. Format of Proposal

The response to each RFP must be made in accordance with the requirements set forth in the RFP, both for mandatory content and for sequence. Noncompliance

on the inclusion of conditions, limitations, or misrepresentations may be cause for rejection of a proposal.

L. Evaluation of Proposals

1. Each RFP will contain the Evaluation Criteria that will be used by Foothill Transit in evaluating proposals. These criteria shall be set forth in the RFP in order of their relative importance, with the most important being listed first. To reflect this, each criterion will either be scored using an equal score range (equal weighing) or each criterion will be assigned a weight. If a weight is assigned, each score will be multiplied by the weight to produce a final criterion score. Price is always included as an evaluation criterion. (If conducting a qualifications-based procurement, i.e., an RFQ, price is excluded as an evaluation factor.). The RFP will set forth the particular method by which price will be evaluated. Only criteria set forth in the RFP may be used to evaluate the proposal.
2. If the RFP sets forth "Minimum Requirements Criteria", a "pass/fail" evaluation will be made of the proposal to determine compliance with the "Minimum Requirements Criteria." Failure in any one of the "pass/fail" criteria may be cause for disqualifying the entire proposal from further review. However, Foothill Transit's evaluation may, in the Director of Procurement's discretion, be corrected by verbal or written requests to proposers for clarification, or additional information as necessary to determine if the "Minimum Requirements Criteria" have been met. The determination to disqualify a proposal shall be solely at the discretion of the Director of Procurement.
3. Proposals that "pass" the "pass/fail" test are evaluated using the procedures set forth in this section.
4. An evaluation committee for each RFP will be recommended by the Director of Procurement in consultation with the Project Manager and appointed by the Chief Executive Officer. In appointing individuals to the Evaluation Committee, the Chief Executive Officer will consider the nature of the procurement and the appropriate expertise of the individuals recommended for appointment.
5. A date and time for an evaluation meeting will be set.
6. Members of the Evaluation Committee shall be familiar with the content of the RFP. Any questions on the RFP or documentation furnished by a proposer shall be addressed to the Director of Procurement prior to initiation of evaluations.
7. The Evaluation Committee shall first perform a technical evaluation of each proposer's proposal using the evaluation score sheets provided by the Director of Procurement.

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8. Upon compilation of the Evaluation Committee's initial scores, the Director of Procurement shall review the scores, determine whether discussions are necessary or if award may be made based on initial proposals, and if discussions are to be conducted, define the competitive range and determine which proposers fall within the competitive range for purposes of conducting discussions.
9. The competitive range shall be defined based on the evaluation factors and criteria set forth in the RFP and shall include all proposals that have a reasonable chance of being selected for award. The competitive range shall not be used to unfairly eliminate proposers. If discussions are conducted with one proposer, discussions must be conducted with all proposers within the competitive range.
10. Discussions after receipt of initial proposals is not required in the following cases:
 - a. The Director of Procurement determines that evaluation and award may be made based on initial proposals alone;
 - b. Procurement is for supplies for which prices or rates are fixed by law or regulation;
 - c. Time for delivery will not permit discussions; or
 - d. The procurement is for a product and, due to the existence of adequate competition or accurate prior cost experience, it can be clearly demonstrated that acceptance of an initial proposal would result in a fair and reasonable price.

M. Discussions

1. The Evaluation Committee may conduct oral discussions with all proposers who submit proposals within the competitive range, as determined in subsection L. During the discussion phase of the source selection process, all communication is coordinated through the Director of Procurement.
2. The discussion process is governed by the following general guidelines.
 - a. Notify all proposers regarding their status and arrange a meeting with those proposers who have been determined to be within the competitive range.
 - b. Verbally at the meeting and in written form advise proposers of deficiencies in their proposals so that the proposers are given an opportunity to satisfy Foothill Transit's requirements.

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- c. Attempt to resolve any uncertainties concerning the proposer's technical proposal and other terms and conditions of the proposal.
 - d. Resolve any suspected mistakes by calling such mistakes to the proposer's attention as specifically as possible without disclosing information contained in other proposals or regarding the evaluation process.
 - e. Provide the proposer a reasonable opportunity to submit any cost or price, technical, or other revisions to its proposal that may result from the discussion.
3. During the discussion, the Evaluation Committee should not engage in:
- a. Technical leveling, defined as helping a proposer bring its proposal up to the level of other proposals through successive rounds of discussion, such as pointing out weaknesses resulting from the proposer's lack of diligence, competence, or inventiveness in preparing the proposal.
 - b. Technical transfusion, defined as disclosure of technical information pertaining to a proposal that results in improvement of a competing proposal.
 - c. Auction techniques, such as:
 - i. Indicating to a proposer the cost or price that it must meet to obtain further consideration.
 - ii. Advising a proposer of its price standing relative to another proposer; however, it is permissible to inform proposer that its cost or price is considered by the Evaluation Committee to be too high or unrealistic.
 - iii. Otherwise furnishing information about other proposer's prices.

N. Request for Best and Final Offer (BAFO)

1. Upon completion of discussions, Foothill Transit may make a selection for contract award without requesting BAFOs or may issue to all proposers within the competitive range a request for a final supplement denominated the "Best and Final Offer"(BAFO). Oral requests for BAFOs shall be confirmed in writing.
2. BAFOs must be submitted in accordance with written procedures received from Foothill Transit advising proposers that:

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- a. Negotiations are being concluded.
- b. Proposers are being asked for their “best and final” offer, not merely to confirm or reconfirm prior offers.
- c. Any revision or modification of proposals must be submitted by the date specified.

O. Recommendation for Contract Award

1. Following the review of the initial proposals, results of discussions, and/or BAFOs by the Evaluation Committee, the Director of Procurement shall consolidate the cost and technical evaluations and all score sheets along with the Committee’s comments and recommendations.
2. After reviewing the evaluations and recommendation made by the Evaluation Committee, the Chief Executive Officer shall make a determination of the recommendation for contract award.

P. Award of the Contract

1. After evaluation of proposals in accordance with the criteria set forth in the RFP, the contract shall be awarded to the proposer whose proposal is most advantageous to Foothill Transit, price and other factors considered.
2. If Executive Board approval is not required, Foothill Transit will notify all unsuccessful proposers of its intent to award a contract to the successful proposer at the same time it notifies the successful proposer. If Executive Board approval is required, Foothill Transit will notify the recommended successful proposer and the unsuccessful proposers of the recommendation at the same time as the publication of the Board agenda.
3. Notification to unsuccessful and successful proposers will be made by overnight delivery or email.

Q. Final Award

1. If Executive Board approval is required for contract award, the Project Manager, in consultation with the Director of Procurement, shall prepare the Board Report. The Board Report shall describe the procurement and evaluation process, set forth the evaluation scores for each proposer, describe the services or goods being procured, include a tabulation chart of all proposers and prices received, and contain the Chief Executive Officer’s determination of the recommendation for contract award.
2. The Executive Board shall vote to accept or reject the Chief Executive Officer’s determination of the recommendation for contract award. If the Executive Board rejects the Chief Executive Officer’s recommendation for

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contract award, the Executive Board shall state the reason(s) for rejecting the recommendation and take one of the following actions: (1) choose another proposer using the same evaluation criteria set forth in the RFP; or (2) direct re-solicitation of proposals.

3. If the Executive Board elects to choose another proposer, each Executive Board member shall become familiar with the content of the final RFP. Any questions regarding the RFP, the Proposals, or any documentation furnished by a proposer shall be addressed to the Director of Procurement prior to the Executive Board's initiation of evaluations. Each Executive Board Member shall perform a technical evaluation of each proposer's Proposal using evaluation score sheets substantially similar to those used by the Evaluation Committee, which will be provided by the Executive Board Chair, who may be assisted by the Director of Procurement. All Executive Board Members' evaluations shall be performed in accordance with these policies and procedures, the RFP, and applicable regulations and laws. The Executive Board Chair, with the assistance of the Director of Procurement, shall then review the scores and determine the successful proposer for contract award.
4. Executive Board approval of contract award shall authorize the Chief Executive Officer to negotiate final terms and conditions and enter into an agreement with the successful proposer. The contract will be reviewed by Counsel who will ensure that the contract will not include any terms or conditions to be negotiated in the future. The Director of Procurement will ensure that any contract addressing such terms and/or conditions will not be signed. The Director of Procurement will ensure that the contract is signed at the approval level required in these procedures.
5. Each contract will be signed by Foothill Transit and the contractor. As used in this Policy and Procedures Manual, the word "signed" shall be deemed to include original "wet" ink signatures and portable document format (.pdf) or electronic signatures. If wet ink originals are obtained, the Procurement Department will maintain an original of the contract for the procurement file and if requested by the contractor, will distribute one original to the contractor. Copies will be distributed to Counsel, the procurement file, and the Project Manager and, if necessary, to the contractor.

Prior to signing a contract containing only a .pdf or electronic signature of the contractor, Foothill Transit shall ensure that the contract includes language confirming that .pdf or electronic signatures are permissible and have the same force and effect as originals for all purposes. If the contract does not contain this language, Foothill Transit shall ensure that the contract and each amendment or modification thereto is signed with a wet-ink signature.

R. Debriefing of Unsuccessful Proposers

1. When a contract is to be awarded on some basis other than price alone and an unsuccessful proposer submits to the Director of Procurement a written request for a debriefing within a reasonable time, Foothill Transit shall provide a debriefing. Foothill Transit shall provide the debriefing at the earliest time after a final determination is made regarding contract award. The debriefing shall be conducted by the Director of Procurement and may be either oral or written as the Director of Procurement determines appropriate.
2. The debriefing shall:
 - a. Be limited to discussion of the unsuccessful proposer's proposal and must not include specific discussion of a competing proposer's proposal.
 - b. Be factual and consistent with the evaluation of the unsuccessful proposer's proposal; and
 - c. Provide information on areas in which the unsuccessful proposer's technical proposal was deemed weak or deficient.

S. Project Completion

All original documentation related to each procurement such as the RFP, successful proposal, BAFO, control record, Board Report, background data, evaluation criteria and scores, and meeting reports/notes will be submitted to the Director of Procurement for storage when the file becomes inactive. For audit purposes, complete files will be maintained for a minimum of four years after the project is closed out and completed unless a different time period is mandated by a funding entity.

Negotiated procurement records or files should provide at least the following pertinent information: justification for the use of negotiation in lieu of competitive bidding; contractor selection; justification for contract type; determination and findings; record of negotiations; and cost or price analysis.

**Subchapter E – Special Procedures for Request for Qualifications (RFQ) –
Architectural/Engineering Services**

- A. Special, formal procedures will be used for competitive negotiation procedures for the qualifications-based procurement of Architectural and Engineering (“A/E”) services and related services such as program management, construction management, feasibility studies, preliminary engineering, design, surveying, mapping, or related services. An RFQ is used in the solicitation of A/E and related services.
- B. Following this method, each proposer’s qualifications are evaluated and the most qualified proposer is selected subject to negotiation of fair and reasonable compensation. Foothill Transit may not consider price as an evaluation factor in determining the most qualified proposer. Negotiation is conducted with only the most qualified proposer. This method can only be used in procurement of the above services. It cannot be used to obtain other types of services even though firms that provide the above types of services are also potential sources to perform other services.
- C. Refer to the RFP procedures above for all pre-evaluation activities, as well as debriefing, final award, and project completion. The steps to be used for submittal evaluation and contract negotiation for A/E and related services solicitations are as follows:
 - 1. An evaluation committee will be recommended by the Director of Procurement in consultation with the Project Manager and appointed by the Chief Executive Officer to review eligible firms and all responses to the RFQ.
 - 2. The Evaluation Committee will evaluate eligible firms based on factors and criteria set forth in the RFQ, which may include the following:
 - a. Professional qualifications for performance of the required services;
 - b. Specialized experience and technical competence in the type of work required;
 - c. Experience and professional qualifications of the firm’s staff to be assigned to the project;
 - d. Location of the main office of the proposing firm and its consultants (provided such consideration does not unduly limit competition);
 - e. Analysis of the firm’s current workload and capacity to accomplish the work in the required time; and
 - f. Overall performance record of the firm.
 - 3. The Evaluation Committee will hold discussions with the most highly qualified firms (“short list”).

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4. The Evaluation Committee will prepare a selection report for the Chief Executive Officer recommending, in order of preference, those firms that are considered to be the most highly qualified to perform the required services. The report should include a description of the discussions and evaluations by the team to allow the Chief Executive Officer to review the basis upon which the recommendations were made. The Chief Executive Officer shall not add firms to the selection report. If recommended firms are deemed to be unqualified or the report is inadequate, the Chief Executive Officer shall document the reasons therefore and return the report to the evaluation team for appropriate revision.
5. The final selection shall be made by the Chief Executive Officer from a list of the most highly qualified firms prepared by the Evaluation Committee. The Chief Executive Officer will list those firms in order of preference for negotiating a contract.
6. After the final selection has taken place, Foothill Transit may release information identifying only the A/E firm with which an attempt will be made to negotiate a contract price. If negotiations are terminated without awarding a contract to the highest rated firm, Foothill Transit may release information that negotiations will take place with the next highest rated firm.
7. The final selection authorizes negotiations to begin with the most qualified firm, which will be requested to submit a proposal that includes fees and cost estimates.
8. The negotiation of compensation to the contractor should represent a fair and equitable payment for the services performed. At this stage, negotiations must take place not only on the amount of compensation, but also the method of payment.
9. In determining the amount of compensation and the method of payment, consideration shall be given to:
 - a. Scope and complexity of designs, surveys, and other work and the skills necessary for these services.
 - b. Quality and quantity of data provided to the A/E by Foothill Transit.
 - c. Location of, and conditions under which, the services will be performed.
 - d. Date services are to begin and time allowed for performance.
10. Costs should be negotiated taking into consideration:
 - a. Direct Labor.
 - b. Overhead.
 - c. General and administrative expenses.

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- d. Materials.
 - e. Other direct costs.
 - f. Profit, which is further influenced by:
 - i. Degree of A/E's risk.
 - ii. Level of effort.
 - iii. Level of talent or expertise the A/E must furnish.
 - iv. Amount of subcontracting.
 - v. Amount of top level A/E management involved.
 - vi. Subcontracts.
 - vii. Contractor's investment.
11. When the contract is negotiated and signed, the negotiations shall be documented and placed in the file.
12. The contract shall be monitored to ensure that expenditures and payments are commensurate with performance and meet all the terms of the contract.
13. The contractor is responsible for the professional quality, technical accuracy, and coordination of all services under the contract. The contractor may be liable to Foothill Transit for costs resulting from errors or deficiencies in design furnished under the terms of the A/E contract.

Subchapter F – Sole Source Procurements

- A. A sole source procurement is a noncompetitive procurement method. Sole source procurement is a purchase accomplished through solicitation or acceptance of a proposal from only one source; or, if after solicitation of a number of sources, competition is determined inadequate. A sole source procurement above the micro purchase threshold must be documented as to the reasons why only one supplier is acceptable. Purchases under \$10,000 are considered micro purchases and are exempt from the requirement to obtain competitive quotes or process a sole source justification. The Director of Procurement will ensure that the Project Manager utilizes the Procurement Department's sole source form in evaluating a potential sole source procurement and in making a recommendation that a sole source procurement be utilized by Foothill Transit. The Project Manager must fully document the grounds for the sole source procurement, and the Director of Procurement will ensure that the justification is provided to the Chief Executive Officer or Executive Board for approval as appropriate. The Director of Procurement will also ensure that that the completed form is included in the procurement file.
- B. The following areas must be considered in sole source determinations:
1. A contract amendment or change order that is not within the scope of the original contract is considered a sole source procurement.
 2. A sole source procurement may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals and at least one of the following circumstances applies:
 - a. Single Source
The item or services sought is available only from a single source and one of the following condition described below is present:
 - i. Unique Capability or Availability. The offeror demonstrates a unique or innovative concept or capability not available from another source. Unique or innovative concept means a new, novel, or changed concept, approach, or method that is the product of original thinking, the details of which are kept confidential or are patented or copyrighted, and is available to Foothill Transit only from one source and has not in the past been available to Foothill Transit from another source.
 - ii. Patents or Restricted Data Rights. Patent or data rights restrictions preclude competition.

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- iii. Substantial Duplication Costs. In the case of a follow-on contract for the continued development or production of highly specialized equipment and major components thereof, when it is likely that award to another contractor would result in substantial duplication of costs that are not expected to be recovered through competition.
 - iv. Unacceptable Delay. In the case of a follow-on contract for the continued development or production of highly specialized equipment and major components thereof, when it is likely that award to another contractor would result in unacceptable delays in fulfilling Foothill Transit's needs.
 - b. Unusual and Compelling Urgency. Foothill Transit may limit the number of sources from which it solicits bids or proposals when it has such an unusual and urgent need for the property or services that it would be seriously injured unless it were permitted to limit the solicitation. Foothill Transit may limit the solicitation when the public exigency or emergency will not permit a delay resulting from publicizing a competitive solicitation for the property or services.
 - c. FTA Approval. The Federal Transit Administration authorizes noncompetitive negotiations.
 - d. Inadequate Competition. After solicitation of a number of sources, competition is determined inadequate. If upon completion of a competitive procurement only one proposal is received, the Director of Procurement will review the specifications and determine if they were unduly restrictive or contact sources that chose not to submit a bid or proposal to inquire the reasons for not submitting a bid or proposal. If it is determined that the competition was inadequate, the procurement can proceed as a sole source.
- C. A cost analysis must be performed for each sole source procurement if price reasonableness cannot be determined via a price analysis. The purpose of the analysis is to provide sufficient information to support the conclusion that the price is fair and reasonable. The analysis will be prepared by the Project Manager in consultation with the Director of Procurement. The Director of Procurement will ensure that no contracts will be signed until a fully detailed and documented analysis is completed and made a part of the appropriate procurement file. The Director of Procurement will ensure that a pre-approved form relating to cost analysis is utilized and completed by the Project Manager for each sole source procurement action undertaken by Foothill Transit. The Director of Procurement will also ensure that the completed template is included in the procurement file.

Subchapter G – Single Bid or Proposal

A single bid situation exists when only one bid has been received at the time and date set for bid opening; or only one responsive bid is received at the time and date set for bid opening (as a result of having only one responsive bidder and all other bidders being determined to be non-responsive). A single proposal situation exists when only one proposal has been received at the time and date set for submission of proposals; or it is determined after review of proposals received that only one proposal meets the criteria set forth in the request for proposals.

When only one bid or proposal is received in response to a solicitation that was issued to multiple sources, it must first be determined if there was adequate competition. The receipt of only one bid or proposal does not, in itself, mean that competition was inadequate. At a minimum, to determine if there was adequate competition, bidders/proposers who received solicitations, but did not bid/propose, will be contacted by the Director of Procurement and questioned to determine why they did not respond to the solicitation. Potential bidders/proposers will be specifically queried as to whether there were any elements in the procurement that may have restricted competition. The Director of Procurement will ensure that documentation reflecting the above process is included in the procurement file. Upon completion of the above process, the Director of Procurement will determine whether there were any elements in the procurement that may have restricted competition and will determine whether the procurement documents should be modified and the solicitation re-advertised or whether the procurement can go forward as originally advertised. If this is the case then the procurement is treated as a sole source, and it must be processed in accordance with the requirements for a sole source procurement set out in these Procedures.

Alternatively, the original solicitation can be cancelled, the requirements in the original solicitation can be changed to allow for more bids or proposals, and a new invitation for bids or request for proposals issued.

If the reasons given by the non-responders are unrelated to the specification and/or solicitation terms, it will be presumed that competition was adequate and the award of the contract can be carried out as the result of a competitive procurement.

If the competition is deemed to be adequate, a price analysis must be performed to determine the reasonableness of the bid or proposal price. The Project Manager, in consultation with the Director of Procurement will prepare the price analysis. If, on the basis of a price analysis, it can be documented that the price is fair and reasonable, and if the bid is responsive and, as appropriate, the bidder or proposer is responsible, the contract may be awarded. If it cannot be determined that the bid or proposal price is reasonable on the basis of a price analysis, the bidder or proposer will be requested to provide a detailed breakdown of costs and profit, and Foothill Transit will perform a cost analysis.

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If competition is deemed to be inadequate, and it is determined appropriate to process the award as a sole source, a cost analysis must be performed unless the reasonableness of the price can be established based on a bidder or proposer's catalogue or market price.

Subchapter H – Emergency Procurements

Emergency procurements (defined as purchases immediately necessary for the preservation of life or property, or to prevent an immediate termination of a critical Foothill Transit function or activity) will be handled immediately and expedited as required. The Director of Procurement has the authority to approve the purchase of all goods and services in emergency conditions. If the Director of Procurement is unavailable to authorize an emergency procurement, the Chief Executive Officer and/or the Deputy Chief Executive Officer may provide the necessary authorization. Upon completion of the emergency procurement, the Director of Procurement will document the actions taken and execute a proper requisition.

Subchapter I – Unsolicited Proposals

- A. An Unsolicited Proposal is a proposal that is:
1. Innovative and unique;
 2. Independently originated and developed by the offeror;
 3. Prepared without Foothill Transit's supervision, endorsement, direction, or direct involvement;
 4. Sufficiently detailed such that its benefits in support of Foothill Transit's mission and responsibilities are apparent;
 5. Not an advance proposal for property or services that Foothill Transit could acquire through competitive methods; and
 6. Not an offer responding to a published expression of need or request for proposals previously published by Foothill Transit.
- B. Receipt of an unsolicited proposal does not, by itself, justify contract award without providing for full and open competition. Unless the unsolicited proposal offers a proprietary concept that is essential to contract performance, competition is required.
- To satisfy the requirement for full and open competition, the following actions must be taken before Foothill Transit enters into a contract resulting from an unsolicited proposal:
1. Publicize receipt of the unsolicited proposal.
 2. Publicize an adequate description of the property or services offered without improperly disclosing proprietary information or disclosing the originality of thought or innovativeness of the property or services sought.
 3. Publicize Foothill Transit's interest in acquiring the property or services described in the proposal.
 4. Provide an adequate opportunity for interested parties to comment or submit competing proposals.
 5. Publicize Foothill Transit's intention to award a contract based on the unsolicited proposal or another proposal submitted in response to the publication.
- C. If it is impossible to describe the property or services offered without revealing proprietary information or disclosing the originality of thought or innovativeness of the property or services sought, Foothill Transit may make a sole source award to

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the offeror. A sole source award may not be based solely on the unique capability of the offeror to provide the specific property or services proposed.

Subchapter J – Bilateral Changes and Unilateral Change Orders

- A. A change to a contract alters the terms and conditions of the original contract or provides for a change in the scope or requirements of the original contract beyond what is specifically allowed by the original contract. A contract may not be changed to include a larger scope, greater quantities, or options beyond Foothill Transit’s reasonably anticipated needs.
- B. Foothill Transit shall have the right, based on a clause contained in each contract, to agree to a bilateral change to the contract to correct errors, omissions, or discrepancies; to cover acceptable overruns; to expand or reduce the scope of the contract; or to direct other changes in contract execution to meet unforeseen field, regulatory, or market conditions. All changes must be within the scope of the original contract and agreed to by Foothill Transit in advance of work being conducted by the contractor. In addition, Foothill Transit shall have the unilateral right, based on a clause contained in each contract, to issue an immediate, unilateral change order and negotiate cost and price for time and materials after the issuance of the change order.
- C. A change is not permitted if the change causes a major deviation from the original purpose of the work or the intended method of achievement, or causes a revision of contract work so extensive, significant, or cumulative that, in effect, the contractor is required to perform very different work from that described in the original contract. Such a change would be considered a “cardinal change” to the contract.
- D. All proposed bilateral changes shall be submitted to the Director of Procurement complete with explanations and back up information and, when applicable, a detailed breakdown of charges for review and/or recommendation of approval.
- E. Verification of Bilateral Changes

The Director of Procurement will verify all bilateral changes under the following procedures:
 - 1. The Project Manager and the Director of Procurement will review the proposed contract amendment that will incorporate the change and determine whether it is within the scope of work for the project of the original contract. If the work under the amendment is within the scope of work of the original contract, the Project Manager in consultation with the Director of Procurement will perform a price or cost analysis to determine if the price is fair and reasonable before recommending approval of the amendment.
 - 2. If the amendment includes work that is not within the scope of work of the original contract, the amendment will be treated as a sole source

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procurement and evaluated accordingly. Supporting documentation will be added to the procurement files.

3. The Director of Procurement and the Project Manager will ensure that the methods of calculating the amount of the amendment are in conformance with the terms of the contract.
4. The issuance of bilateral changes for each individual contract shall be monitored by the Director of Procurement.

E. Issuance of Unilateral Change Orders

The Chief Executive Officer will issue unilateral change orders under the following procedures:

1. The Project Manager will draft the proposed change order.
2. The Director of Procurement will review the proposed change order and determine whether it is within the scope of work for the project of the original contract.
3. If the proposed change order includes work that is not within the scope of work of the original contract, the amendment will be treated as a sole source procurement and evaluated accordingly. Supporting documentation will be added to the procurement files.
4. The Chief Executive Officer shall review and issue the change order if he or she approves of the proposed change order.
5. After issuance of the proposed change order, the Project Manager shall commence negotiation of cost and price of the change order.

Subchapter K – Use of an Existing Contract

- A. An “existing contract” means a contract that, when formed, was intended to be limited to the original parties thereto. An existing contract is not a State or local government purchasing schedule or purchasing contract. The use of “tag-ons” (the addition of work, supplies, equipment, or services) by Foothill Transit that are beyond the scope of the original contract is prohibited.

- B. Within the conditions set forth below, Foothill Transit is permitted to use existing contract rights held by another.
 - 1. Foothill Transit may use contract options held by another with the following limitations:
 - a. Foothill Transit must ensure that the terms and conditions of the option it seeks to exercise are substantially similar to the terms and conditions of the option as stated in the original contract at the time it was awarded.
 - b. The underlying contract complies with applicable requirements and includes an assignability clause with a clear right to assign and that the quantities that will be purchased are allowable under the original contract terms.
 - c. The domestic content requirements in the original contract meet the current requirements.
 - d. Foothill Transit may not exercise an option unless it has determined that the option price is better than prices available in the market, or that when it intends to exercise the option, the option is more advantageous.
 - 2. Prior to using the contract options held by another, Foothill Transit shall obtain a complete procurement file for the underlying procurement from the assigning entity.

- C. Assignment of Contract Rights
 - 1. Foothill Transit is required to limit its procurements to the amount of property and services required to meet its reasonably expected needs without adding excess capacity simply for the purpose of assigning contract rights to others at a later date. Foothill Transit must be able to justify the quantities it procures.
 - 2. Foothill Transit may assign its contract rights to others if the original contract contains an assignability provision that permits the assignment of all or a portion of the specified deliverables under the terms originally advertised,

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competed, evaluated, and awarded, or contains other appropriate assignment provisions.

Subchapter L – Options

In awarding a contract that will include options, Foothill Transit will evaluate bids or offers for any option quantities or periods contained in a solicitation if it intends to exercise those options after the contract is awarded. When an option is exercised, the Director of Procurement will ensure that the exercise of the option is in accordance with the terms of the original contract, and that a cost or price analysis is conducted as appropriate to determine if the option price is better than prices available in the market at the time that the option is to be exercised, or that the option price is more advantageous to Foothill Transit at the time that the option is exercised. The Director of Procurement will also ensure that responsibility checks are carried out on any option exercise.

Option quantities, periods, and terms identified in a bid or proposal will be evaluated by the Project Manager or the Foothill Transit evaluation team at the time that the bid or proposal is evaluated and prior to the award of the base contract.

A record of the above actions will be documented in the procurement records.

Subchapter M – Intergovernmental and Joint Procurement Agreements

Foothill Transit is authorized to use cooperative purchasing agreements such as California Multiple Award Schedules (CMAS), National Association of State Procurement Officials (NASPO) ValuePoint, Sourcewell cooperative contracts, and other cooperative purchasing methods, including purchasing schedules, both federal and from other states. These offer goods and services to various state and local government agencies at prices which are fair, reasonable, and competitive. Under these methods, Foothill Transit is responsible for its own contracting program and purchasing decisions.

Under CMAS, the contractor offers to provide products or services at a price equal to or lower than the Federal GSA multiple award schedule. For CMAS, the State of California adds standard contract terms and conditions which result in a CMAS contract. It is the option of the contractor whether or not to allow a local government such as Foothill Transit to use their CMAS contract. This is not a competitive bid process, and Foothill Transit may use any criteria to assess the offers and select the awarded contractor.

Federal funds may be used for certain types of cooperative purchases. Foothill Transit shall consult with Counsel prior to initiating a cooperative purchase using Federal funds. Federal law requires that any cooperative purchase contract using Federal funds be limited as follows: (1) the initial contract term may not be for more than two (2) years; (2) the contract may not include more than three (3) optional extensions for terms of not more than one (1) year each; and (3) the contract may not be in effect for a total period of more than five (5) years, including each extension.

Cooperative agreements that utilize a catalog approach where multiple vendors/resellers offer the same product at a maximum price point will require that three or more quotes are obtained prior to award. Cooperative agreements that have publicly and openly competed procurements where one vendor has been selected as the sole awardee will not require multiple quotes. A cost or price analysis is still required for cooperative procurements.

Foothill Transit may jointly procure goods and services with other entities. When obtaining goods or services in this manner using Federal funds, the Director of Procurement shall ensure that Federal requirements, required clauses, and certifications are properly followed and included in the resulting joint solicitation and contract documents.

Subchapter N – Independent Cost Estimates

An Independent Cost Estimate is required for any procurement action (including sole-source awards, contract modifications, and change orders) over the micro purchase threshold.

A. Construction Projects

Construction cost estimates will be developed either directly by the A/E firm responsible for design development of the project or by a subcontractor of the firm. The estimates received will be dated and made part of the procurement documentation. The Director of Procurement will ensure that the estimates are prepared prior to the issuance of an invitation for bids.

The estimates will be made part of the procurement documentation and will be utilized and compared to the actual bids received to determine the reasonableness of the bids.

B. Non-Construction Projects, Goods, or Services

Cost estimates for non-construction projects, goods, or services will be developed by the Project Manager as part of the development of procurement documents. The estimates will be made part of the procurement documentation and will be utilized and compared to the actual bids or price proposals received to determine the reasonableness of the bids or price proposals. At a minimum, the documentation will identify the source of information used to develop the estimate, the date that the estimate was made, and the individual preparing the estimate. The Director of Procurement will ensure that the estimates are prepared prior to the issuance of procurement documents.

C. Use of Form

The Director of Procurement will ensure that the Project Manager for each procurement action undertaken by Foothill Transit uses and completes a standard form approved by the Director of Finance. The Director of Procurement will also ensure that the completed form is included in the procurement file.

Subchapter O – Price or Cost Analysis

- A. Foothill Transit shall conduct a price or cost analysis in connection with every procurement action, including contract modifications. In most cases, the analysis may be limited for micro purchases and abbreviated for small purchases. If a valid price analysis cannot be completed, a cost analysis of the bid price may be conducted.

1. **Price Analysis** is the process of examining and evaluating a prospective price without evaluation of the separate cost elements or proposed profit of the prospective supplier.

Price analysis may be accomplished through one or more of the following activities:

1. Adequate price competition (exists when two or more responsible offerors compete independently and submit proposals deemed responsive to a solicitation, and there is no evidence that competition was restricted or that the lowest price is unreasonable).
2. Comparison to prices set by law or regulation, established catalog prices, or established market prices.

Prices Set by Law or Regulation should be established by a copy of the applicable rate schedules.

Established Catalog Price is a price included in a catalog, price list, schedule, or other form that (1) is regularly maintained by a manufacturer or vendor, (2) is published or made available for inspection by customers, and (3) states prices at which sales are currently or were last made to a significant number of buyers from the general public.

Established Market Price is a current price established in the usual and ordinary course of business between buyers and sellers free to bargain. A market price must be verified by buyers and sellers who are independent of the offeror.

3. Comparison to previous purchases (need to account for changes in quantity, quality, delivery schedules, and the economy, and analyze each differing situation through trend analysis; need to ensure that previous price was fair and reasonable).
4. Comparison to a valid independent cost estimate.
5. Value analysis.

2. **Cost Analysis** is the review and analysis of a contractor's cost or pricing data and of the factors applied in projection from the data to the estimated costs in order to form an opinion on the degree to which the contractor's proposed costs represent what performance of the contract should cost, assuming reasonable economy and efficiency. As compared to price analysis, cost analysis involves a more detailed review of the offeror's proposal and can be used where Foothill Transit has less assurance of a fair and reasonable price.

Cost analysis may be accomplished through the following:

1. Verify contractor's cost data.
2. Evaluate specific elements of costs and project these data to determine the effect on prices of such factors as:
 - a. The necessity for certain costs;
 - b. The reasonableness of amounts estimated for the necessary costs;
 - c. Allowances for contingencies; and
 - d. The basis used for allocations of particular overhead costs to the proposed contract.
3. When the necessary data is available, compare the contractor's estimated cost with:
 - a. Actual costs previously incurred by the contractor;
 - b. The contractor's last prior cost estimate for the same or similar estimates;
 - c. Current cost estimates from other possible sources; and
 - d. Prior estimates or historical costs of other contractors manufacturing the same or similar items.
4. Forecasting future trends in costs from historical experience:
 - a. In periods of either rising or declining costs, an adequate cost analysis must include some evaluation of the trends.
 - b. In cases involving recently developed, complex equipment, even in periods of relative price stability, trend analysis of basic labor and materials costs should be undertaken.

In performing a cost analysis, there are three questions that should be asked in the examination of costs, particularly those in the overhead area:

1. Is the cost allowable in accordance with Federal guidelines?
2. Is the cost allocable to the particular project?; and

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3. Is the cost reasonable?

A cost analysis conducted in support of a Federally-funded procurement action must comply with the cost principles set forth in 2 C.F.R. Part 200, Subpart E.

- B. The purpose of the price or cost analysis is to provide sufficient information to support the conclusion that the price is fair and reasonable. The appropriate analysis will be prepared by the Project Manager, in consultation with the Director of Procurement. The Director of Procurement will ensure that no contracts will be signed until a fully detailed and documented analysis is completed and made a part of the appropriate procurement file.
- C. If only one bid or proposal is received, the sole bidder or proposer must cooperate with Foothill Transit as necessary in order for its bid or proposal to be considered for award. A new solicitation may be issued if the single bid or proposal price appears unreasonable or if no determination is made as to the reasonableness of the single bid or proposal price.
- D. The Director of Procurement will ensure that a pre-approved form is utilized and completed by the Project Manager for each cost or price analysis. The Director of Procurement will also ensure that the completed form is included in the procurement file.
- E. Foothill Transit shall negotiate profit as a separate element of the price for each Federally funded contract where there is no price competition and in all cases where a cost analysis is performed. Establishment of a fair and reasonable profit must take into consideration the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of the contractor's record of past performance, and industry profit rates in the surrounding geographical area for similar work.
- F. For each Federally funded contract which includes price or cost elements based on incurred or estimated costs, Foothill Transit shall ensure that the contract provides that payment of incurred or estimated costs is only permitted if such costs would be allowable for Foothill Transit under the Federal award.

Subchapter P – Design-Build Contracts

Public Contract Code §§ 22160, *et seq.*¹ provides state law authority for design-build procurements. Subject to changes in applicable law, the design-build method of project delivery may be used for transit capital projects with a projected contract award of \$1,000,000 or more. These are complex procedures requiring careful analysis and reviews as to their applicability and the specific procedures to be followed.

¹ California Pub. Con. Code § 22169 is effective only until January 1, 2025, and remains subject to further legislative amendments.

Subchapter Q – Demonstration (Pilot) Projects for Innovative Products, Approaches, or Technologies

A demonstration project is a short-term, carefully planned, pilot exercise designed to test and evaluate the feasibility and application of an innovative product, approach, or technology not currently used by Foothill Transit. Demonstration projects will allow Foothill Transit to observe and analyze effectiveness and efficiency of the innovative product, approach, or technology without a large commitment of resources. Demonstration projects may be initiated by an unsolicited proposal or by Foothill Transit on its own initiative. A demonstration project may result in a procurement if Foothill Transit determines that the piloted product, approach, or technology should be fully implemented at Foothill Transit.

Demonstration projects shall not be considered for public works/construction (as defined in Article 3.5 of the California Public Contract Code) projects or for projects involving Architectural and/or Engineering services. Demonstration projects shall not be considered in connection with Federal funding unless such funding is specifically authorized for use on such demonstration project.

A. Preliminary Discussions

Foothill Transit may engage in preliminary discussions with a vendor to explore the feasibility of a proposed demonstration (pilot) project. Discussions are not negotiations for the award of a contract. A summary of these discussions shall be documented and retained in the contract file.

B. Determination

Prior to entering into negotiations for the award of a contract for a demonstration project, the Chief Executive Officer shall make a determination stating that:

1. Testing or experimentation is advisable to evaluate the service or reliability of an innovative product, approach, or technology;
2. The product, approach, or technology cannot be reasonably acquired for evaluation through a competitive solicitation;
3. The product, approach, or technology is not currently in use by Foothill Transit;
4. The results of the demonstration project shall be documented and made publicly available on Foothill Transit's website upon its conclusion;
5. There is an intent to competitively acquire the product, approach, or technology if, after testing and evaluation, a decision is reached to continue its use within Foothill Transit; and

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6. Any outside funding relied upon to justify the award of the contract pursuant to this subchapter has been documented.

C. Notice of Intent

1. Notice of intent to enter negotiations for a demonstration project shall be published on Foothill Transit's website for at least seven days before entering into negotiations with the vendor. The notice shall remain on Foothill Transit's website until expressions of interest are due.
2. Such notice shall include: (i) title and/or brief description of the goods or services to be procured; (ii) name of the proposed vendor; (iii) a summary of the determination made pursuant to subsection B above; (iv) how vendors may express their interest in providing such goods or services; and (v) the due date for expressions of interest, which shall be no sooner than five days after the posting of the notice.

D. Evaluation of Interest

Upon evaluation of expressions of interest received, if any, the Chief Executive Officer shall make a determination of how to proceed, which shall include the basis for such determination. Where it appears that the product, approach, or technology is already competitively available in the marketplace, the Chief Executive Officer may determine that a competitive solicitation may be issued; or, if it appears that the product, approach, or technology can be reasonably evaluated using short-term contracts with more than one vendor, the Chief Executive Officer may determine that negotiations to establish such demonstration projects may be conducted with more than one vendor; or negotiations may proceed with the single vendor originally identified.

E. Negotiations

After completing negotiations, the Chief Executive Officer shall award the contract if it is determined that the award will be in Foothill Transit's best interest and that the price is fair and reasonable.

F. Award

The Chief Executive Officer has the authority to award a demonstration project contract under \$100,000. A demonstration project contract of \$100,000 or more must be awarded by the Executive Board.

G. Contract Term

Contracts for demonstration projects should be for a term that is reasonable both to conduct the demonstration and to determine its effectiveness. The term of the demonstration project shall not exceed one (1) year, unless the Chief Executive Officer determines that the effectiveness of the product, approach, or technology cannot be evaluated in one (1) year.

In order to enter into a multi-year contract, the Chief Executive Officer shall make a determination setting forth with specificity:

1. Why the effectiveness of the product, approach, or technology cannot be evaluated in one (1) year; and
2. How the proposed term of the contract was determined. In making such determination, the Chief Executive Officer may consider whether it would be in Foothill Transit's best interest to ensure that no break in the provision of services occurs at the end of the demonstration project, if successful. If the Chief Executive Officer makes such a determination, the Chief Executive Officer should establish an initial term that is long enough to allow for the subsequent solicitation of those services at the conclusion of the project's evaluation.

H. Notice of Award

1. Award of contracts pursuant to this Subchapter shall be published on Foothill Transit's website in a location that is accessible by the public following award of the contract.
2. Such notice shall include: (i) title and/or brief description of the goods or services procured; (ii) name of the vendor; (iii) dollar value of the contract; (iv) the date of the published notice of intent to enter into negotiations for the award of a contract from a demonstration project; (v) a summary determination of the basis for the demonstration project; and (vi) the term of the contract and the date before which Foothill Transit will determine whether to competitively acquire or discontinue use of the product, technology, or approach.

I. Conclusion of Demonstration Project

At the conclusion of the demonstration term, based upon documented results of the project, Foothill Transit shall make a determination, including the reasons therefore, whether to competitively acquire or to discontinue the use of the product, approach, or technology.

CHAPTER IV – PURCHASE ORDERS

A. Purchase Order Process / Requirements

1. Purchase Orders can be issued for the purchase of good or services. The issuance of a purchase order requires the approval of the Department Head and/or Project Manager responsible for the particular budget. The Finance system will not allow the issuance of a Purchase Order when sufficient budget funding is not available. Three types of Purchase Orders are available: 1) Contract Purchase Orders (KPO); 2) Purchase Orders (PO); and 3) Purchase Invoices (PI).
2. A KPO, PO, or PI is required for all purchases. A properly completed Purchase Order includes: a description of the item to be procured, the quantity, unit cost, total costs and when applicable attachments including: invoice, contract, vendor quotations, and when and where service will be performed; and when and where the items will be delivered.
3. The account name(s) and number(s) must be provided to determine which account will be expensed when the Purchase Order is processed for payment.
4. Purchase Orders are handled by orally notifying the vendor of the approved Purchase Order number. Written confirmation shall be sent to the vendor, if appropriate.
5. Vendors shall be instructed to include their Purchase Order number on all correspondence, including packaging, invoices, credit memos, etc.

B. Types of Purchase Orders:

1. Contract Purchase Orders (KPO)

This type of purchase order is used when the purchase of goods and/or services is directly tied to an existing contract. The Contract Purchase Order number is the same as the existing contact number preceded with “KPO” and the amount of the total contract value which will be encumbered and no longer available for future expenditures. This will be the maximum potential liability for all payments under the contract. Progress payments can be accomplished using the KPO number; however payments cannot exceed the total value of the KPO. In the event a contract amendment is signed which either increases or decreases the initial contract amount, the KPO can be modified to reflect the amendment. The modification would be similar to the preparation of the original KPO using the contract number preceded by KPO, entering an account number and amount of the

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amendment, a positive amount for a contract increase and negative amount for a contract reduction.

2. Purchase Orders (PO)

A Purchase Order is used when the good and/or services have not been received and the vendor requires an authorization to sell and invoice Foothill Transit for goods and/or services. The PO number will be assigned by the finance system and the amount should be sufficient to encumber funds to complete the purchase. Normally the goods and/or services are delivered and one payment is executed for full payment. However, POs may be issued for items that are to be delivered over a period of time with payments executed as the goods and/or services are delivered. Using the PO for staggered deliveries and payments is akin to a "Blanket Purchase Order". The total amount of the PO will be encumbered, removing the funding from future expenditures.

3. Purchase Invoice (PI)

Purchase Invoices are to be used when an invoice for goods and/or services has been received from the vendor. The PI number will be assigned by the finance system. The issuance of the PI will initiate payment for the goods and/or services. The PI amount cannot exceed available funding.

C. **Receipt of Goods/Service and Authorization to Pay**

1. The Department Head, his or her designee, or the designated Project Manager is responsible for the receipt of the physical merchandise order when goods are being purchased. Upon receipt, the packing slip shall be compared to the goods received. If correct, the packing slip shall be processed for payment.
2. The Department Head, his or her designee, or the designated Project Manager is responsible for the supervision of services to be performed for Foothill Transit. Upon completion of the services, invoice(s) shall be compared to the services received. If correct, invoice shall be processed for payment.

CHAPTER V – VENDOR PROTEST PROCEDURES

A. Purpose

The purpose of this Chapter is to set forth the procedures to be utilized by Foothill Transit in considering and determining all bid protests or objections regarding solicitations, proposed award of a contract, or award of a contract whether before or after award.

B. General

In order for a bid protest to be considered by Foothill Transit, it must be submitted by an interested party (as defined below) in accordance with the procedures set forth herein. A protest submitted by a party that is not an interested party or which is not in accordance with the procedures shall not be considered by Foothill Transit, and will be returned to the submitting party without any further action by Foothill Transit.

In all instances where Foothill Transit receives a protest involving a potential contract that will be funded with Federal Transit Administration funds, Foothill Transit will notify the Federal Transit Administration of the protest, provide information concerning the nature of the protest, and keep the Federal Transit Administration informed about the status of the protest.

C. Definitions

For purposes of these Bid Protest Procedures:

1. The term “Bid” includes any bid or offer submitted by a bidder in response to an Invitation for Bid (IFB), a proposal submitted by a proposer in response to a Request for Proposals (RFP), or a submittal submitted by an offeror in response to a Request for Qualifications (RFQ).
2. The term “contract” means that document to be entered into between Foothill Transit and the successful bidder and offeror.
3. The term “days” refers to normal business days of Foothill Transit staff offices.
4. The term “interested party” means any person: who is an actual or prospective proposer, bidder, or offeror in the procurement involved; and whose direct economic interest would be affected by the award of a contract or by failure to award a contract. A subcontractor does not qualify as an “interested party” because it does not have a direct economic interest in the results of the procurement.
5. The term “solicitation” means an Invitation for Bids (IFB), Request for Proposals (RFP), or other form of document used to procure equipment or services.

D. Grounds for Protest

Any interested party may file a bid protest with Foothill Transit on the grounds that:

1. Foothill Transit has failed to comply with applicable Federal or State Law;
2. Foothill Transit has failed to comply with its procurement procedures;
3. Foothill Transit has failed to comply with the terms of the solicitation in question, including the failure to adhere to the evaluation criteria set forth in the solicitation, if applicable;
4. Foothill Transit has issued restrictive or discriminatory specifications; or
5. Award is made to other than the lowest responsive and responsible bidder on formally advertised (IFB) procurements.

E. Contents of Protest

1. A bid protest must be filed in writing and must include:
 - a. The name and address of the protestor.
 - b. The name and number of the procurement solicitation.
 - c. A detailed statement of the grounds for the protest, including all relevant facts and a citation to the Federal or State law, the provision of Foothill Transit procurement procedures, or specific term of the solicitation alleged to have been violated.
 - d. Any relevant supporting documentation the protesting party desires Foothill Transit to consider in making its decision.
 - e. The desired relief, action, or ruling sought by the protestor.
2. Protests must be filed with:

Director of Procurement
Foothill Transit
100 South Vincent Avenue, Suite 200
West Covina, California 91790
3. All protests must be received at the Foothill Transit address listed above during normal office hours of 8:30 a.m. to 5:00 p.m., Pacific Standard or Daylight Time.
4. If any of the information required by this section is omitted or incomplete, Foothill Transit will notify the protestor, in writing, within one day of the receipt of the protest, and the protestor will be given one day to provide the

omitted or incomplete information in order for the protest to be further considered. Note that this provision only applies in the case of a failure to state any grounds for a protest and does not apply to stating inadequate grounds for a protest or the failure to submit documentation.

F. Timing Requirements and Categories of Protests

Foothill Transit will consider the following categories of bid protests within the time period set forth in each category:

1. Any bid protest alleging improprieties in a solicitation process or in procurement documents must be filed no later than five calendar days prior to the scheduled bid opening or deadline for submittal or proposals, as appropriate, in order to be considered by Foothill Transit. Any protest based on such grounds not filed within this period will not be considered by Foothill Transit. This category of protests includes, but is not limited to, allegation of restrictive or exclusionary specifications or conditions.
2. Any bid protests regarding the evaluation of bids or proposals by Foothill Transit, or improprieties involving the approval or award or proposed approval or award of a contract must be filed with Foothill Transit no later than the earlier of five calendar days after: (a) Foothill Transit's issuance of notice of intent to award the contract, if Board approval of the contract is not required; (b) Foothill Transit's publication of the Board agenda containing the Chief Executive Officer's recommendation for contract award, if Board approval of the contract is required; or (c) Board award of the contract, if the Board awards to a proposer other than the proposer recommended for award by the Chief Executive Officer. Any protest filed after such date which raises issues regarding the evaluation of bids or proposals, or the contract approval or award will not be considered by Foothill Transit.

G. Review of Protest by Foothill Transit

1. Foothill Transit will notify the protestor within 3 days of timely receipt of a bid protest that the protest is being considered.
2. In the notification, Foothill Transit will inform the protestor of any additional information required for evaluation of the protest by Foothill Transit, and set a time deadline for submittal of such information. If Foothill Transit requests additional information, and it is not submitted by the stated deadline, Foothill Transit may either review the protest on the information before it, or decline to take further action on the protest.
3. In its sole discretion, Foothill Transit may give notice of any bid protest to other bidders or proposers for the procurement involved in the protest, as appropriate, and permit such bidders or offerors to submit comments to Foothill Transit relative to the merits of the bid protest. Foothill Transit will

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set a time deadline for the submittal of such comments, which will be no less than 5 days after Foothill Transit provides notification of the protest.

4. In its sole discretion, Foothill Transit may schedule an informal conference on the merits of a bid protest. All interested parties will be invited to participate in the conference. Any information provided at the conference will only be considered by Foothill Transit in deciding the bid protest if it is submitted to Foothill Transit in writing within 3 days after the conference.

H. Effect of Protest on Procurement Actions

1. Upon receipt of a timely protest regarding either the solicitation process of the procurement documents in the case of sealed bids, Foothill Transit will postpone the opening of bids until resolution of the protest. The filing of the protest will not, however, change the date on which bids are due, unless Foothill Transit determines, and so notifies all bidders, that such a date change is necessary and appropriate to carry out the goals of the procurement and assure fair treatment for all bidders.
2. Upon receipt of a timely protest regarding evaluation of bid or proposals, or the approval or award of a contract, Foothill Transit will suspend contract approval or other pending action, or issue a stop work order if appropriate, until the resolution of the protest. In this event, the successful bidder or proposer may not recover costs as a change order.
3. Notwithstanding the pendency of a bid protest, Foothill Transit reserves the right to proceed with any appropriate step or action in the procurement process or in the implementation of the contract in the following cases:
 - a. Where the item to be procured is urgently required;
 - b. Where Foothill Transit determines, in writing, that the protest is vexatious or frivolous;
 - c. Where delivery or performance will be unduly delayed, or other undue harm to Foothill Transit will occur, by failure to make the award promptly;
or
 - d. Where Foothill Transit determines that proceeding with the procurement is otherwise in the public interest.

I. Summary Dismissal of Protests

Foothill Transit reserves the right to summarily dismiss all or any portion of a bid protest that raises legal or factual arguments or allegations that have been considered and adjudicated by Foothill Transit in a previous bid protest by any interested party in the same solicitation or procurement action.

J. Protest Decisions

1. After review of a bid protest by appropriate Foothill Transit staff and/or Counsel, a recommendation shall be made to the Foothill Transit Chief Executive Officer concerning the appropriate disposition of such protest.
2. The recommendation shall be made on the basis of the information provided by the protestor and other parties, the results of any conferences, and Foothill Transit's own investigation and analysis.
3. The decision of the Foothill Transit Chief Executive Officer shall be in writing and shall be the final binding agency action. Except in exceptional circumstances, the decision of the Foothill Transit Chief Executive Officer will be issued within 30 days after the date all relevant information is submitted according to the dealings set forth in these procedures.
4. If the protest is upheld, Foothill Transit will take appropriate action to correct the procurement process and protect the rights of the protestor, including resolicitation, revised evaluation of bids or proposals or Foothill Transit's determination, or termination of the contract.
5. If the protest is denied, Foothill Transit will lift any suspension imposed and proceed with the appropriate state of the procurement process or the contract.

K. Judicial Appeals

A protestor adversely affected by a bid protest decision may appeal such decision to an appropriate court of the State of California.

L. Limited Appeals to Federal Transit Administration (Only if Federal funds are used in the procurement)

1. Foothill Transit protest decisions may be appealed to FTA only as permitted by Federal standards, including the U.S. Department of Transportation's adoption of 2 C.F.R. 200.318(k) and FTA Circular 4220.1F, as currently in effect as of the date of Foothill Transit's decision on the bid protest. A protestor must exhaust its administrative remedies by pursuing Foothill Transit's protest procedures to completion before appealing Foothill Transit's decision to FTA.
2. In accordance with the FTA Circular, such protest must be filed with FTA's Regional Office no later than five (5) working days after the date when the protestor has received actual or constructive notice of Foothill Transit's final decision or within five (5) working days of the date when the protestor has identified other grounds for appeal to FTA (i.e., Foothill Transit's failure to have or failure to comply with its protest procedures or failure to review the protest).

CHAPTER VI – CONTRACT ADMINISTRATION

A. Contract Administration Guidelines

1. A Notice to Proceed will be issued as necessary as determined by the Director of Procurement in consultation with the Project Manager.
2. A letter of agreement shall be sufficient for projects with specific specifications and/or scope of work and with a value of \$20,000 or less.
3. A full contract agreement (with terms and conditions) will be entered into for all projects with a value in excess of \$20,000.
4. All agreements will be assigned a contract number, which must be referred to on the Purchase Order and the contractor's invoices.
5. Once the Notice to Proceed is issued or the contract is signed (if a Notice to Proceed is not required), the Project Manager will originate the Purchase Order.
6. The Project Manager will review and approve all invoices in a timely manner so that timely payment may be issued to the contractor in accordance with the contract provisions. The Project Manager's review shall include examining the invoices to confirm that all costs invoiced to Foothill Transit are allowable under the applicable funding agreement and regulations, including 2 C.F.R. 200, as appropriate.
7. The Chief Executive Officer will sign all contracts unless unavailable, in which case contracts will be signed in accordance with Chapter I of this Procurement Policies and Procedures Manual.
8. A copy of the procurement document must be included with the contract files, including an explanation of the process used in procuring the goods or services.
9. The Project Manager is responsible for ensuring that each contractor provides the goods and services specified in the contract in accordance with the terms and conditions of the contract including, but not limited to, product and/or construction specifications.
10. Foothill Transit is solely responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements.

B. State and Local Procurement Requirements.

State and local requirements are applicable to all procurements regardless of the source of funding. These requirements are listed in Appendix A.

C. Federal Procurement Requirements

1. Since Foothill Transit receives FTA capital assistance, Federal procurement requirements apply to all Federally-funded procurements. Some of these requirements are unique and pertain only to Federally-funded procurements. The specific contract terms and/or regulatory or administrative requirements that only apply when Federal funds are being utilized for the procurement are listed in Appendix B.
2. The requirements of the Americans with Disabilities Act, the equal opportunity provisions of the Civil Rights Act of 1964, as amended, and the FTA's Drug and Alcohol Testing Requirements (49 CFR Parts 655) (if applicable) apply to all procurements, *even if Federal funds are not utilized.*
3. State or local geographic preferences, except those expressly mandated or encouraged by Federal statute, are prohibited. (A/E procurements may use geographic location as selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.)

D. Bonding Requirements

1. Purpose
To ensure uniform and equitable application of bonding requirements in compliance with State and Federal regulations and protect the interests of Foothill Transit.
2. Responsibility
It shall be the responsibility of the Director of Procurement to ensure that these guidelines are followed and applied impartially.
3. Types of Bonds
 - a. Bid Guarantee: This shall consist of a firm commitment, such as a bid bond, certified or cashier's check, or other negotiable instrument accompanying a bid as assurance the bidder will, upon acceptance of the bid by Foothill Transit, execute such contractual documents as may be required within the time specified. Foothill Transit will require bid bonds for all construction projects in excess of \$6,500, for any equipment or services contract of a critical nature to the operations of Foothill Transit, or for any equipment contract in which the equipment is specifically manufactured for Foothill Transit. The bid bond amounts are set forth in the chart below. Foothill Transit will require proposal bonds for any equipment or services contract of a critical nature to the operations of Foothill Transit. Failure of bidders to comply with these requirements will result in a determination by

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the Director of Procurement that the bid is non-responsive. Original “wet” ink signatures are required on all bid bonds.

- b. **Performance:** This is a bond executed in connection with a contract to secure fulfillment of all the Contractor’s obligations under such contract. Performance bonds shall be written by a corporate surety that is an admitted surety in the State of California. Foothill Transit will require performance bonds for all construction projects in excess of \$6,500, for any equipment or services contract of a critical nature to the operations of Foothill Transit, or for any equipment contract in which the equipment is specifically manufactured for Foothill Transit. Bond amounts are set forth in the chart below. Original “wet” ink signatures are required on all performance bonds.
- c. **Payment:** This is a bond executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract. Payment bonds shall be written by a corporate surety that is an admitted surety in the State of California. Foothill Transit will require a bond for public works (that are “works of improvement”) contracts over \$25,000. Bond amounts are set forth in the chart below. Original “wet” ink signatures are required on all payment bonds.

4. **Procedures**

Public Works/Construction – Bid guarantees and performance bonds are required by the State of California for all construction projects in excess of \$6,500. Payment bonds are required by the State of California for all public works that are “works of improvement” projects in excess of \$25,000.

Other projects – Bid guarantees and/or performance bonds are not required unless the procurement involves equipment or services of a critical nature to the operations of the agency and/or is specifically manufactured for the agency thereby making procurement from another source difficult or time consuming. Payment bonds are not required under these circumstances.

Required bonding levels are:

Type of Project	Type of Bond		
	Bid	Performance	Payment
Public Works/Construction <i>*Bonds mandatory (in percent stated) to the extent the above-referenced requirements are met</i>	10%	100%	100%

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<p>Materials and Equipment <i>*Bonds mandatory if procurement is for equipment of a critical nature to the operations of Foothill Transit or if equipment is specifically manufactured for Foothill Transit</i></p>	up to 5%	up to 20%	N/A
<p>Services (except for personal or professional) <i>*Bonds mandatory if procurement is for services of a critical nature to the operations of Foothill Transit</i></p>	up to 5%	up to 100%	N/A

5. Forfeiting of Bonds

All contracts that contain bonding requirements shall contain a clause allowing termination on default of the contractor and providing that in such cases the surety company shall bear the responsibility for the completion of the contract, or if no surety company has provided a performance bond, Foothill Transit will claim the alternate to the performance and payment bond and use such funds for the completion of the contract.

E. Insurance Requirements

1. Insurance requirements vary depending on the project type. They may include provisions for personal injury, environmental liability and other areas. The insurance requirements for each project are established by Foothill Transit.
2. In assessing risk, Foothill Transit will consider the following project information:
 - a. Scope of work.
 - b. Contract amount.
 - c. Whether the project requires the contractor to operate on Foothill Transit property.
 - d. The ultimate use of the good or service provided by the contractor.
 - e. Previous experience associated with similar or related projects.
3. Once the insurance requirements are defined, they must be included in the procurement document.
4. The Director of Procurement will request that insurance certificates be provided within ten (10) business days after contract execution. A copy of the insurance certificate is to be kept in the project file.

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5. The Director of Procurement shall not allow any contract to continue without proper insurance in effect after notification of the lapse of requisite insurance.

F. Liquidated Damages

1. The Project Manager will determine whether the use of a liquidated damages provision is appropriate for each specific procurement. The amount of liquidated damages must be reasonable, shall be set at a specific rate for each day of overrun in contract time for a public works/construction contract or for delivery of goods, or for each instance of an incident giving rise to imposition of liquidated damages in a service contract, and the rate must be specified in the contract. If liquidated damages are assessed in a Federally-funded contract, the Project Manager in consultation with the Finance Manager will ensure that, as appropriate, the liquidated damages recovered are credited to the project unless the Federal Transit Administration permits otherwise.
2. A liquidated damages clause may be used if it is determined that:
 - a. The time of delivery of goods or services to Foothill Transit is critical, and Foothill Transit can expect to suffer damage if the delivery is delinquent; and
 - b. The extent or amount of such damage would be difficult or impossible to determine.

G. Indemnification

All contracts shall provide that the contractor indemnify and save harmless Foothill Transit, its members, Executive Board Members, officers, agents, employees, and other consultants or contractors as appropriate from any injuries and or damages received by any person during any operations connected with the Contract, by use of any improper materials, or by any act or omission of the Contractor or his subcontractor, agents, servants or employees.

H. Termination for Cause, Mutual Agreement, and for Convenience

All contracts shall contain a provision allowing for the termination of the contract for convenience by Foothill Transit and prescribe methods in which the contractor may calculate cost of work already performed, and termination settlement costs. All contracts shall also contain a clause allowing for termination by mutual agreement of the parties. All federally-funded contracts that exceed \$10,000 are to include provisions that allow Foothill Transit to terminate the contract for cause or convenience, and that stipulate the manner by which termination will be made and the basis for settlement.

I. Dispute Resolution

All contracts shall contain provisions providing that any dispute between the contractor and Foothill Transit relating to the implementation or administration of the contract in question be resolved in accordance with a dispute resolution process set out in the contract.

J. Reporting Changed Circumstances

If current or prospective legal matters with potentially serious circumstances (or any matter or situation) arise and may adversely affect the Federal Government's interest in a project or related activity, Foothill Transit shall report the circumstance(s) to FTA. In such instances, Foothill Transit shall expeditiously keep FTA informed of the status of circumstances.

K. Project Control File

The project control file shall be maintained during the procurement process, throughout the term of the contract and for a minimum of three (3) years from the later of the date on which: (i) vendor has completed all work, or (ii) Foothill Transit has received final payment from FTA for the work.

The control file consists of the following sections:

1. Vendor list.
2. Rationale for type of procurement used.
3. Rationale for selecting the contract type.
4. List of all vendors responding to the procurement.
5. All documentation relating to the selection process, including, but not limited to: evaluation score sheets, bids, rationale for selection and/or rejection of respondents, and the source selection plan.
6. Notice to proceed (if applicable).
7. Basis for contract price.
8. Final contract.
9. Executive Board report, if required.
10. All correspondence.
11. Proof of insurance.
12. Bond documents.

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13. Notice of Solicitation.
14. Legal advertisement (if applicable).
15. Original procurement document and all addenda.
16. Original responses to the procurement.
17. DBE information.

L. Vendor Database

1. The Vendor Database is housed in the electronic procurement portal and consists of a listing of businesses, organizations, and enterprises that could provide quality goods and services specific to Foothill Transit.
2. A vendor will be removed from the Vendor Database if Foothill Transit determines that the vendor should be prohibited from participating in Foothill Transit procurement actions. Foothill Transit shall make such determination in accordance with the Debarment and Suspension Procedures set forth in Chapter VII.

M. Types of Contracts and Payment Terms

1. Except as provided in this section, any type of contract which will promote the best interest of Foothill Transit may be used. A type of contract other than firm, fixed-price may be used only when a determination is made by the Director of Procurement that such contract is likely to be less costly than the firm, fixed-price contract or that it is impractical to obtain the supplies, services or construction required by the firm, fixed-price contracting method.
2. A firm, fixed-price contract establishes a price that is not subject to any adjustment on the basis of the contractor's cost experience in performing the contract.
3. A cost-reimbursement contract is one in which the contractor is paid its reasonable, allocable and allowable costs of performance regardless of whether the work is completed.
4. A time and material contract may be used only:
 - a. after a determination by the Director of Procurement that no other type of contract is suitable; and
 - b. if the contract specifies a ceiling price that the contractor shall not exceed except at its own risk.

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5. Cost plus percentage of cost and percentage of construction cost methods of contracting are prohibited.
6. Except in limited circumstances, advance payments utilizing Federal Transit Administration funds are prohibited unless prior written concurrence is obtained from the Federal Transit Administration and adequate security is obtained from the contractor.
7. Progress payments will only be made on the basis of costs incurred or, in the case of construction contracts or certain major acquisition contracts, on the basis of percent of completion or major milestones completed or major components procured. In such cases, Counsel will ensure that the contract provides that Foothill Transit obtain adequate security including taking title to major components, performance or payment bonds, letters of credit or equivalent means to protect Foothill Transit's interests. In Federally funded contracts, if milestones are used as the basis for progress payments, the contractor shall be required to substantiate the actual costs incurred in connection with each milestone.
8. Contractors shall designate an account on an approved Foothill Transit form, to which payments shall be made. Any change in payment account information shall require an amendment to the contract.
9. Each "contractor," as defined in CA Bus & Prof Code § 7026, shall be required to pay subcontractors within 7 days of its receipt of Foothill Transit's payments.
10. All other contractors shall be required to pay subcontractors within timeframes provided in applicable laws and regulations, and if no such timeframe is established or the timeframe exceeds 30 days from receipt of payment, contractors shall be required to pay subcontractors for work satisfactorily performed, within 30 days of Foothill Transit's payments, in accordance with 49 CFR §26.29, unless such payment is excused by Foothill Transit for good cause. Contractor may only delay or postpone any payment obligation to any of its subcontractors where, in Foothill Transit's sole estimation, good cause exists for such a delay or postponement. All such determinations on Foothill Transit's part that good cause exists for the delay or postponement of contractor's payment obligation to its subcontractor must be made in writing prior to the time when payment to the subcontractor would have been otherwise due by the contractor.

CHAPTER VII – DEBARMENT AND SUSPENSION PROCEDURES

A. Purpose

The purpose of this Chapter is to set forth the Debarment and Suspension Procedures to be used by Foothill Transit in making a determination as to whether a contractor should be prohibited from participating in Foothill Transit Procurement Actions. These Procedures are intended to protect the public interest by assuring that Foothill Transit awards Contracts to responsible Contractors only, and by barring from participation those Contractors that have engaged in criminal acts, fraudulent or deceptive practices, a pattern of deficient performance, or other improper actions as described in this Chapter. As set forth below, the Procedures establish the specific grounds for Debarment and/or Suspension and the process to be followed by Foothill Transit to assure that an affected Contractor is afforded due process in the Debarment Determination. The Procedures establishes a process for local debarment decisions and are separate and apart from any State or Federal debarment process.

B. Definitions

For purposes of these Debarment and Suspension Procedures:

1. The term “Affiliate” means a person or firm that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with a Contractor. For purposes of determining status as an Affiliate, “control” may be evidenced by interlocking ownership or management, financial control, actual day-to-day control, or shared facilities, equipment, or employees.
2. The term “Bid” includes any bid or offer submitted by a bidder in response to an Invitation for Bid (IFB), a proposal submitted by a proposer in response to a Request for Proposals (RFP), or a response submitted by an offeror in response to a Request for Qualifications (RFQ).
3. The term “Civil Judgment” means a judgment or finding of a civil offense by a court of competent jurisdiction.
4. The term “Contract” means the document entered into, or to be entered into, between Foothill Transit and a successful bidder.
5. The term “Contractor” means a person or firm that has submitted a Bid in a Foothill Transit Procurement Action, or reasonably may be expected to submit such a Bid, or has provided equipment, vehicles, construction work, professional services, or other materials or services for Foothill Transit under a Contract.
6. The term “Conviction” means a conviction of a criminal offense by a court of competent jurisdiction, whether entered upon a verdict or a plea.

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7. The term “Days” refers to normal business days of Foothill Transit staff offices.
8. The term “Debarment” means the action taken by Foothill Transit which results in a Contractor, and identified Affiliates of the Contractor, being prohibited from bidding on, being awarded, and/or performing work on a Contract for a specified Debarment Period.
9. The term “Debarment Determination” means the written determination made by Foothill Transit’s Chief Executive Officer regarding the Debarment of a Contractor pursuant to Section E hereof.
10. The term “Debarment Panel” means the three person panel established by Foothill Transit to make recommendations regarding Debarment actions to the Foothill Transit Chief Executive Officer. The Debarment Panel shall consist of three individuals from Foothill Transit. Individuals from the Procurement Department are not permitted to sit on the Debarment Panel.
11. The term “Debarment Period” means the period of Debarment described in Section F hereof and set forth in the Debarment Determination.
12. The term “Debarment Recommendation” means the written recommendation made by the Debarment Panel to Foothill Transit’s Chief Executive Officer regarding a proposed Debarment action.
13. The term “Disposition Agreement” means a written agreement between Foothill Transit and a Contractor that disposes, to the satisfaction of Foothill Transit, of the grounds for a possible Debarment.
14. The term “Government Entity” means any Federal, State, or local department, agency, or authority.
15. The term “Procurement Action” means a procurement carried out by Invitation for Bids (IFB), Request for Proposals (RFP), Request for Qualifications (RFQ), or other form of solicitation used by Foothill Transit to procure equipment, vehicles, construction work, professional services, or other materials or services.
16. The term “Suspension” means the action taken by Foothill Transit which results in a Contractor, and identified Affiliates of the Contractor, being temporarily disqualified from participating in Foothill Transit Procurement Actions pending the issuance of a Debarment Determination.

C. Grounds for Debarment

1. Foothill Transit may debar a Contractor for any of the following:

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- a. Conviction of or a Civil Judgment for (i) the commission of a criminal offense under Federal or State law in obtaining, attempting to obtain, or performing a contract with a Government Entity; or (ii) the commission of fraud, embezzlement, theft, bribery, extortion, forgery, falsification or destruction of records, or receiving stolen property.
- b. Conviction of or a Civil Judgment for the commission of any other offense indicating a lack of business integrity or business honesty that directly affects the Contractor's responsibility.
- c. Violation of the terms of a contract with a Government Entity so serious as to justify Debarment, such as a pattern of unsatisfactory or deficient performance of the contract, including material or repeated failure to meet contractual deadlines or to provide contract deliverables.
- d. Disqualification, suspension, or debarment by another Government Entity.
- e. Fraudulent, deceptive, or otherwise improper conduct, statements, or actions in connection with obtaining, attempting to obtain, or performing a contract with Foothill Transit or another Government Entity, including bribery, billing irregularities, destruction of records, or misrepresentations or fraud relating to disadvantaged or minority business enterprises.
- f. A pattern of unsafe practices in the performance of work under contracts with Foothill Transit or other Government Entities, as evidenced by factors such as multiple and serious violations of Federal or State OSHA statutes or regulations, materially deficient worker safety programs or practices, or a workers' compensation experience modification history consistently in excess of industry averages.
- g. Acts or omissions that indicate the Contractor's lack of quality, fitness, or capacity to perform, or that indicate a lack of business integrity or business honesty.
- h. A pattern of false, frivolous, or vexatious claims against Government Entities in connection with the performance of contracts.
- i. The presence of officers, directors, shareholders, or partners in the Contractor's business who were in those positions with another Contractor that was debarred by Foothill Transit or another Government Entity in the last five (5) years.
- j. Any other cause of so serious or compelling a nature that it affects the present responsibility of the Contractor.

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2. Foothill Transit may, in its discretion and based on the specific facts of the case: (a) institute Debarment proceedings under this Chapter against a Contractor on the basis of the actions of an Affiliate that would constitute a grounds for Debarment under this Section; and (b) in issuing a Debarment Determination, impose appropriate sanctions on an Affiliate as well as on the Contractor that is the subject of the Debarment process.
3. The fraudulent, criminal, or other improper conduct of any officer, director, shareholder, partner, or employee of a Contractor may be imputed to the Contractor and may be the basis for Debarment or Suspension hereunder when the conduct occurred in connection with the individual's performance of duties for or on behalf of the Contractor, or occurred with the Contractor's knowledge, approval, or acquiescence.

D. Debarment Process

1. The Debarment process under this Chapter will be initiated by Foothill Transit's Director of Procurement providing written notice to a Contractor of an intent to debar, which shall set forth (a) the specific grounds for the proposed Debarment and relevant facts relied upon by Foothill Transit; (b) a notice of the Contractor's right to submit written information and argument in opposition to the proposed Debarment; and (c) a notice of the Contractor's right to a hearing, subject to paragraph 4 below.
2. The Contractor's information and argument in opposition to the intent to debar shall be submitted to Foothill Transit within ten (10) Days after the date of the written notice of the intent to debar.
3. Foothill Transit will, within fifteen (15) Days after the receipt of the Contractor's submittal under paragraph 2, conduct a hearing before the Debarment Panel (unless the hearing is waived pursuant to paragraph 4). At the hearing, the Director of Procurement will present information and evidence in support of the intent to debar, and the Contractor will have the opportunity to appear with counsel, submit evidence, and present witnesses. Unless Foothill Transit and the Contractor otherwise agree, there will be a transcribed record of the hearing, which shall be made available to the Contractor at cost.
4. If the notice of intent to debar is based upon a Conviction or Civil Judgment, the Debarment Panel may waive the requirement for a hearing and make its determination on the basis of the written record, specifically including the grounds for Debarment cited by the Director of Procurement, the relevant facts relied upon, and the written information and argument submitted by the Contractor. In addition, in any other case, Foothill Transit and the Contractor may, by mutual agreement, waive the requirement for a hearing.
5. In the Debarment process, the Contractor may submit evidence of mitigating factors, such as (a) the Contractor brought the activity cited as

grounds for Debarment to the attention of Foothill Transit or another Government Entity; (b) the Contractor has established standards of conduct, internal control systems, and/or ethics training programs to prevent future actions that would constitute grounds for Debarment; (c) the Contractor has investigated the circumstances surrounding the grounds for Debarment and has made the results of that investigation available to Foothill Transit or other Government Entities; or (d) the Contractor has taken appropriate disciplinary action against the individuals responsible for the actions constituting the grounds for Debarment.

E. Debarment Recommendation and Debarment Determination

1. Within twenty (20) Days after the completion of the hearing under Section D 3, or within twenty (20) Days after the Contractor's submittal under Section D 2 if no hearing is held, the Debarment Panel shall prepare its Debarment Recommendation. The Debarment Recommendation shall state the specific reasons for the proposed decision, including any findings of fact from the hearing. If the decision is to recommend Debarment, the Debarment Recommendation shall state the specific grounds for the Debarment, the relevant facts relied upon, whether the Debarment extends to any Affiliates, and the proposed Debarment Period. The Debarment Recommendation shall be submitted to Foothill Transit's Chief Executive Officer.
2. After review of the Debarment Recommendation, the Chief Executive Officer will promptly issue the Debarment Determination, which may adopt, modify, or reject the Debarment Recommendation of the Debarment Panel. In the event the Chief Executive Officer modifies or rejects the Debarment Recommendation of the Debarment Panel, the Chief Executive Officer shall provide a written explanation for that modification or rejection. The Chief Executive Officer's Debarment Determination shall constitute the final agency action.
3. The Chief Executive Officer shall notify the Contractor, and any affected Affiliates, of the Debarment Determination by certified mail, return receipt requested. If the Debarment Determination is to debar the Contractor, the notice shall include the specific grounds for Debarment, whether the Debarment extends to any Affiliates, and the Debarment Period.
4. At any time before the Chief Executive Officer issues the Debarment Determination under Section E 2, Foothill Transit and the Contractor may enter into a Disposition Agreement relating to the proposed Debarment of the Contractor. Any such Disposition Agreement shall be based on a determination by Foothill Transit that, based on the particular facts presented (including any mitigating factors presented by the Contractor), it is in the public interest to enter into such agreement in lieu of a formal Debarment or Suspension action. A Disposition Agreement may set forth

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specific actions, internal control procedures, and standards of conduct the Contractor will be required to implement, and may also include a specific period of time during which the Contractor will be prohibited from participating in Foothill Transit Procurement Actions.

F. Period of Debarment

1. The Debarment Period shall be five (5) years, three (3) years, or one (1) year, commensurate with the seriousness of the grounds for Debarment. In setting the Debarment Period, Foothill Transit will take into account, in addition to the specific grounds for Debarment presented: (a) whether the Contractor has a pattern or history of actions that could be grounds for Debarment; and (b) any mitigating factors described in Section D 5.
2. The Debarment Period shall commence on the date the Debarment Determination is received by the Contractor. The Debarment Determination shall be deemed received by the Contractor on: (a) the day of delivery, if delivered by hand (including overnight courier service) during the Contractor's regular business hours; or (b) on the fifth business day following deposit in the United States mail, first class, postage prepaid, to the last known address of the Contractor.
3. Foothill Transit may reduce the Debarment Period, upon request of the Contractor, for reasons such as (a) reversal of the Conviction or Civil Judgment that was the grounds for Debarment; (b) change in ownership or management of the Contractor; or (c) newly discovered material evidence that directly relates to the grounds for Debarment.

G. Suspension

1. Foothill Transit may suspend a Contractor that has received a written notice of intent to debar from participating in Foothill Transit Procurement Actions during the pendency of the Debarment process under this Chapter. Such a Suspension shall be based on a determination by the Director of Procurement that, on the basis of the seriousness of the grounds for Debarment involved and the available evidence, immediate action is necessary to protect the public interest. The Director of Procurement will include notice of such Suspension in the written notice of intent to debar.
2. A Contractor suspended pursuant to paragraph 1 above shall be allowed to submit written information and argument in opposition to the Suspension.
3. A Suspension under paragraph 1 shall remain in effect until the Chief Executive Officer issues the Debarment Determination regarding the Contractor under Section E, unless in the interim the Director of Procurement determines, on the basis of the Contractor's written submittal

Foothill Transit Procurement Policies and Procedures

or other available information, that the Suspension is no longer necessary to protect the public interest.

4. The Debarment Determination under Section E shall supersede any Suspension under this Section.

H. Effect of Debarment or Suspension

1. A Contractor that is debarred or suspended under this Chapter (including any debarred or suspended Affiliates) shall be prohibited, for the period of such Debarment or Suspension, from (a) submitting a bid or proposal in response to any Foothill Transit Procurement Action; (b) being awarded a Contract with Foothill Transit; or (c) serving as a subcontractor, at any tier, on any work or project undertaken pursuant to a Foothill Transit Procurement Action.
2. If a Contractor that is debarred under this Chapter is performing work or providing services for Foothill Transit as a contractor or subcontractor under a Contract in effect on the date of such Debarment, Foothill Transit may, in its discretion: (a) if the Contractor is the prime contractor under such a Contract, terminate that Contract for default; (b) if the Contractor is a subcontractor under such a Contract, direct the prime contractor to terminate the subcontractor from all future work under that Contract; or (3) if Foothill Transit determines it is in the public interest or otherwise necessary and appropriate for continuity of the work or services being provided, continue the Contract as is or with such modifications as Foothill Transit determines appropriate.

I. Judicial Appeals

A Contractor adversely affected by a Debarment Determination under this Chapter may seek relief in an appropriate court of the State of California.

Foothill Transit Procurement Policies and Procedures

Appendix A – State and Local Requirements

State Laws	Sections(s)	Subject
Civil Code	3320 - 3321	Prompt Payment and Retention to Design Professionals
Civil Code	9000 - 9566	Provisions Applicable to Public Works of Improvement; Payment Bond Requirement for Construction Projects
Code of Civil Procedure	995.311	Verification of Admitted Surety Insurers on Bonds
Code of Regulations	8 C.C.R. 16000	Payment of Prevailing Wages (Public Works Contracts)
Government Code	4525 et seq.	Contracts with Private Architects, Engineering, Land Surveying, and Construction Project Management Firms
Government Code	4529.10 - 4529.20	Architect & Engineering Services
Government Code	4420 - 4422	Surety Requirements on Public Building or Construction Contracts
Government Code	4215	Removal, Relocation or Protection of Existing Utilities
Government Code	4550 - 4554	Antitrust Claims; Assignment
Government Code	53064	Identical highest and lowest bids; selection by lot
Government Code	53068	Notice inviting bids
Government Code	53069.85	Contracts for public works; liquidated damages; bonus for completion prior to time specified

Foothill Transit Procurement Policies and Procedures

State Laws	Sections(s)	Subject
Government Code	53079	Local public entity; construction project, security deposit; interest
Government Code	6250 – 6270	California Public Records Act
Government Code	81000 et seq.	California Political Reform Act of 1974
Government Code	84308	Levine Act; Other than Competitively Bid, Labor or Personal Employment Contract
Labor Code	1072	Service Contracts; Retention of Employees
Labor Code	1720, 1720.2, 1720.3, and 1771	Public Works and Prevailing Wage
Labor Code	1777	Public Works; Eligibility to Contract
Public Contract Code	7100 - 7200	Public Works Contract Clauses
Public Contract Code	4100 - 4114	Subcontracting
Public Contract Code	22160 - 22169	Design-Build
Public Contract Code	9201 - 9204	Claims and Disputes
Public Contract Code	20216 - 20217	Competitive Negotiation Process
Public Contract Code	1103	Responsible Bidder (Public Work Contracts)
Public Contract Code	1104	Architectural & Engineering Plans and Specifications
Public Contract Code	2202	Investment Activities in Iran; Contracts of \$1,000,000 or more

Foothill Transit Procurement Policies and Procedures

State Laws	Sections(s)	Subject
Public Contract Code	3300	Contractor's License in Specifications for Bids
Public Contract Code	3400	Trade Name or Specific Names in Specifications for Bids
Public Contract Code	6109	Ineligible and Debarred Contractors and Subcontractors
Public Contract Code	6610	Contents of Notice Inviting Bids
Public Contract Code	5100 - 5107, 5110	Relief of Bidders
Public Contract Code	20100 - 20103.7	Local Agency Public Construction Act
Public Contract Code	20104 - 20104.8	Resolution of Construction Claims
Public Contract Code	20103.8	Additive and deductive items
Public Contract Code	20104.5	Timely Progress Payments
Public Contract Code	20104.7	Damages Relating to Competitive Bidding
Public Contract Code	20120 - 20146	As applicable, Local Public Agency Construction Contract provisions specific to counties
Public Contract Code	20122	Public works projects over \$6,500
Public Contract Code	20125	Advertisement for bids
Public Contract Code	20129	Bidder's security; performance bond

Foothill Transit Procurement Policies and Procedures

Appendix B – Federal Requirements

Federal Requirement	Notes	When Required						
		Rolling Stock	Operating	Construction	Consultant Services	Research	Goods	Prof'l Services
Buy America	(49 C.F.R. Part 661)	>\$150,000		>\$150,000				
Build America, Buy America	(2 C.F.R. Part 184) <i>See applicability and effective date rules at 2 C.F.R. 184.2</i>	Infrastructure projects						
Cargo Preference	(49 C.F.R. Part 381) <i>Where procurement involves equipment, materials, or commodities suitable for transport by ocean vessel</i>	X	X	X	X	X	X	X
Fly America	(49 U.S.C. 40118) <i>Required for international air transportation</i>	X	X	X	X	X	X	X
Pre-Award and Post-Delivery Audits	(49 C.F.R. Part 663)	X						
Bus Testing	(49 C.F.R. Part 665) <i>Bus procurements only</i>	X						
Seismic Safety	(49 C.F.R. Part 41) <i>New buildings or additions to existing buildings</i>			X				
Davis-Bacon Act	(40 U.S.C. 3141-48)			>\$2,000				
Copeland Anti-Kickback Act	(40 U.S.C. 3145)			>\$2,000				
Contract Work Hours and Safety Standards Act	(40 U.S.C. 3702 and 3704) <i>Applies to employment of laborers or mechanics; not applicable to the purchase of supplies, materials, or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence</i>	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000

Foothill Transit Procurement Policies and Procedures

Federal Requirement	Notes	When Required						
		Rolling Stock	Operating	Construction	Consultant Services	Research	Goods	Prof'l Services
Lobbying	(31 U.S.C. 1352) <i>Require certification forms and, if appropriate, lobbying disclosure forms</i>	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Energy Conservation	(42 U.S.C. 6321)	X	X	X	X	X	X	X
Clean Water	(33 U.S.C. 1251)	>\$150,000	>\$150,000	>\$150,000	>\$150,000	>\$150,000	>\$150,000	>\$150,000
Clean Air	(42 U.S.C. 7401)	>\$150,000	>\$150,000	>\$150,000	>\$150,000	>\$150,000	>\$150,000	>\$150,000
Civil Rights	<i>Federally-funded construction contracts must include the full clause found at 41 C.F.R. 60-1.4(b)</i>	X	X	X	X	X	X	X
Disadvantage Business Enterprises	(49 C.F.R. Part 26)	X	X	X	X	X	X	X
Trafficking in Persons	(22 U.S.C. 7102)	X	X	X	X	X	X	X
Government-Wide Suspension and Debarment		>\$25,000	>\$25,000	>\$25,000	>\$25,000	>\$25,000	>\$25,000	>\$25,000
No Government Obligations to Third Parties		X	X	X	X	X	X	X
Patents and Rights in Data	(35 U.S.C. 200; 37 C.F.R. Part 401)					X		
Program Fraud and False or Fraudulent Statements and Related Acts		X	X	X	X	X	X	X
Recycled Products	(42 U.S.C. 6962) <i>Applies where the value of an EPA designated item exceeds \$10,000</i>	X	X	X	X	X	X	X
Safe Operation of Motor Vehicles	(E.O. 13043, E.O. 13513, and U.S. DOT Order 3902.10)	X	X	X	X	X	X	X
Access to Records and Reports	(49 U.S.C. 5325(g) and 2 C.F.R. 200.337 and FTA Master Agreement (see Sections 8 and 9 of 2022 Master Agreement))	X	X	X	X	X	X	X

Foothill Transit Procurement Policies and Procedures

Federal Requirement	Notes	When Required						
		Rolling Stock	Operating	Construction	Consultant Services	Research	Goods	Prof'l Services
Federal Changes		X	X	X	X	X	X	X
Substance Abuse Requirements	<i>Where contractor is performing safety-sensitive function</i>	X	X	X	X	X	X	X
Incorporation of Federal Transit Administration Terms		X	X	X	X	X	X	X
Intelligent Transportation Systems-National Architecture	<i>ITS property and services</i>	X	X	X	X	X	X	X
Charter Bus	(49 U.S.C. 5323(d), (r) and 49 C.F.R. Part 604)		X					
Public Transportation Employee Protective Arrangements	(49 U.S.C. 5333(b) and 29 C.F.R. Part 215)		X					
School Bus Operations	(49 U.S.C. 5323(f) and 49 C.F.R. Part 605)		X					
Veteran's Preference	(49 U.S.C. 5325(k))			X				
Americans with Disabilities Act		X	X	X	X	X	X	X
Notification of Legal Matters and Waste, Fraud, or Abuse	FTA Master Agreement (see Section 39 of 2022 Master Agreement)	X	X	X	X	X	X	X
Clause and Certification on Federal Tax Liability and Recent Felony Conviction	FTA Master Agreement (see Section 4 of 2022 Master Agreement) <i>Must obtain prior to entering into contract with any private corporation, partnership, trust, joint-stock company, sole proprietorship, or other business association</i>	X	X	X	X	X	X	X
Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment	(Public Law 115-232, Section 889 and 2 C.F.R. 200.216)	X	X	X	X	X	X	X



March 29, 2024

To: Executive Board

Subject: **Transportation Fund Exchange - City of San Gabriel**

Recommendation

Authorize the Chief Executive Officer to execute an assignment agreement with the City of San Gabriel to exchange Foothill Transit general use funds for Proposition A Transportation Local Return funds.

Analysis

The City of San Gabriel has \$500,000 of uncommitted Proposition A Transportation Local Return funds which may be made available to Foothill Transit to assist in providing transit services. In exchange, Foothill Transit will provide the City of San Gabriel with \$375,000 of available general use funds. Proposition A Transportation Local Return funds may only be used for transportation-related expenditures.

The exchange will take place a) within 30 days of execution of the assignment agreement, and b) approval of the exchange by the Los Angeles County Metropolitan Transportation Authority (LACMTA).

Budget Impact

Foothill Transit will benefit from this exchange by receiving a net gain of \$125,000 more than our contribution. The City of San Gabriel will benefit from this exchange by receiving funds that provide more flexibility to meet the city's expenditure needs. Foothill Transit will program the funds into eligible transit operating and capital expenses.

Sincerely,

Michelle Lopes Caldwell
Director of Finance and Treasurer

Doran J. Barnes
Chief Executive Officer



March 29, 2024

To: Executive Board

Subject: **Transportation Fund Exchange - City of Temple City**

Recommendation

Authorize the Chief Executive Officer to execute an assignment agreement with the City of Temple City to exchange Foothill Transit general use funds for Proposition A Transportation Local Return funds.

Analysis

The City of Temple City has \$1,000,000 of uncommitted Proposition A Transportation Local Return funds which may be made available to Foothill Transit to assist in providing transit services. In exchange, Foothill Transit will provide the City of Temple City with \$750,000 of available general use funds. Proposition A Transportation Local Return funds may only be used for transportation-related expenditures.

The exchange will take place a) within 30 days of execution of the assignment agreement, and b) approval of the exchange by the Los Angeles County Metropolitan Transportation Authority (LACMTA).

Budget Impact

Foothill Transit will benefit from this exchange by receiving a net gain of \$250,000 more than our contribution. The City of Temple City will benefit from this exchange by receiving funds that provide more flexibility to meet the city's expenditure needs. Foothill Transit will program the funds into eligible transit operating and capital expenses.

Sincerely,

Michelle Lopes Caldwell
Director of Finance and Treasurer

Doran J. Barnes
Chief Executive Officer



March 29, 2024

To: Executive Board

Subject: **Foothill Transit Employee Compensation Policy**

Recommendation

Approve the annual update to the Employee Compensation Policy including two recommended changes to the policy as follows:

- *Provide a one-time merit-based compensation adjustment of 5% for staff who have successfully met their annual goals.*
- *Increase the employee reimbursement for out of pocket medical expenses from the current level of \$20,000 to \$30,000.*

Analysis

The Employee Compensation Policy is provided to the Board annually to update the Board on any changes that occurred during the year or are proposed to be changed for the upcoming year. The policy is attached for Board review.

The current policy for staff compensation adjustments reads as follows:

- “Under the adopted management compensation plan, annual performance conversations will take place in June of each year with any compensation adjustments effective July 1 of that year. The salary ranges will be adjusted by 3% each year.”

In considering the potential merit increase and salary range adjustments for fiscal year 2024, it should be noted that Foothill Transit has seen increases for the Purchased Transportation labor in excess of 30% for certain operating contracts. These increases are a direct reflection of increased labor costs by our contractors.

A recent compensation review and comparison to other similar employers (such as Long Beach Transit, Omnitrans, LA Metro, and the APTA salary survey) revealed that Foothill Transit salaries are generally less than similar jobs at the other agencies. Additionally, cities within the Foothill Transit service area are reporting increasing turnover due to employees seeking higher salaries at other agencies.



The Bureau of Labor Statistics has reported that the consumer price index (CPI) inflation rate increased 3.5 percent from January 2023 to January 2024. A consumer price index is the price of a weighted average market basket of consumer goods and services purchased by households. The annual percentage change in CPI is used as a measure of inflation and can be used to adjust for the effect of inflation on the real value of wages, salaries, and pensions. While the CPI rate this past year has been lower, it follows a period of unusually high increases over the past two years.

As noted in the updated Foothill Transit financial forecast, the organization is projecting a balanced budget through fiscal year 2028. In light of this, it is proposed that the compensation and salary ranges adjustments which were scheduled to increase by three percent effective July 1, 2024, instead be increased by five percent.

The current policy for reimbursement of out-of-pocket medical expenses states the following:

- “In the event of a serious illness or injury, an employee may submit their Explanation of Benefits from their health care provider, or other appropriate documentation, identifying the out-of-pocket expenses or declined payments in excess of \$5,000. Foothill Transit will reimburse the employee for those expenses, not to exceed \$20,000.”

The recommendation is to increase the not to exceed amount to \$30,000. This recommendation is based on the rising costs of medical care experienced since the policy was developed in 2018. This benefit has been used only by those employees who have experienced extreme financial impacts from their medical expenses.

Budget Impact

The financial impact of the updated Employee Compensation Policy has been included in long-range financial forecasting and the draft FY2025 Budget and Business Plan.

Sincerely,

Michelle Lopes Caldwell
Director of Finance & Treasurer

Doran J. Barnes
Chief Executive Officer

Attachment



Foothill Transit
Going Good Places

Attachment A

Foothill Transit Employee Compensation Program

Adopted February 23, 2018 (updated March 2024)

Foothill Transit's employee compensation program is described below. The Foothill Transit Board reserves the right to modify or change this plan at its sole discretion at any time. The Chief Executive Officer is charged with administering this program.

Pay Grades

Foothill Transit shall utilize the following pay grades and ranges. Employees may be hired at any point within these pay ranges at the discretion of the Chief Executive Officer and subject to overall budget limitations:

		Proposed (FY2025)*	
Range	Position Type	Annual Min	Annual Max
9	Executive (Deputy CEO)	\$204,404 \$194,670	\$311,148 \$296,331
8	Director	\$128,816 \$122,682	\$222,206 \$211,624
7	Manager	\$99,270 \$94,543	\$168,020 \$160,020
6	Technical Staff	\$76,720 \$73,066	\$123,519 \$117,637
5	Technical Support	\$60,803 \$57,907	\$99,245 \$94,519
4	Administrative Support	\$50,876 \$48,453	\$84,379 \$80,361
3	Clerical Support	\$46,607 \$44,388	\$75,242 \$71,659

* The ranges have been adjusted in March 2024 to reflect 5 percent range increases in FY2025.

Compensation for the Chief Executive Officer shall be set at the sole discretion of the Board.

Positions

Foothill Transit's Chief Executive Officer is responsible for the organization of the staff subject to the limits of the budget and the total number of authorized full-time equivalent employees authorized in the budget. The Chief Executive Officer has the authority to make title and grade range changes within those parameters.

Internship Program

As part of Foothill Transit's commitment to workforce development, Foothill Transit has created an internship program. The internships allow students and recent graduates to gain valuable skills and knowledge. In addition, the interns support Foothill Transit in achieving its mission. Interns' work schedule will be agreed to in advance with the hiring supervisor, however, the intern's work hours will not exceed the hours per week and days per year as required by state and federal laws for students and for part-time employment.

Paid Time Off

Paid time off (PTO) combines vacation and sick time into a single bank of days for employees to use to take paid time off from work. PTO allows employees to take time off work at their discretion (with approval from their supervisor) which supports work-life balance and flexibility. The PTO accruals are based on years of service as shown in the table below:

Accrual Rates

Years of Service	Bi-Weekly Accrual (expressed in decimals)	Annual Accrual	Maximum Allowable Accrual (three times annual rate)
0-5 Years of Service	6.77 hours	176 hours	528 hours
5-10 Years of Service	8.30 hours	216 hours	648 hours
10-15 Years of Service	9.84 hours	256 hours	768 hours
15+ Years of Service	11.38 hours	296 hours	888 hours

Years of service shall include time worked as a Foothill Transit employee and time worked for a Foothill Transit operating and/or management contract for the period in which the employee was assigned full-time to serving Foothill Transit. Service does not need to be consecutive.

Employees may request to cash out their PTO hours once every calendar year, provided they 1) have used at least 80 hours of **scheduled** PTO hours during the 12-month period prior to requesting the cash out, and 2) they retain at least 160 hours in their PTO bank. Any deviation from this policy must be approved by the Chief Executive Officer.

Employees who separate from Foothill Transit after the age of 55 years will receive their final PTO check as a lump sum payment into the 401a retirement plan. The payment will be processed in the following pay cycle after the employment termination date.

Holidays

Holiday Hours

Foothill Transit shall observe the following eight paid holidays:

- Martin Luther King Day
- President's Day
- Memorial Day
- Independence Day
- Labor Day
- Veterans Day
- Thanksgiving
- Day after Thanksgiving

If an employee works on one of those eight holidays or if a holiday falls on a regularly scheduled flex day, non-exempt employees will receive both holiday pay and pay for the hours worked for that day. Exempt employees will receive nine hours of holiday pay in their PTO bank.

Foothill Transit also observes a holiday period beginning on December 24th of each year and ending on January 1st. The administrative offices are closed during this time. The specific number of days and total hours of holiday time will vary from year to year.

Foothill Transit will grant paid holiday time off to all eligible employees immediately upon assignment to full-time status. Holiday pay will be calculated based on the employee's straight-time pay rate (as of the date of the holiday) times the number of hours the employee would otherwise have worked on that day. Part-time employees are not eligible for holiday pay.

Paid Family Leave (PFL)

Occasionally an employee may be required to take a prolonged leave of absence due to a serious illness or injury for either themselves or a family member or to bond with a

new child (approved Family Medical Leave). Foothill Transit will pay PFL payments to eligible employees according to the regulations set forth in the California Employment Development Department. Employees can elect to coordinate PFL with their available PTO bank to provide full pay while on leave. PTO accrual is suspended while on continuous leave. PFL may be taken intermittently, and if approved, PTO accrual will continue to be earned and adjusted based on work hours the employee indicates on their timesheet. Any compensation provided by Foothill Transit while an employee is on leave shall not exceed the regular compensation and benefits they would normally receive during their regular work schedule.

Work Hours and Schedules

Management and administrative employees will work a 9/80 flex schedule with every other Monday off.

Employees will coordinate their work schedules with their Supervisor or Department Director. Departments which operate 7 days a week, 24 hours a day, may assign employees specific work hours and days. A detailed discussion of the work hours and schedules is included in the Employee Handbook.

Health Benefits

Foothill Transit shall pay 90% of the cost of medical, dental, vision and chiropractic insurance for the employee and their eligible dependents. Employees who can demonstrate verification of health coverage may opt out of the Foothill Transit health benefits program. Employees who opt out will receive \$250 per month for medical insurance and \$60 per month for dental, vision, and chiropractic insurance.

In the event of a serious illness or injury, an employee may submit their Explanation of Benefits from their health care provider, or other appropriate documentation, identifying the out-of-pocket expenses or declined payments in excess of \$5,000. Foothill Transit will reimburse the employee for those expenses, not to exceed **\$30,000**.

In order to encourage good health, the cost of flu shots for employees and their dependents covered by the Foothill Transit group medical health plans, are eligible to receive reimbursement annually for the administration of the flu shot.

Life Insurance

Foothill Transit shall provide life insurance at one time the employee's annual salary with a MAX cap limit of \$300,000. At age 70, the benefit is 50%. Per United States Internal Revenue requirements, the premium for insurance in excess of \$50,000 per year is considered taxable income. Employees will be responsible for this tax liability. A payroll deduction will be made each pay period related to this tax liability.

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Retirement Benefits

Foothill Transit shall contribute an amount equal to eight percent of the employee's bi-weekly compensation to a defined contribution retirement plan. In addition, Foothill Transit will match 100 percent of employee contributions up to four percent of bi-weekly compensation to this retirement plan.

Tuition Reimbursement

Employees shall be eligible for tuition reimbursement for classes related to professional positions at Foothill Transit. A grade of "C" or better or an equivalent passing grade must be achieved to obtain reimbursement. The maximum annual reimbursement shall be \$5,250.

Transit Bus Passes for Employees and Dependents

Foothill Transit bus passes shall be provided to employees for their professional and personal use. Foothill Transit bus passes also shall be provided to all employees' dependents.

Employees commuting via other transit providers shall be provided transit passes for any public transit provider.

Length of Service Recognition

Employees shall receive a one-time length of service payment as follows:

5 years of service	\$500
10 years of service	\$750
15 years of service	\$1,000
Each subsequent five years of service	\$1,000

Length of service shall include time worked as a Foothill Transit employee and time worked for a Foothill Transit operating and/or management contract for the period in which the employee was assigned full-time to serving Foothill Transit.

Amounts noted are gross pay subject to appropriate taxes.

Compensation Adjustments

Under the adopted management compensation plan, annual performance conversations will take place in June of each year with any compensation adjustments effective July 1 of that year. The salary ranges will be adjusted by three percent each year (unless otherwise modified by the Board of Directors).

- **Individual Performance Goals** – Achievement of individual performance goals are under the direct control of employees and superior performance should be recognized. In this category, an increase of up to **five percent of salary will be granted during FY2025** based on the achievement of individual annual goals. These performance goals are determined between the employee and their supervisor prior to the beginning of the fiscal year and approved by the Chief Executive Officer every June.
- **Developmental Program** – It is anticipated that some employees will be hired at the lower end of their pay range. As they perform their jobs and enhance their skill set, they will become more valuable to the organization and their compensation should reflect this added value. Accordingly, developmental compensation increases will be granted as follows: An employee in the lowest quarter of the salary range will receive a three percent increase; an employee in the second lowest quarter of the salary range will receive a two percent increase; an employee in the second highest quarter of the salary range will receive a one percent increase; and an employee in the highest quarter of the salary range will receive no increase. To qualify for a developmental increase an employee must receive a satisfactory rating overall on their annual evaluation.
- **Educational Advancement** – Foothill Transit places great emphasis on the achievement of advanced education. This commitment is reflected in the education reimbursement program. Employees who earn advanced degrees bring additional skills to the organization. In recognition of these additional skills, a one-time increase in base compensation of five percent shall be granted upon achievement of a bachelor's degree, master's degree, or doctoral degree in a field of study that is relevant to the mission of Foothill Transit.



March 29, 2024

To: Executive Board

Subject: **Financial Stability Policy Fiscal Year 2025 Financial Strategies**

Recommendation

Approve the annual Financial Stability Policy update to include the FY2025 financial strategies for budget planning.

Analysis

Foothill Transit has an important responsibility to the taxpayers of Los Angeles County to prudently manage its long and short-term finances. In time of economic change and uncertainty, it is especially important for Foothill Transit to ensure its ability to deliver safe, quality and reliable transportation services that are based upon a strong and stable financial foundation.

The subsidy revenue for FY2025 (local and state sales taxes) is forecasted to slightly decrease when compared to the FY2024 adopted funding marks for the region. Fare revenues are predicted to increase slightly due to the ridership increases. The remainder of the federal American Rescue Plan Act Additional Assistance grant will be budgeted during FY2025.

The Financial Stability policy was adopted by the Foothill Transit Board in February 2016 to ensure that Foothill Transit financial policies are based upon Generally Accepted Accounting Principles and promulgated by the Government Accounting Standards Board. Every three years, the Federal Transit Administration and the Los Angeles Metropolitan Transportation Authority, on behalf of the State of California Transportation Development Act (TDA) requirements, perform audits to determine among other things, if we are following our published, Board adopted policies.

The adopted policy is updated annually to provide management with a framework for developing the upcoming year’s budget and other longer-range financial plans and establishing future business targets for management to achieve.

The policy includes goals, annual financial strategies, and general fiscal policies. Each year staff will bring the annual financial strategies to the Executive Board for review and approval.



FY2024/FY2025 Financial Strategies

- S1. Adjust bus operating expenses as needed in accordance with agreed-upon contractual increases in existing operating contracts and to include changes in pricing resulting from contract award for Arcadia/Irwindale operating and maintenance contract.
- S2. Adjust fuel expenses to reflect FY2024 economic changes and stabilization of fuel prices; continue to transition bus operating expenses to reflect the operational change from traditional fueling methods to increased hydrogen fuel cell operations.
- S3. Closely monitor actual revenue receipts to ensure that deviations from current assumptions can be addressed promptly.
- S4. Implement service changes to improve service efficiency, maintain and increase ridership, and maintain revenues included in the Governing Board adopted Business Plan.
- S5. Adopt an annual budget which includes allocation to capital programs adequate to meet annual baseline funding for projects and programs which are essential to ensure system performance and safety and meet the requirements of the approved Transit Asset Management Plan.
- S6. Pursue grant funding for capital projects pursuant to the priorities adopted by the Governing Board in the annual Business Plan.
- S7. Pursue favorable investment strategies for reserved funds to ensure Board adopted priorities of 1) safety, 2) liquidity, and 3) financial gain.

Financial Impact

This FY2025 policy update will set the framework for the annual budget development. Specific service and fare changes, operating cost adjustments, and new capital projects will be brought to the Board as part of the proposed Business Plan.

Sincerely,

Michelle Lopes Caldwell
Director of Finance & Treasurer

Doran J. Barnes
Chief Executive Officer

Attachment (Financial Stability Policy)



Foothill Transit

Financial Stability Policy	Policy No: FIN2016-001R 39
	Revised: 03/26/2024
	Page: 1 of 9

Policy Statement

Foothill Transit has an important responsibility to the taxpayers of Los Angeles County to prudently manage its long and short-term finances. In times of economic change and uncertainty, it is especially important for Foothill Transit to ensure its ability to deliver safe, quality and reliable transportation services that are based upon a strong and stable financial foundation.

The Financial Stability Policy is divided into three sections: Goals, Strategies, and General Fiscal Policies. The purpose of the policy is to ensure that Foothill Transit prudently manages its financial affairs, establishes appropriate cash reserves, if debt is necessary, ensures that the debt assumptions are based on financial parameters similar to or more conservative than those that would be placed on Foothill Transit by the financial marketplace, and to provide management with a framework for developing the upcoming year's budget and other longer range financial plans and establishing future business targets for management to achieve.

Financial Goals

- G1. Provide safe and secure transportation services on Foothill Transit's bus system as the top priority.
- G2. Maintain an operating and capital financial base that is sufficient to deliver safe, quality, transportation improvements and bus service efficiently and cost-effectively, to meet the levels of demand.
- G3. Continuously strive to improve productivity.
- G4. Establish and maintain an operating fund balance sufficient to ensure that Foothill Transit can adjust to economic downturns, extraordinary cost increases and other financial emergencies.
- G5. Maintain the highest possible credit rating and reputation for prudent financial management.



Foothill Transit

Financial Stability Policy	Policy No:	FIN2016-001R 39
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~~FY2023~~~~FY2024~~-~~FY2024~~-~~FY2025~~ Financial Strategies

- S1. Adjust bus operating expenses as needed in accordance with agreed-upon contractual increases in existing operating contracts and to include changes in pricing resulting from contract award for [the Arcadia/Irwindale](#) operating and maintenance contract.
- S2. ~~Increase~~~~Adjust~~ fuel expenditures to reflect FY202~~4~~3 economic changes and ~~rising~~~~stabilization of CNG~~ fuel prices; transition bus operating expenses to reflect the operational change from traditional fueling methods to ~~increased~~ hydrogen fuel cell operations.
- S3. Closely monitor actual revenue receipts to ensure that deviations from current assumptions can be addressed promptly.
- S4. Implement service changes to improve service efficiency, maintain and increase ridership, and maintain revenues and Governing Board adopted Business Plan.
- S5. Adopt an annual budget which includes allocation to capital programs adequate to meet annual baseline funding for projects and programs which are essential to ensure system performance and safety and meet the requirements of the approved Transit Asset Management Plan.
- S6. Pursue grant funding for capital projects pursuant to the priorities adopted by the Governing Board in the annual Business Plan.
- S7. Pursue favorable investment strategies for reserved funds to ensure Board adopted priorities of 1) safety, 2) liquidity, and 3) financial gain.

General Fiscal Policies



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- F1. Complete and accurate accounting records shall be maintained in accordance with Generally Accepted Accounting Principles as promulgated by the Government Accounting Standards Board. The fiscal year-end for financial reporting purposes shall be June 30.
- F2. An independent certified public accounting firm shall perform an examination of Foothill Transit's consolidated financial statements on an annual basis. The goal is to receive an unqualified opinion on the financial statements and an opinion that Foothill Transit is in compliance with Federal Single Audit, State and Local reporting requirements in all material respects and to receive the Government Finance Officers Association (GFOA) award for excellence in financial reporting.
- F3. Funds shall be invested within the guidelines of the Executive Board's approved investment policy and in compliance with applicable state law.
- F4. Revenues received during a fiscal year that are in excess of the revenue budget for that year shall be reported as unrestricted, designated fund balances which may only be expended pursuant to Governing Board authorization. Such funds are generally available for appropriation in a subsequent budget cycle.
- F5. Financial control procedures are set up to track actual expenditures and revenue comparing these with the budget for federally funded projects in the General Ledger and Project Status Reports monthly and quarterly for the Federal Financial Report (FFR). Project expenditures and revenues are tracked by distinct project code and funding code references comparing the actual numbers to the grant budget by activity line item (ALI) on a monthly basis. Analysis is performed on variances between actual and budget explaining the reasons for differences; adjustments are made, if necessary. For timely closeout of the grant, expenditures and revenues reports are reconciled with FTA grant fund activities by ALI on a monthly basis to monitor the grant remaining balances. The federal funding ratio for federal and local matching funds are reviewed monthly to ensure compliance with the grant application requirements.
- F6. The annual budget establishes the legal level of appropriation. The budget shall include operating and capital components and full-time



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equivalent personnel necessary to implement the policy direction contained in the Annual Business Plan.

Budget Basis

Foothill Transit is a single entity for budgeting and accounting purposes. Annual budgets are adopted on a basis consistent with Generally Accepted Accounting Principles (GAAP) for all governmental and proprietary funds except that depreciation and amortization are not budgeted. The Governmental Accounting Standards Board (GASB) defines a fund as a “fiscal and accounting entity with a self-balancing set of accounts that are segregated for the purpose of carrying on specific activities or attaining certain objectives in accordance with special regulations, restrictions, or limitations.”

Foothill Transit operates with a single fund known as an Enterprise Fund. The Enterprise Fund is considered a proprietary fund. The fund is accounted for using the accrual basis of accounting, meaning revenue is recognized when it is earned and expenses are recorded when incurred.

Budget Process, Policies and Procedures

The annual budget, as adopted by the Governing Board, is the legal authority to obligate and spend funds and to hire employees. It includes all operating, capital and debt service (when applicable) requirements of Foothill Transit for the fiscal year, July 1st to June 30th. The annual budget is comprised of an operating budget and capital program and includes the total of full-time equivalent (FTEs) personnel required to deliver the budgeted activities.

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Foothill Transit operates with an Enterprise Fund which includes all business-type activities such as bus operations and capital projects. The operating budget provides a summary of planned revenues and expenses for the fiscal year for Foothill Transit services and programs including the following:

- All revenue and expenditure/expense assumptions and projections
- Revenue service hours and miles of bus service
- Operation and maintenance of transit stores



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- Total number of Board approved FTEs

The operating budget includes bus operations and special services, property management activities and agency administration.

Operating Budget

The annual operating budget is developed on the basis of the combination of two budget methodologies. Continuation level budgeting is used to develop the funding and resources necessary to sustain critical operating, special programs and previously approved capital projects. Foothill Transit uses zero-based budgeting methodology to determine resources of new programs and capital projects as well as general and administrative expenses. Foothill Transit's chart of accounts is reviewed and supplemented on an as-needed basis. The Finance Department monitors revenues and budget expenditures throughout the fiscal year.

Budget detail is a management plan for financial activity and is prepared at the fund, project, department, and account level. The Board approved legal level of control is at the fund level.

Total annual expenditures cannot exceed the final appropriation adopted by the Governing Board except for the capital budget, where appropriations are approved on a life-of-project basis. During the fiscal year, changes in law, economic conditions and emergencies can have an impact on budget authority. Spending authority may be increased or decreased throughout the fiscal year as unanticipated situations arise. Management may make revisions within operational and project budgets only when there is no net dollar impact to the total appropriations at the fund level. As such, the Chief Executive Officer can approve administrative revisions, including FTE changes, to the financial plan if changes are consistent with the fund appropriation.

Foothill Transit's source of authority to make changes is rooted in disclosure on financial policy as stated in Foothill Transit's Annual Comprehensive Financial Report (ACFR) where reference to the legal level of authority is at



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the fund level so that staff has the ability to make changes within that legal authority.

Capital Program Budget

The capital budget process is integrated into the annual budget process. The capital budget includes all capital program activities associated with bus acquisition, bus capital improvements, facility construction and other capital improvements such as information technology enhancements. The Governing Board approves a capital project as part of the annual budget adoption; it authorizes the schedule and total expenditures over the life of the project.

Appropriations for the capital budget are approved on a life-of-project basis and thus, do not lapse at the end of the fiscal year. Providing flexible funding over the life of a project authorizes staff to re-appropriate unexpended revenues and expenses from the prior year.

The capital program budget (CP) is adopted on a life-of-project basis. Thus, annual re-appropriations are not required. Changes to the life-of-project budget for any project whose life-of-project budget is over \$1 million must be approved by the Governing Board. The CP budget process is completed as part of the annual budget process. Project managers analyze the status of their funded projects (reforecasting schedules, costs, etc.) They also submit new projects for consideration through the CP process in the second-third quarter of the current fiscal year.

Commented [JQ1]: If less than \$1M, does it need Exec Board approval?

The CP budget process includes the following:

- Determines which prior year projects will not be completed as scheduled in the current fiscal year;
- Identifies new requirements or projects since the adoption of the prior CP, including changes to the life-of-project budget;
- Authorizes capital projects and associated funding plans;



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- Estimates the operating impact of the capital investment, including cost increases.

The CP budget is developed based on criteria established in the Transit Asset Management (TAM) Plan. The TAM plan is designed to ensure that all assets meet the State of Good Repair requirements. Projects are included based on project rankings, project readiness, available agency resources, and funding. Project managers gather project information (current and new projects) and submit the information to Finance in the ~~second~~-third quarter of the current fiscal year. Finance assembles the proposed projects and submits to Executive Management. Executive Management reviews the list of recommended capital projects and further prioritizes the projects to match available revenues.

Federal Funds:

Eligible expenditures and revenues are coded by distinct project codes and funding codes in the general ledger and project status reports and are reconciled with the corresponding activities in the FTA grant by Activity Line Item (ALI) on a monthly basis. All expenditures are reviewed and approved by 1) the Project Manager, 2) the Accountant who prepares the project status report, and 3) the Controller who approves the payment. The eligible expenditures are paid as they become due for payment and on a monthly basis they are claimed for reimbursement in ECHO. These FTA grant activities are reported in the Federal Financial Report (FFR) as cash receipts and cash disbursements quarterly.

Grant Administration:

Financial records, such as the General Ledger and Project Status Reports, are coded by project number. Federal and local matching funds are prepared by finance staff and reviewed by the Controller every month and the numbers are used to enter the data on the FFR on a quarterly basis. The data in the FFRs are prepared on a quarterly basis by the finance staff then compared and validated with the progress report prepared by the project manager which is the basis of the quarterly MPRs.



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Purchase orders/contracts are input into the financial information system as the total amount of obligation. Each invoice is deducted as it is paid; the monthly encumbrance report shows unliquidated obligations. Retention is recorded as “retention payable”. All information is tracked and visible in the financial information system.

The status and progress of the project are obtained from the project manager and are compared to the previously scheduled deliverables. Unexpected delays and reasons for delays are included in the MPRs. Finance staff reviews the FFRs and MPR quarterly and ensures that grants are closed-out promptly within 90 days after all activities in the FTA grant are complete.

Finance staff ensures all eligible FTA revenues and expenditures are properly recorded and drawn down in ECHO and comply with 2 CFR 200, Subpart E, and all deliverables in the Milestone Progress Reports (MPR) are fully completed. Within 90 days after all activities are completed, the FTA grant is closed out in TrAMS.

In the event that Foothill Transit provides FTA financial assistance to a subrecipient, Finance staff will ensure that all cash payments comply with 2 CFR 200.305.

Revision History:

Adopted February 27, 2016

Effective February 27, 2016

Revised February 23, 2018

Revised March 29, 2019

Revised January 31, 2020

Revised April 24, 2020

Revised December 18, 2020

Revised March 26, 2021

Revised March 25, 2022

Revised April 25, 2023

Revised March 29, 2024

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March 29, 2024

To: Executive Board

Subject: **Authorization to Amend Contract for Special Legal Services**

Recommendation

Authorize the CEO to execute Amendment No. 7 to Contract No. 19-037.1 with Thompson Coburn LLC in an amount not to exceed \$100,000 for additional special legal services in Fiscal Year 2024 and exercise the first five-year option.

Analysis

At the June 2019 Executive Board Meeting, the Executive Board authorized the CEO to enter into a contract with Thompson Coburn LLC to provide in part special legal services to Foothill Transit. The scope of these services include, but are not limited to, research, review, advisement, representation, drafting of legal documents and policies, and analysis across ten distinct areas of legal expertise. Thompson Coburn LLC was awarded the contract in 7 of 10 disciplines included the open solicitation. Those disciplines are Civil Rights, including ADA and DBE, Finance, Intellectual Property, Federal Compliance, Public Transportation Operations, Real Estate, and Procurement. Three other firms were awarded contracts in the remaining disciplines, which included Insurance & Liability, Environmental Law and Labor & Employment. The cumulative awarded cost for these contracts was not-to-exceed (NTE) \$600,000 per year, of which Thompson Coburn had an annual NTE of \$525,000.

Due to a greater than normal volume of work, including additional work on operating procurements and amendments, Federal Transit Administration (FTA) triennial review work and multiple bus procurements the agreement with Thompson Coburn is on pace to surpass the NTE threshold of \$525,000. The increased costs will not affect the budgeted operating amount as some legal services costs are eligible to be capitalized for specific capital projects.

The initial term of the contract will expire at the outset of FY2025, there are two five-year options on the agreement. As part of the amendment, Foothill Transit would exercise the first five-year option with the same annual NTE amount of \$525,000 and enact the scheduled hourly rate increase not-to-exceed 3 percent. Additionally, the Procurement Department will work with the CEO to exercise the five-year options for the firms retained in the three



other disciplines. The cumulative five-year NTE amounts of those individual agreements are within the CEO's signing authority.

Budget Impact

Funding for these services are included in the Fiscal Year 2024 Budget.

Sincerely,

Christopher Pieper
Director of Procurement

Doran J. Barnes
Chief Executive Officer

Michelle Lopes Caldwell
Director of Finance and Treasurer



March 29, 2024

To: Executive Board

Subject: **Zero Emission Bus and Joint Procurement Funding**

Recommendation

Receive and file the report on Zero Emission Bus and Joint Procurement Funding.

Analysis

The U.S. bus transit industry is losing three manufacturers. Nova Bus in Plattsburgh, N.Y. is exiting the U.S. transit bus market by first quarter of 2025, Proterra filed for bankruptcy last year and REV Group announced the closure of its ElDorado manufacturing facility in Riverside, California at the end of Fiscal Year 2024. That leaves only two manufacturers of CNG buses, New Flyer and Gillig Bus, and only one fuel cell bus manufacturer, New Flyer.

To address the issues, the Federal Transit Administration (FTA) is taking actions to strengthen the American bus manufacturing industry with the goal of reducing vehicle contract costs and shortening vehicle delivery times.

On February 7, 2024, the Federal Transit Administration issued a Dear Colleague letter that outlined some tools to enhance the procurement process of transit buses. Some of the recommendations to accelerate procurement and lower cost is to purchase from State Schedules or engage in joint procurements, engage in advance payments or progress payments, minimize or eliminate customization and Low-No funding partnership.

The Fiscal Year 2024 Low or No Emission and Grants for Buses and Bus Facilities Competitive Programs, FTA will provide priority consideration to applicants that intend to utilize state contracts or joint procurement with at least three transit agencies using a common specification.

LA Metro is in the process of developing a Request for Proposals (RFP) for Zero Emissions buses and considering a joint procurement. Foothill Transit is supportive of the plan and will evaluate for possible participation.

There are other organizations such as California Air Resources Board and the Hydrogen Fuel Cell Bus Council working on creating procurement groups in response to the Low or No Bus Grant.



Budget Impact

Participating in a joint procurement with LA Metro or other procurement groups will have no budget impact.

Funding for the buses is included in a Board approved life of project budget under capital project #0229. Funding will be a combination of federal and state funds and programmed in the approved Fiscal Year 2024 budget.

Sincerely,

Roland M. Cordero
Director of Maintenance and Vehicle Technology

Doran J. Barnes
Executive Director

Michelle Lopes Caldwell
Director of Finance and Treasurer

Christopher Pieper
Director of Procurement



March 29, 2024

To: Executive Board

Subject: **Fare Capping**

Recommendation

Receive and file report on a new form of fare collection methodology known as fare capping.

Analysis

Foothill Transit's current fare structure adheres to conventional fare products, where customers have the option to either pay for individual rides or purchase multi-day or trip passes in advance. This conventional framework has long been prevalent in transit systems nationwide and continues to be utilized actively. However, with technological advancements in fare collection systems, farebox equipment, fare validating devices, and backend systems, fare collection systems have evolved to become more sophisticated. These technological enhancements pave the way for innovative and equitable fare structures.

One such emerging fare structure is fare capping. Fare capping was made feasible by new technology, where passes are earned as customers pay for individual rides. Under fare capping, transit agencies typically eliminate multi-day and trip passes, selling only stored value. When the customer taps the farebox, each ride is deducted from the stored value until they reach a predetermined cap within a specified period. For instance, mirroring the duration and pricing of our current multi-day passes, this could entail a one-day period with a price cap of \$5.00 for a regular adult rider.

Fare capping streamlines the fare structure, benefiting both customers and the agency. Customers no longer need to pre-plan their transit usage to determine the most economical fare option at the beginning of each month or day. Moreover, customer service representatives are relieved of the need to sell various passes and explain complex fare structures to customers. Backend management and administration are similarly simplified with the elimination of multiple pass options.

Following recent equipment and backend updates, the TAP Program now has the technological capability to implement a regional fare capping program.



LA Metro initiated a fare capping pilot in July 2023, and following a few months of implementation, they are prepared to engage in discussions regarding a regional fare capping program with TAP participants. Initial meetings were conducted with regional operators, during which LA Metro presented key decision points and considerations essential for the effective transition to fare capping. The following are some of the key policy decisions and considerations that transit agencies should consider before proceeding with the fare capping structure:

Ride-based or amount-based fare cap: The capped amount could be determined either by the number of rides taken or the dollar amount spent.

Commuter Express fares: Fares on Commuter Express services are notably higher, and depending on the chosen capping mechanism, customers may reach the cap sooner and free rides could be given to capped customers.

Revenue sharing: Revenue from paid rides prior to reaching the cap is collected at the operator's farebox and credited to the operator's account. In a regional program context, operators that provide free rides should be permitted to share the initial revenue collected before reaching the cap.

Transfers: Currently, customers who pay for a ride are entitled to free unlimited transfers within a two-hour window. Free transfers enable customers to pay once every two hours, thereby extending the time taken to reach the cap.

Fare revenue impact: The impact on fare revenue for Los Angeles-based customers remains uncertain. National studies indicate that fare revenue may be negatively affected when transit agencies introduce fare capping. Foothill Transit awaits LA Metro's sharing of pilot results to assess and analyze the fare revenue impact of fare capping implementation.

Pass partnerships with ClassPass partners and neighboring transit agencies will not be impacted by fare capping. Pass products and interagency transfer agreements are expected to remain the same.



Budget Impact

Currently there is no impact to the Foothill Transit adopted budget. If this policy is considered by the Foothill Transit Board at a later date, it will be added to the budget at that time.

Sincerely,

John Xie
Controller

Doran J. Barnes
Chief Executive Officer



March 29, 2024

To: Executive Board

Subject: **Proposed Fiscal Year 2025 Business Plan Initiatives**

Recommendation

Approve the proposed FY2025 Business Plan Initiatives.

Analysis

Each year, Foothill Transit identifies initiatives that will direct the agency's activities and focus for the coming fiscal year. The following six key projects are recommended for inclusion in the Business Plan:

- **Fuel Cell Bus and Infrastructure Expansion** - Foothill Transit has been a leader in zero-emission vehicles for many years. First beginning with battery electric and in 2023 with the introduction of 33 fuel cell buses into the fleet and the construction of the permanent fueling infrastructure. An additional 19 fuel cell buses are on order to replace Foothill Transit's oldest fleet of fast-charge battery-electric buses currently operating at the Arcadia Irwindale Operations and Maintenance Facility. These 19 fuel cell buses will go into production at the New Flyer Industries manufacturing facility in Anniston, Alabama in mid-2025, and construction activities for the buildout of the supporting infrastructure and anticipated to begin in early 2025. By utilizing the lessons learned from the construction of the facility at the Pomona Operations and Maintenance Facility, it is anticipated that this project will be completed prior to the delivery of the buses.
- **Zero-Emissions Double Deck Fleet Expansion** - To further our organization's deployment of zero-emissions buses, an upcoming deployment of vehicles in 2026 to replace aging CNG-powered vehicles will consist of an order of 12 double-deck coaches and a possible additional 12 in coming years dependent on available funding. The double-deck zero-emissions, battery electric coaches offer superior ride quality, are visually appealing, and include sustainability and that have attracted riders and community members who may not otherwise consider taking public transit. These buses will go into production at the new Alexander Dennis manufacturing facility in Las Vegas.



- **Foothill Transit Pomona Facility CNG Equipment Upgrade** - The compressed natural gas (CNG) fueling equipment operating the Pomona CNG Fueling Facility was built in 1997. Since then the compressors and other major equipment have been maintained by Clean Energy, however, the existing compressors presents a continual challenge with sourcing certain parts and components to maintain the heavy-duty compressors. The new upgrade will consists of removing six of the eight compressors and replace with four new high-power compressors. New dispensers and control panels are also being proposed. The upgrade will be planned in stages to minimize any potential impacts to fueling.
- **Enhanced State Advocacy Presence** - Recent changes resulting from redistricting, term limits, and legislation have brought new challenges and opportunities at the state and local government levels. We will focus on enhancing relationships with lawmakers and key staff who are new to Foothill Transit's representation utilizing a new state lobbying firm. We will also strengthen and further cultivate the relationships we have built with the Department of Transportation, Federal Transit Administration, California State Transportation Agency, California Transportation Commission, California Air Resources Board, California Public Utilities Commission, and others. This relationship-building and maintenance strategy will also continue to be the focus of our efforts with our existing federal and state delegation, Los Angeles County Supervisors, and local city representatives in the Pomona and San Gabriel Valleys. We will also maximize our participation in public transportation associations and regional business associations to further advocate for legislation and policies that advance regional mobility and Foothill Transit's operations, and zero-emissions fleet expansion.
- **Administrative Office Solar Project** - Sustainability is one of Foothill Transit's values and as a testament to the agency's environmental commitment, the agency plans to build a carport-mounted solar array panels at the administrative office building for renewal power generation for the administrative office building as well as provide shade for vehicles parked in the parking lot. In addition, the project will include replacement of parking lights with energy-efficient LED's. The combined impact of solar power generation and parking lot light replacements is expected to greatly reduce the agency's energy consumption for years to come. Additional Electric Vehicle charging stations are also proposed.



- **Cal Poly Pomona Bronco Mobility Hub and Class Pass Project** - Foothill Transit and Cal Poly Pomona continue its partnership to improve mobility on campus with key transit projects including the development of a Mobility Hub and an the advancement of the Class Pass program. The Class Pass program is underway and has contributed to increases in ridership over time especially with rerouting Foothill Transit's Silver Streak Service to the campus this past year. Advancing these projects will help provide a convenient transportation option for students, faculty, and staff and represent an exciting opportunity to further strengthen our close partnership with the university.

These are proposed agency-wide initiatives for FY2025. Individual department goals will be detailed in their respective sections within the proposed FY2025 Business Plan.

Pending your approval, these proposed initiatives will serve as the foundation for agency planning prioritization in the coming year and will be included in the Proposed FY2025 Budget and Business Plan.

Sincerely,

LaShawn King Gillespie
Deputy Chief Executive Officer

Doran J. Barnes
Chief Executive Officer