



**AUSTIN TRANSIT PARTNERSHIP  
BOARD OF DIRECTORS MEETING  
AGENDA**

**Wednesday, March 1, 2023, 9:00 a.m.**

**ATP Board Room**

**203 Colorado St. Austin, TX 78701**

**ADA Compliance**

*Reasonable modifications and equal access to communications are provided upon request.  
Please call 512-389-7590 or email [chloe.maxwell@atptx.org](mailto:chloe.maxwell@atptx.org) if you need more information.*

**Board of Directors**

*Veronica Castro de Barrera, Chair, Kirk Watson, Vice Chair, Tony Elkins, Jeffrey Travillion, Juan Garza, Spencer Cronk (ex officio), Dottie Watkins (ex officio).*

**Public Comment**

Public comment may be completed in person or virtual. Those wishing to contribute comments must notify ATP 24-hours before the meeting by calling 512-389-7590 or emailing [chloe.maxwell@atptx.org](mailto:chloe.maxwell@atptx.org). Please provide your name, phone number and the topic you wish to discuss. On the day of the meeting, you will be contacted, added as an attendee of the board meeting, and have 3 minutes to speak. You will have only one opportunity at the beginning of the board meeting to speak on all items you intend to address.

**Watch Live**

ATP Board Meetings are streamed [live](#) from the ATP website.

**Executive Session**

The Board of Directors reserves the right to adjourn into executive session at any time during the course of this meeting to discuss any of the matters listed as authorized by Texas Government Code Chapter 551, including, but not limited to: Sections 551.071 (Litigation/Consultation with Attorney), 551.072 (Deliberations regarding real property), 551.073 (Deliberations regarding gifts and donations), 551.074 (Deliberations regarding personnel matters) or 551.076 (Deliberations regarding deployment/implementation of security personnel or devices), and 551.087 (Deliberations regarding Economic Development negotiations).

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1. Organizational Readiness Update	
2. Results of Procurement Assessment	
3. March 21 Community Event (Light Rail Options)	
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4.4 Action Item 4 - Consent Item Approval of a resolution authorizing the Executive Director to negotiate and execute an interlocal agreement with Workforce Solutions - Capital Area to support development of the region's first Workforce Mobility Industry Sector Partnership and for the development of construction training programs for 12 months, with a 6-month extension option, in an amount not to exceed \$300,000	112
<b>5. Partnership Reports</b>	
5.1 Update by CapMetro on MetroRapid and MetroRail Projects	
5.2 Update by City of Austin on Improved Processes for Project Connect	
<b>6. Discussion Items</b>	
6.1 Briefing on Light Rail Plan of Finance	
6.2 Briefing on Light Rail Delivery and Contracting Framework	
<b>7. Executive Session</b>	
1. Section 551.071 of the Texas Government Code for consultation with attorney and Section 551.074 of the Texas Government Code for personnel matters discussion regarding the potential approval of a resolution appointing Greg Canally as Executive Director of the Austin Transit Partnership and authorizing the Board Chair to negotiate and execute an employment contract for the same	
<b>8. Item from the Board</b>	

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9.	<b>Adjournment</b>	



**COMMITTEE:** Combined meeting of the Engineering, Architecture & Construction (EAC) Advisory Committee and the Planning, Sustainability, Equity & DBE (PSEC) Advisory Committee

**DATE:** 2/1/2023

**ATTENDANCE:**

EAC: Board Liaison Veronica Castro de Barrera, Lyndon Henry, Efrain Velez, David Bodenman, Karen Bondy

PSEC: Board Liaison Juan Garza, Marcel Gutierrez-Garza, Karen Magid, Vivian Venish

CAC Design Working Group: Joao Paulo Connolly,

ATP/PMOR Staff: Brandon Carr, Lindsay Wood, Peter Mullan, Jen Pyne, Courtney Chavez, Yannis Banks, Deron Lozano, Ryan Robinson, Larsen Andrews, Jennifer Kirby, Chloe Maxwell, Lisa Storer

**PRIMARY AGENDA ITEMS:**

1. Introduction of ATP Board Member Juan Garza, new Liaison to the PSEC
2. Light Rail Implementation Plan Update
  - ATP Process Update
  - Focus Group Report
  - Planning Team Report
3. ATP Executive Director Selection Process Update

**COMMITTEE DISCUSSION & RECOMMENDATIONS:**

1. The PSEC (as well as the EAC and CAC Design Working Group) welcomed ATP Board Member Juan Garza as the new liaison to the committee.
  - The winter ice storm was affecting the power of several TAC members and impacted attendance; the resilience of the EAC, PSEC, and CAC Design Working Group who attended is very much commended!
2. ATP staff gave a brief recap of the Light Rail Project Development Workplan, summarizing the last six months of work since the July 2022 board meeting presented the challenge of aligning the LRT program and sequencing to the available funding.
  - The technical analysis and community values criteria were presented in the context of FTA grant competitiveness.

- The Community Engagement team gave a brief report regarding the six Focus Groups held in December and January (with additional outreach planned for February), outlining the major takeaways and common themes that arose through the process.
  - Affordability, access to key destinations, and ensuring the system is equitable were the top three community values captured during these focus groups.
  - The ease of connections and transfers between bus and rail, speed, and efficiency were also themes that were discussed.
- The Planning team gave a detailed briefing on the citywide demographic and other data that is being evaluated and informing the Project Development process along the LRT alignments.
  - Mapped data included population, density, BIPOC population, household income, affordable housing locations, employment density, zero- and one-vehicle households, transit and multimodal connections, community tree planting priority areas, and historic resources.
  - Covariant maps of population density vs median income and population density with BIPOC share were presented to give more context to the background citywide data.
  - The team also presented a key destination analysis, which overlaid high ridership stations (where rider volume is highest) with stations of high transit propensity (one/no car households).

3. **ATP Board Chair** Castro de Barrera and Board Member Garza led a discussion regarding the Executive Director selection process.

#### **REQUESTS FOR MORE INFORMATION:**

- The joint TAC requested additional demographic information at the station level, and a discussion about the available granularity of data and the resulting information related to census tracts was discussed.

#### **FUTURE MEETING TOPICS:**

- ATP will hold joint TAC meetings over the next few months as the LRT Implementation Plan is developed further and is released for public input.



**COMMITTEE:** Finance & Risk Advisory Committee

**DATE:** 2/14/2023

**ATTENDANCE:**

FAR members: Dave Sullivan, John Langmore, Cindy Matula, Gretchen Flatau, Art Alfaro, Sumit DasGupta, Sandra Menjivar-Suddeath, Tony Elkins, Sarah Campbell

ATP staff: Jamie Atkinson, Shereen Gendy, Rebecca Giello, Katie Houston, Cameron Lagrone, Jennifer Pyne, Bryan Rivera,

ATP partners: Veronica Castro de Barrera (ATP Board Chair), Brian Buchanan (HDR VP), Catherine Walker (CapMetro EVP/CFO)

**PRIMARY AGENDA ITEMS:**

Community Engagement Opportunities – ATP Chief of Staff Rebecca Giello

Project Connect Status Report – HDR VP Brian Buchanan

Update from the Internal Auditor – ATP Director of Internal Audit Katie Houston

- a. New Senior Auditor Intro
- b. Planned Audit Project Timeline for FY23

Change Order Resolution Update – ATP Board Member Tony Elkins

Discussion – ATP Board Member Tony Elkins

- a. Future discussion topics
- b. Member ideas/suggestions

**COMMITTEE DISCUSSION & RECOMMENDATIONS:**

-Discussion of funding concerns related to labor and commodities increases. Staff are working on a plan with the Board, community partners, and the public to address cost and scope increases.

-FAR members asked about the implications of possible delays, the federal role in the project, and concerns with meeting FTA deadlines. Staff are in conversation with the FTA about potential options, to include an extension request or a pause on specific elements.

**REQUESTS FOR MORE INFORMATION:**

-FAR members want an opportunity to review and discuss Project Connect risks.

**FUTURE MEETING TOPICS:**

Briefing on Ranked Risk Register, to include Project Controls and Internal Audit staff.



# AUSTIN TRANSIT PARTNERSHIP BOARD OF DIRECTORS MEETING

203 Colorado St. Austin, TX 78701

~ Minutes ~

Board Secretary Casey Burack  
512-369-6040

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Wednesday, January 27, 2023  
10:30 AM

10:38 AM Meeting Called to Order  
12:49 PM Meeting Adjourned

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## 1. Official Seating of New Board Member

Board Member Kirk Watson was recognized by board members at his first ATP Board meeting. Mayor Watson serves as the City of Austin appointed member to the ATP Board of Directors.

## 2. Public Comment

There was no public comment at the meeting.

## 3. Executive Director Report

ATP Interim Executive Director Greg Canally presented on:

- Organizational Updates
- Project Connect Status Report / Board Brief

## 4. Action Items

1. Approval of minutes from the December 21, 2022 Austin Transit Partnership Board Meeting  
**RESULT: ADOPTED [UNANIMOUS]**  
**MOVER:** Travillion  
**SECONDER:** Garza  
**AYES:** Castro de Barrera, Travillion, Elkins, Watson, Garza  
**ABSENT:**
2. Approval of a resolution electing Veronica Castro de Barrera as Chair of the Austin Transit Partnership Board of Directors  
**RESULT: ADOPTED**  
**MOVER:** Garza  
**SECONDER:** Travillion  
**AYES:** Castro de Barrera, Travillion, Garza, Watson  
**ABSENT:**  
**ABSTAIN:** Elkins



3. Approval of a resolution electing Mayor Kirk Watson as Vice Chair of the Austin Transit Partnership Board of Directors  
**RESULT: ADOPTED [UNANIMOUS]**  
**MOVER:** Travillion  
**SECONDER:** Garza  
**AYES:** Castro de Barrera, Travillion, Garza, Watson, Elkins  
**ABSENT:**
4. Approval of a resolution electing Bryan Rivera as Treasurer of the Austin Transit Partnership Board of Directors  
**RESULT: ADOPTED [UNANIMOUS]**  
**MOVER:** Watson  
**SECONDER:** Travillion  
**AYES:** Castro de Barrera, Travillion, Garza, Watson, Elkins  
**ABSENT:**
5. Approval of a resolution electing Brandon Carr as Secretary of the Austin Transit Partnership Board of Directors  
**RESULT: ADOPTED [UNANIMOUS]**  
**MOVER:** Travillion  
**SECONDER:** Garza  
**AYES:** Castro de Barrera, Travillion, Garza, Watson, Elkins  
**ABSENT:**
6. Approval of a resolution appointing a liaison, Board Member Juan Garza, to the Planning, Sustainability, Equity and DBE Advisory Committee and adoption of certain Technical Advisory Committee Charter Amendments  
**RESULT: ADOPTED [UNANIMOUS]**  
**MOVER:** Watson  
**SECONDER:** Travillion  
**AYES:** Castro de Barrera, Travillion, Elkins, Garza, Watson  
**ABSENT:**

## 5. Adjournment

### ADA Compliance

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**BOARD OF DIRECTORS:** Veronica Castro de Barrera, Chair; Kirk Watson, Tony Elkins, Jeff Travillion, Juan Garza, Gina Fiandaca (ex officio), Dottie Watkins (ex officio).

The Board of Directors may go into closed session under the Texas Open Meetings Act. In accordance with Texas Government Code, Section 551.071, consultation with attorney for any legal issues, under Section 551.072 for real property issues; under Section 551.074 for personnel matters, or under Section 551.076, for deliberation regarding the deployment or implementation of security personnel or devices; arising regarding any item listed on this agenda.



***Austin Transit Partnership Board of Directors Resolution***

***Meeting Date: 3/1/2023***

***ATP-2023-003***

Adoption of amendments to ATP Procurement Policy & Guidelines

**Subject:** Approval of a resolution adopting amendments to the ATP Procurement Policy and Guidelines.

**Fiscal Impact:** None

**Responsible Department:** Procurement.

**Executive Summary:** To comply with the Federal Transit Administration's (FTA) requirement that ATP adopt a written procurement policy that complies with federal, state, and local procurement regulations to be eligible for federal funding of contracts procured to assist with the implementation of Project Connect, the ATP Board of Directors adopted a procurement policy on September 15, 2021. The Procurement Policy and Guidelines were written to comply with Federal Transit Administration (FTA) and local, state, and federal regulations. Changes are needed to the policy to streamline some existing practices and to acknowledge state laws for the procurement of non-federally funded contracts using local dollars.

Further, the Board desires to adopt changes to the current policy that reflects certain critical objectives described in the proposed ATP Procurement Policy which include the following: move provisions from the Guidelines chapters to internal guidelines – reducing the size of the Procurement Policy; reduce duplication; re-order and re-group provisions for faster searching; add a process for locally-funded procurements; update the non-competitive procurement policy to closer match FTA guidance; change bonding requirements to reference state law; changes to match state and federal requirements; update internal roles and responsibilities; update terminology and defined terms; and formatting changes.

**Procurement Summary:** See Executive Summary.

**Disadvantaged Business Enterprise Program Summary:** Does not apply.



## RESOLUTION OF THE AUSTIN TRANSIT PARTNERSHIP

### BOARD OF DIRECTORS

STATE OF TEXAS  
COUNTY OF TRAVIS

**Resolution ID: ATP-2023-003**

Adoption of amendments to ATP  
Procurement Policy & Guidelines

**WHEREAS**, the Austin Transit Partnership (“ATP”) Board of Directors (the “Board”) recognizes the Federal Transit Administration’s requirement that ATP adopt a written procurement policy that complies with federal, state, and local procurement regulations to be eligible for federal reimbursement of expenses related to contracts procured to assist with the implementation of Project Connect; and

**WHEREAS**, the Austin Transit Partnership Board of Directors approved ATP’s current Procurement Policy and Guidelines on September 15, 2021; and

**WHEREAS**, changes are needed to the policy to streamline some existing practices and to acknowledge state laws for the procurement of non-federally funded contracts using local dollars; and

**WHEREAS**, the ATP Board of Directors has considered an adoption of an amended Procurement Policy and Guidelines to include the following: move provisions from the Guidelines chapters to internal guidelines – reducing the size of the Procurement Policy; reduce duplication; re-order and re-group provisions for faster searching; add a process for locally-funded procurements; update the non-competitive procurement policy to closer match FTA guidance; change bonding requirements to reference state law; changes to match state and federal requirements; update internal roles and responsibilities; update terminology and defined terms; and formatting changes;

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Directors of ATP that the amended Procurement Policy and Guidelines, substantially in the form attached as Exhibit A to this resolution, are hereby adopted.

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**Brandon Carr**  
Secretary of the Board

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**Date**

## Austin Transit Partnership

### ATP Procurement Policy and Procedures Version No. 002: Summary of Changes

Ref	Topic	Description
1.	Adjusting contents to focus on fundamental aspects of procurement philosophy	This version of the Policy is intended to focus on the fundamental tenements of ATP's procurement philosophy and to ensure compliance with laws and regulations. To that end, certain sections (e.g., internal procedures for managing change orders and ATP's internal process for selection of contracting method) have been removed to streamline the Policy and will be addressed in further detail through a suite of separate internal guidance documents.
2.	Streamlining policies and procedures for locally-funded procurements	This version allows for more streamlined procurements where federal funding is not contemplated for a particular procurement.
3.	Aligning with federal and state requirements	This version includes adjustments to assist with fully aligning with federal and state requirements. As an example, the noncompetitive procurement provisions in Version No. 002 have been aligned to be fully reflective of the FTA requirements including by allowing sole sourcing in the event of the specific circumstances described in the federal requirements.
4.	Providing flexibility for ATP to enact its contracting plan	The intent is to avoid "one-size fits all" requirements which do not promote flexibility with regards to the size, scope, or complexity of particular procurements. This version relies on detailed template contractual terms and conditions being developed for procurements to support ATP's contracting plan. Consequential adjustments have been made to various sections of the Policy, which are intended to provide ATP with appropriate flexibility in implementing the contracting plan.
5.	Updating ATP roles and responsibilities	This version includes updated designations of ATP roles and responsibilities.
6.	Bolstering administrative remedies	A review of the administrative remedies provisions has been conducted and additional protections for ATP have been included in this version.
7.	Consolidation and organization	This version includes consolidation of certain concepts previously addressed in multiple locations to ensure consistency and ease of understanding. Re-ordering of provisions and additional subheadings have also been included for clarity and a review of the document for alignment of terminology and formatting has been conducted.



# Procurement Policy and Procedures

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# 1. GENERAL PROVISIONS

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## 1.1 Introduction to Austin Transit Partnership

Austin Transit Partnership ("**ATP**") is a local government corporation created by the City of Austin ("**City**") and the Capital Metro Transportation Authority ("**CapMetro**") pursuant to Chapter 431, Texas Transportation Code, to aid and act on behalf of the City and CapMetro to accomplish a governmental purpose by serving as the independent entity responsible for the implementation of Project Connect.

## 1.2 Purpose of this Policy

This ATP Procurement Policy and Procedures (this "**Policy**") is for the benefit of ATP only and does not confer any rights on actual or potential Offerors, Contractors, or any other person, except as expressly provided in Chapter 6 (Administrative Remedies, Audit and Organizational Conflicts of Interest). ATP has developed this Policy to support and promote best practices in the procurement of goods and services and to comply with Applicable Law, including the expectations and requirements of the Federal Transit Authority ("**FTA**") for written procurement policies and procedures, and in furtherance of its Procurement priorities and goals, including the following:

### (a) Innovation and Industry Best Practices

ATP seeks to take an innovative and creative approach to Procurement that incorporates and improves upon transit industry best practices and successful transit delivery models. ATP seeks to establish and follow procurement methods and practices that promote competition.

### (b) Commitment to Transparency and Integrity

ATP seeks to ensure that its Solicitations foster full and open competition, seek quality and Best Value, maintain integrity and accountability, and promote the goal of creating opportunities. Appropriate efforts will be used to develop and implement planning, procedures and practices that promote these commitments to transparency and integrity.

### (c) Non-Discrimination

Discrimination based on religion, sex, race, color, ethnic or national origin, sexual orientation, gender identity, age, or disability will not be tolerated, and all aspects

of ATP Procurement will be undertaken in a non-discriminatory manner. All ATP employees, officers and board members ("**ATP Persons**") should operate in a manner that provides and promotes equal opportunity without regard to any protected status and in conformity with Applicable Law prohibiting discrimination.

(d) **Maximizing Participation of Disadvantaged and Small Business Enterprises**

ATP has committed to developing and implementing a Disadvantaged Business Enterprise ("**DBE**") Program to meet and comply with Federal Requirements to ensure that maximum opportunities are available for women, minority, and small businesses, including veteran-owned businesses, to participate.

(e) **Equity**

In addition to ATP's expectation to provide opportunities for DBEs, ATP is led by the guiding principle of equity. ATP proactively seeks to build and foster the capacity for competitive skills in those historically underutilized businesses to participate in comparable procurement and service contracts.

(f) **Use of Available Procurement Options**

ATP may employ all procurement contracting methods to the fullest extent permitted by Applicable Law and Federal Requirements. ATP seeks to select the Procurement method appropriate to the property, services, construction or other work being procured, that encourages full and open competition to the extent possible (except where a noncompetitive procurement is permitted and appropriate as described in this Policy), that enables ATP to procure the property, services, construction or other work in a timely and cost efficient manner and that aligns with industry best practice.

(g) **Maximizing Public Funds**

ATP intends to provide efficiency and effectiveness in Procurement activities, exercise good stewardship of public funds and maximize, to the fullest extent possible, the purchasing value of those public funds.

1.3 **Applicable Law**

(a) **General**

ATP is a political subdivision of the State, and is subject to certain State laws applicable to the procurement of goods and services. This Policy is intended to

comply with Applicable Law, and is designed to ensure ongoing compliance with Applicable Law, while also promoting flexibility and efficiency. This Policy encourages ATP staff to consult with ATP's general counsel when conducting Procurement. In the event of an irreconcilable conflict between this Policy and Applicable Law (including, if applicable, the Federal Requirements), Applicable Law will control.

(b) **Federally Funded Procurements**

For Federally Funded Procurements, ATP will comply with the applicable sections of 2 C.F.R. Part 200 (as adopted by the U.S. Department of Transportation in 2 C.F.R. Part 1201), the terms of any applicable FTA funding agreement, FTA Circular 4220.1F, and other applicable federal statutory and regulatory requirements, in each case as in effect on the applicable date ("**Federal Requirements**"). In particular, ATP will ensure compliance with the standards and requirements identified in 2 C.F.R. Part 200.318 through Part 200.326.

(c) **Purchasing and Vendor Services**

ATP is not a municipality and is therefore not subject to the competitive purchasing requirements applicable to municipalities set forth in Chapter 252, Texas Local Government Code. Nevertheless, ATP will endeavour to obtain competitive pricing using its own competitive purchasing processes as contemplated in this Policy.

(d) **Professional Services under Chapter 2254**

ATP is a "governmental entity" within the meaning of Chapter 2254, Texas Government Code ("**Chapter 2254**"), governing the procurement and selection of professional services and consulting services, as such terms are defined in Chapter 2254. Unless otherwise exempt under Chapter 2254, all contracts for such professional services will be procured in compliance with Chapter 2254. Contracts for such professional services are awarded on the basis of demonstrated competence and qualifications to perform the services, and for a fair and reasonable price.

(e) **Construction Services**

ATP is subject to the same Procurement requirements as the City for the procurement of construction services for public works, except as otherwise exempted under Section 431.110, Texas Transportation Code. ATP will procure contracts for construction services using the delivery methodologies described in

Chapter 2269, Texas Government Code, unless otherwise permitted under Applicable Law.

(f) **Other Services**

For Procurements of other services, ATP shall be entitled to utilize any approach permitted under Applicable Law.

(g) **Alternative Delivery Methods**

To the fullest extent permitted by Applicable Law, ATP shall be entitled to utilize procurement methods which utilize (i) a collaborative/progressive delivery method (including but not limited to construction manager at-risk, construction manager/general contractor, and progressive design-build) and/or (ii) a combination of design, construction, financing, operation, and maintenance services for public improvements through alternative delivery methods including public-private partnerships. ATP should consult with ATP's general counsel to determine the availability of such delivery methods under Applicable Law.

(h) **Prompt Payment for Goods and Services**

It is ATP's policy to comply with the requirements of Chapter 2251, Texas Government Code governing the prompt payment of vendors for goods and services.

**1.4 Policy Deviations and Permanent Changes**

- (a) The Executive Director may approve deviations from this Policy with respect to an individual Procurement, subject to compliance with Applicable Law and any applicable Federal Requirements.
- (b) No permanent substantive change shall be made to this Policy without the express approval of the Board.
- (c) The Procurement Director may authorize clerical updates and clarifications to this Policy (e.g., style changes, typographical, punctuation, and transposition errors).

**1.5 Application of this Policy**

- (a) Unless the context otherwise requires, this Policy shall apply to every expenditure of public funds irrespective of their source, including federal assistance monies, by ATP under any Contract, except that this Policy shall not apply to:

- (i) grants;
  - (ii) employment contracts;
  - (iii) real estate contracts;
  - (iv) intergovernmental agreements, including cooperative purchasing agreements and other contracts between ATP and other public agencies under Chapter 791, Texas Government Code, as amended; or
  - (v) any transaction for, or related to, the borrowing of money by ATP permitted under the State law.
- (b) Nothing in this Policy shall prevent ATP from complying with the terms and conditions of any grant, gift, bequest, or cooperative agreement.
- (c) This Policy is intended to apply to both locally funded and Federally Funded Procurements, except to the extent indicated in this Policy.

#### 1.6 Standards of Conduct

- (a) ATP conducts all Procurements based on the following ethical principles. The Procurement Department will:
- (i) practice integrity, transparency, and accountability in order to merit the respect and inspire the confidence of the organization and the public being served;
  - (ii) comply with legal and other obligations;
  - (iii) treat Offerors equally and fairly;
  - (iv) not tolerate personal aggrandizement or personal profit obtained through misuse of public or personal relationships;
  - (v) identify situations where a conflict of interest may be involved;
  - (vi) keep ATP informed through appropriate channels; and
  - (vii) uphold the dignity and worth of the services rendered by the organization and the societal responsibilities assumed as a trusted public servant.
- (b) All ATP Persons and all committee members, representatives, consultants, vendors, contractors, volunteers, outside agencies doing business with employees

and/or any other parties with a business relationship with ATP that are involved in a Procurement, an award or administration of Third Party Contracts must comply with the obligations in this Policy (including Section 6.8 (ATP Conflicts of Interest)) and the ATP Ethics Policy. In the event of a conflict between documents, the policy that is more restrictive on the ATP Person shall govern.

- (c) All parties involved in the negotiation, performance, or administration of contracts with ATP shall act in good faith.

#### **1.7 Public Access to Procurement Information**

- (a) ATP recognizes the importance of maintaining the confidentiality of Contractor information to the fullest extent permitted by Applicable Law, while also balancing interests of integrity and transparency. ATP representatives will abide by the ATP Ethics Policy as it relates to maintaining confidentiality. In addition, the Board, ATP staff, and ATP representatives shall use confidential information received through a Procurement solely for the purposes outlined in the Solicitation. This Policy is not intended to prevent disclosure where disclosure is required by Applicable Law; including, without limitation, pursuant to the Texas Public Information Act.
- (b) Solicitations may contain a provision requiring all Offers to identify any information believed to be exempt from disclosure as trade secrets or commercial or financial information, provided that blanket designations will not be acceptable and that any such identification of information will not be determinative of any issue relating to the application of, or treatment of, such information or materials, under Applicable Law.

#### **1.8 Reporting to the Board**

The Executive Director or their Designee will provide regular updates to the Board regarding Procurement activities.

#### **1.9 Ensuring Necessary and Non-Duplicative Purchases**

ATP shall endeavor to acquire only property and services that are necessary and non-duplicative. To determine its reasonably expected Procurement needs, ATP shall carry out long-range Procurement planning to identify the Procurement requirements of ATP.

#### **1.10 General Provisions and Interpretation**

- (a) **Severability**

If any provision of this Policy, or any application of this Policy to any person or circumstance, is held invalid, such invalidity shall not affect any other provision or application of this Policy which can be given effect without the invalid provision or application, and to this extent the provisions of this Policy are declared to be severable.

**(b) Prior Policies Superseded**

All prior policies and resolutions of ATP which are inconsistent with this Policy are superseded by this Policy. No part of this Policy shall be deemed to be impliedly repealed or modified by subsequent action of ATP if such construction reasonably can be avoided.

**(c) Dissemination of this Policy**

Private firms, individuals, and others may obtain copies of this Policy from the Procurement Department or on the ATP website.

**(d) Written Determinations**

- (i) Where this Policy requires a written determination, the person responsible for making the determination may delegate its preparation, but the responsibility for and the execution of the determination itself shall not be delegated unless expressly permitted.
- (ii) Any failure of ATP to make any written determination required by this Policy will not affect the validity of any action taken in relation to any other party.
- (iii) Written determinations shall set out sufficient facts, circumstances, and reasoning as will substantiate the specific determinations made.
- (iv) The Executive Director or their Designee is authorized to prescribe methods and operational procedures to be used in preparing written determinations.
- (v) Written determinations shall be filed in the appropriate Procurement File, shall be retained as part of such file for so long as the file is required to be maintained, and (except as otherwise provided by Applicable Law) shall be open to public inspection.

**(e) Definitions**

The defined terms in this Policy shall have the meanings set forth in Chapter 7 (Definitions) whenever they appear in this Policy unless the context in which they are used clearly requires a different meaning or a different definition is prescribed for a particular section or provision or under Applicable Law or Federal Requirements.



## 2. PROCUREMENT AUTHORITY AND OFFICIALS

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### 2.1 General Procurement Authority

- (a) The authorization to enter into Contracts, Contract Modifications, or other commitments on behalf of ATP will be conferred only by resolution of the Board providing general authorizations to enter into contracts or authority for specific contracts or types of contracts. Any provision in this Policy describing the methods and procedure for Procurement and designating ATP representatives for Procurement actions shall be subject to any such authorization from the Board to award a Contract.
- (b) No Contract, Contract Modification, or other commitment shall be made on behalf of ATP unless it is made in writing and executed by a representative of ATP acting within the scope of the representative's designated authority. ATP will not be bound by unauthorized Procurement actions.
- (c) No person shall be authorized or permitted to commence work for or on behalf of ATP in contemplation of a contract prior to the execution of a written contract and issuance of a notice to proceed by ATP.
- (d) Contracts, Contract Modifications, or other commitments made on behalf of ATP by ATP Persons acting outside the scope of their designated authority may be ratified by the Executive Director if the Executive Director determines in writing that such action is in ATP's best interest.

### 2.2 Board Authority

- (a) The Board is empowered under State law to exercise its powers by resolution, including to make Contracts, incur liabilities, borrow money, and issue notes, bonds and other obligations.
- (b) The Board may delegate authority to the Executive Director or other officers or agents of ATP to purchase certain property, services, or construction, within budgeted amounts approved by the Board.

### 2.3 Executive Director Authority

- (a) **Execution of Agreements**

- (i) The Executive Director or their Designee is authorized to execute agreements in amounts less than any threshold amounts approved by the Board.
- (ii) The Executive Director shall seek the prior approval of the Board for any agreement exceeding any threshold amounts approved by the Board.
- (iii) Any Contract Modification above the threshold amount approved by the Board will require subsequent Board approval.

**(b) Appointment of Contracting Officers**

The selection, appointment, and termination of appointments of Contracting Officers shall be made only by the Executive Director. In selecting Contracting Officers, the Executive Director shall consider public contract experience, training, education, judgment, character, and ethics.

**(c) Procurement Authority**

- (i) The Executive Director or their Designee shall be responsible for the Procurement of property, services, and construction in accordance with this Policy.
- (ii) The Executive Director or their Designee may:
  - (A) adopt operational guidance and/or prepare template Procurement documents consistent with this Policy pertaining to the execution of Procurement duties;
  - (B) approve and execute all Purchase Requisitions within their level of authority;
  - (C) advertise and/or issue Solicitation documents;
  - (D) approve and enter into purchase orders and Contracts within their level of authority;
  - (E) determine whether a supply item or group of supply items shall be included as a part of, or procured separately from, any Contract for construction;
  - (F) approve and enter into a Contract Modification (including the settlement of a contract claim) that did not originally require the

Board's approval so long as the Contract Modification (either individually or in combination with other Contract Modifications) does not increase the Contract amount or yearly contract amount above the level of authority given to the Executive Director;

- (G) approve and enter into a Contract Modification (including the settlement of a contract claim) that originally required the Board's approval so long as the Contract Modification, as combined in amount with other non-Board-approved Contract Modifications does not exceed the level of authority given to the Executive Director; and
- (H) approve the authorization or execution of Contract Modifications that do not exceed the level of authority given to the Executive Director.

**(d) Delegations**

- (i) The Executive Director's delegations of authority shall be in writing and shall specify:
  - (A) the activity or function authorized;
  - (B) any limits or restrictions on the exercise of the delegation; and
  - (C) the duration of the delegation.
- (ii) Any authority delegated by the Executive Director may be revoked at any time and without prior approval of the Board.
- (iii) Authority conferred on the Executive Director in this Policy with respect to the following matters shall not be delegated:
  - (A) appointment of Contracting Officers under Section 2.3(b) (Appointment of Contracting Officers);
  - (B) deviations from this Policy under Section 1.4 (Policy Deviations and Permanent Change);
  - (C) stay of Procurements during Protests under Section 6.3(c) (Stay of Procurements); and
  - (D) authority to debar or suspend under Section 6.4(b) (Authority to Debar or Suspend).

## 3. PROCUREMENT SELECTION AND PROCEDURES

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### 3.1 Procurement Method Selection

- (a) ATP will determine which Procurement method to use for any Procurement based on the considerations in this Chapter 3. Selecting the appropriate Procurement method is dependent on a number of factors, including price, value, competition, scope, timing, and legal requirements. To the extent required by Applicable Law, or at the recommendation of the Procurement Department, certain Procurements may require that the Board or the Executive Director approve selection of the appropriate Procurement method.
- (b) ATP may select the lowest Responsible Offeror or the Offeror who provides the goods or services at the Best Value to ATP in accordance with Applicable Law.

### 3.2 General Procurement Requirements

#### (a) Determination of Terms and Conditions

##### (i) General

The Procurement Department and ATP's general counsel will determine the terms and conditions of Solicitations and Contracts, subject to the terms of this Policy and Applicable Law (including, for Federally Funded Procurements, Section 1.3(b) (Federally Funded Procurements) and the Federal Requirements).

##### (ii) Determination of Terms and Conditions for Federally Funded Procurements

The following apply to the determination of terms and conditions of Solicitations and Contracts for Federally Funded Procurements:

- (A) ATP shall include required federal certifications (e.g., TVM, Lobbying, Buy America, if applicable) in its Solicitations and will require signed certifications from Offerors;
- (B) the Procurement Department shall include all applicable federal clauses. Such clauses shall include the applicable provisions described in Appendix II to 2 C.F.R. Part 200 and any other provisions

required under Applicable Law (including the Federal Requirements). Incorporation of a clause by reference is permitted; however a general reference to FTA guidelines or clauses is not sufficient to incorporate a clause. ATP shall include Davis Bacon wage determinations in applicable construction Solicitations; and

- (C) any federally funded Contract must be a sound and complete agreement and must include remedies for breach of contract (e.g., liquidated damages) and provisions covering termination for cause and convenience.

**(b) Invitation for Bids/Request for Proposals**

Any Invitation for Bids or Request for Proposals shall include, without limitation, the following:

- (i) instructions and information to Offerors concerning the Offer submission requirements, including the time and date set for receipt of Offers, the address or electronic portal for delivery, and the maximum time for Offer acceptance by ATP;
- (ii) the purchase description or scope of services and, if applicable, evaluation factors and their relative importance; and
- (iii) the Contract terms and conditions, including warranty and bonding or other security requirements, as applicable.

**(c) Offer Preparation Time**

Offer preparation time is the period between the date of distribution of the Solicitation and the Offer Submission Date. Offer preparation time shall be set to provide Offerors with sufficient time to prepare their Offers.

**(d) Bonds**

- (i) Bid, performance and payment bonds or other security may be required for supply Contracts, service Contracts, or construction Contracts to comply with Applicable Law, Federal Requirements (for Federally Funded Procurements) or, where not defined by Applicable Law or Federal Requirements, as the Procurement Department deems advisable to protect the interest of ATP. Any such requirements must be set forth in the

Solicitation. Bid or performance bonds should not be used as a substitute for a determination of Offeror's responsibility.

- (ii) Section 2253, Texas Government Code sets forth the payment and performance bonding requirements applicable to construction Contracts for public works.

(e) **Public Notice**

ATP recognizes the need for appropriate publicity and advertisement of Procurement opportunities. Any Procurement shall be, as deemed appropriate by the Procurement Department:

- (i) advertised in accordance with Applicable Law and in a manner appropriate for the relevant Procurement; and
- (ii) distributed to an adequate number of Offerors for the purpose of securing competition.

(f) **Bidders Lists**

ATP reserves the right to maintain a bidders list.

(g) **Pre-Bid/Proposal Conferences**

- (i) ATP may conduct pre-bid/proposal conferences to further explain or clarify the Procurement requirements. ATP shall announce any pre-bid/proposal conference in a manner appropriate for the relevant Solicitation.
- (ii) Nothing stated at a pre-bid/proposal conference shall change the Solicitation documents unless a change is made by written amendment as provided in Section 3.2(h) (Amendments to Solicitation).

(h) **Amendments to Solicitation**

- (i) If amendments are made to a Solicitation, then the Procurement Department must ensure proper publication and notice of such changes.
- (ii) Amendments may be used, without limitation, to:
  - (A) make any changes in the Solicitation, such as changes to quantity, the purchase description or scope of services, delivery schedules, and opening dates;

- (B) correct defects or ambiguities; or
  - (C) furnish to other Offerors information given to one Offeror if such information will assist the other Offerors in submitting Offers or if the lack of such information would prejudice the other Offerors.
- (iii) Amendments shall require that the Offeror acknowledge receipt of all amendments issued.

### 3.3 **Methods of Procurement**

#### (a) **Locally Funded Procurements**

- (i) ATP may determine, at its discretion, to purchase goods or services solely using local funds for which it will not seek federal funding reimbursement.
- (ii) ATP will determine which Procurement method, if any, to use for any locally funded Procurements, in accordance with Applicable Law.
- (iii) The Procurement Department will develop the appropriate procedures and guidelines for handling locally funded Procurements in accordance with Applicable Law.

#### (b) **Federally Funded Micro-Purchases**

##### (i) **Applicability**

- (A) Federally funded micro purchases, including delivery charges, may be accomplished without securing competitive quotations if the prices are considered to be fair and reasonable. The federal micro-purchase threshold and procedures are set out in 41 U.S.C. § 1902.
- (B) Dividing a Procurement requirement with the intent of avoiding the federal micro purchase threshold, competition requirement, or other dollar thresholds is considered bid-splitting and is prohibited by the Federal Requirements.

##### (ii) **Procedures**

- (A) ATP shall distribute micro-purchases equitably among qualified suppliers. Micro-purchases made under the Purchasing Card Program are not excluded from the need for rotation.

- (B) The Contracting Officer shall prepare a written determination that the price is fair and reasonable for documentation in the Procurement File.

(c) **Federally Funded Small Purchases**

(i) **Applicability**

- (A) Small purchase procedures may be used for the Federally Funded Procurements of property, services, or construction valued at more than the federal micro purchase threshold, but less than the Simplified Acquisition Threshold.
- (B) Dividing a Procurement requirement with the intent of avoiding the Simplified Acquisition Threshold, competition requirement, or other dollar thresholds is considered bid-splitting and is prohibited by the Federal Requirements.
- (C) Elements of the competitive sealed bidding and competitive sealed proposal procedures may be applied in addition to the procedures under this Section 3.3(c) if determined by ATP to be in its best interest.

(ii) **Procedures**

- (A) ATP shall obtain price or rate quotations from an adequate number of qualified sources. Written or oral quotations received in response to a Solicitation shall be documented in the Procurement File.
- (B) Where practical, no less than three businesses shall be solicited to submit quotations. Award shall be made to the business offering the lowest acceptable quotation.
- (C) Small purchases may be accomplished without securing competitive quotations if the prices quoted are considered by ATP to be fair and reasonable. Such purchases shall be distributed equitably among qualified businesses. When practical, a quotation shall be solicited from other than the previous supplier prior to placing a repeat order.

(iii) **Small Purchases of Professional Services**

- (A) If it is expected that professional services can be procured for less than the applicable threshold, the methods specified in this Section



3.3(c)(iii) may be used for the Procurement of professional services instead of the procedure specified in Section 3.3(d) (Professional Services).

- (B) Before contacting any Person to perform the required services, ATP may examine any current statements of qualifications on file with ATP and contact the most competent and qualified firm and attempt to negotiate a Contract for the required services at a fair and reasonable price. If no current statements of qualifications are on file or the statements on file are inadequate to determine the most competent and qualified firm, responses shall be solicited in accordance with Section 3.3(d) (Professional Services).
- (C) With respect to federally funded contracts, nothing in this Section 3.3(c)(iii) shall be deemed to permit ATP to procure architectural engineering services by any means except qualifications-based procurement procedures in accordance with the Federal Requirements.

(d) **Professional Services**

(i) **Applicability**

- (A) Under Chapter 2254, ATP may not select a professional services provider (including architect-engineer services) or award a contract for the services on the basis of competitive bids.
- (B) Except as authorized under Section 3.3(c)(iii) (Small Purchases of Professional Services), Section 3.3(e) (Emergency Procurements) or Section 3.3(h) (Noncompetitive Procurement), the selection procedures set out in Section 3.3(d) shall be used for all Procurements of professional services.
- (C) For the purposes of this Section (d)3.3(d) and Section 3.3(c)(iii) (Small Purchases of Professional Services), "professional services" means professional services as defined in Chapter 2254.

(ii) **Procedures**

- (A) When seeking professional services, ATP shall solicit vendors based upon their competence and qualifications, and not based on pricing. ATP will solicit services through a formal RFQ Solicitation.
- (B) Vendors shall be evaluated based upon their demonstrated competence and qualifications to perform the services being sought, such as the following:
  - (aa) the plan for performing the required services;
  - (bb) ability to perform the services as reflected by technical training and education, general experience, specific experience in providing the required services, and the qualifications and abilities of personnel proposed to be assigned to perform the services;
  - (cc) the personnel, equipment, and facilities to perform the services currently available or demonstrated to be made available at the time of contracting; and
  - (dd) a record of past performance of similar work.

The relative importance of these and other factors will vary according to the types of services being procured.

- (C) Vendors shall be ranked based upon their qualifications and experience relative to the services being sought, in accordance with the criteria established in the Solicitation. After ranking respondents, ATP must attempt to negotiate a fair and reasonable price for the services. If a fair and reasonable price cannot be negotiated, ATP may end negotiations and go on to the next qualified respondent. The Procurement Department may rely upon the judgment of the Contracting Officer for purposes of determining whether a price for services is fair and reasonable.
- (D) When professional services are needed on a recurring basis, ATP may actively solicit persons engaged in providing such services to submit annual statements of qualifications in a prescribed format.
- (E) When contracting for architectural and engineering services, geographic location may be a selection criterion provided its

application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the Contract.

(e) **Emergency Procurements**

(i) **General Authority**

Subject to Section 2.1 (General Procurement Authority) and notwithstanding any other provision of this Policy, the Executive Director or their Designee may make or authorize others to make Procurements in emergency conditions for which the public exigency will not permit the delay incident to competition.

(ii) **Definition of Emergency Conditions**

An emergency condition is a situation which creates a threat to public health, welfare, or safety such as may arise by reason of accidents, fires, floods, riots, or equipment failures. The existence of such condition creates an immediate and serious need for property, services, or construction that cannot be met through normal Procurement methods and the lack of which would seriously threaten:

- (A) the functioning of ATP's operations;
- (B) the preservation or protection of property; or
- (C) the health or safety of any person.

(iii) **Scope of Emergency Procurements**

Emergency Procurements shall be limited to the property, services, or construction items necessary to meet the emergency.

(iv) **Selection of Emergency Procurement Method**

- (A) The procedure used shall be selected to ensure that the required property, services, or construction items are procured in time to meet the emergency. Given this constraint, such competition as is practicable shall be obtained.
- (B) Competitive Procurement is unsuccessful when Offers received are unreasonable, noncompetitive, or exceed available funds as certified by the appropriate fiscal officer, and time or other circumstances will

not permit the delay required to resolicit Offers. If emergency conditions exist after an unsuccessful attempt to use competitive Procurement methods, an emergency Procurement may be made.

(v) **Determination and Record of Emergency Procurements**

The Contracting Officer or the Procurement Director shall make a written determination stating the basis for an emergency Procurement and for the selection of the particular Contractor. A record of each emergency Procurement shall be made as soon as practicable.

(f) **Competitive Sealed Bids**

(i) **Competitive Sealed Bidding**

(A) **Applicability**

Under the competitive sealed bidding method, selection is based on price and discussions or changes to the Bid after the Offer Submission Date are not permitted. ATP will determine in writing whether competitive sealed bidding is appropriate on a Procurement-by-Procurement basis taking into account the relevant circumstances including, but not limited to, whether: (i) a precise specification could be available, (ii) two or more Responsible Bidders are willing to compete, (iii) the Procurement generally lends itself to a firm fixed-price contract, (iv) selection can be made on the basis of price, and (v) discussions are not expected to be necessary.

(B) **Procedures**

- (aa) If the Procurement Department determines to use competitive sealed bidding for a Procurement, ATP will use a formal competitive sealed bid process in a manner consistent with Applicable Law.
- (bb) The Invitation for Bids shall be prepared in accordance with Section 3.2(b) (Invitation for Bids/Request for Proposals) and shall include a form for the Bidder to insert the Bid price, sign and submit along with any other necessary submissions. The evaluation criteria may include criteria to determine acceptability (such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose) and the Bid

price (such as discounts, transportation costs, and total or life-cycle costs). Where specified in the Invitation for Bids, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which Bid is lowest.

**(C) Product or Service Acceptability**

- (aa) The Invitation for Bids for competitive sealed bidding shall set forth any evaluation criterion to be used in determining product or service acceptability. It may require the submission of bid samples, descriptive literature, technical data, or other material.
- (bb) The Invitation for Bids may also provide for accomplishing any of the following prior to award:
  - (a) inspection or testing of a product prior to award for such characteristics as quality or workmanship;
  - (b) examination of such elements as appearance, finish, taste, or feel; or
  - (c) other examinations to determine whether it conforms with any other purchase description or scope of services requirements.
- (cc) The Invitation for Bids shall state that bid samples or descriptive literature should not be submitted unless expressly requested and that, regardless of any attempt by a bidder to condition the bid, unsolicited bid samples or descriptive literature which are submitted at the bidder's risk will not be examined or tested and will not be deemed to vary any of the provisions of the Invitation for Bids.

**(ii) Multi-Step Competitive Sealed Bidding**

**(A) Applicability**

- (aa) Multi-step competitive sealed bidding is a two-phase Procurement process consisting of:

- (a) submittal of an unpriced technical offer for evaluation by ATP ("**Step 1**"); and
  - (b) submittal of price bids by bidders whose technical offers are determined by ATP to be acceptable for consideration ("**Step 2**").
- (bb) Multi-step competitive sealed bidding may be used when it is not practical to prepare a definitive purchase description or scope of services which will be suitable to permit an award based on price, including when it is beneficial for ATP:
  - (a) to invite and evaluate technical offers to determine their acceptability to fulfill the purchase description or scope of services requirements prior to soliciting priced Bids;
  - (b) to conduct discussions or obtain supplemental information, permit amendments of technical offers, or amend the purchase description or scope of services prior to soliciting priced Bids; and
  - (c) to award the Contract to the lowest Responsive and Responsible Bidder.

**(B) Procedures**

- (aa) If the Procurement Department determines to use multi-step competitive sealed bidding for a Procurement, ATP will use a formal multi-step competitive sealed bid process in a manner consistent with Applicable Law.
- (bb) The Invitation for Bids shall be prepared in accordance with Section 3.2(b) (Invitation for Bids/Request for Proposals) and shall include:
  - (a) directions for submitting technical offers and priced bids separately;
  - (b) an explanation that priced bids will be considered only from those Bidders whose technical offers are found acceptable in Step 1;

- (c) the criteria to be used in the evaluation of the technical offers and the relative importance of each criterion; and
- (d) an explanation that ATP, to the extent ATP finds necessary, may conduct discussions regarding the technical offers.

**(g) Competitive Sealed Proposals**

**(i) Applicability**

- (A) When ATP determines in writing that the use of competitive sealed bidding is either not practicable, or not advantageous to ATP, the competitive sealed proposals Procurement method may be used.
- (B) A Request for Proposal allows ATP to consider a variety of factors in addition to price to select the Contractor who provides the Best Value to ATP. Factors for evaluation may include, but are not limited to: experience/reputation; quality of goods or services; price; achievement of DBE contracting goals; safety record; proposed personnel; financial capability; and other relevant factors.
- (C) Multi-step competitive sealed proposals (RFQ/RFP) may be used when beneficial to ATP and permitted under Applicable Law.

**(ii) Procedures**

**(A) Request for Proposals**

The Request for Proposals shall be prepared in accordance with Section 3.2(b) (Invitation for Bids/Request for Proposals) and shall also include:

- (aa) a statement that discussions may be conducted with Proposers who submit Proposals and that such Proposals may be accepted without such discussions;
- (bb) a statement of when and how price proposals should be submitted; and
- (cc) evaluation factors, including price, and their relative importance.

**(B) Form of Proposal**

The manner in which Proposals are to be submitted, including any forms for that purpose, shall be designated as a part of the Request for Proposals.

**(h) Noncompetitive Procurement**

**(i) Applicability**

A Contract for goods or services may be awarded without competition when the Procurement Department determines in writing that the conditions for use set forth in Section 3.3(h)(ii) (Conditions for Use) have been satisfied.

**(ii) Conditions for Use**

Subject to Section 3.3(h)(iii) (Lack of Advance Planning or Availability of Funds), ATP may use a noncompetitive procurement when the Procurement is inappropriate for competitive sealed bids, competitive sealed proposals, micro purchase procedures under Section 3.3(b) (Federally Funded Micro-Purchases), or small purchase procedures under Section 3.3(c) (Federally Funded Small Purchases), and at least one of the following conditions is present:

- (A)** the Contract is for services or supplies for which there is only one Responsible source, and no other supplies or services will satisfy the relevant requirements. Examples include but are not limited to:
  - (aa)** only one Offer is received and an appropriate determination has been made under Section 4.1(f) (Only One Offer Received);
  - (bb)** the Contractor provides a unique or innovative concept or capability not available from any other source;
  - (cc)** patent or data rights restrictions preclude competition;
  - (dd)** in the case of follow-on Contracts for highly specialized equipment and associated major components, it would otherwise result in substantial duplication of costs or unacceptable delays; or



- (ee) any other circumstances described in the Federal Requirements.
- (B) ATP has such an unusual and urgent need for the property or services that it would be seriously injured if it were not permitted to limit the Procurement;
- (C) when the public exigency or emergency will not permit any delay resulting from a competitive Procurement for the property or services;
- (D) with some exceptions, when FTA awards a grant agreement or enters into a cooperative agreement with a team, consortium, joint venture, or partnership, the grant agreement or cooperative agreement may constitute approval of those arrangements;
- (E) FTA authorizes procurement by noncompetitive proposals in all of the circumstances authorized by Part 6.3, FAR, including in one or more of the following circumstances:
  - (aa) to comply with Department of Transportation appropriations laws that include specific statutory requirements, with the result that only a single contractor can perform certain project work;
  - (bb) to maintain a facility, producer, manufacturer, or other supplier available to provide supplies or services in the event of a national emergency or to achieve industrial mobilization;
  - (cc) to acquire the services of an expert or neutral person for any current or anticipated Protest, dispute, claim or litigation;
  - (dd) when the disclosure of ATP's needs would compromise national security;
  - (ee) when ATP determines that full and open competition in connection with a particular acquisition is not in the public interest;
  - (ff) any other circumstances described in the Federal Requirements;

(F) for locally funded Procurements, an exemption listed in Section 252.022, Texas Local Government Code, or Sections 451.111 or 431.110, Texas Transportation Code is applicable to a Procurement (in which case ATP may award the Contract on the basis of demonstrated competence and qualifications to perform the services for a fair and reasonable price); and

(G) the Procurement is in any other category permitted by Applicable Law.

(iii) **Lack of Advance Planning or Availability of Funds**

Contracting without providing for full and open competition shall not be justified on the basis of (i) lack of advance planning by ATP; or (ii) concerns related to the availability of funds.

(iv) **Procedures**

(A) When less than full and open competition is available to ATP, ATP will:

(aa) solicit Offers from as many Offerors as ATP deems practicable under the circumstances;

(bb) justify its decision in writing adequately in the light of the standards of this Section 3.3(h);

(cc) prepare or obtain a cost analysis verifying the proposed cost data, the projections of the data, and the evaluation of the costs and profits; and

(dd) if FTA so requests, submit the proposed Procurement to FTA for pre-award review.

(B) ATP shall conduct negotiations, as appropriate, as to price, delivery, and terms.

(C) A written record of noncompetitive Procurements shall be maintained in the Procurement File.

(i) **Other Procurement Methods**

(i) **Incremental Award**

(A) **Applicability**

An incremental award is an award of portions of a definite quantity requirement to more than one Contractor. Each portion is for a definite quantity, and the sum of the portions is the total definite quantity required. An incremental award may be used only when awards to more than one Offeror for different amounts of the same item are necessary to obtain the total quantity for the required delivery.

**(B) Procedures**

- (aa) If an incremental award is anticipated prior to issuing a Solicitation, ATP shall reserve the right to make such an award, and the criteria for award shall be stated in the Solicitation.
- (bb) The Contracting Officer shall make a written determination setting forth the reasons for the incremental award, and the determination shall be documented in the Procurement File.

**(ii) Multiple Award**

**(A) Applicability**

A multiple award is an award of an indefinite quantity contract for one or more similar supplies or services to more than one Offeror when ATP is obligated to order all of its actual requirements for the specified supplies or services from those Contractors. A multiple award may be made when award to two or more Offerors for similar products is necessary for adequate delivery, service, or product compatibility.

**(B) Procedures**

- (aa) If a multiple award is anticipated prior to issuing a Solicitation, ATP shall reserve the right to make such an award, and the criteria for award shall be stated in the Solicitation.
- (bb) The Contracting Officer shall make a written determination setting forth the reasons for a multiple award, and the determination shall be documented in the Procurement File.

**(iii) Other Procurement Sources**

**(A) General**

ATP may use and consider various other Procurement sources, including, but not limited to:

- (aa) State contracts awarded competitively for the benefit of all State agencies (such as DIR, HGACBuy, Texas Multiple Award Schedule Program, The Cooperative Purchasing Network, and Buy Board);
- (bb) another state's cooperative Procurement contract, including purchases made pursuant to Section 3019 of the FAST Act;
- (cc) cooperative Procurement contracts that are purchasing schedules between a state or eligible nonprofit with one or more vendors;
- (dd) specified purchasing programs under the General Services Administration ("**GSA**") Federal Supply Schedule to the extent authorized by Applicable Law (which may include the Cooperative Purchasing Program for information technology, law enforcement, and security solutions; disaster purchases; and public-health-emergency purchases);
- (ee) federal excess and surplus property; and
- (ff) assignment of another entity's contract rights.

**(B) GSA Schedule Requirements**

- (aa) The GSA schedule does not require vendors to comply with FTA's Buy America regulations, and it may include manufactured products that are not eligible for reimbursement of FTA funds. In these cases, ATP must ensure that all Buy America certifications or waivers are received before awarding a Contract.
- (bb) When using the GSA schedule to acquire property or services, ATP can fulfill the requirement for full and open competition by seeking offers from at least three vendors. ATP must still determine that any purchase from the GSA schedule is a fair and reasonable price.

**(C) Acquisition Through Assigned Contract Rights (Piggybacking)**

- (aa) ATP may acquire contract rights through assignment by another entity, in which case ATP shall ensure that the assignment complies with all Federal Requirements, including:
  - (a) the underlying contract complies with FTA requirements prohibiting excessive options;
  - (b) if applicable, the underlying contract includes an assignment clause that allows the assignment of quantities and provides that those quantities are permitted to be purchased under the original contract terms;
  - (c) ATP documents that the price of the contract rights being assigned is fair and reasonable at the time of the assignment (no price analysis is required if ATP can confirm that a price analysis was properly prepared for the original contract);
  - (d) no Cardinal Changes are made;
  - (e) domestic content meets the applicable requirements; and
  - (f) it obtains a complete Procurement File for the underlying Procurement from the assigning agency.
- (bb) ATP must also consider, prior to using another entity's contract rights, if other approaches would better allow it to meet its particular needs. Where the assigned contract includes options, ATP shall only exercise the option right if it has determined that: (i) the terms and conditions of the option to be exercised are substantially similar to the terms and conditions as stated in the original contract at the time of award; and (ii) 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.

### 3.4 Unsolicited Offers

- (a) ATP may enter into a Contract based on an Unsolicited Offer when authorized by Applicable Law. Receipt of an Unsolicited Offer does not, by itself, justify Contract award without providing for full and open competition.
- (b) Unless the Unsolicited Offer offers a proprietary concept that is essential to Contract performance, ATP will seek competition. To satisfy the requirement for full and open competition, ATP will take the following actions before entering into a Contract resulting from an Unsolicited Offer:
  - (i) publicize its receipt of the Unsolicited Offer;
  - (ii) 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;
  - (iii) publicize its interest in acquiring the property or services described in the Unsolicited Offer;
  - (iv) provide an adequate opportunity for interested parties to comment or submit competing Proposals; and
  - (v) publicize its intention to award a Contract based on the Unsolicited Offer or another Proposal submitted in response to the publication.

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, ATP may make an award to the Offeror under Section 3.3(h) (Noncompetitive Procurement). A noncompetitive award may not be based solely on the unique capability of the Offeror to provide the specific property or services proposed.

### 3.5 Procurement File

- (a) ATP will prepare and maintain adequate and readily accessible project performance and financial records, covering Procurement transactions as well as other aspects of project implementation.
- (b) ATP will maintain these records for three years after final payment and all other pending matters are closed.
- (c) ATP will prepare, maintain, and distribute the following documents, as necessary, written records detailing the history of each Procurement, as follows:

- (i) rationale for the method of Procurement ATP used for each contract, including a noncompetitive Procurement justification for any acquisition that does not qualify as competitive;
  - (ii) the reasons for selecting the contract type ATP used (fixed price, cost reimbursement, and so forth);
  - (iii) ATP's reasons for Contractor selection or rejection including a written Responsibility determination; and
  - (iv) justification for the Contract cost or price.
- (d) The extent of documentation should be reasonable. Documents included in a procurement history should be commensurate with the size and complexity of the Procurement itself. These written records will vary greatly for different Procurements.
- (e) 49 U.S.C. § 5325(g) provides FTA and U.S. Department of Transportation officials, the U.S. Comptroller General, or any of their representatives, access to and the right to examine and inspect all records, documents, and papers, including contracts, related to any FTA project financed with federal assistance authorized by 49 U.S.C. § 53.

## 4. OFFER SUBMISSION, EVALUATION, COST OR PRICING DATA, AND AWARD

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### 4.1 Offer Submission

#### (a) Timelines of Submission

- (i) Offers must be submitted in accordance with the requirements set forth in the Solicitation. Any Offer that is materially late will be rejected, unless the delay is caused internally by ATP's mishandling of mail delivery or an ATP technological issue.
- (ii) Any late Offer shall be documented in the Procurement File.

#### (b) Modification or Withdrawal

- (i) Any Offer may be amended or withdrawn by any method authorized by the Solicitation prior to the Offer Submission Date. To be effective, any notice of the amendment or withdrawal must be received by the Contracting Officer in the manner designated in the Solicitation or in the absence of instruction by written notice to the Contracting Officer.
- (ii) Any modification or withdrawal of Offers shall be documented in the Procurement File.

#### (c) Mistakes and Minor Irregularities

- (i) After Offer submission, ATP may allow the Offeror an opportunity to cure any deficiency resulting from a minor informality or irregularity, or waive the deficiency in its reasonable discretion in the best interest of ATP if permitted by Applicable Law. A minor informality or irregularity is merely a matter of form and not of substance. It can also pertain to an immaterial defect in an Offer or a variation of an Offer from the exact Solicitation requirements that could be corrected or waived without being prejudicial to other Offerors (i.e., the effect on price, quantity, quality, or delivery is negligible when contrasted with the total cost or scope of the supplies or services being acquired).
- (ii) There is no authority to permit correction of an Offer that is non-Responsive.



- (iii) When an Offer is corrected or a waiver is granted, or correction or waiver is denied, the Contracting Officer shall prepare a written determination for documentation in the Procurement File.

**(d) Receipt and Opening of Offers**

- (i) Bids and Bid modifications shall be opened publicly, in the presence of one or more witnesses, at the time, date, and place designated in the Invitation for Bids. The name of each Bidder, the Bid price, and such other information as is deemed appropriate by ATP will be read aloud or otherwise made available.
- (ii) Proposals shall not be opened publicly but shall be opened in the presence of two or more ATP representatives. Proposals and Proposal modifications shall be shown only to ATP Persons, consultants, advisors, or other persons having a legitimate interest in them.

**(e) Extension of Time for Offer Acceptance**

After receipt of Offers, ATP may request Offerors to extend the time during which ATP may accept their Offers. The reasons for requesting the extension shall be documented in the Procurement File.

**(f) Only One Offer Received**

- (i) If only one Responsive Offer is received in response to a Solicitation, the Procurement Department shall determine if competition was adequate. This should include a review of the Specifications for undue restrictiveness and might include a survey of potential sources that chose not to submit an Offer. Competition will be considered adequate when the reasons for few Offers were caused by conditions beyond ATP's control. Such determination shall be documented in the Procurement File.
- (ii) If the competition is determined adequate, then ATP may make an award to the single Offeror in accordance with the procedures in Section 3.3(h)(iv) (Procedures).
- (iii) If the competition is not determined adequate, then ATP may reject the Offer under Section 4.10 (Cancellation of Solicitations; Rejection of Offers) and ATP may resolicit Offers; or cancel the relevant Procurement.

## 4.2 Responsiveness

### (a) Application

A determination of Responsiveness or non-Responsiveness shall be governed by this Section 4.2.

### (b) Standards of Responsiveness

- (i) To be considered for award, an Offer must be Responsive to the Solicitation.
- (ii) To be Responsive, an Offer must meet, without any material deviation, the expressed requirements of a Solicitation, and in particular:
  - (A) with respect to a Bid, must be fully compliant with and not materially deviating from the terms, conditions, and specifications set forth in an Invitation for Bids; and
  - (B) with respect to a Proposal, must be materially compliant with a Request for Proposals (or must be capable of being made compliant through discussions).
- (iii) The Contracting Officer must notify an Offeror if its Offer has been determined to be non-Responsive to the Solicitation.

## 4.3 Responsibility

### (a) Application

A determination of Responsibility or non-Responsibility shall be governed by this Section 4.3.

### (b) Standards of Responsibility

- (i) An Offeror must demonstrate affirmatively its Responsibility, including (when necessary) that of its proposed subcontractors.
- (ii) Factors to be considered in determining whether the standard of Responsibility has been met may include whether an Offeror has:
  - (A) the appropriate financial, material, equipment, facility, technical, and personnel resources and expertise, or the ability to obtain them, to indicate its capability to meet all Contractual requirements;

- (B) a satisfactory record of past and current performance, including quality or timeliness of delivery;
- (C) a satisfactory record of integrity;
- (D) legal qualifications to contract with ATP, including applicable licensing;
- (E) supplied all necessary information in connection with the inquiry concerning responsibility;
- (F) an acceptable safety record in accordance with Section 252.0435, Texas Local Government Code; and
- (G) complied with all Applicable Law regarding nondiscrimination and equal opportunity.

(iii) The Offeror shall supply information requested by the Contracting Officer concerning Responsibility. If the Offeror fails to supply the requested information, the Contracting Officer shall base the determination of Responsibility upon any available information or may find the Offeror non-Responsible if such failure is unreasonable.

(c) **Demonstration of Ability to Meet Standards**

The Offeror may demonstrate that the standard of Responsibility has been met by submitting upon request:

- (i) evidence that the Offeror possesses the appropriate financial, material, equipment, facility, technical, and personnel resources and expertise;
- (ii) acceptable plans to subcontract for such financial, material, equipment, facility, technical, and personnel resources and expertise; or
- (iii) a documented commitment from, or explicit arrangement (which will be in existence at the time of award) with, a satisfactory source to provide such financial, material, equipment, facility, technical, and personnel resources and expertise.

(d) **Pre-Award Surveys**

When the information available to the Contracting Officer is insufficient to make a determination regarding Responsibility, a pre-award survey of the Offeror's business and facilities may be conducted. A pre-award survey may cover one or

more areas, including technical ability, production capacity, facilities, equipment, quality control, accounting system, financial capability, and record of performance on other contracts.

(e) **Responsibility Determination**

Before awarding a Contract, ATP must be satisfied that the Offeror is Responsible and document this determination in writing. If an Offeror who otherwise would have been awarded a Contract is found non-Responsible, the Contracting Officer shall prepare a written determination of non-Responsibility setting forth the basis of the finding and shall notify the non-Responsible Offeror indicating that ATP has determined it to be non-Responsible and stating the reason(s) for the determination. The final determination shall be documented in the Procurement File.

4.4 **Selection of Competitive Sealed Bids**

(a) **Selection**

Competitive sealed bids shall be selected based on the requirements set forth in the Invitation for Bids. Factors not specified in the Invitation for Bids shall not be considered.

(b) **Evaluation of Product Acceptability**

The evaluation of any product or service acceptability submittal under Section 3.3(f)(i)(C) (Product or Service Acceptability) is not conducted for the purpose of determining whether one Bidder's item is superior to another but only to determine that a Bidder's offering is acceptable as set forth in the Invitation for Bids. Any Bidder's offering which does not meet the acceptability requirements shall be rejected as non-Responsive.

(c) **Lowest bid**

Following determination of product or service acceptability as set forth in Section 4.3(b) (Standards of Responsibility) (if any is required), Bids will be evaluated to determine which Bidder offers the lowest cost to ATP in accordance with the evaluation criteria set forth in the Invitation for Bids.

(d) **Low Tie Bids**

- (i) In the case of competitive sealed bid Solicitations, if two or more Responsible Bidders submit the lowest Responsive Bid, then the award shall be made to the earliest Bid received, according to ATP records and good faith judgment.
- (ii) Records shall be made of all Invitation for Bids in relation to which low tie bids are received showing at least the following information:
  - (A) the identification number of the Invitation for Bids;
  - (B) the property, service, or construction item; and
  - (C) a listing of all Bidders and prices submitted.
- (iii) A copy of each such record shall be documented in the Procurement File.

#### **4.5 Evaluation of Multi-Step Competitive Sealed Bids**

- (a) After receipt of technical offers, amendments to the Invitation for Bids shall be distributed only to Bidders who submitted technical offers, and they shall be permitted to submit new technical offers or to amend those submitted. If, in the opinion of ATP, a contemplated amendment will significantly change the nature of the Procurement, the Invitation for Bids shall be cancelled in accordance with Section 4.10 (Cancellation of Solicitations; Rejection of Offers) and a new Invitation for Bids issued.
- (b) The technical offers shall be evaluated based on the criteria set forth in the Invitation for Bids. Factors not specified in the Invitation for Bids shall not be considered.
- (c) ATP will determine if there are sufficient acceptable technical offers to ensure effective price competition in Step 2. If there are not sufficient acceptable technical offers, ATP shall (i) issue an amendment to the Invitation for Bids; or (ii) engage in technical discussions. If there are sufficient acceptable technical offers, ATP may initiate Step 2 of the multi-step competitive sealed bidding process without technical discussions.
- (d) ATP may conduct discussions with any Bidder who submits an acceptable or potentially acceptable technical offer. Discussions shall be conducted in accordance with Section 4.6(b)(ii) (Discussions). Once discussions have begun, any Bidder that has been invited to discussions may submit supplemental information amending its technical offer (and any price proposal previously submitted) at any

time until the closing date established by ATP. Such submission may be made at the request of ATP or upon the Bidder's own initiative.

- (e) When ATP determines a Bidder's technical offer to be unacceptable, such Bidder shall be notified and shall not be afforded an additional opportunity to supplement its technical offer.
- (f) Upon the completion of Step 1, ATP shall: (i) open the priced bids; or (ii) if priced bids have not been submitted, technical discussions have been held, or amendments to the Invitation for Bids have been issued, invite each acceptable bidder to submit a priced bid.
- (g) Step 2 shall be conducted in accordance with the procedures applicable to competitive sealed bid Procurements. No additional public notice of the invitation to submit priced bids is required.

#### 4.6 **Evaluation of Competitive Sealed Proposals**

##### (a) **Evaluation**

Competitive sealed proposals shall be evaluated based on the evaluation criteria set forth in the Request for Proposals. Criteria not specified in the Request for Proposals shall not be considered.

##### (b) **Discussions**

- (i) ATP may conduct discussions with Proposers. The purpose of such discussions shall be to:
  - (A) promote understanding of ATP's requirements and the Proposals; and
  - (B) facilitate arriving at a Contract that will be most advantageous to ATP taking into consideration price and the other evaluation factors set forth in the Request for Proposals.
- (ii) Proposers shall be accorded fair and equal treatment with respect to any opportunity for discussions and revisions of Proposals. ATP should establish procedures and schedules for conducting discussions. If during discussions there is a need for any substantial clarification of or change in the Request for Proposals, the Request for Proposals shall be amended to incorporate

such clarification or change. Any substantial oral clarification of a Proposal shall be reduced to writing by the Proposer.

(c) **Best and Final Offers**

- (i) ATP shall establish a common date and time for the submission of best and final offers, if applicable. Subject to Section 4.6(c)(ii), best and final offers shall be submitted only once and no discussion of or changes to the best and final offers shall be allowed prior to award.
- (ii) The Executive Director or their Designee may make a written determination that it is in ATP's best interest to conduct additional discussions or change ATP's requirements and require another submission of best and final offers.

(d) **Evaluation of Multi-Step Competitive Sealed Proposals**

If ATP uses a multi-step competitive sealed proposal process, ATP may use responses to a Request for Qualifications to evaluate the qualifications of the Proposers.

**4.7 Evaluation of Professional Services Responses**

(a) **Evaluation**

Professional services responses shall be evaluated based on the evaluation criteria set forth in the Request for Qualifications.

(b) **Discussions**

- (i) ATP shall evaluate all responses submitted and may conduct discussions with any respondent. The purposes of such discussions shall be to:
  - (A) determine in greater detail such respondent's competence and qualifications; and
  - (B) explore with the respondent the scope and nature of the required services, the respondent's proposed method of performance, and the relative utility of alternative methods of approach.
- (ii) Discussions shall not disclose any information derived from responses submitted by other respondents, and ATP shall not disclose any information contained in any responses until after award of the proposed Contract has been made.

- (iii) Responses may be modified or withdrawn at any time prior to the conclusion of discussions.

(c) **Selection of the Best Qualified Respondents**

After conclusion of validation of qualifications, evaluation, and discussions, ATP shall select, in the order of their respective ranking, any number of respondents whose proposals to provide the required services have received the highest evaluation scores.

(d) **Negotiation and Award of Contract for Professional Services**

- (i) ATP shall negotiate a Contract with the highest evaluated respondent for the required services at compensation determined by ATP to be fair and reasonable.
- (ii) Contract negotiations shall be directed toward:
  - (A) making certain that the respondent has a clear understanding of the scope of the work, specifically the essential requirements involved in providing the required services;
  - (B) determining that the respondent will make available the necessary personnel and facilities to perform the services within the required time; and
  - (C) agreeing upon fair and reasonable compensation, taking into account the estimated value of the required services and the scope, complexity, and nature of such services.
- (iii) If compensation, Contract requirements, and Contract documents can be agreed upon with the highest evaluated respondent, the Contract shall be awarded to that respondent.
- (iv) If compensation, Contract requirements, or Contract documents cannot be agreed upon with the highest evaluated respondent, a written record stating the reasons for the failure to agree shall be documented in the Procurement File, and the Contracting Officer shall advise such respondent of the termination of negotiations, which shall be confirmed by written notice.



- (v) Upon failure to negotiate a Contract with the highest evaluated respondent, ATP may enter into negotiations with the next highest evaluated respondent. If compensation, Contract requirements, and Contract documents can be agreed upon, then the Contract shall be awarded to that respondent. If negotiations again fail, negotiations shall be terminated as provided in Section 4.7(d)(iv) and commenced with the next highest evaluated respondent.
- (vi) Written notice of award shall be documented in the Procurement File.
- (vii) If ATP is unable to negotiate a Contract with any of the respondents initially selected, responses may be resolicited or additional respondents may be selected based on original, acceptable submissions in the order of their respective evaluation ranking and negotiations may continue in accordance with Section 4.7(d)(iv) and 4.7(d)(v) until an agreement is reached and the Contract awarded.

(e) **Memorandum of Evaluation and Negotiation**

At the conclusion of negotiations resulting in the award of the Contract, the Contracting Officer shall prepare a memorandum setting forth the bases of award for documentation in the Procurement File.

4.8 **Cost or Pricing Data**

(a) **Cost or Pricing Data**

(i) **Applicability**

The provisions in this Section 4.8(a) apply to the extent required by Applicable Law (including the Federal Requirements, if applicable).

(ii) **Requirement for Cost or Pricing Analysis**

ATP must perform a cost or price analysis in connection with every Procurement action (including Contract Modifications) exceeding the applicable Simplified Acquisition Threshold, after receiving Offers and before awarding a Contract. The method and degree of analysis is dependent on the facts surrounding the particular Procurement.

(b) **Independent Cost Estimate**

- (i) The independent cost estimate is a tool to assist in determining the reasonableness of the Offer being evaluated and to assist in performing the cost or price analysis. ATP will use the ICE as the starting point for conducting a cost or price analysis. It is required for all Procurements exceeding the Simplified Acquisition Threshold. An ICE must be completed prior to receipt of Offers and is required for Procurement actions such as Contract Modifications and Change Orders. It can range from a simple budgetary estimate to a complex estimate based on inspection of the product itself and review of items like drawings, specifications, and information from previous procurements. The word "independent" means that the estimate is prepared without the influence of persons who have a financial interest in, or will be considered for, the resulting award. It does not imply that it is performed by someone other than ATP.
- (ii) The ICE is especially critical whenever there is no price competition or where offerors are submitting price proposals for goods or services that are not exactly comparable (e.g., for procurements of high-technology items or professional services). It is also useful in competitive procurements to alert ATP when all competitors are submitting unreasonably high or low-cost proposals.

**(c) Applicability of Cost and Price Analysis**

- (i) A price analysis (i.e., using catalog, market prices, or comparison of Offerors) is used to determine if a Contract or Contract Modification price is reasonable following a determination that competition was adequate. It involves an evaluation of the prices for the same or similar items or services. A price analysis is a more simplified process and is normally used when two or more Responsive and Responsible Offers have been received.
- (ii) ATP will conduct a cost analysis for every Procurement action when a price analysis will not provide sufficient information to determine reasonableness of the Contract cost or Contract Modification. Generally, a cost analysis must be performed for: (1) Procurements which require that Offerors submit detailed elements of direct and indirect costs; (2) Procurements where adequate price competition is lacking; and/or (3) noncompetitive Procurements, unless price reasonableness can be established based on market prices. Obtaining cost elements for noncompetitive pricing of manufactured items can be difficult or impossible since many vendors may

feel this information is proprietary. In these cases, ATP should prepare a price analysis to determine if the price is fair and reasonable.

**(d) Evaluations of Cost or Pricing Data**

- (i) Evaluations of cost or pricing data may include comparisons of costs and prices of an Offeror's based on any independent price and cost estimates by ATP, or if permitted under Applicable Law, the cost estimates of other Offerors. They also shall include consideration of whether such costs are reasonable and allocable.
- (ii) Cost analysis includes the appropriate verification of cost or pricing data and the use of this data to evaluate:
  - (A) specific elements of costs;
  - (B) the necessity for certain costs;
  - (C) the reasonableness of amounts estimated for the necessary costs;
  - (D) the reasonableness of allowances for contingencies;
  - (E) the basis used for allocation of indirect costs;
  - (F) the appropriateness of allocations of particular indirect costs to the proposed contract; and
  - (G) the reasonableness of the total cost or price.

**(e) Negotiation of Profit**

For each Contract in which there is no price competition and in all cases where a cost analysis is performed, ATP will negotiate profit as a separate element of the price. To establish a fair and reasonable profit, consideration must be given to 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. An Offeror's profit should be separately negotiated and not based on a flat percentage of estimated Contract costs.

**(f) Estimated costs**

As applicable under the Federal Requirements, costs or prices based on estimated costs for contracts are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for ATP under 2 C.F.R. Part 200 Subpart E or ATP's own cost principles that comply with the federal cost principles.

**(g) Submission of Cost or Pricing Data and Certification**

- (i) When cost or pricing data are required, they shall be submitted to the Contracting Officer at any reasonable time and in any reasonable manner prescribed by the Contracting Officer. When the Contracting Officer requires the Offeror or Contractor to submit cost or pricing data, such data shall either be actually submitted or specifically identified in writing.
- (ii) The Offeror or Contractor is required to keep such submission current until the negotiations are concluded, unless otherwise directed by the Contracting Officer.
- (iii) The Offeror or Contractor shall certify, as soon as practicable after agreement is reached on price, that the cost or pricing data submitted are accurate, complete, and current as of a mutually determined date prior to reaching agreement.

**(h) Certificate of Current Cost or Pricing Data**

- (i) When cost or pricing data must be certified, a certificate provided by the Contracting Officer shall be included in the Procurement File along with any award documentation required under this Policy. The Offeror or Contractor shall be required to submit the certificate as soon as practicable after agreement is reached on the Contract price or adjustment.
- (ii) Whenever it is anticipated that a Certificate of Current Cost or Pricing Data may be required, notice of this requirement shall be included in the Solicitation. If such a certificate is required, the contract shall include a clause giving ATP a contract right to a reduction in the price as provided in Section 4.8(i) (Defective Cost or Pricing Data).
- (iii) The exercise of an option at the price established in the initial negotiation in which certified cost or pricing were used does not require recertification or further submission of data.

(i) **Defective Cost or Pricing Data**

- (i) If certified cost or pricing data subsequently are found to have been inaccurate, incomplete, or noncurrent as of the date stated in the certificate, ATP is entitled to an adjustment of the Contract price, including profit or fee, to exclude any significant sum by which the price, including profit or fee, was increased because of the defective data. Judgmental errors made in good faith concerning the estimated portions of future costs or projections do not constitute defective data. It is presumed that overstated cost or pricing data increased the contract price in the amount of the overstatement plus related overhead and profit or fee. Therefore, unless there is a clear indication that the defective data were not used or relied upon, the price should be reduced in such amount. In establishing that the defective data caused an increase in the Contract price, ATP is not expected to reconstruct the negotiation by speculating as to what would have been the mental attitudes of the negotiating parties if the correct data had been submitted at the time of agreement on price.
- (ii) In determining the amount of a downward adjustment, the Contractor shall be entitled to an offsetting adjustment for any understated cost or pricing data submitted in support of price negotiations for the same pricing action up to the amount of ATP's claim for overstated cost or pricing data arising out of the same pricing action.

4.9 **Award**

(a) **Award of Competitive Sealed Bids**

A firm fixed price contract shall be awarded with reasonable promptness by written notice to the lowest Responsible and Responsive Bidder whose Bid meets the requirements and criteria set forth in the Invitation for Bids.

(b) **Award of Competitive Sealed Proposals**

- (i) The Contract shall be awarded by written notice to the Responsible and Responsive Offeror whose Proposal is determined by ATP in writing to be the best overall value and most advantageous to ATP taking into consideration the evaluation factors set forth in the Request for Proposals.
- (ii) When requested by an unsuccessful Offeror, ATP will provide a debriefing following Contract award utilizing the evaluation matrix, documentation of

scoring process, and the narrative appraisal describing the strengths and weaknesses as basis for the debriefing discussion. ATP may elect to conduct the debriefing in writing only or virtually or in person. When a DBE or other small or minority business requests a debriefing, the DEI Director may be invited to participate in the debriefing.

#### **4.10 Cancellation of Solicitations; Rejection of Offers**

##### **(a) Policy on Issuing Solicitations**

Solicitations should be issued only when there is a valid Procurement need, unless the Solicitation states that it is for informational purposes only. Preparing and distributing a Solicitation requires the expenditure of ATP's time and funds. Businesses likewise incur expense in examining and responding to Solicitations. Therefore, although issuance of a Solicitation does not compel award of a Contract, a Solicitation is to be cancelled only when there are cogent and compelling reasons to believe that the cancellation of the Solicitation is in ATP's best interest.

##### **(b) Notice**

Each Solicitation issued by ATP shall state that ATP reserves its right to cancel the Procurement or reject Offers as provided in this Section 4.10.

##### **(c) Cancellation Prior to Offer Submission Date**

(i) Prior to the Offer Submission Date, a Procurement may be cancelled in whole or in part when ATP determines in writing that such action is in its best interest for reasons including, but not limited to:

- (A) ATP no longer requires the property, services, or construction;
- (B) ATP no longer can reasonably expect to fund the Contract; or
- (C) proposed amendments to the Solicitation would be of such magnitude that a new Procurement is desirable.

(ii) Notice of cancellation shall be distributed in a manner appropriate for the relevant Procurement.

##### **(d) Cancellation After Offer Submission Date**

(i) After the Offer Submission Date, all Offers may be rejected in whole or in part when ATP determines in writing that there is a sound, documented

business reason and such action is in ATP's best interest for reasons including, but not limited to:

- (A) the construction, property, or services being procured are no longer required;
- (B) ambiguous or otherwise inadequate specifications were part of the Solicitation;
- (C) the Solicitation did not provide for consideration of all factors of significance to ATP;
- (D) prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;
- (E) all otherwise acceptable Offers received are at clearly unreasonable prices;
- (F) there is reason to believe that the Offers may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith; or
- (G) no Responsive Offer has been received.

- (ii) Notice of rejection shall be sent to all businesses that submitted Offers.

#### **4.11 Rejection of Individual Offers**

- (a) This Section 4.11 applies to rejections of individual Offers in whole or in part. Each Solicitation issued by ATP shall reserve ATP's right to reject any Offer in whole or in part where there is a sound, documented business reason and it is in the best interest of ATP as provided in this Section 4.11.
- (b) For competitive sealed bidding, reasons for rejecting a Bid include, but are not limited to, the following:
  - (i) the Bidder is not a Responsible Bidder as determined under Section 4.3 (Responsibility); or
  - (ii) the Bid is not Responsive.
- (c) For competitive sealed proposals, unless the Solicitation states otherwise, Proposals need not be unconditionally accepted without alteration or correction,

and ATP's stated requirements may be revised or clarified after Proposals are submitted. This flexibility must be considered in determining whether reasons exist for rejecting all or any part of a Proposal. Reasons for rejecting Proposals include, but are not limited to, the following:

- (i) the Proposer is not a Responsible Proposer as determined under Section 4.3 (Responsibility);
  - (ii) the Proposal ultimately (after any opportunity has passed for altering or clarifying the Proposal) fails to meet the announced requirements of ATP in some material respect;
  - (iii) the Proposal is not Responsive;
  - (iv) the proposed price is clearly unreasonable; or
  - (v) the Proposal is materially unbalanced so that there is a risk that evaluation under the stated criteria may not result in award of a Contract that will be most advantageous to ATP.
- (d) Upon request, unsuccessful Offerors shall be advised of the reasons for the rejection of their Offers.



## 5. CONTRACTING

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### 5.1 Contract Performance

#### (a) Performance Review

- (i) Each Contractor should expect regular and customary inquiries from ATP regarding Contract performance. These inquiries may include the following:
  - (A) timely execution of core Contract responsibilities;
  - (B) costs and expenses consistent with the identified costs for contract;
  - (C) quality of the work and product presented to ATP;
  - (D) satisfaction of the Contract goals for small business and diversity participation;
  - (E) compliance with prevailing wage requirements;
  - (F) safety procedures and completion;
  - (G) compliance with specific Contract obligations;
  - (H) timely payment to subcontractors; and
  - (I) adherence to governmental rules and regulations.
- (ii) The objective of the performance review is to confirm Contract compliance. ATP will record clear failures by the Contractor to meet any core Contract obligations as listed above and efforts to afford opportunities for the contractor to satisfy those obligations.

#### (b) Contract Modifications and Change Orders

- (i) Any material change to the Contract cost/fee, scope of work, duration or any other element of the Contract will necessitate a Contract Modification. The form and content of all Contract Modifications must be approved in advance by ATP's general counsel.
- (ii) For competitively procured Contracts, Change Orders are permissible only if the change is considered within or materially consistent with the scope of

work of the original Solicitation and does not constitute a significant change from the original purpose of the work. For competitively bid Contracts, if a significant change in scope or purpose of work results from the change, ATP must issue a new Solicitation. No Change Order may be made without proper authorization.

## 5.2 Types of Contracts

The selection of an appropriate contract type depends on various factors, including the nature of the property, services, or construction to be procured, the uncertainties which may be involved in contract performance, and the extent to which ATP or the contractor is to assume the risk of the cost of performance of the contract. Contract types differ in the degree of responsibility assumed by the contractor. ATP shall, before choosing a contract type, review all relevant factors, including relevant legal authority and Applicable Law, and the elements of the Procurement which directly affect the cost, time, risk, and profit incentives bearing on the performance. The solicitation documents will state the type of contract that will be awarded. ATP will determine which type of contract is most appropriate on a procurement-by-procurement basis and state the reasons for the selection in the Procurement File.

Certain general requirements relating to specific types of contract are set out below.

### (a) Cost-Plus-a-Percentage-of-Cost Contracting

The use of a cost-plus-a-percentage-of-cost Contract is prohibited. A cost-plus-a-percentage-of-cost Contract is one in which, prior to completion of the work, the parties agree that the fee will be a predetermined percentage of the total cost of the work. The more the Contractor spends, therefore, the greater its fee. The Contractor's incentive may be to incur cost at the expense of ATP and not to economize.

### (b) Time and Materials Contracts

Time and materials Contracts provide an agreed basis for payment for the actual cost of materials supplied and direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit. Such Contracts shall, to the extent possible, contain a stated ceiling or an estimate that shall not be exceeded without prior approval by ATP (except at the Contractor's own risk) and shall be entered into only after ATP determines in writing that:

- (i) ATP representatives have been assigned to closely monitor the performance of the work; and
- (ii) in the circumstances, it would not be suitable to use any other type of Contract to obtain needed property, services, or construction in the time required and at the lowest cost or price to ATP.

(c) **Option Provisions**

- (i) ATP may elect to include an option for renewal, extension, or purchase in a Contract in accordance with Applicable Law, including the Federal Requirements. When a Contract will contain an option, notice of the option provision shall be included in the Solicitation. ATP shall document in the Procurement File a justification for including any options.
- (ii) If an option is included, the option quantities and periods included in the Solicitation must generally be evaluated unless ATP determines that evaluation is not in its best interest. Any such determination must be documented in the Procurement File. Any evaluation of options should be documented in the Procurement File and should be part of the cost or price analysis undertaken by ATP for the overall Procurement.
- (iii) If an option is included for the Procurement of bus or rail rolling stock or replacement parts, the period of that option must comply with the Federal Requirements, if applicable.
- (iv) Documentation awarding the Contract should indicate that the award is for the base contract and the identified options.
- (v) Before exercising any option, ATP should consider whether a competitive Procurement is practical and would be more advantageous to ATP than renewal, extension or purchase of the existing Contract. Exercise of an option is at ATP's discretion only and is not subject to agreement or acceptance by the Contractor.

5.3 **Specifications**

(a) **Purpose and Policies**

- (i) The purpose of a specification is to serve as a basis for obtaining a property, service, or construction item adequate and suitable for ATP's needs in a

cost-effective manner taking into account, to the extent practicable, the costs of ownership and operation as well as initial acquisition costs.

- (ii) It is a requirement of Applicable Law and this Policy that specifications permit full and open competition consistent with this purpose. Specifications shall be drafted to clearly describe ATP's requirements. The Federal Requirements prohibit use of exclusionary, discriminatory or unreasonably restrictive specifications or specifications that otherwise violate the Federal Requirements.
- (iii) Specifications shall, to the extent practicable, emphasize functional or performance criteria including the range of acceptable characteristics or minimum acceptable standards, while limiting design or other detailed physical descriptions to those necessary to meet the needs of ATP.
- (iv) It is the general policy of ATP to procure standard Commercial Items whenever practicable. In developing specifications, accepted commercial standards shall be used and unique requirements shall be avoided, to the extent practicable. If the Executive Director or their Designee makes a determination that the items or services to be purchased qualify as Commercial Items, the Procurement shall be fully and openly competed, whenever practicable.
- (v) All specifications shall be written in such a manner as to describe the requirements to be met, without having the effect of exclusively requiring a proprietary supply, service, or construction item, or Procurement from a noncompetitive Procurement, unless no other manner of description will suffice. In that event, a written determination shall be made that it is not practicable to use a less restrictive specification.

(b) **Authority to Prepare Specifications**

The Executive Director or their Designee shall be responsible for preparing, approving, revising, and maintaining all specifications used by ATP for Procurements. Specifications should be completed a sufficient time in advance of selection and implementation of the appropriate Procurement method under this Policy. When it is in the best interest of ATP, a Contract may be entered into to prepare specifications for ATP's use in the Procurement of goods or services, as long as such Contract would not result in an organizational conflict of interest as described in this Policy and the ATP Ethics Policy. In an emergency under Section

3.3(e) (Emergency Procurements), any necessary specifications may be utilized without regard to this Section 5.3.

(c) **Procedures for the Development of Specifications**

A specification may provide alternate descriptions of goods or services or include a range of acceptable characteristics where two or more design, functional, or performance criteria will satisfactorily meet ATP's requirements. Specifications should not include any Solicitation or contract term or condition such as a requirement for time or place of bid opening, time of delivery, payment, liquidated damages, or qualification of bidders.

(d) **Brand Names**

(i) A Brand Name Specification may be used if ATP makes a written determination that only the identified Brand Name item will satisfy ATP's needs. If a Brand Name Specification is used, ATP shall seek to solicit sources from which the Brand Name item can be obtained to achieve a practicable degree of competition. If a Brand Name Specification results in a restraint on competition (e.g., a single offeror), the terms of Section 3.3(h) (Noncompetitive Procurement) will apply.

(ii) A Brand Name or Equal Specification may be used if ATP makes a written determination that:

- (A) no specification for a common or general use item or Public Transportation List is available;
- (B) time does not permit the preparation of another form of specification which does not include a Brand Name Specification;
- (C) a Brand Name or Equal Specification is suitable for the Procurement due to the nature of the product or the nature of ATP's requirements;
- (D) it is impractical or uneconomical to write a clear and accurate description of the technical requirements of the property or services to be acquired; or
- (E) use of a Brand Name or Equal Specification is in ATP's best interest.

(iii) If a Brand Name or Equal Specification is used:

- (A) ATP shall seek to designate as many different brands as is practicable as "or equal" references;
- (B) the Solicitation shall state that substantially equivalent products to those designated will be considered for award;
- (C) the Brand Name or Equal Specification shall include a description of the particular design, functional, or performance characteristics required to meet ATP's needs; and
- (D) the Solicitation shall state that the use of a Brand Name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition.

(e) **Public Transportation Lists**

A Public Transportation List may be developed when testing or examining property or construction items prior to issuance of the Solicitation would best satisfy ATP's requirements. When developing a Public Transportation List, a representative group of potential suppliers shall be solicited in writing to submit products for testing or examination to determine acceptability for inclusion on a Public Transportation List. Any potential supplier, even if not solicited, may offer its products for consideration. Inclusion on a Public Transportation List shall be based on results of tests or examinations conducted in accordance with prior published requirements. Except as otherwise provided by Applicable Law, trade secrets, test data, and similar information provided by the supplier will be kept confidential when requested in writing by the supplier. Test results used in formulating Public Transportation Lists may be made public.

(f) **Specifications Prepared by Others**

The requirements of this Section 5.3 shall apply to all specifications prepared by ATP Persons and by those who are not ATP Persons including, but not limited to, those prepared by consultants, architects, engineers, designers, and other draftsmen of specifications for public contracts. Contracts for the preparation of specifications by those who are not ATP Persons shall require the specification writer to adhere to such requirements.

## 6. ADMINISTRATIVE REMEDIES, AUDIT AND ORGANIZATIONAL CONFLICTS OF INTEREST

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### 6.1 Administrative Remedies

- (a) ATP, as a local government corporation created under Chapter 431, Texas Transportation Code, operates on a fiscal year budget. A person's or entity's participation in an ATP Procurement Related Matter requires ATP to use a portion of its limited resources to administer, analyse, evaluate, respond, or otherwise handle such participation.
- (b) ATP seeks to foster public confidence in the integrity of its handling of ATP Procurement Related Matters by providing a fair and impartial resolution of Controversies in an expeditious and cost-efficient manner.
- (c) Pursuant to the authority granted under State law (including but not limited to Section 22.051, Texas Business Organizations; Sections 431.006, 431.062 and 431.108, Texas Transportation Code; Section 271.154, Texas Local Government Code; and Chapter 171, Texas Civil Practice and Remedies Code) this Chapter 6 provides for mandatory administrative remedies for all ATP Procurement Related Matters.
- (d) Specifically, by participating in an ATP Procurement Related Matter, the person or entity agrees that any claim they may have or could have against ATP (including its directors, officers, and employees) arising out of or in connection with an ATP Procurement Related Matter shall be resolved exclusively by the administrative remedies stated in this Chapter 6 and further waives any and all right to seek judicial relief (which includes but is not limited to seeking relief based in equity, contract, tort, common law, or any other basis), for any claim, prior to completing all conditions precedent under this Chapter 6.

### 6.2 Required Provision for Solicitations and Contracts

This Section 6.2 sets forth a standard contract clause that may be used in Solicitations, Contracts entered into by ATP and required associated written (tangible or electronic) external communications. The clause in this Section 6.2 may be modified, as applicable.

Administrative Remedies. Pursuant to the authority granted ATP under State law and in consideration of ATP's use of its limited resources to administer, analyze, evaluate, respond, or otherwise handle this submission, by submitting this document to ATP the filer agrees that any claim it has or may have against ATP (including its directors, officers, and employees) arising out of or in connection with an ATP current, prior, or post procurement related matter (which includes but is not limited to administration, bid submission, bid acceptance, bid handling, bid rejection, evaluations, complaints, debarments, determinations, disputes, payments, pre-bid conferences, Protests, Solicitations, suspensions, and terminations) (hereinafter "**ATP Procurement Related Matter**") shall be resolved exclusively by the administrative remedies which are established by ATP as stated in Chapter 6 (Administrative Remedies, Audit and Organizational Conflicts of Interest) of the ATP Procurement Policy, and which are expressly incorporated herein by reference as if fully set forth. **ACCORDINGLY, BY EXECUTING AND SUBMITTING THIS DOCUMENT, THE FILER HEREBY AGREES TO WAIVE ANY AND ALL RIGHT TO SEEK JUDICIAL RELIEF (WHICH INCLUDES RELIEF SOUGHT BASED IN EQUITY, CONTRACT, TORT, COMMON LAW, OR ANY OTHER BASIS), FOR ANY CLAIM, PRIOR TO COMPLETING ALL CONDITIONS PRECEDENT FOR ADMINISTRATIVE REMEDIES AS STATED IN ATP PROCUREMENT POLICY CHAPTER 6 (ADMINISTRATIVE REMEDIES AUDIT AND ORGANIZATIONAL CONFLICTS OF INTEREST). FURTHER, THE FILER AGREES TO WAIVE ANY CLAIM IT HAS OR MAY HAVE AGAINST ATP (INCLUDING ITS DIRECTORS, OFFICERS, AND EMPLOYEES) ARISING OUT OF OR IN CONNECTION WITH THE ADMINISTRATION, EVALUATION, OR RECOMMENDATION OF ANY BID; WAIVER OF ANY REQUIREMENTS UNDER ANY BID OR CONTRACT DOCUMENTS; OR IN CONNECTION WITH AN ATP PROCUREMENT RELATED MATTER.**

### 6.3 Protests of Solicitations and Awards

#### (a) Limited Right to Protest

The right to Protest is limited to a person who has participated in an ATP Procurement Related Matter. The Executive Director or their Designee may, in their sole discretion, allow an Interested Party to file a Protest provided said Interested Party has agreed in writing (on an approved ATP form) that by filing the Protest, it agrees that any claim it has or may have against ATP (including its directors, officers, and employees) arising out of or in connection with an ATP Procurement Related Matter shall be resolved exclusively by the administrative remedies stated in this Chapter 6. A Protest must be signed and submitted as a written document (i.e., in tangible form, not electronic or digital).



**(b) Filing of Protest**

- (i) Protests shall be made in writing to the Procurement Director and shall be filed in duplicate no later than 90 Days after the Protester knew or should have known of the alleged claim or complaint. Protests that do not comply with this requirement are considered improper and untimely. However, in an effort to resolve matters efficiently and effectively, it is recommended that Protests be filed within 10 Days. A Protest is considered filed when received by the Procurement Director. An untimely Protest shall not be considered. Absent a showing of fraud or misrepresentation, a Protester filing an untimely Protest waives its right to contest the subject ATP Procurement Related Matter. The timeliness of a Protest filing is a question of fact and a determination by the Procurement Director that a Protest was timely or untimely filed shall be final and binding as provided in Section 6.3(h) (Finality of Decision).
- (ii) Protesters may file a Protest on any phase of the Procurement or award including, but not limited to, specifications preparation, Solicitation, award, or disclosure of information marked confidential in the Offer.
- (iii) To expedite handling of Protests, all Protests must comply with the following requirements, which shall be strictly enforced:
  - (A) the envelope containing the Protest must be labeled "Protest";
  - (B) the Protestor's name, business address, phone number, email, and the Protester's preferred method for receiving notice and communications from ATP;
  - (C) a statement of facts showing the timeliness of the Protest, including but not limited specific dates as to when the circumstances that gave rise to the Protest occurred;
  - (D) appropriate identification of the ATP Procurement Related Matter and, if a Contract has been awarded, its number;
  - (E) a detailed statement of reasons for the Protest with specific references to relevant and applicable sections of this Policy or Contract sections; and

(F) supporting exhibits, or documents to substantiate any claims ("**Supporting Evidence**"). If a portion of the Supporting Evidence is not available at the time of filing the Protest, then the Protester shall provide a description of the unavailable Supporting Evidence expected to be filed along with a sworn statement of good cause setting forth the reasons the Supporting Evidence is unavailable. The Protester shall provide the unavailable Supporting Evidence no later than 30 days after filing the Protest. The Procurement Director may, in its sole discretion, allow the Protester additional time to provide the unavailable Supporting Evidence if it was sufficiently described in the Protest and good cause is shown.

(iv) Any additional information requested by any of the parties to the Protest should be submitted within the time periods established by the Procurement Director in order to expedite consideration of the Protest. Failure of any party to comply expeditiously with a request for information may result in resolution of the Protest without consideration of any information which is not timely filed.

(c) **Stay of Procurements**

Maintaining its commitments with its stakeholders (i.e., service area residents, business and community leaders, elected and appointed officials, funding agencies, etc.) is of paramount importance and a substantial interest to ATP. Accordingly, as a necessity of protecting this substantial interest, it is critical that Procurements be progressed in a timely manner. Accordingly, the filing of a Protest does not automatically stay or delay any Procurement action scheduled to be taken by ATP, including but not limited to the award of Contracts. Notwithstanding, in the absence of a voluntary stay by the Procurement Director, a Protester may file a "request for stay" with the Executive Director or their Designee, with copy sent to the Procurement Director, to stay a relevant ATP Procurement Related Matter at any time before the resolution of the Protest. The Executive Director shall issue a written determination as to whether the request for stay should be granted or denied within 10 days of the filing of the request. The Executive Director may grant the request for stay only upon a finding that the stay will not harm the substantial interests of ATP.

(d) **Availability of Information**

ATP shall, upon written request to the Procurement Director, make available to the Protester information that is relevant to the basis of the Protest except where information is proprietary, confidential, or otherwise permitted or required to be withheld by Applicable Law. The decision of the Procurement Director or their Designee as to whether and the extent to which the requested information is relevant shall be final. Participants in the Protest process who wish to keep the information they submit confidential must specifically label and/or identify such information within documents submitted and indicate on the front page of each document that it contains confidential information. To the full extent allowed by Applicable Law and this Policy, this written request for confidentiality of information shall be honored.

(e) **Protest Decision**

- (i) A decision on a Protest shall be made by the Executive Director or their Designee as expeditiously as possible after receiving all relevant, requested information. If a Protest is sustained, the available remedies, at the sole discretion of ATP, include, but are not limited to, amendment to the Solicitation, re-Procurement, cancellation of the Procurement, and termination of the Contract.
- (ii) In addition to any other relief, a recommendation may be made by the Executive Director to the Board that the Protester be awarded the reasonable costs incurred in connection with the Procurement, including Offer preparation costs other than attorney's fees, when a Protest is sustained and the Protester should have been, but was not, awarded the Contract under the Procurement. Such recommendations shall confer no rights on the Protester and shall not be binding on ATP.

(f) **Request for Reconsideration**

- (i) Reconsideration of a decision of the Procurement Director may be requested only by a person who has substantially participated in the Protest. Only one reconsideration request will be allowed per Protest regardless of how many persons participated. Those who did not file the request for

reconsideration may file statements in support or in opposition to the reconsideration.

- (ii) Any request for reconsideration shall state that it is a "request for reconsideration" and must be filed with the Executive Director or their Designee, with notice sent to all other Protesters, not later than five calendar days after notice of the Protest decision is sent to the other Protesters using their preferred method of communication. The request for reconsideration shall contain a detailed statement of the factual and legal grounds for challenging fact findings or identify any legal errors in the ruling upon which reversal or modification should be deemed warranted. A request for reconsideration shall be acted upon as expeditiously as possible. The Executive Director or their Designee may uphold the previous decision or reopen the case.

(g) **Appeal of Decision**

Protesters may appeal administratively any Protest decision to the Board within 10 Days after notice of the decision is sent to the Protester. A failure to timely appeal a decision within such 10 Day period waives any and all right to appeal.

(h) **Finality of Decision**

A decision by the Board on a Protest shall be final and binding unless fraudulent, a request for reconsideration is timely filed, or the decision is timely appealed administratively to the Board within 10 Days after notice of the decision is sent to the Protester using its preferred method of communication.

(i) **Federal Reporting Requirements**

(i) **Notification**

ATP will notify the FTA, and will keep the FTA informed of status, of Protests as required under the Federal Requirements.

(ii) **Access to Information**

ATP will disclose information about a Protest to FTA upon request. FTA may require ATP to provide copies of a particular Protest, and any or all related supporting documents, as FTA may determine necessary.

6.4 **Debarment or Suspension**

(a) **Scope of Coverage**

This Section 6.4 applies to all debarments or suspensions of persons from consideration for award of Contracts imposed by the Executive Director.

(b) **Authority to Debar or Suspend**

- (i) After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the Executive Director shall have authority to debar a person for cause from consideration for award of Contracts. The debarment shall not be for a period of more than three years. The Executive Director shall have authority to suspend a person from consideration for award of Contracts if there is probable cause for debarment. The suspension shall not be for a period exceeding three months.
- (ii) The causes for debarment or suspension may include the following:
  - (A) conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
  - (B) conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a contractor;
  - (C) conviction under state or federal antitrust statutes arising out of the submission of Offers;
  - (D) violation of contract provisions, as set forth below, of a character which is regarded by the Executive Director or their Designee to be so serious as to justify debarment action:
    - (aa) deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
    - (bb) a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more ATP contracts; provided, that failure to perform or unsatisfactory performance caused by acts beyond the control of the

contractor shall not be considered to be a basis for debarment;  
and

- (E) any other cause specified in the Procurement documents or that the Executive Director determines to be so serious and compelling as to affect responsibility as a contractor with ATP, including debarment by another government entity.

**(c) Suspension**

- (i) Upon written determination by the Executive Director or their Designee that probable cause exists for debarment as set forth in Section 6.4(b) (Authority to Debar or Suspend), a contractor or prospective contractor shall be suspended. A notice of suspension, including a copy of such determination, shall be sent to the suspended contractor or prospective contractor. Such notice shall state that:
  - (A) the suspension is for the period it takes to complete an investigation into possible debarment including any appeals of a debarment decision but not for a period in excess of three months;
  - (B) Offers will not be solicited from the suspended person, and, if they are received, they will not be considered during the period of suspension; and
  - (C) if a hearing has not been held, the suspended person may request a hearing in accordance with this Policy.
- (ii) A contractor or prospective contractor is suspended upon issuance of the notice of suspension. The suspension shall remain in effect during any appeals. The suspension may be ended by the Executive Director or their Designee or the Board but, otherwise, shall only be ended when the suspension has been in effect for three months or a debarment decision takes effect.

**(d) Initiation of Debarment Action**

Written notice of the proposed debarment action shall be sent to the contractor or prospective contractor. This notice shall:

- (i) state that debarment is being considered;

- (ii) set forth the reasons for the action;
- (iii) state that, if the contractor or prospective contractor so requests, a hearing will be held, provided such request is received by the Executive Director or their Designee within 10 Days after the contractor or prospective contractor receives notice of the proposed action; and
- (iv) state that the contractor or prospective contractor may be represented by counsel.

(e) **Request for Hearing**

A contractor or prospective contractor that has been notified of a proposed debarment action may request in writing that a hearing be held. Such request must be received by the Executive Director or their Designee within 10 Days of receipt of notice of the proposed action. If no request is received within the 10-day period, a final determination may be made as set forth in Section (i)6.4(i) (Debarment Decision).

(f) **Notice of Hearing**

If a hearing is requested, the Executive Director or their Designee may in their absolute discretion appoint a hearing officer to conduct the hearing and recommend a final decision. Otherwise, the Executive Director or their Designee shall act as the hearing officer. The hearing officer shall send a written notice of the time and place of the hearing. Such notice shall be sent by certified mail, return receipt requested, and shall state the nature and purpose of the proceedings.

(g) **Authority of Hearing Officer**

The hearing officer, in the conduct of the hearing, has the authority to:

- (i) hold informal conferences to settle, simplify, or fix the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding either by consent of the parties or upon such officer's own motion;
- (ii) require the parties to state their positions with respect to the various issues in the proceeding;

- (iii) require the parties to produce for examination those relevant witnesses and documents under their control;
- (iv) rule on motions and other procedural items on matters pending before such officer;
- (v) regulate the course of the hearing and conduct of participants in the hearing;
- (vi) receive, rule on, exclude or limit evidence, and limit lines of questioning or testimony which are irrelevant, immaterial, or unduly repetitious;
- (vii) fix time limits for submission of written documents in matters before such officer;
- (viii) impose appropriate sanctions against any party or person failing to obey an order under these procedures, which sanctions may include:
  - (A) refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence;
  - (B) excluding all testimony of an unresponsive or evasive witness; and
  - (C) expelling any party or person from further participation in the hearing; and
- (ix) take official notice of any material fact not appearing in evidence in the record, if such fact is among the traditional matters of judicial notice.

(h) **Hearings**

- (i) Hearings shall be as informal as may be reasonable and appropriate under the circumstances and in accordance with applicable due process requirements. ATP may be represented in hearings by legal counsel. The weight to be attached to evidence presented in any particular form will be within the discretion of the hearing officer. Stipulations of fact agreed upon by the parties may be regarded and used as evidence at the hearing. The parties may stipulate the testimony that would be given by a witness if the witness were present. The hearing officer may require evidence in addition to that offered by the parties.



- (ii) A hearing may be recorded but need not be transcribed except at the request and expense of the person making such request. A record of those present, identification of any written evidence presented, copies of all written statements, and a summary of the hearing shall be sufficient record.
- (iii) Opening statements may be made unless a party waives this right.
- (iv) Witnesses shall testify under oath or affirmation. All witnesses may be cross-examined.
- (v) If the contractor or prospective contractor that is the subject of the hearing does not appear on time at a scheduled hearing, all claims and issues raised are abandoned, unless good cause for such failure to timely appear is shown.

(i) **Debarment Decision**

The hearing officer shall prepare a written determination recommending a course of action. Such determination shall be given to the Executive Director or their Designee. Copies shall also be sent to the contractor or prospective contractor that was the subject of the debarment proceeding. The contractor or prospective contractor shall have 10 Days to file comments upon the hearing officer's determination. The Executive Director or their Designee may request oral argument. The Executive Director or their Designee shall issue a final decision. Both the hearing officer's determination and the final decision shall recite the evidence relied upon. When debarment is recommended or ordered, the length of the debarment (not to exceed two years), the reasons for such action, and to what extent affiliates are affected shall be set forth. In addition, the final determination shall inform the debarred person of their rights to administrative review of the debarment decision under this Policy. If the contractor or prospective contractor fails to timely appeal administratively any debarment decision to the Board within seven Days after notice of the decision is issued, then the debarment decision becomes final and binding.

(j) **Effect of Debarment Decision**

A debarment decision will take effect upon issuance and receipt by the contractor or prospective contractor. After the debarment decision takes effect, the contractor shall remain debarred until a court, the Board, or the Executive Director orders otherwise or until the debarment period specified in the decision expires.

(k) **Appeal of Decision**

A contractor may appeal administratively any debarment decision to the Board within seven Days after notice of the decision is issued. A contractor's failure to timely appeal a decision within such seven day period waives any and all right to appeal.

## **6.5 Contract Disputes Procedures**

### **(a) Scope of Coverage**

- (i) Appropriate contractual provisions relating to disputes procedures shall be included in ATP contracts. In the absence of any such contractual provisions, this Section 6.5 contains the procedures for resolving contract disputes unless otherwise determined by the Procurement Director or ATP's general counsel or their Designee. It is ATP's policy to try to resolve all Controversies by mutual agreement if possible. In appropriate circumstances, informal discussions between the parties can aid in the resolution of differences by mutual agreements and are encouraged. To streamline and expedite the claim resolution process, ATP may, at ATP's discretion, develop and use standard claim resolution procedures ("**SCR**P"). The SCR<sup>P</sup> may, at ATP's discretion, be further refined to account for the unique nature of a claim into custom claim resolution procedures.
- (ii) Unless otherwise determined by the Procurement Director or ATP's general counsel or their Designee, this Section 6.5 is intended to be applicable to Controversies. This includes, without limitation, Controversies based upon breach of contract, mistake, misrepresentation, or other cause for contract modification, reformation, or rescission.

### **(b) Delegation of ATP**

- (i) Except as stated in Section 6.5(b)(ii), the authority to settle and resolve Controversies is reserved to the Executive Director or their Designee.
- (ii) The Procurement Director or Contracting Officer shall have the authority to settle or resolve Controversies involving claims up to but not exceeding \$50,000. For settlement or resolution of Controversies in excess of \$50,000, the Contracting Officer, with agreement of the Procurement Director, shall prepare a recommended decision for the Executive Director or their Designee.

### **(c) Contracting Officer's Decision**

- (i) When a Controversy cannot be resolved by mutual agreement, the Contracting Officer or their Designee shall, after written request by the Contractor for a final decision, promptly issue a written decision. Before issuing a final decision, the Contracting Officer or their Designee shall:
  - (A) review the facts pertinent to the Controversy;
  - (B) secure any necessary assistance from legal, fiscal, and other advisors; and
  - (C) obtain the decision of the Executive Director or their Designee as described in 6.5(b) (Delegation of ATP).
- (ii) The Contracting Officer or their Designee immediately shall furnish a copy of the decision to the Contractor and include in the decision:
  - (A) a description of the Controversy;
  - (B) a reference to pertinent contract provisions;
  - (C) a statement of the factual areas of agreement or disagreement;
  - (D) a statement of the Contracting Officer's decision, with supporting rationale; and
  - (E) a section substantially similar to the following:

*"This is the final decision of the Contracting Officer or their Designee. This decision may be appealed to the Board of Directors of ATP. If you decide to make such an appeal, you must deliver or otherwise furnish written notice of appeal to the Board on or before the 30th calendar day from the date of decision issuance. A copy of the notice of appeal shall be furnished to the Contracting Officer from whose decision the appeal is taken. The notice shall indicate that an appeal is intended, reference the decision from which the appeal is being taken, and identify the contract involved."*
- (iii) If the Contracting Officer or their Designee does not issue a written decision within 120 days after written request by the Contractor for a final decision, or within such longer period as may be agreed upon by the parties, then the Contractor may proceed as if an adverse decision had been issued.

(d) **Claims by ATP**

All controversies involving claims asserted by ATP against a Contractor which cannot be resolved by mutual agreement shall be the subject of a decision by the Executive Director or their Designee.

**6.6 Administrative Appeals**

(a) **Scope of Coverage**

This Section 6.6 provides for the administrative appeal to the Board or its duly authorized representative.

(b) **Authorized Representative**

The Board may designate a duly authorized representative to decide administrative appeals fairly and impartially pursuant to this Section 6.6 and according to the facts, this Policy, Contract provisions, and Applicable Law. Such authorized representative may be an administrative judge, a hearing officer, or an administrative board of appeals.

(c) **Hearings**

Any person appealing a decision administratively under this Chapter 6 shall be entitled to a hearing in accordance with this Section 6.6(c). All proceedings in an administrative appeal shall be de novo, except for prior determinations of the timeliness of the filing of a document: the timeliness of a filing is a question of fact and a prior determination that a document was timely or untimely filed shall be final and binding as provided in Section 6.3(h) (Finality of Decision). The Board or its duly authorized representative shall have all authority of a hearing officer under Section 6.4(g) (Authority of Hearing Officer). If not previously established by the Board, the duly authorized representative shall prescribe hearing procedures appropriate under the circumstances and in accordance with applicable due process requirements. All hearings will be electronically recorded but shall not be transcribed. Any party to the hearing, at that party's expense, may request that a licensed, certified court reporter transcribe the recorded hearing. If transcribed, any other party to the hearing may, at their expense, purchase a copy of the hearing transcription from the court reporter. A licensed notary public shall administer oaths. Witnesses shall testify under oath or affirmation.

(d) **Finality of Decision**

The decision of the Board or its duly authorized representative in an administrative appeal shall be final and binding as to questions of fact unless determined by a court of competent jurisdiction in Travis County, Texas to have been fraudulent or arbitrary and capricious. The decision of the Board or its duly authorized representative shall not be final as to questions of law. No action challenging such decision shall be brought more than one year from the date of the issuance of the decision.

## **6.7 Audits**

### **(a) Authority to Audit**

Audits by or on behalf of ATP of the books and records of a Contractor, prospective Contractor, subcontractor, or a prospective subcontractor may be performed when authorized by a Solicitation, Contract, or subcontract provision. Audits may be performed by representatives of ATP or for ATP by an independent contractor.

### **(b) Cost or Pricing Data Audit**

The Executive Director or their Designee may require an audit of cost or pricing data that has been submitted under Section 4.8(g) (Submission of Cost or Pricing Data and Certification). An audit should be required when, with respect to the Contractor, prospective Contractor, subcontractor, or prospective subcontractor, there is:

- (i) a question as to the adequacy of accounting policies or cost systems;
- (ii) a substantial change in the methods or levels of operation;
- (iii) previous unfavorable experience indicating doubtful reliability of estimating, accounting, or purchasing methods;
- (iv) a lack of cost experience due to the Procurement of a new supply or service;  
or
- (v) other evidence that an audit is in ATP's best interests.

### **(c) Cost or Pricing Data Audit Report**

When an audit is required under Section 6.7(b) (Cost or Pricing Data Audit), the auditor shall submit a written report to the Contracting Officer by an agreed-upon

date. The report should contain the following with respect to the contractor, prospective Contractor, subcontractor, or prospective subcontractor:

- (i) a description of the original Offer and all submissions of cost or pricing data;
- (ii) an explanation of the basis and the method used in preparing the Offer;
- (iii) a statement identifying any cost or pricing data not physically submitted with the Offer but examined by the auditor which has a significant effect on the proposed cost or price;
- (iv) a description of any deficiency in the cost or pricing data submitted and an explanation of its effect on the Offer;
- (v) a statement summarizing those major points where there is a disagreement as to the cost or pricing data submitted; and
- (vi) a statement identifying any information obtained from other sources.

(d) **Contract Audit**

- (i) Books and records may be audited under a Contract for which price is based on costs or is subject to adjustment based on costs, or in which auditing would be appropriate to ensure satisfactory performance (such as a time and materials Contract), or to ensure compliance with the requirements to submit current, accurate, and complete cost or pricing data.
- (ii) A Contract audit may be warranted when a question arises in connection with:
  - (A) the financial condition, integrity, and reliability of the Contractor or subcontractor;
  - (B) any prior audit experience;
  - (C) the adequacy of the Contractor's or subcontractor's accounting system;
  - (D) the number or nature of invoices or reimbursement vouchers submitted by the Contractor or subcontractor for payment;
  - (E) the use of federal funding;

- (F) the fluctuation of market prices affecting the Contract;
- (G) adequacy of cost or pricing data; or
- (H) any other circumstance when the Contracting Officer finds that such an audit is in ATP's best interests.

(iii) The scope of the audit may be limited as specified in the audit request.

(e) **Contract Audit Report**

Where a Contract audit is required under Section 6.7(d) (Contract Audit), the auditor shall submit a written report to the Contracting Officer by an agreed upon date. The scope of the report will depend on the scope of the audit ordered. However, the report should contain specific reference to the terms of the Contract to which the audited data relate and a statement of the degree to which the auditor believes the audited data evidence compliance with those terms.

(f) **Retention of Books and Records**

- (i) Any Contractor who receives a Contract, Change Order, or Contract Modification for which cost or pricing data are required under Section 6.7(b) (Cost or Pricing Data Audit) shall be required to maintain such books and records that relate to such cost or pricing data for three years from the date of final payment under the Contract, or such other time period specified in the Contract or required by Applicable Law.
- (ii) Contracts shall require that books and records relating to a Contract with ATP, including subcontracts, shall be maintained:
  - (A) by a Contractor, for three years from the date of final payment under the prime Contract; and
  - (B) by a subcontractor, for three years from the date of final payment under the subcontract, or such other time period specified as determined by the Contracting Officer or required by Applicable Law.

**6.8 ATP Conflicts of Interest**

(a) **Participation in Selection, Award, or Administration of a Contract**

- (i) No ATP Person shall participate in the deliberation, evaluation, selection, award, or administration of any Contract if they have a real or apparent conflict of interest as described in the ATP Ethics Policy.
- (ii) If any ATP Person recuses himself or herself from a Procurement action or administration of a Contract on the basis of a real or apparent conflict of interest, ATP shall document the recusal in the Procurement File.

**(b) Contact with Vendors and Contractors**

All ATP Persons shall avoid any conduct that may give the impression that a person can improperly influence official acts or actions by ATP. ATP Persons shall avoid compromising or culpable acts, including any action that gives the appearance of improper influence or personal conflict of interest. In addition to complying with the ATP Ethics Policy, ATP Persons must also comply with the requirements below to ensure that Procurement actions are and appear to be proper.

**(c) Contacts Prior to Issuance of a Solicitation**

- (i) ATP may make informational and market-research Contacts with prospective Contractors prior to the issuance of a Solicitation, which may include a request for information process. Such contacts are a valuable source of data and information to ATP and must be guided by the exercise of good judgment.
- (ii) In making any such contracts, ATP Persons must avoid:
  - (A) making promises of a future Contract;
  - (B) making requests for substantial complimentary goods or services, which may create the impression of an obligation on the part of ATP; and
  - (C) subject to Section 6.8(c)(iii), testing, viewing, sampling, etc. the product or services of a single vendor or contractor.
- (iii) If any ATP Person determines it is necessary to test, view, sample, etc., a product or service, the ATP Person must coordinate the contact with the Procurement Department. The ATP Person may be required to obtain a form or agreement that will protect ATP and the prospective vendor or Contractor.



(d) **Contacts After Issuance of a Solicitation and Before Contract Award**

- (i) ATP shall require all contacts with Contractors that relate to a Procurement that is in the Solicitation, evaluation, negotiation, or pre-award phase to be conducted only through the Procurement Department (or such other persons designated by the Procurement Department in the relevant Solicitation documents). The Procurement Department may direct technical questions (e.g., whether an item is considered an "approved equivalent") to the Project Manager for evaluation, DBE and other small minority business questions to the DEI Office and other questions to the relevant departments, consultants or advisors. All oral and written communications with ATP regarding the Procurement action shall be exclusively with, or on the subjects and with the persons approved by, the persons identified by the Procurement Department. Discussions with any other person not specified could result in disclosure of proprietary or other competitive sensitive information or otherwise create the appearance of impropriety or unfair competition and thereby compromise the integrity of ATP's Procurement system.
- (ii) ATP will include in all Solicitations information to caution prospective Offerors that until the Procurement is either awarded or cancelled, they may have contact regarding the Procurement only with the contact person identified in the Solicitation. Discussions or communications regarding the Procurement with any other personnel associated in any capacity with ATP, its consultants, contractors or the Board, are strictly prohibited, unless otherwise approved in writing by the Contracting Officer. Any violation of this restriction may result in the disqualification of the Offeror from further participation in the Procurement, and from award of any Contract or subcontract under the Procurement.

(e) **Prohibitions Regarding Gifts, Gratuities or Favors**

All ATP Persons shall comply at all times with the ATP Ethics Policy with respect to gifts, gratuities and favors.

(f) **Discipline for Violations**

In accordance with the ATP Ethics Policy, ATP may take disciplinary actions against any ATP Person or any Contractors, subcontractors, or their agents for a violation of the standards of conduct in Section 1.6 (Standards of Conduct), this Section 6.8,

or the ATP Ethics Policy. Any actions taken by a third party (including the federal government) against the applicable ATP Person or other person shall not impact ATP's right to take such action.

## 6.9 Contractor Organizational Conflicts of Interest

### (a) General

- (i) An organizational conflicts of interest ("OCI") may arise where, because of other activities or relationships with other persons, a person is potentially unable to render impartial assistance or advice to ATP; the person's objectivity in performing the Contract is or might be otherwise impaired; or a person has an unfair competitive advantage. Contracting Officers have the responsibility to avoid, neutralize, or mitigate potential conflicts of interest to prevent an unfair competitive advantage or the existence of conflicting roles that might impair a Contractor's objectivity.
- (ii) ATP will examine each individual contracting situation on the basis of its particular facts and the nature of the proposed contract. Contracting Officers are required to examine each potential conflict and exercise common sense, good judgment, and sound discretion when assessing whether a significant potential OCI exists and then developing an appropriate way to resolve it.
- (iii) There are three areas of concern examined in order to avoid, neutralize, or mitigate OCI:

#### (A) Unequal Access to Information

If during the performance under a previous or current contract or task order for ATP a firm has access to non-public information and that information could provide them a competitive advantage in a later competition for a follow-on contract, their performance may create an OCI e.g., an OCI may exist if a firm involved in the development or validation of ATP's independent cost estimate (i.e., non-public information) and subsequently competes for the Contract for which the ICE was developed.

#### (B) Biased Ground Rules

If during the performance under a previous or current contract or task order for ATP a firm in some sense set the ground rules for another task/contract with ATP by, for example, writing the statement of work, evaluation factors, specifications, or system design, their performance may create an OCI. By participating in such activities, the firm could skew the competition in its favor (whether intentional or not). The firm by virtue of its special knowledge of ATP's future requirements would have an unfair competitive advantage.

**(C) Lack of Impartiality or Impaired Objectivity**

When the firm is unable, or potentially unable, to provide impartial and objective assistance or advice to ATP due to other activities, relationships, contracts, or circumstances, an OCI may exist (e.g., if a firm's work under one ATP contract/task entails it evaluating itself either through an assessment of performance under another contract/task or through an evaluation of Proposals). This could lead to impaired objectivity, where the firm's ability to render impartial advice to ATP could appear to be undermined by its relationship with the entity whose work product is being evaluated.

- (iv) In order to ensure objective Contractor performance and eliminate unfair competitive advantage, Contractors that develop or draft specifications, requirements, statements of work, or Invitations for Bids or Requests for Proposals must be excluded from competing for such Procurements.

**(b) Waiver**

The Executive Director or their Designee may waive any general rule or procedure of this Section 6.9 by determining that its application in a particular situation would not be in ATP's interest. Any request for waiver must be in writing, shall set forth the extent of the conflict, and requires approval by the Executive Director or their Designee.

**(c) Contracting Officer's Responsibilities**

- (i) Using the general rules, procedures, and examples in this Chapter 6, the Contracting Officer shall analyze planned Procurements in order to:
  - (A) identify and evaluate potential OCI as early in the Procurement process as possible; and

- (B) avoid, neutralize, or mitigate significant potential conflicts before Contract award.
  - (ii) The Contracting Officer should obtain the advice of ATP's general counsel and the assistance of appropriate technical specialists in evaluating potential conflicts.
  - (iii) Before issuing a Solicitation for a contract that may involve a significant potential conflict, the Contracting Officer shall recommend to the Executive Director or their Designee a course of action for resolving the conflict.
  - (iv) In fulfilling their responsibilities for identifying and resolving potential conflicts, the Contracting Officer should avoid creating unnecessary delays, burdensome information requirements, and excessive documentation. The Contracting Officer's judgment need be formally documented only when a substantive issue concerning potential OCI exists.
- (d) **Procedures**
- (i) If the Contracting Officer initially decides that a particular Procurement involves a potential or actual OCI, the Contracting Officer shall, before issuing the Solicitation, submit to the Executive Director or their Designee for approval, a written analysis, including a recommended course of action for avoiding, neutralizing, or mitigating the conflict.
  - (ii) The Executive Director or their Designee shall:
    - (A) review the Contracting Officer's analysis and recommended course of action;
    - (B) consider the benefits and detriments to ATP and prospective contractors; and
    - (C) approve, modify, or reject the recommendation in writing.
  - (iii) The Contracting Officer shall:
    - (A) consider additional information provided by prospective contractors in response to the Solicitation or during negotiations; and

- (B) before awarding the Contract, resolve the potential conflict in a manner consistent with the approval or other direction by the Executive Director or their Designee.

## 7. DEFINITIONS

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"**Applicable Law**" means any federal, state, or local statute, law, regulation, ordinance, rule, standard, judgment, order, executive order, decree, directive, guideline, policy requirement, or other governmental restriction or any similar form of decision of or determination by, or any interpretation or administration of any of the foregoing by, any court or government entity, which is applicable to this Policy, whether taking effect before or after the effective date of this Policy. An Applicable Law, when cited in this Policy, shall be as amended unless provided to the contrary. Applicable Law excludes governmental approvals, customs, duties, and tariffs.

"**ATP**" is defined in Section 1.1 (Introduction to Austin Transit Partnership).

"**ATP Ethics Policy**" means the Austin Transit Partnership's Ethics, Conflicts and Nondisclosure Policy, as may be updated from time to time.

"**ATP Persons**" is defined in Section 1.2(c) (Non-Discrimination).

"**ATP Procurement Related Matter**" means an ATP current, prior, or post procurement related matter, including but not limited to administration, bid submission, bid acceptance, bid handling, bid rejection, evaluations, complaints, debarments, determinations, disputes, payments, pre-bid conferences, Protests, Solicitations, suspensions, and terminations.

"**Best Value**" describes a competitive Procurement process in which ATP reserves the right to select the most advantageous offer by evaluating and comparing factors in addition to cost or price such that ATP may acquire technical superiority even if it must pay a premium price. A "**premium**" is the difference between the price of the lowest priced proposal and the one that ATP believes offers the Best Value. The term "**Best Value**" also means the expected outcome of an acquisition that, in ATP's estimation, provides the greatest overall benefit in response to its material requirements. To achieve Best Value in the context of acquisitions for public transportation purposes, the evaluation factors for a specific Procurement should reflect the subject matter and the elements that are most important to ATP. While FTA does not mandate any specific evaluation factors, ATP must disclose those factors in its Solicitation. Evaluation factors may include, but are not limited to, technical design, technical approach, length of delivery schedules, quality of proposed personnel, past performance, and management plan. Additional Best Value considerations are found in Section 252.043, Texas Local

Government Code. This definition is intended neither to limit nor to dictate qualitative measures ATP may employ, except that those qualitative measures must support the purposes of the Federal Public Transportation Program.

**"Bid"** means any offer submitted in competitive sealed bidding, in Step 2 of multi-step competitive sealed bidding, or in small purchases under Section 3.3(c) (Federally Funded Small Purchases) if no changes in offers are allowed after submission.

**"Bidder"** means a Person who responds to an Invitation for Bids by submitting a Bid.

**"Board"** means the Board of Directors (Executive Committee) of ATP.

**"Brand Name or Equal Specification"** means a Brand Name Specification which provides for the submission of equivalent products.

**"Brand Name Specification"** means a specification limited to one or more items by manufacturers' names or catalogue numbers.

**"CapMetro"** is defined in Section 1.1 (Introduction to Austin Transit Partnership).

**"Cardinal Change"** means a major deviation from the original purpose of the work or the intended method of achievement, or 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.

**"Change Order"** means a written, unilateral order signed by the Contracting Officer directing the applicable Contractor to make changes, as authorized under the terms of the applicable Contract.

**"Chapter 2254"** is defined in Section 1.3(d) (Professional Services).

**"City"** is defined in Section 1.1 (Introduction to Austin Transit Partnership).

**"Commercial Item"** shall have the meaning given in the Federal Acquisition Regulation or FAR.

**"Contract"** means any type of agreement entered into by ATP, regardless of what it may be called, for the Procurement, services, or construction or other work.

**"Contracting Officer"** means any person (or a duly appointed successor) authorized to enter into and administer contracts and amendments on behalf of ATP and make written determinations.

**"Contract Modification"** means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any Contract, whether under a Change Order or a bilateral agreement, as authorized under the terms of the applicable Contract.

**"Contractor"** means any person who has entered into a Contract with ATP.

**"Controversy"** means a controversy between ATP and a Contractor arising under, or by virtue of, a Contract between them, including the full spectrum of disagreements from pricing of routine Contract changes to claims of breach of Contract.

**"Days"** means calendar days. In computing any period of time prescribed by this Policy, the day of the event from which the designated period of time begins to run shall not be included, but the last day shall be included unless it is a Saturday, Sunday, or Federal or State holiday, in which event the period shall run to the end of the next business day.

**"DBE"** is defined in Section 1.2(d) (Maximizing Participation of Disadvantaged and Small Business Enterprises).

**"Designee"** means a duly authorized representative of a person having specific authority or holding a superior position.

**"Executive Director"** is the person appointed by the Board to be the chief operating officer of ATP.

**"Federally Funded Procurements"** means a Procurement for a Contract which is anticipated to utilize federal funding.

**"Federal Requirements"** is defined in Section 1.3(b) (Federally Funded Procurements).

**"FTA"** is defined in Section 1.2 (Purpose of this Policy).

**"ICE"** is defined in Section 4.8(b) (Independent Cost Estimate).

**"Interested Party"** means a person or entity who has not participated in any ATP Procurement Related Matter.

**"Invitation for Bids" or "IFB"** means all documents, whether attached or incorporated by reference, utilized for soliciting competitive sealed Bids.

**"OCI"** is defined in Section 6.9 (Contractor Organizational Conflicts of Interest).



**"Offer"** means a response (including a Bid or a Proposal) to a Solicitation (including an Invitation for Bids, a Request for Qualifications or a Request for Proposals) that, if accepted, would bind the Offeror to perform according to the terms specified in the Solicitation or otherwise responds to the Solicitation.

**"Offeror"** means a Person (including a Bidder or Proposer, as applicable) who responds to a Solicitation by submitting an Offer.

**"Offer Submission Date"** means the date set for opening of Bids or receipt of Proposals.

**"Person"** means any individual, firm, corporation, LLC, LLP, joint venture, voluntary association, partnership, trust or public or private organization, other legal entity or a combination thereof.

**"Policy"** is defined in Section 1.2 (Purpose of this Policy).

**"Procurement"** means buying, purchasing, renting, leasing, or otherwise acquiring any property (except real property), services, or construction. It also includes all functions that pertain to the obtaining of any supply, service, or construction, including description of requirements, selection and Solicitation of sources, preparation and award of contract, and all phases of contract administration.

**"Procurement Department"** means the office responsible for the acquisition of supplies, services, and construction in support of ATP's business.

**"Procurement Director"** means the primary ATP employee designated by the Executive Director to implement this Policy.

**"Procurement File"** means the documentation contained in a Procurement file that details the history of the Procurement through award of the contract. It includes, at a minimum, the items described in Section 3.5 (Procurement File).

**"Proposal"** means any Offer submitted in response to a Solicitation, other than a Bid.

**"Proposer"** means a Person who responds to a Request for Proposal by submitting a Proposal.

**"Protest"** means a properly filed claim or complaint that there has been a violation of law or the Procurement Policy in connection with an ATP Procurement Related Matter.

**"Protester"** means a person who has participated in an ATP Procurement Related Matter or an Interested Party that has been permitted to lodge a Protest under Section 6.3(b)

(Filing of Protest) and has agreed that any claim it has or may have against ATP (including its directors, officers, and employees) arising out of or in connection with an ATP Procurement Related Matter shall be resolved exclusively by the administrative remedies stated in Chapter 6 (Administrative Remedies, Audit and Organizational Conflicts of Interest).

**"Public Transportation List"** means an approved list of property, services, or construction items described by model or catalogue numbers, which, prior to competitive Solicitation, ATP has determined will meet the applicable specification requirements.

**"Purchase Requisition"** means a document used to request that a Contract is entered into by ATP for a specific need, and may include, but is not limited to, the description of the requested item, delivery schedule, transportation data, criteria for evaluation, suggested sources of supply, and information supplied for the making of any written determination required by this Policy.

**"Request for Proposals" or "RFP"** means all documents, whether attached or incorporated by reference, utilized for soliciting Proposals.

**"Request for Qualifications" or "RFQ"** means all documents, whether attached or incorporated by reference, utilized for requesting responses relating to the qualifications and competence of a respondent.

**"Responsible"** means determined to be "Responsible" in accordance with Section 4.3 (Responsibility).

**"Responsive"** means determined to be "Responsive" in accordance with Section 4.2 (Responsiveness).

**"SCRIP"** is defined in Section 6.5(a)(i) (Scope of Coverage).

**"Simplified Acquisition Threshold"** means the dollar amount below which a non-federal entity may purchase property or services using small purchase methods. Non-federal entities adopt small purchase procedures in order to expedite the purchase of items costing less than the Simplified Acquisition Threshold. The Simplified Acquisition Threshold is set by the Federal Acquisition Regulation at 48 C.F.R. Part 2.1 and in accordance with 41 U.S.C. § 1908.

**"Solicitation"** means an Invitation for Bids, a Request for Qualifications, a Request for Proposals, a request for quotations or any other document issued by ATP for the purpose of soliciting Offers to perform a Contract or otherwise solicit responses.

**"State"** means the state of Texas.

**"Step 1"** is defined in Section 3.3(f)(ii)(A)(aa)(a) (Multi-Step Competitive Sealed Bidding).

**"Step 2"** is defined in Section 3.3(f)(ii)(A)(aa)(b) (Multi-Step Competitive Sealed Bidding).

**"Supporting Evidence"** is defined in Section 6.3(b)(iii)(F) (Filing of Protest).

**"Texas Public Information Act"** means Chapter 552, Texas Government Code, as amended.

**"Third Party Contract"** refers to ATP's contract with a vendor or contractor, including Procurement by purchase order or purchase by credit card, which is financed with federal assistance awarded by FTA.

**"Unsolicited Offer"** means an Offer that is: innovative and unique, independently originated and developed by the Offeror, prepared without ATP's supervision, endorsement, direction, or direct involvement, sufficiently detailed that its benefits in support of ATP's mission and responsibilities are apparent, not an advance proposal for property or services that ATP could acquire through competitive methods, and not an offer responding to ATP's previously published expression of need or request for proposals.

ATP Procurement Policy can be found [here](#):

[https://www.atptx.org/docs/librariesprovider3/about/procurement-documents/atp-procurement-policy-and-guidelines.pdf?sfvrsn=84eaae49\\_8](https://www.atptx.org/docs/librariesprovider3/about/procurement-documents/atp-procurement-policy-and-guidelines.pdf?sfvrsn=84eaae49_8) .

ATP is subject to the same Procurement requirements as the City for the procurement of construction services for public works, except as otherwise exempted under Section 431.110, Texas Transportation Code. ATP will procure contracts for construction services using the delivery methodologies described in Chapter 2269, Texas Government Code, unless otherwise permitted under Applicable Law.

(f) **Other Services**

For Procurements of other services, ATP shall be entitled to utilize any approach permitted under Applicable Law.

(g) **Alternative Delivery Methods**

To the fullest extent permitted by Applicable Law, ATP shall be entitled to utilize procurement methods which utilize (i) a collaborative/progressive delivery method (including but not limited to construction manager at-risk, construction manager/general contractor, and progressive design-build) and/or (ii) a combination of design, construction, financing, operation, and maintenance services for public improvements through alternative delivery methods including public-private partnerships. ATP should consult with ATP's general counsel to determine the availability of such delivery methods under Applicable Law.

(h) **Prompt Payment for Goods and Services**

It is ATP's policy to comply with the requirements of Chapter 2251, Texas Government Code governing the prompt payment of vendors for goods and services.

#### 1.4 **Policy Deviations and Permanent Changes**

- (a) The Executive Director [or their Designee](#) may approve deviations from this Policy with respect to an individual Procurement, subject to compliance with Applicable Law and any applicable Federal Requirements.
- (b) No permanent substantive change shall be made to this Policy without the express approval of the Board.
- (c) The Procurement Director may authorize clerical updates and clarifications to this Policy (e.g., style changes, typographical, punctuation, and transposition errors).

Board's approval so long as the Contract Modification (either individually or in combination with other Contract Modifications) does not increase the Contract amount or yearly contract amount above the level of authority given to the Executive Director;

- (G) approve and enter into a Contract Modification (including the settlement of a contract claim) that originally required the Board's approval so long as the Contract Modification, as combined in amount with other non-Board-approved Contract Modifications does not exceed the level of authority given to the Executive Director; and
- (H) approve the authorization or execution of Contract Modifications that do not exceed the level of authority given to the Executive Director.

(d) **Delegations**

- (i) The Executive Director's delegations of authority shall be in writing and shall specify:
  - (A) the activity or function authorized;
  - (B) any limits or restrictions on the exercise of the delegation; and
  - (C) the duration of the delegation.
- (ii) Any authority delegated by the Executive Director may be revoked at any time and without prior approval of the Board.
- (iii) Authority conferred on the Executive Director in this Policy with respect to the following matters shall not be delegated:
  - (A) appointment of Contracting Officers under Section 2.3(b) (Appointment of Contracting Officers);
  - ~~(B) deviations from this Policy under Section 1.4 (Policy Deviations and Permanent Change);~~
  - (B) ~~(C)~~ stay of Procurements during Protests under Section 6.3(c) (Stay of Procurements); and
  - (C) ~~(D)~~ authority to debar or suspend under Section 6.4(b) (Authority to



*Austin Transit Partnership Board of Directors Resolution*  
*Meeting Date: 3/1/2023*  
*ATP-2023-005*  
**Approval of Changes to ATP Board Operating Procedures Policy**

**Subject:** Approval of changes to the Austin Transit Partnership ("ATP") Board Operating Procedures Policy.

**Fiscal Impact:** No fiscal impact.

**Responsible Department:** Legal.

**Executive Summary:** The ATP Board approved a Board Operating Procedures Policy on May 19, 2021. To govern the administration and operation of the Austin Transit Partnership's Board of Directors, including Board meetings and public comment procedures, as well as board travel policies, the Board is to consider adopting changes to the Board Operating Procedures Policy to include the following: a process for executive session and permitting the Chair to invite staff and ex-officio Board members; a process for consent agenda items; a process for Item(s) from the Board; the addition of a Board Communications policy; and, the addition of a Code of Conduct policy.

**Procurement Summary:** Does not apply.

**Disadvantaged Business Enterprise Program Summary:** Does not apply.



## RESOLUTION OF THE AUSTIN TRANSIT PARTNERSHIP

### BOARD OF DIRECTORS

STATE OF TEXAS  
COUNTY OF TRAVIS

**Resolution ID: ATP-2023-005**

Approval of Changes to ATP Board  
Operating Procedures Policy

**WHEREAS**, the Austin Transit Partnership ("ATP") Board of Directors (the "Board") recognizes the need to establish a policy to govern the administration and operation of the Board, as well as Board meetings, as it works to guide and support ATP in achieving its goal of implementing Project Connect; and;

**WHEREAS**, it is the intent of the Board to achieve best practices in governance, policy direction, and oversight, as well as promote and receive input from the public on matters of ATP's public business; and

**WHEREAS**, the Board proposes to make changes to the Board Operating Procedures by adding the following: a process for executive session and permitting the Chair to invite staff and ex-officio Board members; a process for consent agenda items; a process for Item(s) from the Board; a Board Communications policy, and a Code of Conduct policy;

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Directors of ATP that the Board Operating Procedures Policy attached hereto as Exhibit A to this resolution is hereby adopted, as amended.

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**Brandon Carr**  
**Secretary of the Board**

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**Date**



# **AUSTIN TRANSIT PARTNERSHIP BOARD OPERATING PROCEDURES POLICY**

Revised March 1, 2023

## **I. OVERVIEW**

The Austin Transit Partnership (“ATP”) was formed by the Capital Metropolitan Transportation Authority (“Capital Metro”) and the City of Austin (the “City”) for the purpose of implementing the Project Connect System Plan (“Project Connect”) as such project is more particularly described in Capital Metro Resolution No. AI-2020- 1273 and City Resolution 20200610-02. ATP does hereby establish this Board Operating Procedures Policy (this “Policy”) to govern the administration and operation of ATP's Board of Directors (the “Board”) and Board meetings as the Board works to govern ATP in achieving its mission of implementing of Project Connect.

This Policy is intended to outline the Board's general powers and duties under chapter Subchapter D of Chapter 431 of the Texas Local Government Code, Chapter 394 of the Texas Local Government Code, and other applicable laws. This Policy does not supersede and is subject to any applicable federal or Texas law or administrative rule, including the Texas Open Meetings Act.

## **II. GENERAL RULES AND OPERATING PROCEDURES**

The Board shall strive to achieve best practices in governance, policy direction, and oversight. The Board shall act as a body in making and announcing its decisions. Individual Board members serve on the ATP Board to support the mission of ATP and shall discharge their duties with ordinary care and in a manner each member reasonably believes to be in ATP's best interests.

### *A. Board Members.*

- (1) Board members shall hold office for the period specified in ATP's Articles of Incorporation. The composition of the Board and qualifications of the Board members, as well as the procedures for their appointment and removal, shall be as provided by ATP's Articles of Incorporation or Bylaws (as applicable).
- (2) Board members shall regularly attend meetings to participate in the decision-making process, responsibly represent the public and preserve public trust. In accordance with Article VI of the ATP Articles of Incorporation, a Board member may be removed from the Board by a resolution approved by a majority vote of the City Council and Capital Metro Board finding that such Board member is derelict in his or her duties by either:
  - (i) failing to attend four consecutive scheduled meetings, including any combination of annual meetings, regular meetings, or special meetings; or,
  - (ii) failing to attend one-third or more of scheduled meetings during any fiscal year of ATP, including any combination of annual meetings, regular meetings, or special meetings, unless such Board member can show good cause for the absences.

- (3) Board members must keep confidential any written materials and verbal information provided during executive sessions or information exempt from disclosure pursuant to the Texas Public Information Act.
- (4) Newly appointed Board members are encouraged to take advantage of information opportunities to learn about ATP, the Board's rules and operating procedures and significant Board actions.
- (5) Except for purpose of inquiry or clarification, the Board and Board members will make best efforts to work through the Executive Director to advance individual requests of staff.
- (6) Board members may contact and consult ATP's general counsel at any time to obtain legal guidance related to ATP or their service on the Board.

*B. Board Chair and Vice Chair.*

- (1) The Board shall select a Chair and Vice Chair by a majority vote of Board members for a term of office in accordance with Sections 3.2 and 3.3 of the ATP Bylaws.
- (2) At all meetings of the Board, the Chair shall preside, and in the absence of the Chair, the Vice Chair shall preside. In the absence of the Chair and the Vice Chair, an acting presiding officer shall be chosen by the Board from among the Board members then present.
- (3) Subject to the limitations contained in the ATP Articles of Incorporation, the Chair may, upon authorization by resolution of the Board, sign and execute all bonds, notes, deeds, conveyances, franchises, assignments, mortgages, contracts, and other instruments of any kind in the name of ATP.
- (4) The Vice Chair shall perform the duties and exercise the powers of the Chair upon the Chair's death, absence, disability, or resignation, or upon the Chair's inability to perform the duties of his or her office. Any action taken by the Vice Chair in the performance of the duties of the Chair shall be conclusive evidence of the absence or inability to act of the Chair at the time such action was taken.
- (5) The Chair is authorized to sign resolutions, motions, contracts, warrants and other instruments and documents requiring evidence of approval by the agency as the Board may direct or as may be required to facilitate agency business. In the event that the Chair is absent or unavailable when such signatures are required, the Vice Chair may sign such instruments and documents.

*C. Board Secretary.*

- (1) The Secretary of ATP shall act as secretary of all meetings of the Board, but in the absence of the Secretary, the presiding officer may appoint any person to act as secretary of the meeting.
- (2) The Board Secretary shall endeavor to give notice of each meeting seven (7) days in advance of such Board meeting and in accordance with Article 2 of the ATP Bylaws and with the Texas Open Meetings Act.

- (3) The Board Secretary shall keep the minutes of the meetings of the Board in one or more books provided for that purpose, see that all notices are duly given in accordance with the provisions of this Policy, the ATP Bylaws, the ATP Articles of Incorporation and as required by law, be custodian of ATP's records, and in general perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned by the Board or the Chair. The Secretary shall serve at the discretion of the Board and may be removed as Secretary by the Board at any time, with or without cause. The Secretary need not be a member of the Board.

*D. Meeting Procedures.* In general, all Board meetings, including any emergency meetings, shall be conducted in accordance with the requirements of Article 2 of the ATP Bylaws. In addition, Board meetings shall be conducted as follows:

- (1) The Board may conduct public meetings and hearings, as well as joint meetings and hearings with other agencies for and on behalf of the Board to meet any legal requirements and enable ATP to perform its statutory functions.\
- (2) The Board shall meet in accordance with and file notice of each meeting of the Board in the same manner as required of the City Council of the City and Capital Metro's Board of Directors under the Open Meetings Act. Notice of each meeting shall be posted by the Secretary of the Board at the same location. Additional notice of each meeting may be posted at one or more other locations.
- (3) A majority of the Board shall constitute a quorum for the consideration of matters pertaining to the purposes of ATP. Ex-officio directors shall not count for the purposes of determining the presence of a quorum. If at any meeting of the Board there is less than a quorum present, business of the Board shall not be conducted. The act of a majority of the Board members shall constitute the act of the Board, unless the act of a greater number is required by law or by the ATP Articles of Incorporation or Bylaws.
- (4) Voting may be conducted in any manner chosen by the Chair. Only Board members may cast votes. A roll call vote on any action may be called by any Board member at any time before beginning discussion on the next agenda item, and such vote shall be recorded in the minutes. Board members in attendance may not abstain from voting on any matter proposed for action unless they believe that a vote on the matter may present a personal conflict of interest. The Board member must indicate an abstention before discussion of the proposed action.
- (5) Board actions may be made by motion or resolution. An affirmative vote of a majority of Board members is required for approval of resolutions and motions, unless the act of a greater number is required by law or by the ATP Articles of Incorporation or Bylaws. Final action will not be taken on any action unless there was notice and an opportunity for public comment on the action.
- (6) The Board may enter an executive session (a meeting closed to the public) in accordance with the Texas Open Meetings Act, Chapter 551 of the Texas Government Code. At the Chair's discretion, the Board may invite ex-officio

Board members and staff into any executive session, unless such invitation is prohibited under law.

- (7) The Board may approve items that are posted on consent in one motion. Any Board member may request, prior to the vote on the consent items, that an item be removed from the consent vote for discussion and action. The Chair shall honor the request from the Board member and remove the item from the consent vote.
- (8) Any two Board members may request an action or discussion item be added to the Board agenda as an Item from the Board. Once a co-sponsor is secured, the sponsor of the item will contact the ATP Board Liaison, with a copy to the co-sponsor, to add the item to the agenda. There will be one Board member listed on the agenda as a sponsor and the other Board member will be listed as a co-sponsor. Staff support for Board presentations or items to be posted with the agenda in support of the Item from the Board shall be available upon the request of the item sponsor or co-sponsor.
- (9) The Board may adjourn any meeting by an affirmative vote of a majority of Board members in attendance or at the Chair's discretion. Any such meeting may be continued at any subsequent meeting.

*E. Attendance by Phone and Video.*

- (1) A Board member may attend a meeting by video upon notice to the Board Chair or Secretary and the meeting may be conducted so long as a quorum is physically in attendance. A request to attend a meeting by video is limited to extraordinary circumstances such as emergencies, illness, accident, official business outside of the agency's district, or other circumstances that do not allow attendance at the meeting, provided that attendance by video shall be permitted at any time in-person meetings have been suspended by the Governor of Texas or applicable law, and in such instances no request for phone or video attendance shall be required.
- (2) A request to attend a meeting by phone or video may be approved by the Chair and will be noted when the meeting is called to order or when the Chair becomes aware of the request. The phone or video connection must allow the Board member to hear and be heard by other Board members and the public.
- (3) Any Board member participating in a meeting by phone or video is deemed to be present at the meeting for all purposes, including, but not limited to, establishing a quorum.

### **III. PUBLIC COMMENT PROCEDURES**

It is the policy of the Board to value input from the public on matters of ATP's public business. Interested parties representing various points of view are allowed time to present their views in an orderly manner in accordance with this Policy, while permitting the Board to conduct its meetings in an efficient and effective manner. This Policy applies to Board meetings and Board committee meetings and is subject in all respects to the Texas Open Meetings Act requirements as applicable and in effect at any time.

*A. Public Comment.*

- (1) Members of the public may sign up to speak on any action item or topic prior to the Board meeting by (i) completing a Public Comment form available outside the Board meeting room prior to the meeting, or (ii) contacting ATP via the email address or telephone number listed in the Public Comment section of the ATP website at least twenty-four (24) hours in advance of the Board meeting.
- (2) Public comment on general topics will be received as the first item on the meeting agenda.
- (3) Speakers may elect to comment in person by physical attendance at the Board meeting, via telephone, or via written, video-recorded, or audio-recorded comments emailed to the email address listed in the Public Comment section of the ATP website at least twenty-four (24) hours in advance of the Board meeting that may be read aloud into the record by an ATP representative at the sole discretion of Chair.
- (4) Speakers will each have three (3) minutes to address the Board. Non-English speakers requiring a translator will have six (6) minutes to address the Board. In the event a speaker submits a written comment, such comment shall be no longer than four hundred (400) words, or a video or audio- recorded comment, such comment shall be no longer than three (3) minutes.
- (5) At the Chair's option, public comment may be limited to up to ten (10) speakers from each side of an issue before the Board. If less than ten (10) speakers request to speak for either side of an issue, additional speakers from the opposite side of the issue shall be permitted to speak for up to an aggregate total of twenty (20) speakers.
- (6) If more than one member of the public from a particular group request to comment, the Chair may ask that the group select one representative of the group to present the group's view. In such a case, the group's representative will be allowed five (5) minutes to speak in person or submission of written comment of up to six hundred and fifty (650) words.

**IN ITS SOLE DISCRETION THE BOARD RESERVES THE RIGHT TO WAIVE THE PROCEDURES CONTAINED IN THIS SECTION III WHEN NECESSARY TO CONDUCT BOARD MEETINGS EFFICIENTLY AND EFFECTIVELY. ATP RESERVES THE RIGHT TO REMOVE PERSONS WHO CAUSE A DISTURBANCE AT AN OPEN MEETING OR TAKE OTHER ACTIONS TO PROMOTE AN ORDERLY MEETING.**

#### **IV. BOARD TRAVEL POLICIES**

Board members may be required to travel for business reasons associated with ATP. Board members are encouraged to attend transit-related conferences and pursue other educational opportunities for the betterment of ATP. The purpose of these Board Travel Policies is to assure that authorized travel by members of the Board is conducted in a responsible manner and that all travel is done in the most efficient and cost-effective manner possible.

Board members shall follow all applicable business travel policies and procedures of ATP, in addition to the terms of this Section IV, to ensure that authorized travel is conducted in a responsible manner and that established procedures are followed consistently.

- A. *Allocation of Board Travel Funds.* The Board shall establish an amount in each adopted annual budget for business travel and conference expenses by members of the Board for the upcoming fiscal year. Each Board member shall be allocated in the budget an equal amount for ATP business travel, with an additional sum allocated to be dispersed at the discretion of the Chair for additional travel beyond an individual member's allocation. Travel funds shall further be subject to the following:
- (1) Allocated travel funds shall include registration fees and all allowable reimbursable expenses such as air travel, lodging, per diem and other reasonable travel expenses. Payment for hotel or other lodging expenses within fifty (50) miles of the Board member's personal residence shall not be an allowable reimbursable expense.
  - (2) Travel arrangements will not be made unless the Board member has funds available or has received approval from the Chair or their designee for the use of funds from the Board's discretionary allocation.
  - (3) Each Board member shall annually work with staff and submit to the Executive Director or their designee a list of anticipated travel for the upcoming fiscal year by September 15th based on the proposed budgeted amount allocated to each Board member for Board member travel. To assist with meeting planning and budgeting, the submission must include dates, location, and estimated costs for each planned trip.
  - (4) ATP shall not pay for Board members to travel when it would coincide with a regularly scheduled monthly meeting of the full Board unless it is deemed necessary for business reasons by the Chair or their designee.
  - (5) Board members are expected to work with the Board Relations Manager to make their travel arrangements no less than 14 days prior to travel.
  - (6) ATP shall only pay a Board member's travel costs equal to those on the 14th day prior to travel, except under extenuating circumstances as approved by the Chair. If a Board member wishes to travel upon booking less than 14 days in advance, the Board member may do so by personally paying any additional costs associated with booking that travel less than 14 days in advance.
- B. *Mileage Reimbursement.* Board members and advisory committee members may receive personal mileage reimbursement at the IRS standard mileage reimbursement rate when traveling for ATP business and when more advantageous or economical to ATP than a common carrier, Capital Metro or ATP vehicle. Mileage reimbursement to Board members for local travel within the service area in furtherance of ATP business shall NOT be deducted from a Board member's allocated travel funds.
- C. *Exceptions to Board Travel Policies.* The Chair may consider and approve exceptions to this policy on a case-by-case basis when a need arises as the budget allows.

## **V. BOARD COMMUNICATIONS**

Electronic communications involving official ATP business are to be transmitted using ATP accounts, including their ATP-issued email account, to the greatest extent possible. ATP Board members are subject to the Texas Public Information Act, Chapter 552 of the Texas Government Code, unless otherwise excepted by law.

Official Board communications, including email, instant messaging, online message boards, and media interviews, should be coordinated with the Chair for unified messaging and strategy.

## **VI. CODE OF CONDUCT**

ATP is committed to providing a work environment free of harassment, in which all people are treated with dignity, decency and respect. The environment of the organization should be characterized by mutual trust and the absence of intimidation, oppression, and exploitation. ATP will not tolerate unlawful discrimination or harassment of any kind.

A. *Required Conduct.* Board members commit to the following behavior, both with regard to fellow Board members and ATP staff, including but not limited to:

- (1) Cooperating fully with any audit or investigation in order to ensure a complete, timely, and accurate process;
- (2) In the event of any litigation, summons, subpoena, or regulatory investigations, always referring the matter to the Legal Services Department;
- (3) Treating others and their ideas with respect and working with each other constructively; and
- (4) Helping create an environment where others feel comfortable speaking up and contributing;

B. *Prohibited Conduct.* Board members commit to not engaging in the following behavior, both with regard to fellow Board members and ATP staff, including but not limited to:

- (1) Retaliating against anyone for raising concerns or reporting possible misconduct in good faith or for assisting in the investigation of possible misconduct;
- (2) Discriminating based on gender, race, color, national origin, ancestry, citizenship, religion, age, physical or mental disability, medical condition, sexual orientation, gender identity, marital status or any other basis prohibited by applicable law; and
- (3) Sexual harassment, verbal abuse, yelling, or violent behavior.

**Violation of this Code of Conduct may subject a Board member to removal from their position in accordance with the ATP Bylaws and Articles of Incorporation.**

## **VII. AMENDMENTS, SUPPLEMENTS, SUSPENSIONS**

Subject to the terms of the ATP Bylaws and Articles of Incorporation and applicable law, this Policy may, by an affirmative vote of two-thirds of the Board members in attendance at a meeting, be temporarily suspended to facilitate consideration of Board action in the event of emergencies or other special circumstances, or otherwise supplemented or amended.



***Austin Transit Partnership Board of Directors Resolution***

***Meeting Date: 3/1/2023***

***ATP-2023-006***

***Approval of an interlocal agreement with  
Workforce Solutions - Capital Area***

**Subject:** Approval of a resolution authorizing the Executive Director to negotiate and execute an interlocal agreement with Workforce Solutions - Capital Area to support development of the region's first Workforce Mobility Industry Sector Partnership and for the development of construction training programs for 12 months, with a 6-month extension option, in an amount not to exceed \$300,000.

**Fiscal Impact:** See Executive Summary

**Responsible Department:** Equity & Community Partnership

**Executive Summary:** The City of Austin, CapMetro and ATP have entered into a Joint Powers Agreement, effective December 17, 2021 (the "Joint Powers Agreement"), delineating the roles and responsibilities of the three parties and to confirm their commitment and support of Project Connect. The Joint Powers Agreement, Section 4.3, contemplates that ATP will be responsible for "[d]eveloping and implementing a construction careers program which meets the requirements of federal law and regulations and includes City of Austin hiring goals to hire workers from apprenticeship and craft training programs, and which promotes the hiring of local workers so long as possible within the existing workforce." WFS is the leadership and governing body for the regional workforce system and is responsible for the planning, oversight, and evaluation of workforce development activities in the Austin/Travis County area. ATP and WFS agree that WFS is an established organization that can help ATP reach its goals related to the development and implementation of a construction careers program. The purpose of this Agreement is to support the creation of the region's first Workforce Mobility Industry Sector Partnership that includes the development and implementation of a construction workforce plan for the construction of Project Connect.

**Procurement Summary:** This is an interlocal agreement not subject to Procurement requirements under Chapter 791 of the Texas Government Code, the Interlocal Cooperation Action.

**Disadvantaged Business Enterprise Program Summary:** N/A





## RESOLUTION OF THE AUSTIN TRANSIT PARTNERSHIP

### BOARD OF DIRECTORS

STATE OF TEXAS  
COUNTY OF TRAVIS

Resolution ID: ATP-2023-006

*Approval of an interlocal agreement  
with Workforce Solutions - Capital Area*

**WHEREAS**, Austin Transit Partnership (“ATP”) was created by CapMetro and the City of Austin (the “City”) following the approval of a ballot measure by the voters of the City at the November 3, 2020, special election to provide dedicated funding to an independent board to oversee the implementation of the Project Connect System Plan (“**Project Connect**”); and

**WHEREAS**, ATP was formed to aid and act on behalf of CapMetro and the City to accomplish their governmental purpose, namely, to implement Project Connect, as it is more particularly described in Capital Metro Resolution No. AI-2020-1273, City Resolution No. 20200610-02, and City Resolution No. 20200812-015 (such resolution more commonly known as the “**Contract with Voters**”); and

**WHEREAS**, ATP has been designated by the City and CapMetro to be the principal entity responsible for the financing, design, engineering, construction, and contracting with CapMetro to operate and maintain assets funded by ATP for Project Connect in a manner independent of the City and CapMetro; and

**WHEREAS**, the City, CapMetro and ATP have entered into a Joint Powers Agreement, effective December 17, 2021 (the “**Joint Powers Agreement**”), delineating the roles and responsibilities of the three parties and to confirm their commitment and support of Project Connect; and

**WHEREAS**, the Joint Powers Agreement, Section 4.3, contemplates that ATP will be responsible for “[d]eveloping and implementing a construction careers program which meets the requirements of federal law and regulations and includes City of Austin hiring goals to hire workers from apprenticeship and craft training programs, and which promotes the hiring of local workers so long as possible within the existing workforce;” and

**WHEREAS**, Workforce Solutions – Capital Area (“**WFS**”) is the leadership and governing body for the regional workforce system and is responsible for the planning, oversight, and evaluation of workforce development activities in the Austin/Travis County area; and

**WHEREAS**, the Parties agree that WFS is an established organization that can help ATP reach its goals related to the development and implementation of a construction careers program; and

**WHEREAS**, the purpose of this Agreement is to support the creation of the region’s first Workforce Mobility Industry Sector Partnership that includes the development and implementation of a construction workforce plan for the construction of Project Connect;

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Directors of ATP that the Executive Director, or his designee, is hereby authorized to negotiate and execute an interlocal agreement with Workforce Solutions - Capital Area to support development of the region’s first Workforce Mobility Industry Sector Partnership and for the provision of construction training programs for 12 months, with a 6-month extension option, in an amount not to exceed \$300,000.

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**Brandon Carr**  
**Secretary of the Board**

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**Date**

**INTERLOCAL COOPERATION AGREEMENT**  
**BETWEEN**  
**AUSTIN TRANSIT PARTNERSHIP**  
**AND**  
**WORKFORCE SOLUTIONS – CAPITAL AREA**  
**FOR THE**  
**DEVELOPMENT OF THE WORKFORCE MOBILITY INDUSTRY PARTNERSHIP**

This Interlocal Cooperation Agreement ("**Agreement**") is dated and entered into as of April 1, 2023 (the "**Effective Date**") by and between Austin Transit Partnership Local Government Corporation ("**ATP**"), a public nonprofit joint local government corporation created under Subchapter D, Chapter 431, Texas Transportation Code, Chapter 394, Texas Local Government Code, and Chapter 22, Business Organizations Code, and Workforce Solutions – Capital Area ("**WFS**"), a publicly-funded non-profit organization created under Chapter 2308, Workforce Investment Act, Texas Government Code (ATP and WFS being referred to as the "**Parties**").

**ARTICLE I**  
**BACKGROUND**

1. ATP was created by CapMetro and the City of Austin (the "**City**") following the approval of a ballot measure by the voters of the City at the November 3, 2020, special election to provide dedicated funding to an independent board to oversee the implementation and financing of the Project Connect System Plan ("**Project Connect**").
2. ATP is the principal entity responsible for the financing, design, engineering, construction, and contracting with CapMetro to operate and maintain assets funded by ATP for Project Connect in a manner independent of the City and CapMetro.
3. The City, CapMetro and ATP have entered into a Joint Powers Agreement, effective December 17, 2021 (the "**Joint Powers Agreement**"), delineating the roles and responsibilities of the three parties and to confirm their commitment and support of Project Connect.
4. The Joint Powers Agreement, Section 4.3, contemplates that ATP will be responsible for "[d]eveloping and implementing a construction careers program which meets the requirements of federal law and regulations and includes City of Austin hiring goals to hire workers from apprenticeship and craft training programs, and which promotes the hiring of local workers so long as possible within the existing workforce."
5. The Parties agree that WFS is an established organization that can help ATP reach its goals related to the implementation of a construction careers program.

**NOW, THEREFORE**, accordingly, in consideration of the mutual covenants and agreements set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confirmed, ATP hereby enters into this Agreement and do hereby agree as follows:

## **ARTICLE II SCOPE OF AGREEMENT**

2.1 **Public Purpose.** The purpose of this Agreement is to support the creation of the region's first Workforce Mobility Industry Sector Partnership that includes the development and implementation of a construction workforce plan for the construction of Project Connect, which was approved by the voters of the City at the November 3, 2020, special election.

2.2 **Scope of Services.** The services to be performed by WFS are contained in Exhibit A.

## **ARTICLE III TERM AND TERMINATION**

3.1 **Term.** The term of this Agreement shall commence on the Effective Date and shall continue until April 1, 2024, which may be extended up to 6 months upon the mutual consent of both Parties (the "**Term**"). An extension shall not affect the cost of the services, unless mutually agreed in writing, and approved by the ATP Board of Directors.

3.2 **Termination for Convenience.** ATP may terminate this Agreement, in whole or in part, for any reason or no reason at all, upon 30 days' written notice to WSF.

3.3 **Termination for Cause.** Either Party may terminate this Agreement in whole or in part, for cause if the other Party has committed an Event of Default that has not been cured within the required Cure Period. In the event of termination for cause, ATP shall reimburse to WSF compensation for undisputed services rendered and amounts owed.

3.4 **Event of Default.** A Party shall not be in breach or default under the terms of this Agreement for any act, omission, or failure to perform hereunder except as expressly provided in this Section.

3.5 Prior to declaring an Event of Default against another Party hereunder, a Party must first deliver written notice to such other Party's Chief Financial Officer and General Counsel, specifying the events and circumstances regarding such alleged breach and specifying any action which the notifying party desires the receiving Party to take to remedy such alleged breach ("Default Advisory Notice"). The receiving Party shall work in good faith with the notifying Party to resolve the matter within a reasonable amount of time but in any event no less than sixty (60) days.

3.6 If after delivering a Default Advisory Notice, the alleged breach is not resolved to the reasonable satisfaction of the notifying Party within sixty (60) days, then the notifying Party may declare an Event of Default against the receiving Party by delivering written notice thereof to the defaulting Party (a "Default Notice"); provided, however, that no Party shall be

authorized to deliver a Default Notice unless the governing body of the notifying Party has taken official action declaring the defaulting Party to be in material breach under the terms of this Agreement in an open meeting (an "**Event of Default**") and directing staff to deliver such Default Notice to the defaulting Party. After receiving a Default Notice, the defaulting Party shall have an additional sixty (60) days to cure such Event of Default or such additional amount time as may be reasonably necessary to cure such Event of Default, but only so long as such defaulting Party is diligently seeking to cure such Event of Default the ("**Cure Period**").

#### **ARTICLE IV PAYMENT**

- 4.1 **Cost.** ATP will pay to WFS a total of \$300,000 for the services to be performed under this Agreement. Changes to the funding allocation among different line items in the services budget may be made with written approval from the ATP Project Manager. For additional information, please see Exhibit A.
- 4.2 **Payment.** Services to be performed under this Agreement is for a one-year term beginning on the date of approval by the ATP Board of Directors. On a monthly basis WFS will submit an invoice and a supporting memorandum detailing work completed during that month. Payment for the work completed will be dependent on the milestones achieved that will be outlined in the workplan (to still be developed). WFS will have fifteen (15) days from the end of each month to submit both the invoice and progress report memorandum.

#### **ARTICLE V APPROPRIATIONS AND SUBORDINATION**

- 5.1 Any payment obligations of ATP under this Agreement are subject to appropriation from year to year in accordance with State law. The Parties further acknowledge and agree, notwithstanding anything else in this Agreement to the contrary, that ATP's obligation with respect to its reimbursement obligations is subject to, and governed by, Article 11, Section 5 of the Texas Constitution and must be paid only out of ATP's current revenues or any other funds lawfully available therefore (and appropriated for such purpose) in accordance with Article 11, Section 5 of the Texas Constitution. WFS shall not be entitled to penalties or damages in the event of a termination of this Agreement for lack of funding.
- 5.2 WFS acknowledges and agrees that notwithstanding any present or future appropriation of funds by ATP to fulfill its payment obligations hereunder, all payment obligations of ATP to WFS under this Agreement shall constitute unsecured contractual obligations of ATP payable from current funds, and shall be expressly subject and subordinate to any present or future pledge by ATP of its revenues securing any lien for the repayment of its public securities, credit or liquidity agreements or other debt obligations of ATP for the financing of all components or any component of Project Connect. In the event of any conflict between this Agreement and any Public Security Authorization, as defined in Section 1201.002(3) of the Texas Government Code, the Public Security Authorization shall prevail.

## **ARTICLE VI AUDITS AND RECORDS**

6.1 ***Audit Rights.*** Upon reasonable prior written notice, ATP shall have the right to review and inspect all data and work relevant to the expenses billed to ATP by WFS and its subcontractors. ATP shall have the right, at its cost and expense, to have the books and records of WFS related to this Agreement:

- (a) reviewed by ATP from time to time during the Term; and
- (b) audited by a nationally or regionally recognized independent certified public accountant, under appropriate confidentiality provisions, for the purpose of verifying the accuracy of all fees and cost calculations under this Agreement; provided, that any such audit shall be conducted no more than once per budget year (a "budget year" being defined as October 1 through September 30) and shall be conducted, in each case, upon at least 30 days' advance written notice; provided further, that no review or audit shall be conducted outside of normal business hours or in a manner that interferes unreasonably with WFS's business.

6.2 ***Records Retention.*** At a minimum, WFS shall maintain records required under the terms of this Agreement in accordance with 49 CFR 18.36(i), which requires project-related documents to be retained for 3 years following project completion.

6.3 ***Ownership of Work Product.*** ATP shall retain an irrevocable, non-exclusive, fully paid, perpetual license in any works created under this Agreement using ATP funds, including, but not limited to the Phase Two Infrastructure Workforce Action Plan. ATP shall have full rights to use, distribute, or reproduce any work product produced as part of the Scope of Services.

## **ARTICLE VII DISPUTES, GOVERNING LAW, AND VENUE**

7.1 ***Resolution of Disputes.*** Upon request of either Party, an informal attempt shall be made to negotiate a resolution of any dispute arising under this Agreement. Such request shall be in writing and shall seek a meeting between representatives of each Party within 14 calendar days after receipt of the request or such later period as agreed by the Parties. Each Party shall provide for the meeting, at a minimum, one senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within 30 calendar days after such meeting, the Parties have not succeeded in negotiating a resolution of the dispute, they shall proceed directly to mediation as described below. Informal negotiation may be waived by a written agreement signed by both Parties, in which event the Parties shall proceed directly to mediation as described below.

- a. The mediation shall take place in Austin, Travis County, Texas. The Parties shall select a mediator within 30 calendar days of the written waiver, or within sixty 60 calendar days of the informal negotiation meeting. The Parties agree to act in good

faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in this Agreement prevents the Parties from relying on the skills of a person who is trained in the subject matter of the dispute. If the time period for selecting the mediator has expired with no agreement on the mediator, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The Parties agree to participate in mediation in good faith for up to 30 calendar days from the date of the first mediation session. The Parties will share the costs of mediation equally.

- b. Nothing in this Article 7 shall limit either Party's right to terminate this Agreement for cause; provided, however, this Article shall survive termination of this Agreement.

**7.2 Governing Law and Venue.** This Agreement is governed by the laws of the State of Texas and all obligations under this agreement are performable in Travis County, Texas. Venue for any cause of action arising under the terms of this Agreement shall be exclusively in the federal and district courts of Travis County, Texas.

## **ARTICLE VIII NOTICES**

**8.1 Notices.** Any notice, demand, statement, request or consent made hereunder shall be in writing and may be personally served or sent by mail or courier service and shall be deemed to have been given when delivered by mail or by courier service to the addresses set forth below. Notices delivered by email to the Parties' designated representatives shall also be deemed to have been delivered only if receipt is expressly and personally acknowledged in writing by the recipient.

- a. **ATP Address.** The address of ATP for all purposes under this Agreement and for all notices:

Courtney Chavez (or their successor) (“**ATP Project Manager**”)  
SVP, Equity and Community Partnership  
203 Colorado Street  
Austin, Texas 78701  
Email: Courtney.Chavez@atptx.org

With additional copy to:

Brandon Carr (or their successor)  
General Counsel, SVP of Legal Affairs  
203 Colorado Street  
Austin, Texas 78701  
Email: Brandon.Carr@atptx.org

- b. **WFS Address.** The address of WFS for all purposes under this Agreement and for all notices:

Tamara Atkinson (or their successor) (“**WFS Project Manager**”)  
Chief Executive Officer  
9001 N IH 35, Ste 110E  
Austin, Texas 78753  
Tamara.Atkinson@wfscapitalarea.com

With additional copy to:  
Yael Lawson  
Chief Operations Officer  
9001 N IH 35, Ste 110E  
Austin, Texas 78753  
Yael.Lawson@wfscapitalarea.com

## **ARTICLE IX INSURANCE**

- 9.1 **Required Minimums.** The insurance coverages required under this Agreement are required minimums and are not intended to limit the responsibility or liability of WFS. WFS shall have, and shall require all subcontractors of services provided under this Agreement to have and maintain policies that contain the following:

9.1.1 **Business Automobile Liability Insurance.** Coverage for all owned, non-owned, and hired vehicles. The policy shall contain a minimum combined single limit of \$1,000,000 per occurrence for bodily injury and property damage.

9.1.2 **Workers' Compensation and Employers' Liability Insurance.** Coverage shall be consistent with statutory benefits outlined in the Texas Workers' Compensation Act, Chapter 401 of the Texas Labor Code.

9.1.3 **Commercial General Liability Insurance.** The policy shall contain a combined bodily injury and property damage limit of \$1,000,000 per occurrence.

## **ARTICLE X CONFIDENTIALITY; TEXAS PUBLIC INFORMATION ACT**

- 10.1 **Confidentiality.** WFS shall not and shall use its reasonable efforts to ensure that WFS employees shall not use, divulge or communicate to any person (other than those whose province it is to know the same or with authority from ATP) any trade secrets or information which are for the time being confidential to ATP or any of its subsidiaries and are not in the public domain (“**Confidential Information**”), which the WFS employees may have received or obtained during the Term. This restriction shall continue to apply after the termination of this Agreement for whatever cause without limit in point in time but shall cease to apply to information or knowledge that may come into the public domain otherwise than through the unauthorized disclosure by or the fault of WFS and/or its employees. WFS undertakes and



shall use reasonable efforts to ensure that the WFS employees shall undertake to return to ATP or any of its subsidiaries within a reasonable time upon request from any or all of them, all materials, whether documentary or otherwise, together with copies thereof containing Confidential Information and not to take further copies of any of the above-mentioned documents or materials after termination of this Agreement.

**10.2 Texas Public Information Act.** Notwithstanding anything herein to the contrary, this Agreement is subject to the “Texas Public Information Act,” Texas Gov’t Code, Chapter 552. ATP is subject to the Texas Public Information Act and must release information required to be released under the Act and regulations promulgated thereunder.

## **ARTICLE XI LIABILITY**

**11.1 Liability.** To the extent allowed by Texas law, the Parties agree that each Party is responsible for its own proportionate share of any liability for the negligent or grossly negligent acts or omissions of its employees, agents, contractors, or subcontractors arising out of, connected with, or as a consequence of its performance under this Agreement. Neither Party shall be liable to the other for any indirect, special, incidental, punitive, or consequential damages (including, but not limited to loss of business, revenues, profits, or other economic advantage) however it arises, whether in an action of contract, negligence or gross negligence, tort or other action, arising out of or in connection with this Agreement, even if advised of the possibility thereof.

## **ARTICLE XII NO JOINT EMPLOYER RELATIONSHIP**

**12.1 No Joint Employer Relationship.** Nothing in this Agreement shall operate or be construed as making WFS and/or ATP either partners, joint venturers, principals, joint employers, fiduciaries, agents or employees of the other. The relationship between WFS and ATP will be that of an independent contractor relationship. No employee, agent, affiliate or contractor retained by WFS to perform work on behalf of ATP or its affiliates under this Agreement will be deemed to be an employee, agent, or contractor of ATP or its affiliates, and ATP does not have any right, direct or indirect, to control the work of the WFS employees. Neither Party will have any right, power, or authority, express or implied, to bind the other. WFS is solely responsible for payment of (1) all income, disability, withholding, and other employment taxes as well as (2) all medical benefit premiums, vacation pay, sick pay, or other fringe benefits resulting from WFS’s retention of any of its officers, directors, employees, agents, or independent contractors.

### **ARTICLE XIII ASSIGNMENT; SUBCONTRACTORS**

- 13.1 **Assignment.** Neither Party shall assign or transfer the whole or any part of this Agreement without the prior written approval of the other Party.
- 13.2 **Subcontractors.** WFS may subcontract all or a part of the services to be performed under this Agreement, only if advanced notice of the intent to subcontract and name of the subcontractor(s) is provided to ATP. All subcontractors under this Agreement shall be bound to the same terms and conditions of this Agreement.

### **ARTICLE XIV SEVERABILITY**

- 14.1 **Severability.** If any provision of this Agreement is invalid, illegal or unenforceable, that provision will, to the extent possible, be modified in such manner as to be valid, legal and enforceable but so as to most nearly retain the intent of the parties hereto as expressed herein. If such a modification is not possible, the parties hereto shall negotiate in good faith a modification of such provision that reflects as closely as possible the economic purpose of the invalid, illegal or unenforceable provision. If no agreement with respect to such modification is reached, the invalid, illegal or unenforceable provision will be severed from this Agreement. In any case, the validity, legality and enforceability of the remaining provisions of this Agreement will not in any way be affected or impaired thereby for so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any Party.

### **ARTICLE XV WAIVER**

- 15.1 **Waiver.** Any claim or right arising out of a breach of the Agreement cannot be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is in writing signed by the aggrieved Party. No waiver by either Party of any one or more events of default by the other Party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Agreement, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

### **ARTICLE XVI NO WAIVER OF SOVEREIGN IMMUNITY**

- 16.1 **No Waiver of Sovereign Immunity.** Neither Party waives or releases its rights and privileges, if any, it may have in any proceeding before any court or tribunal in any jurisdiction to assert the affirmative defense of sovereign immunity based upon their status as a governmental entity with respect to the adjudication of any claim arising or relating to this Agreement, including but limited to any breach of this Agreement.

## **ARTICLE XVII NO THIRD-PARTY BENEFICIARIES**

17.1 **No Third-Party Beneficiaries.** No person or entity (including but not limited to any Employee) shall receive, obtain, or otherwise benefit from any rights, obligations or provisions of this Agreement. By way of example and without limiting the application of this provision, no Employee shall, except as provided above, gain any rights or privileges enforceable by law or by contract on account of any provision in this Agreement.

## **ARTICLE XVIII HEADINGS**

18.1 **Headings.** The headings and captions in this Agreement are for the convenience of the parties hereto in identification of the provisions hereof and shall not constitute a part of this Agreement nor be considered interpretative thereof.

## **ARTICLE XIX ENTIRE AGREEMENT; AMENDMENT**

19.1 **Entire Agreement.** This Agreement represents the final, entire agreement among the Parties and supersedes any and all prior commitments, agreements, representations and understandings, whether written or oral, relating to the subject matter hereof and thereof and may not be contradicted or varied by evidence of prior, contemporaneous or subsequent oral agreements or discussions of the Parties hereto. There are no unwritten oral agreements among the parties hereto.

19.2 **Amendment.** The provisions of this Agreement may be amended or waived only by an instrument in writing signed by the Parties.

## **ARTICLE XX COUNTERPARTS; E-SIGNATURES**

20.1 **Counterparts.** This Agreement may be signed in as many counterparts as may be convenient or required. It shall not be necessary that the signature and acknowledgment of, or on behalf of, each party, or that the signature and acknowledgment of all persons required to bind any Party, appear on each counterpart. All counterparts shall collectively constitute a single instrument. It shall not be necessary in making proof of this Agreement to produce or account for more than a single counterpart containing the respective signatures and acknowledgment of, or on behalf of, each of the Parties hereto. Any signature and acknowledgment page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures and acknowledgments thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature and acknowledgment pages.

20.2 **E-Signatures.** The Parties agree that digital or facsimile signatures shall be given the same legal effect as original signatures, and the Parties hereby agree to accept delivery of digital signatures by e-mail in "pdf" form, or via DocuSign, Adobe Sign, or any similar means of digital delivery.

**ARTICLE XXI**  
**LEGAL AUTHORITY**

21.1 ***Legal Authority.*** The person or persons signing this Agreement on behalf of each Party warrant that they have been duly authorized by their respective entities to sign this Agreement on behalf of the entity and to bind the entity validly and legally to all terms, performances, and provisions in this Agreement. Each Party warrants that the Party possesses the legal authority to enter into this Agreement and to perform the services that Party has obligated itself to perform under this Agreement.

*(Signature Page Follows)*

DRAFT

**IN WITNESS WHEREOF**, the undersigned have executed this Agreement the \_\_\_\_ day of \_\_\_\_, 2023 to be effective as of the Effective Date above.

**WORKFORCE SOLUTIONS – CAPITAL AREA**

By:\_\_\_\_\_

\_\_\_\_\_  
Chief Executive Officer

**AUSTIN TRANSIT PARTNERSHIP**

By:\_\_\_\_\_

Greg Canally  
Interim Executive Director

**EXHIBIT A**  
**PHASE ONE SCOPE OF SERVICES**

WFS is the leadership and governing body for the regional workforce system. WFS is responsible for the planning, oversight, and evaluation of workforce development activities in the Austin/Travis County area.

Through the fostering of partnerships and collaborations, researching and sharing of labor market and economic information, identifying workforce needs of employers and residents, and consulting and advising on public policy, WFS supports and connects local people to local jobs.

Subject to the terms and upon the conditions of this Agreement, WFS shall provide the following services:

	<b>SOW Description</b>	<b>Outcome</b>
1	Create the region's first Workforce Mobility Industry Sector Partnership	Coordinate with ATP, CapMetro, the City of Austin, the Community Advisory Committee, and other mobility/transit entities and public/private sector employers and employee groups, local education agencies, labor union trades people, school districts, and community-based organizations from around the region. Create a neutral, shared table for identification of talent and talent development opportunities, allowing the community to understand how, where, and why mobility and infrastructure job training is important.
2	Analyze the mobility and infrastructure workforce ecosystem	<p>Conduct comprehensive construction, skilled worker, and related occupations supply and demand study for the Central Texas region, including assessment of current worker availability, job training capacity, and the gaps therein. Identify processes to analyze academic readiness of job seekers and training sequencing so job seekers receive what they need and when and can build upon their skills. Map skills to enhance existing training program curricula and recommend opportunities to scale workforce training to align with industry needs.</p> <p>The analysis will also draw out unintended consequences of competing hiring demands, such as displacing workers from other skilled trades and construction projects, and opportunities for working together on shared needs instead of fragmenting the system.</p>
3	Educate leaders on critical nature of infrastructure workforce	Workforce Solutions will communicate and educate leaders (including ATP Board of Directors, WFS board of directors, elected officials, and other relevant decision makers) regarding the mobility and infrastructure talent and talent development ecosystem. This will

	training and value of training local workers	<p>include recognizing needs of job seekers and the need for various entry points that allow for job seekers to build upon their skills and create a pathway for upskilling.</p> <p>Part of the work will entail best practices benchmarking visits to 1-2 communities which are using infrastructure and mobility funds to also build stronger, more resilient communities.</p>
4	Identify and recommend available resources for workforce development	<p>The Workforce Mobility Industry Sector Partnership will recommend opportunities for additional infrastructure funding and cross-industry coordination to optimize workforce development collaboration, enabling efficient productive means to align workforce development resources through mobility, transit, and infrastructure projects.</p> <p>Recommendations should include processes to reach underinvested communities, as well as wrap around service opportunities, such as case management and support. Multiple entry points should be identified and mapped based upon analysis of academic and skill readiness. This should include pathways and upskilling opportunities.</p>
5	Create a Workforce Infrastructure Action Plan	<p>WFS will create a Phase Two Infrastructure Workforce Action Plan and implementation budget to execute recommendations from the Workforce Mobility Industry Sector Partnership, and the Mobility and Infrastructure Research.</p> <p>WFS will create a scorecard for outcomes to measure the collective progress in Phase One, including short-term deliverables and outcomes.</p>

The following is the proposed budget for Phase One services:

Budget for Phase One		
Budget Category	Description	Cost
Consultants and Personnel	Key internal WFS and outsourced project management team, including CEO, COO, and CFO (portion of time).	\$50,000
Industry Sector Research	<p>Mobility and construction industry research. *Funds will be matched by other participating entities.</p> <p>Funds will also be used by research individual/firm to support ATP and WFS in turning recommendations from the report into actionable plans. This</p>	\$100,000

	implementation support may include oversight of specific activities, as approved by WFS.	
Joint Communications Support*	<p>On-going communications support to promote the activities, learnings, and outcomes of the initiative. Activities include, but are not limited to:</p> <ul style="list-style-type: none"> <li>-A monthly press update about the partnership, the scope of work and early wins</li> <li>-Scripted speaking opportunities at Workforce Solutions' Hire Local events</li> <li>-Outreach to national media, including those visiting Austin for SXSW, to secure meetings/interviews about Austin's unique approach to building its workforce as it builds its infrastructure</li> <li>-Draft and place thought leadership articles from ATP/City of Austin/Cap Metro/WFS and elected leaders about the region's transportation infrastructure needs and this group's approach to meeting those needs</li> <li>-Secure and/or create speaking opportunities, including possibly at the U.S. Conference of Mayors Annual Conference in Columbus, OH in June</li> <li>-Produce a video and digital graphics to visually demonstrate findings of the supply/demand study and distribute to media with a press release following a press conference with all participating organizations</li> </ul>	\$95,000
Best Practices Visits (1-2)	Research and then visit communities working innovatively on meeting mobility and infrastructure workforce needs.	\$25,000
WFS Administration		\$30,000



	Total: \$300,000
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Note 1: Subsequent to the release of the Industry Sector Research, outlining talent supply and demand needs compared to available regional capacity, WFS will request Phase Two funding to support training investments (program start-ups and/or expansions).

DRAFT

# SUMMARY REPORT

## SUMMARY OF ENGAGEMENT RELATED TO THE ATP BOARD'S CONSIDERATION OF GREG CANALLY AS CANDIDATE FOR EXECUTIVE DIRECTOR

On January 27, 2023, the ATP Board of Directors indicated unanimously its interest in considering ATP Interim Executive Director Greg Canally as their recommended candidate for the permanent executive director position. Following guidance by the ATP Board to conduct community engagement, ATP gathered stakeholder feedback to inform the Board of Director's consideration of Mr. Canally's candidacy for the ATP Executive Director position. The engagement process included two community forums on February 16, 2023, and February 22, 2023 and meetings with members of the Community Advisory Committee, business community and ATP workforce. This engagement process also allowed stakeholders to provide feedback related to the qualities, values and attributes of the ATP executive director position.

### » ATP BOARD OF DIRECTOR LEADERSHIP

This report serves to summarize stakeholder input during the month of February prior to the ATP Board's consideration of an appointment of a permanent executive director at the ATP Board [Meeting](#) March 1, 2023.

In addition, attachments to this report include:

- A February 6 letter to the ATP Board of Directors from the Board Chair and Board Member Garza, who co-led the effort, providing a proposed engagement plan and timeline.
- A February 8 Community Forum Invitation distributed to Community Advisory Committee, Technical Advisory Committees, Austin City Council, CapMetro Board of Directors and stakeholders.
- A February 17 statement from Transit Forward regarding the Board's decision.
- A February 20 memo from the Community Advisory Committee regarding the decision.
- A compiled summary of feedback from the facilitation of the community forums and ATP employee forum.

### » OUTREACH

Invitations were distributed to organizations and stakeholder groups prior to the February Community Forums; specifically, ATP staff coordinated with the following: with the Community Advisory Committee; Technical Advisory Committee members; Transit Forward; Project Connect Ambassador Network (PCAN); City of Austin departments working on Project Connect as well as CapMetro volunteer committees to include Access Advisory Committee, Customer Satisfaction Advisory Committee, and Public Safety Advisory Committee to distribute the information. Information was made available on the Austin Transit Partnership website, as well as distributed to media partners who previously covered this issue or who had requested information. Additional outreach information is attached to this report.



(Pictured: Participants offering feedback at the Community Forum hosted at the ATP Headquarter Feb. 16)

**Community Forums:** Community members were invited to two Community Forums on February 16 and February 22, 2023, where Interim Executive Director, Greg Canally, was asked to share his thoughts about Austin Transit Partnership’s mission, the partnerships crucial to advance Project Connect, and the importance of the community’s involvement in Project Connect and specifically ATP’s work. The Community Forums were hosted at ATP Headquarters on 203 Colorado Street and at Mendez Recreation Center, 2407 Canterbury Street. The question and answer sessions were recorded so that interested stakeholders unable to join forums may also access the information online.



(Pictured: Feb. 16 Community Forum at ATP Headquarters)



(Pictured: Community member raises question at Feb. 22 Community Forum held at Mendez Recreation Center)

Audio recording and transcripts for both Forums are available online at [www.atptx.org/leadership](http://www.atptx.org/leadership). Click on the “Executive Director Recruitment” tab for this information as well as more information overall on the executive director recruitment process.

## ADDITIONAL STAKEHOLDER MEETINGS

Additional stakeholder meetings included:

- » Meeting with the Community Advisory Committee Governance Workgroup attended by Chair Castro de Barrera and Board Member Garza. (See attached to summary report a resolution from the CAC to the ATP Board of Directors.)
- » Meeting with leaders of the business community groups to include: the Downtown Austin Alliance, Greater Austin Chamber of Commerce, Real Estate Council of Austin, and AIA Austin.
- » Roundtable discussion with ATP employees and Greg where employees were also invited to participate in offering feedback related to the position itself following a facilitated question and answer session with Greg.

## EXECUTIVE DIRECTOR POSITION

Responsive to a recommendation that came from the initial CAC Governance Workgroup meeting on February 9, each community meeting provided stakeholders with an opportunity to provide feedback related also to the ATP executive director position – separate and apart from the input related to the candidate himself. Each meeting offered the opportunity to provide input about the qualifications, values, attributes, and community expectation of ATP’s top staff position. The participants were informed that the ATP Board of Directors may use the feedback to inform the Executive Director Job Description as well as the Board’s performance evaluation of the individual that holds the position of the ATP executive director. The following is a summary of feedback from the community forum sessions.

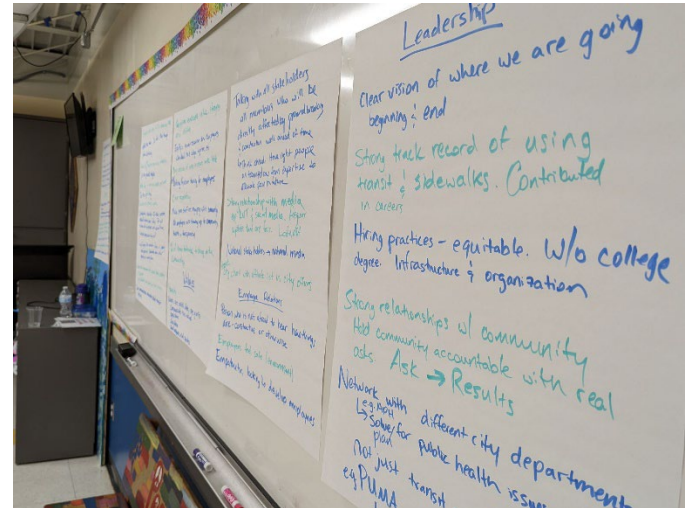
## LEADERSHIP EXPECTATIONS

Passion and championship for the work were both cited as important qualities for the leader of ATP to demonstrate as well as actual utilization of the transit system in order to obtain “on the ground” experience. Feedback also indicated the leader of ATP should be inspirational, have a strong sense of accountability, and set a clear vision for the program, community and workforce. The leader should prioritize standards for equitable hiring practices and should have a strong relationship with community – demonstrating their priority for accountability and producing results. The Executive Director should seek input from diverse stakeholders who will be directly affected by Project Connect. In addition, there should be a high regard for community presence in the work of ATP to include ATP employees’ presence in the community. The leader should be a problem solver and be able to make decisions informed by community – to ensure program goals and community expectations are achieved. Feedback also reflects the leader should be a strategic thinker, aware of the workforce, industry, market trends and changes to include the cost of living. The leader should have a firsthand sense of Austin’s affordability challenges and a deep commitment to equity, diversity, and inclusion. Attached is additional information ATP staff has documented in support of the engagement efforts.

## VALUES

Stakeholders also highlighted a number of values at the Community Forums they would like to see an Executive Director hold, including honesty, authenticity and kindness. Participant feedback indicated the ATP Executive Director should be able to “meet people where they are” and be aware of and value individuals’ lived experiences. The feedback session highlighted the importance to the community of ensuring issues related to accessibility are prioritized. Feedback also reflected the importance of being fair, earnest, and “down to earth” when delivering information are all values and traits necessary in this position.

Other factors indicate the leader should look for opportunities to connect with community champions and advocates and should seek avenues to share progress and challenges. ATP’s executive director should be approachable, responsive and available. Attached is additional information documented by ATP staff supporting the engagement efforts.



## PERFORMANCE EVALUATIONS

Feedback related to the cadence of performance reviews indicated a preference for, at minimum, annually highlighting the importance of community voice to be taken into consideration as well publicly posted “check points” so there is communication in advance related to performance reviews. As it relates to evaluation metrics, feedback related to leadership expectations and values should be taken into consideration as well as metrics related to the ATP organization, project delivery, risk management, and communications.

Attached is additional information documented by ATP staff supporting the engagement efforts.

## BOARD AGENDA ITEM MARCH 1, 2023

The ATP Board of Directors will consider an action item on the March 1, 2023, Board Meeting Agenda related to the appointment of Greg Canally as the ATP Executive Director. This Report also will serve as additional back up to such item. For additional information or questions related to this matter, please contact: Rebecca Giello, Chief of Staff, [Rebecca.Giello@atptx.org](mailto:Rebecca.Giello@atptx.org).



## ATTACHMENTS

## ATP BOARD ENGAGEMENT LETTER & TIMELINE

February 7, 2023

Dear Colleagues:

We appreciate the opportunity to update you on the next steps following the guidance given by the ATP Board of Directors at the ATP Board Meeting on January 27, 2023. As you recall, the Board publicly indicated its interest in considering Greg Canally as the sole candidate for ATP's Executive Director position. Since the January meeting, we have started working with ATP staff to develop a recommended process to engage the community around the sole candidate consideration in accordance with Section 4.2.2 of the Joint Powers Agreement, as further detailed below.

*4.2.2 Executive Director. In accordance with the Bylaws, the ATP Board shall appoint an Executive Director. The ATP Board shall conclude an independent analysis to determine the appropriate leadership model for ATP no later than March 31, 2022. The independent analysis shall include a community engagement process with input from the CAC, technical advisory committees, and others. After careful consideration of such analysis, the ATP Board shall determine its leadership model in its sole discretion. Further, the ATP Board shall make any Executive Director appointments in its sole discretion. The ATP Board shall establish a community engagement process for such appointments which is appropriate for the appointment of senior leadership and similar to the process described above. The Executive Director of ATP shall be the chief executive officer of ATP and shall in general supervise and control all of the business and affairs of ATP.*

### Background

In April 2022, the Board decided unanimously to move forward with an independent executive director for ATP – a decision the Board made in its sole discretion following a community engagement process and with expert assistance from The Eno Center for Transportation. A copy of Eno's report [Austin Project Connect: Independent Review of Governance and Leadership](#) is available for your reference. The April 2022 [Resolution](#) also immediately appointed Greg Canally as ATP's Interim Executive Director and named two Board Members to come back to the Board with a process to hire a permanent Executive Director.

As a part of the initiative and Board direction, ATP staff initiated a solicitation for a national recruiting firm in September 2022, which resulted in one respondent, Affion Public. Because the firm has a demonstrated track record of successful executive placements and is an existing contractor with ATP, the Chair directed staff to engage Affion to advise the Board on its recruitment needs. An important factor in addressing the decisions related to ATP's governance now has been the desire to have a fully seated and complete Board that can advance these discussions as a collective body. The January meeting provided this important opportunity, as well as the opportunity to evaluate ATP's accomplishments under the interim leadership of Greg Canally and to review the work ahead required for ATP to continue to conduct its role for Project Connect.

It is a pivotal time for ATP and Project Connect. The next few months – guided by community input – will set the course for the work over the next several years. The continued stability of the organization, including the administrative oversight of the program, is a priority of the Board as evidenced in the Board's unanimously supported interest in moving forward with a community process to consider a sole candidate for ATP Executive Director.


To that end, the following engagement timeline serves to offer multiple opportunities for input from the community. The next Board Meeting has been moved to March 1, 2023, to allow more time for this process.

**Proposed Sole Candidate Community Engagement Process:**

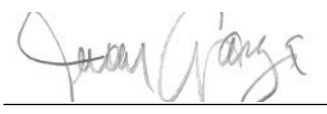
<b>February 9</b>	Listening & Knowledge Sharing Session with the Community Advisory Committee (CAC) Governance Committee
<b>February 10</b>	Listening & Knowledge Sharing Session with additional transit stakeholders and business community leaders
<b>Week of February 13</b>	Community Forum, open to the public
<b>Week of February 20</b>	Community Forum, open to the public
<b>February 24</b>	Agenda Item to be posted for consideration by the Board of Directors informed by the community forums
<b>February 28</b>	Distribution and online publication of community input summary to report feedback received throughout the process
<b>March 1</b>	Austin Transit Partnership Board Meeting (opportunity for public comment)

The above referenced Community Forums will be posted as public meetings to ensure all interested CAC members and Board Members may attend. Please prioritize attending as many meetings as your schedule permits. In addition, ATP staff will support these meetings and will work with stakeholders to involve the CAC and Technical Advisory Committee (TAC) members, all of whom continue to be instrumental to the program. ATP staff will ensure a communications process that keeps this Board apprised with information as we go forward. All information received as a part of this process will be provided to each member.

Kind regards,



Veronica Castro de Barrera  
Chair



Juan Garza  
Board Member

## COMMUNITY FORUM INVITATION

### Austin Transit Partnership Community Forums

An invitation for community input as the ATP Board considers sole candidacy  
for ATP Executive Director

Dear Community Partners:

You are invited to join community stakeholders and the Austin Transit Partnership (ATP) Board of Directors at Community Forums to be hosted February 16 and February 22. The Community Forums are open to the public. The ATP Board will consider Interim Executive Director Greg Canally as a sole candidate for ATP's executive director position at its next board meeting March 1, 2023. The Board Meeting will also provide the public an additional opportunity for input.

The community forums will offer:

- An opportunity to hear from ATP Interim Executive Director, Greg Canally;
- A conversation with questions contributed from stakeholders; and
- An opportunity to provide input related to the executive director position for ATP.

#### COMMUNITY INPUT OPPORTUNITIES:

##### ***ATP Community Forum***

Date: Thursday, February 16, 2023

Time: 6 to 8 pm

Location: Austin Transit Partnership, 203 Colorado St.

##### ***ATP Community Forum***

Wednesday, February 22, 2023 Time: 5:30 to 7:30

pm

Location: Mendez Recreation Center, 2407 Canterbury St.

*Multi-Purpose Room*

##### ***ATP Board Meeting***

Date: March 1, 2023

Time: 9am

Location: Austin Transit Partnership, 203 Colorado St.

At the ATP Board Meeting March 1, 2023, the public may sign up to address the Board on issues related to the agenda or other items as designated during the sign-up process. Interpretation for Spanish-speaking and American Sign-Language (ASL) persons will be provided at each event. Reasonable accommodations can be made for additional languages with a 24-hour notice of event start time.

For questions or to request accommodations, please contact the ATP Board Relations staff member, Chloe Maxwell at [ATPBoardinfo@atptx.org](mailto:ATPBoardinfo@atptx.org). For media inquiries, please contact ATP Senior Communications Specialist Jorge Ortega at [Jorge.Ortega@atptx.org](mailto:Jorge.Ortega@atptx.org). Information is published to ATP's website: <https://atptx.org/atp-leadership/executive-director-searchrecruitment>.



## MEMO FROM THE COMMUNITY ADVISORY COMMITTEE (CAC)

### MEMORANDUM

**TO:** Austin Transit Partnership Board Chair and Board Members

**FROM:** Awais Azhar, Chair, Project Connect Community Advisory Committee

**CC:** Greg Canally, Interim Executive Director, Austin Transit Partnership  
Casey Burack, Executive Vice President, Business and Legal Affairs, Austin Transit Partnership  
Rebecca Giello, Chief of Staff, Austin Transit Partnership

**DATE:** February 20, 2023

**SUBJECT:** Austin Transit Partnership Executive Director Selection Recommendations

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After careful deliberation and considering the importance of the role of the Executive Director of the Austin Transit Partnership (ATP) in delivering a successful Project Connect that will serve the needs of Austin's riders, and in light of the further need to prioritize the challenging light rail implementation decisions that lie ahead, the Community Advisory Committee (CAC) acknowledges the right of the ATP Board to proceed with the decision to appoint Mr. Canally as Executive Director. We affirm that Mr. Canally is a strong candidate, has proven clear leadership in his role as Interim Executive Director for the organization, and we appreciate his commitment to working closely with the CAC.

We understand that the ATP Board has faced a challenging choice and has brought this decision to the public with the intention of finding the outcome that will best support the health and success of the project. We appreciate the efforts of the Board Chair and the Board in engaging with the CAC and the community to get their feedback on this decision in the past several weeks.

However, the unfolding sequence of events of the past month among all parties tasked with guiding Project Connect have led to serious concerns in the community about governance, transparency, and decision-making processes. As an independent entity, it is vital that Austin Transit Partnership work to affirmatively build trust with the community.

To this end, we ask that Board carefully consider the following recommendations moving forward:

- ATP Board members should discuss and establish a clear protocol for making public announcements about Project Connect. It is critical that all communication with the public is clear and transparent so that there is no confusion among community members regarding key decisions, including distinguishing between personal board member opinions and official communication.
- In the past, the ATP Board has made key commitments to the public about equity, transparency, and community engagement. It is vital that in communications with the community and with the CAC, all board members communicate and engage with the community in a manner that upholds these commitments.
- It is crucial that, in all future processes that may impact service and equity outcomes, the Board and staff commit to fully abiding by the Community Engagement Guiding Principles outlined in article 3.2.3 of the Joint Powers Agreement, wherever appropriate. This includes the following commitments:

- *“Opportunities shall allow time for community members to review materials, provide informed and meaningful feedback, and understand how feedback is incorporated before a decision is made.”*
- *“The Project Connect Community Advisory Committee shall be comprehensively consulted and involved in the process...”*
- *“All public engagement opportunities shall be highlighted on a publicly available and accessible calendar and shared through various communication methods with clear information on how community members can obtain further information.”*
- *“Prior to any public meeting, outreach, or engagement opportunity, the responsible party shall provide advance notice for meaningful participation to individuals, businesses, and organizations that will be impacted by the project.”*

While the CAC was not involved in the decision-making regarding the appointment of the President and CEO of the Capital Metropolitan Transportation Authority (CapMetro), we hope that in the future all three parties in charge of the implementation of Project Connect will provide the CAC with an opportunity to give feedback on key decisions.

### **CAC Recommended Commitments and Characteristics for Executive Director, President, and CEO**

The CAC has also taken time to consider some key characteristics and commitments we believe the Executive Director of the ATP and the President and CEO of CapMetro, both tasked with a project of such monumental importance, should uphold.

- **Commitment to Equity throughout Project Connect, including within the organization’s internal managerial culture and hiring practices.** This includes a commitment to striving to hire and maintain pay equity for a diverse workforce, with professionals from Black, Brown, Indigenous, and Immigrant communities, as well as people with disabilities, and people of all genders and sexual orientations, and people who have active lived expertise as transit users.
- **Commitment to serving the needs of Austin’s core transit users.** This includes taking time to use public transit, and striving to listen to, and understand the challenges faced by Austin's transit users, and making the attention to those needs a priority for the organization at every stage in design, construction, and operation of the project.
- **Commitment to labor justice and workplace safety.** This includes striving to ensure that contractors working on the project are upholding labor standards and maintaining safe job sites, including providing third-party monitoring opportunities.
- **Commitment to Accountability.** This includes meeting goals, making realistic promises, delivering on deadlines in a timely manner, engaging with the community, and taking responsibility for the organization’s work.
- **Commitment to actively consulting and working with the Community Advisory Committee.** This includes feedback on planning, implementation, construction, operation, governance, community engagement, and all other equity related matters.

### **Next Steps Associated with Project Governance**

Furthermore, the CAC recommends that the following tasks associated with project governance and implementation be considered in the coming months, particularly at the staff level. The ATP Board and leadership of the other parties should consider taking any necessary actions after the critical decision making process associated with updating the light rail implementation plan this spring and summer is completed.

- Coordinate with the City of Austin and CapMetro to review, revise, and expand, as necessary, the work done on the Joint Powers Agreement to further delineate roles and responsibilities for each party in a manner that leads to a successful Project Connect and further details ATP as the principal entity responsible for implementing the project in an independent manner.
- Coordinate with the Austin City Council and CapMetro Board to identify concerns related to board structure and appointments and move forward with joint action by the three governing bodies to advance comprehensive governance changes. This includes working with the CAC to equitably advance any conversation on potential board expansion and appointment of new board members.

If you should have any questions, I can be reached at [bc-awais.azhar@austintexas.gov](mailto:bc-awais.azhar@austintexas.gov).

Date of Approval: February 20, 2023

Record of the vote: Approved on a 8-0-0 vote (Committee Members Almanza, Broadwater, Gorse, Snitchler, and Taylor absent)

Attest:  , Project Connect Community Advisory Committee Chair

## LETTER FROM TRANSIT FORWARD AUSTIN FEBRUARY 16, 2023

Good evening ATP Chair Castro de Barrera and Board Member Garza,

Thank you very much for helping steer the process for the ATP Executive Director. We know how much work this is, and we are deeply and sincerely appreciative of your effort for this critical process.

Transit Forward, an Austin based 501c3 with a mission to educate and engage our fellow Austinites about transit with a focus on Project Connect, has the following official statement regarding the consideration of Greg Canally as the permanent Executive Director of the Austin Transit Partnership (ATP). It is below, and if you have any feedback for myself or Chair Patrick Rose please do not hesitate to let us know.

“First, we believe strongly that Mr. Canally deserves the opportunity to serve as permanent Executive Director for ATP. He has exhibited numerous qualities in his service in an interim capacity, including a high work ethic, a deep understanding of the region’s fiscal policies, the ability to communicate in a clear and effective manner to numerous different audiences, excellent responsiveness, and an aptitude in developing critical relationships with the Federal Transit Administration. Therefore, we fully encourage the ATP Board to appoint him with a permanent contract in an effort to continue the development of Austin’s Light Rail program without interruption.

Second, we are very thankful for the opportunity to provide input as to the Executive Director position generally. At Transit Forward, we consistently promote inter-department, intra-agency and inter-agency collaboration and efficiency. Therefore, we ask that one of the overall deliverables for the position be to establish clear roles and responsibilities for the completion of Project Connect; both within the organization, and externally with the City of Austin and Capital Metro.

Furthermore, Transit Forward insists on accountable and transparent execution of voter-approved transit projects, including Prop A in 2020, and advocates at all necessary levels of elected and appointed leadership in furtherance of on-schedule, on-budget delivery. For this reason, we encourage the ATP Board to build into any contract the execution of hard, well-defined deliverables in order to make sure our world class city gets a world class transit system as soon as possible.”

Sincerely,

Bill McCamley

Executive Director

TransitForward.org



## LETTER FROM ATX MOBILITY COALITION FEBRUARY 27, 2023



Austin Area  
Urban League

Empowering Communities.  
Changing Lives.



Dear Members of the Austin Transit Partnership Board of Directors, and Capital Metropolitan Transportation Authority Board of Directors,

Thank you for your service to the community.

The ATX Mobility coalition would like to highlight concerns that have been raised by the community with regards to transparency and process surrounding the appointment of the Capmetro CEO, and the Executive Director for Austin Transit Partnership. On January 30th,, CapMetro board chair announced after a closed-door session that, “The decision was made to move forward with him as Executive Director” in reference to the appointment of Greg Cannally. If such were indeed the case, this would entail a violation — or a very bad faith interpretation — of article 4.2.2 of the JPA (and the Texas Open Meetings Act), which was approved by the City of Austin, Capmetro, and ATP in the fall of 2021. That article clearly states:

“The ATP Board shall establish a community engagement process for such appointments which is appropriate for the appointment of senior leadership and similar to the process described above.”

Furthermore, in article 3.2.3, the JPA established “Community Engagement Guiding Principles,” which includes the following:

- *Opportunities shall allow time for community members to review materials, provide informed and meaningful feedback, and understand how feedback is incorporated before a decision is made.*
- *Results of community engagement, including recommendations and policy/program decisions, will be transparently and accountability documented.*
- *The Project Connect Community Advisory Committee shall be comprehensively consulted and involved in the process, including being regularly informed in advance of Project Connect-related equity and anti-displacement actions being brought to any of the Parties' policy making bodies in a timely manner that allows for informed decision-making so that they can effectively assist staff with community engagement processes a space for community members to provide feedback on the program.*

- *All public engagement opportunities shall be highlighted on a publicly available and accessible calendar and shared through various communication methods with clear information on how community members can obtain further information.*

Had the board indeed made this determination, without an appropriate process, it would have been a violation of its core legal and public commitments to the community. Board Chair Castro de Barrera has since clarified this position with a press statement and has assured the community that such commitments indeed continue to be upheld.

However, the damage, to some extent, was already done. The community was led to believe that the board selected Mr. Cannally as a “sole candidate” without a good faith attempt at upholding its own Joint Powers Agreement. This has shaken public trust in the Board of the Austin Transit Partnership and has exposed the project to risk at a crucial moment, in which Board members should be making every effort to build and protect community trust.

Furthermore, such a decision would be in direct contradiction to the Eno Center analysis, which clearly recommended that: “Should the ATP Board adopt a separate leadership model, it should be prepared to spend considerable time recruiting a qualified executive.”

Similarly, although the process for appointing the CEO of Capital Metropolitan Transportation Authority is not governed by the Joint Powers Agreement, it is the belief of the ATX Mobility Coalition the “Community Engagement Guiding Principles” should be applied throughout Project Connect, including on major decisions about governance and changes in executive leadership of the agencies developing the program.

We would like to call your attention to the fact that neither ATX Mobility Coalition, nor the Community Advisory Committee for Project Connect, nor the larger community of transit users, was in any way notified or engaged in the selection process for the new President/CEO of CapMetro. There was no transparent public posting of the candidates, and, to our knowledge, no open community meetings with publicly posted agendas, there was no meaningful stakeholder engagement. We look forward to working with Dottie Watkins, and appreciate the experience she brings to the leadership of this vital project. But the process for the selection did not live up to the public commitments made by the directors, nor did it live up to our community standards. For the future and success of this project, we must do better.

It is crucial that both Capmetro and ATP maintain a clear commitment, and work to uphold and build community trust; this can only be accomplished by a commitment to transparent public process, meaningful community engagement, and persistent oversight. We urge the board to take serious stock of the damage to community trust that such communication has caused and to take meaningful steps to repair that damage. We recommend the following:

- All board members must be intimately familiar with the commitments in the Joint Powers Agreement, and publicly demonstrate its commitment to upholding the “Community Engagement Guiding Principles” in article 3.2.3 of the JPA.
- New Board members should be asked to read and review the Eno Center analysis, and become familiar with the language of its recommendations, which are key to developing and implementing a healthy program.
- The Board must work to improve its communications protocols with the general public, and must improve its communication with the CAC and other advisory bodies in the project.
- The board must strive to repair trust with the community, Including publicly acknowledging the harm caused by the apparent violation of the JPA.

As always, we make ourselves available as allies, and strive for a successful community project.

Sincerely,  
ATX Mobility Coalition

Austin Justice Coalition  
Workers Defense Project  
PUMA - People United for Mobility Action  
Austin Area Urban League  
Planning Our Communities



## COMMUNITY FORUMS OUTREACH INCLUDED THE FOLLOWING:

Media Outlets with prior coverage or inquiries on issue	
	Austin Monitor
	KUT
	KXAN
Project Connect	
	Project Connect Community Advisory Committee (CAC)
	Austin City Council
	CapMetro Board of Directors
Austin Transit Partnership Technical Advisory Committees	
	Engineering, Architecture and Construction Technical Advisory Committee (EAC)
	Finance and Risk Advisory Committee (FAR)
	Planning, Sustainability, Equity and DBE Advisory Committee (PSEC)
CapMetro Volunteer Committees and/or Professional Networks	
	Access Advisory Committee (ACCESS)
	Customer Satisfaction Advisory Committee (CSAC)
	Public Safety Advisory Committee (PSAC)
	Project Connect Ambassador Network (PCAN)
U.S. Green Building Council (USGBC) Allied Partners	
	Austin Energy
	Austin Justice Coalition
	Committee on the Environment (COTE)
	Home Builders' Association
	Austin Parks and Recreation Department (PARD)
	South-central Partnership for Energy Efficiency as a Resource (SPEER)
	Sustainable Food Center
	Texas Impact
	Texas Property Assessed Clean Energy (PACE) Authority
Community Partner Organizations (information may have been shared with additional organizations)	
	Greater Austin Asian Chamber of Commerce
	Transit Forward
	City of Austin, Austin Transportation Department (ATD)
	Greater Austin Black Chamber of Commerce
	City of Austin Urban Transportation Commission (UTC)
	Downtown Austin Alliance (DAA)
	Greater Austin Chamber of Commerce
	Greater Austin Hispanic Chamber of Commerce
	Real Estate Council of Austin (RECA)
	The American Institute of Architects - Austin Chapter (AIA)



## DISCUSSION GROUP FEEDBACK | February 16, 2023

Information below reflects notes taken by the facilitator at the community forum to capture specific feedback from participants attending the in-person event.

Desired Skills for the Executive Director of the Austin Transit Partnership
Leadership, passion, the ability to create trust, expertise in at least one of the elements important to the project. And, most importantly, a CHAMPION. A champion may not always win on the scoreboard, but the E.D. must demonstrate commitment to doing their best
Ride the transit system. On-the-ground experience is important (Seconded by another attendee)
Have ongoing conversations with people you don't usually work with - especially the marginalized and people who depend on transit
Ethical - do the right thing even when no one is looking
Champion - have public board events with media presence; Must have a strong communication plan and be prepared with a media protocol and consciousness
Be prepared to address opponents of the project
Be conscious of all the board members and who they represent
Strong sense of accountability to the community and ATP; Somebody who will take ownership
Strong commitment to equity - including in hiring practices: ATP should hire core transit riders, people with disabilities, black, brown, etc.
Strong leadership skills
Trust in team
Be collaborative, but decisive; Commit to decisions
Inspirational
Deliver difficult messages with sensitivity and without being in a rush. Do not be afraid to take time to answer
Realism when it comes to timelines and promises; It is better to under promise and over deliver
Flag difficulties for the community ahead of time
Risk management
Day-to-Day leadership
Set expectations
Emotional intelligence
Resiliency
Be here and know stuff - with an emphasis on being here
Provide structures to avoid bottlenecks in work - e.g. staff who have to rely on once-a-week or once-a-month check-ins before they can move forward with a solution tend to bottleneck projects
Values
Transparency
Honesty
Earnestness - be down-to-earth in the approach for delivering messages
Sense of fairness
Equity
Humility
Public agency - accountable to the public (value of service)
Respect
Efficiency and innovation*

Collaboration: recognize that this project is part of a larger whole. For example, the use and availability of water affects everyone in Austin. Understand the whole picture in relation to the project.
Problem solver, strategic thinker*
<b>Employee Relations</b>
Retention, engagement, and recognition
Awareness of the workforce, the market, and cost of living
Diverse representation throughout the team
Equity, diversity, and inclusion should not be just checkboxes
Regular check-ins: talk to people who work on the project weekly, without micromanaging. The team needs to understand expectations and the Executive Director needs to understand what the team is doing
Management by walking around - talk to everyone, not only the people who report to you
Strong commitment to safety, worker protections, and respect for labor unions
Texas is the deadliest state for construction workers, we need to revisit the Better Builder standards
Trust employee expertise
<b>How often should we evaluate these goals?</b>
Annual review, at minimum
Provide opportunities for community voice, periodic checkpoints which are publicly posted and communicated in advance
<b>Evaluation criteria</b>
Everything we discussed plus
Organizational metrics
Project delivery, meeting markers to stay on track with annual checkpoints
Timelines need to be put out to the public, early communication is essential especially early messaging about delays (e.g. two-year delay was suddenly announced in the media without community knowledge)
Transparency and budget schedule
Formal and informal evaluations - monthly, quarterly check-ins. Don't wait until the annual evaluation. There should be constructive criticism throughout the year
<b>Organization</b>
Look for opportunities to connect with community champions because they are strong advocates. Be sure to share progress and challenges. The CEO can lead this culture.
<i>*NOTE: This comment was added by the facilitator</i>

## DISCUSSION GROUP FEEDBACK | February 22, 2023

Information below reflects notes taken by the facilitator at the community forum to capture specific feedback from participants attending the in-person event.

Leadership
Clear vision of where we are going - beginning and end
Strong track record of using transit and sidewalks which has contributed in career
Hiring practices – equitable; Hire people without college degrees. Not only to build the infrastructure, but throughout the organization
Strong relationship with community; Hold community accountable with real asks. An ask of the community should produce results
Network with different city departments (besides transportation and public housing). For example, APH can help solve for public health issues by posting walking maps at transit stops. PUMA, for example, pays community members to conduct research on their own community
Talk with all stakeholders (all members who will be directly affected by groundbreaking and construction) well ahead of time; Think ahead; Have the right people on team to draw from expertise to alleviate pain in the future
Strong relationship with media, especially KUT and social media; Ensure that regular updates are fair; Consider being on Latin USA
If this is a federal project, consider the national stakeholders and national media
Employee Relations
Person who is not afraid to hear how things are - constructive or otherwise
Employees feel they work in a safe environment
Recognize employee value, strengths and abilities
Equity = invest resources in employees who don't have college degrees, etc.
Be conscious of wage increases = equitable
Offer "Undoing Racism" training for employees
Clear expectations
Make sure staff are engaging with community all employees are showing up to community events = transparency
Percent of time dedicated to being in the community
Values
Honesty
Words are small, deeds are giants. Communicate the values. Open door. Available. Provide real answers, not pivots
Structure work week to percentage in community work
Walk the trails. On feet. Move through Austin - not driving
Know city also through the eyes of the community
On the ground, tangible
Ride bus at least once a month, once a week
Do the right thing
Ownership of positive and negative
Considerate, available - CE events accessible different locations, times and days; Put self in shoes of the people who aren't there; Meet people where they are; Willingness to be considerate; Aware of people's live experiences; Understand where other people are coming from
Understand community and combine needs, creativity in solutions. e.g. sidewalks that connect from buses to trains
Clear communication, information about transit options

Interconnected maps of mobility
Connect with departments (e.g., APH for health signage)
Architecture of Love & Care; Social emotional background of architecture; Create synergy to help the houseless; Look at the needs of all in the community; Demonstrates passion and need to solve for city issues
<b>Evaluation</b>
Ambassador program (e.g., watershed has an ambassador program) community members who work with board members to evaluate E.D. annually
Like the economist (not accountant) background; Gets big picture; Foundational = big picture; Garners respect of all stakeholders
Evaluate every trimester: check-in with community
Timeline with milestone deliverables; Hold accountable
Have solutions for problems that are brought to the board
Not slow like the rest of Austin; Not so much talking, more doing
ATP Team Feedback - from the whole organization
Post contact information everywhere (e.g., social media, local HEBs with QR code)
Create groups that champion ATP's efforts; This existed before the election, activate these groups again
Create feedback opportunities on transit and at stops
Accessibility (with a capital A) who within ATP represents the interests of the disability community

## DISCUSSION FROM ATP TEAM DISCUSSION | February 23, 2023

*Information below reflects notes taken by the facilitator at the employee roundtable event to capture specific feedback from participants attending the in-person event.*

ATP Team Discussion Feb 23, 2023
Fiduciary responsibility - we do our business following the rules; We need to address that responsibility; Leader needs to own it
Be conscious of how we do business and how we fairly and equitably distribute that business
Responsible
Accountable
Not just a figurehead standing there looking pretty
Second on the fiduciary duty - public perception of how the money is being spent; ED is accountable to both the board and the taxpayers; Funds should be spent wisely
We need to regain trust that has been lost; Community Engagement has been quiet about progress on the project
Convener
The idea of being a new organization is okay internally, not externally
CapMetro's issues are our issues - shared responsibility
Strong leader; Communicate with employees, partners, stakeholders
Leading by example - inspires trust, support team
Small things matter such as timely responses to email
Takes over the room and has respect from all peers
Can we deliver? Counting on ED to lead us through the effort to implement light rail
Consistency of being there; Momentum that stays; Many of us made sacrifices as transplants to be here - would like to know that there is an opportunity for career growth
Understands the value of Community Engagement, outreach. Cannot be rushed. Illustration of a car. Community Engagement is the "paint and body" department. Give Community Engagement the time it needs to deliver a quality product. Cannot be rushed. Do not take time away from "paint and body" Can't expect us to do "God's work" in one day. People are drawn to the car by what it looks like before they pop the hood to be further impressed by how it works.
Respect. The Executive Director should defer to expertise on the team
ED needs to back staff decisions up to the board. The public will be hearing tough decisions and tough information.
The buck stops at the Executive Director
The foundation of good leadership is a good relationship with the staff
Decisiveness
Be able to make a decision and know that not everyone is going to agree
Create a structure of trust; Delegate decisions so that it doesn't have to roll all the way up
People have peace of mind when they know how a decision is going to be made; Establish public metrics, public KPI. The more public, the more secure everyone feels
People who may not agree with the decision, can respect the process because they can see how the decision is made. They see the bones. Don't dumb it down, let the people get as involved as they want to get.
Process to make a decision – show work, set expectations
Show how you used the feedback
Executive Director sets the culture; Bring staff along to allow for innovation and creativity.
Listen to people

Organization should not stifle conversations
Define things you want and what you don't want so you don't try to fit a square peg into a round hole
Careful not to use the same communication with the staff as with the community; Bring staff along with the thought process, do not use loose, philosophical explanations internally
Authenticity in spoken word - especially with staff
Setting system standards
Set clearer expectations of partnership with City of Austin and CapMetro regarding confidentiality and data sharing; The three parties are keeping things internal and consultants are keeping things from staff
ED should ask the triparty board to set a system to create standards of transparency
What is the underlying understanding of partnership
Different departments in the city should not be treated differently
Rooted in procedure
Unified in defining what is proprietary
Partnership with CapMetro is natural, but we need to be on the same page with the City of Austin
Communicate the when and why
Fearless leader: don't lead from a place of fear of public information requests, etc.
Knit the organization closer together



***Austin Transit Partnership Board of Directors Resolution***

***Meeting Date: 3/1/2023***

***ATP-2023-004***

***Approval of a resolution appointing Gregory Canally as Executive Director of the Austin Transit Partnership and authorizing the Board Chair to negotiate and execute an employment contract for the same.***

**SUBJECT:** Discussion and potential approval of a resolution appointing Gregory Canally as Executive Director of the Austin Transit Partnership and authorizing the Board Chair to negotiate and execute an employment contract for the same.

**FISCAL IMPACT:** To be determined based on any change to executive compensation.

**BUSINESS CASE:** Does not apply.

**EXECUTIVE SUMMARY:** On January 27, 2023, the ATP Board of Directors unanimously passed a motion recommending ATP interim Executive Director Greg Canally be presented as the sole candidate for the permanent executive director position. Following guidance given by the ATP Board of Directors, ATP conducted a community engagement process to consider Mr. Canally's candidacy for the executive director position. The community engagement process included two community forums on February 16, 2023 and February 22, 2023. The community engagement process culminates at the March 1, 2023 ATP Board of Directors, where community stakeholders will have an opportunity to make comments regarding the candidacy of Mr. Canally. This Resolution would appoint Gregory Canally as permanent Executive Director of Austin Transit Partnership and authorize the Board Chair to negotiate and execute an employment contract for Mr. Canally.

**RESPONSIBLE DEPARTMENT:** Legal.

**PROCUREMENT SUMMARY:** Does not apply.



## RESOLUTION OF THE AUSTIN TRANSIT PARTNERSHIP

### BOARD OF DIRECTORS

STATE OF TEXAS  
COUNTY OF TRAVIS

Resolution ID: ATP-2023-004

***Approval of a resolution appointing Gregory Canally as Executive Director of the Austin Transit Partnership and authorizing the Board Chair to negotiate and execute an employment contract for the same.***

**WHEREAS**, pursuant to Section 4.2.2 of the Joint Powers Agreement (the "JPA") among the City of Austin (the "City"), the Capital Metropolitan Transportation Authority ("Capital Metro"), and Austin Transit Partnership ("ATP"), the ATP Board of Directors (the "ATP Board") has been directed to appoint an Executive Director of ATP; and

**WHEREAS**, on April 20, 2022, the ATP Board adopted Resolution No. 2022-004, appointing Gregory Canally as Interim Executive Director of ATP; and

**WHEREAS**, on January 27, 2023, the ATP Board of Directors unanimously passed a motion recommending that Mr. Canally be presented as the sole candidate for the permanent executive director position; and

**WHEREAS**, after having conducted a community engagement process and receiving community and stakeholder feedback regarding the candidacy of Mr. Canally, the ATP Board desires to proceed with the appointment of Mr. Canally as the permanent Executive Director of ATP;

**NOW, THEREFORE, BE IT RESOLVED THAT**, the ATP Board hereby appoints Gregory Canally as the Executive Director of ATP, effective March 1, 2023 (the "Effective Date"). From and after the Effective Date, the Executive Director shall generally supervise and control all the business and affairs of ATP in accordance with Section 3.4 of ATP's Bylaws; and

**BE IT FURTHER RESOLVED THAT**, the ATP Board hereby authorizes the Board Chair to negotiate and execute an employment contract with Gregory Canally for the position of Executive Director, for a contract term of two years and a base salary of \$\_\_\_\_\_ per year; and

**BE IT FURTHER RESOLVED THAT**, the General Counsel, and the ATP Board Chair (or their respective designees) are hereby authorized to take all actions as are necessary and appropriate to carry out the purposes of this Resolution.

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**Brandon Carr**  
**Secretary of the Board**

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**Date**





**Austin Transit Partnership Board of Directors Resolution**

**Meeting Date: 03/01/2023**

**ATP-2023-004**

***Resolution appointing Gregory Canally as Executive Director of the Austin Transit Partnership and authorizing the Board Chair to negotiate and execute an employment contract for the same.***

**SUBJECT:** Approval of a resolution appointing Gregory Canally as Executive Director of the Austin Transit Partnership and authorizing the Board Chair to negotiate and execute an employment contract for the same.

**FISCAL IMPACT:** To be determined based on any change to executive compensation.

**BUSINESS CASE:** Does not apply.

**EXECUTIVE SUMMARY:** On January 27, 2023, the ATP Board of Directors indicated unanimous interest in considering ATP Interim Executive Director, Greg Canally, as their recommended candidate for the permanent ATP Executive Director position. Following guidance from the ATP Board of Directors to conduct community engagement to help inform such decision, ATP has gathered stakeholder feedback to inform the Board of Director's consideration of Mr. Canally's candidacy. ATP's engagement process included two community forums, held on February 16, 2023 and February 22, 2023, and additional meetings with members of the Community Advisory Committee, business community and ATP workforce. The engagement process culminated on March 1, 2023 at the ATP Board Meeting where the public also had an opportunity to provide comment on his candidacy. The purpose of this resolution is to appoint Gregory Canally as permanent Executive Director of Austin Transit Partnership and authorize the Board Chair to negotiate and execute an employment contract with Mr. Canally.

**RESPONSIBLE DEPARTMENT:** Legal.

**PROCUREMENT SUMMARY:** Does not apply.

**RESOLUTION  
OF THE  
AUSTIN TRANSIT PARTNERSHIP  
BOARD OF DIRECTORS**

STATE OF TEXAS

COUNTY OF TRAVIS

**Resolution ID: ATP-2023-004**

***Approval of a resolution appointing Gregory Canally as Executive Director of the Austin Transit Partnership and authorizing the Board Chair to negotiate and execute an employment contract for the same.***

**WHEREAS**, pursuant to Section 4.2.2 of the Joint Powers Agreement (the "JPA") among the City of Austin (the "City"), the Capital Metropolitan Transportation Authority ("Capital Metro"), and Austin Transit Partnership ("ATP"), the ATP Board of Directors (the "ATP Board") has been directed to appoint an Executive Director of ATP; and

**WHEREAS**, on April 20, 2022, the ATP Board adopted Resolution No. 2022-004, appointing Gregory Canally as Interim Executive Director of ATP; and

**WHEREAS**, on January 27, 2023, the ATP Board of Directors unanimously expressed its interest in recommending that Mr. Canally be presented as the sole candidate for the permanent executive director position; and

**WHEREAS**, after having conducted community engagement and receiving community and stakeholder feedback regarding the candidacy of Mr. Canally, as well as the Executive Director position overall, the feedback gathered throughout the engagement process may be used by the Board of Directors to inform their decision to appoint Mr. Canally, as well as inform the Executive Director job description and performance evaluation goals and metrics; and

**WHEREAS**, the ATP Board desires to proceed with the appointment of Mr. Canally as the permanent Executive Director of ATP;

**NOW, THEREFORE, BE IT RESOLVED THAT**, the ATP Board hereby appoints Gregory Canally as the Executive Director of ATP, effective March 1, 2023 (the "Effective Date"). From and after the Effective Date, the Executive Director shall generally supervise and control all the business and affairs of ATP in accordance with Section 3.4 of ATP's Bylaws; and

**BE IT FURTHER RESOLVED THAT,** the ATP Board hereby authorizes the Board Chair to negotiate and execute an employment contract with Gregory Canally for the position of Executive Director, incorporating the terms set forth in Exhibit A attached hereto; and

**BE IT FURTHER RESOLVED THAT,** the General Counsel, and the ATP Board Chair (or their respective designees) are hereby authorized to take all actions as are necessary and appropriate to carry out the purposes of this Resolution.

\_\_\_\_\_  
**Brandon Carr**  
**Secretary of the Board**

**Date:** \_\_\_\_\_

**EXHIBIT A**  
**ATP Executive Director**  
**Contract Terms**

Term:	Three one-year terms, automatically renewing each year; Board Action required by November 30 to not renew; termination without cause or by mutual consent subject to severance of remainder of annual contract, but no less than 6 months
Base Salary:	\$365,000 per year; annual increase (amount and timing) same as ATP employees
Bonus:	None
Deferred Compensation:	\$1,875 per month
Other:	vacation, sick days, retirement plan, health insurance, cell phone commensurate with other ATP employees; 100% vested retirement