

**ORDINANCE NO. 21-01**

**AN ORDINANCE OF THE BOARD OF DIRECTORS OF THE  
WESTERN RIVERSIDE COUNTY REGIONAL CONSERVATION AUTHORITY  
ADOPTING PROCUREMENT POLICY MANUAL**

WHEREAS, the Western Riverside County Regional Conservation Authority (“RCA”) is a public agency of the State of California formed by a Joint Exercise of Powers Agreement (“JPA”); and

WHEREAS, pursuant to Section 19 of the JPA, RCA has the power to adopt such rules and regulations as the Board may deem necessary for the conduct of RCA's affairs; and

WHEREAS, RCA adopts purchasing policies and procedures pursuant to Government Code section 54201 *et seq.*; and

WHEREAS, RCA previously adopted Ordinance No. 08-02; and

WHEREAS, RCA recently appointed the Riverside County Transportation Commission (“RCTC”) to serve as the Authority’s management entity; and

WHEREAS, RCA seeks to adopt a purchasing policy that reflects highly ethical and professional standards in the management of its resources, and ensure that services, work, supplies, materials or equipment are acquired in a uniform manner at the best possible cost commensurate with the quality or qualifications needed; and

WHEREAS, RCA, under the management supervision of RCTC, seeks to run its operations as efficiently and effectively as possible; and

WHEREAS, RCTC has a procurement policy manual; and

WHEREAS; RCA and RCTC have worked to combine RCA’s purchasing policies and RCTC’s procurement policies into one procurement policy manual; and

WHEREAS, it is the desire of both agencies to adopt combined procurement policies.

**NOW, THEREFORE, THE WESTERN RIVERSIDE COUNTY REGIONAL  
CONSERVATION AUTHORITY HEREBY ORDAINS AS FOLLOWS:**

**SECTION 1.** RCA hereby adopts the Procurement Policy Manual attached hereto as Exhibit “A,” as the same may be amended by RCTC from time to time without need for further action by RCA.

**SECTION 2.** This Ordinance supersedes and replaces Ordinance 08-02 and any other purchase policies or guidelines previously adopted by RCA.

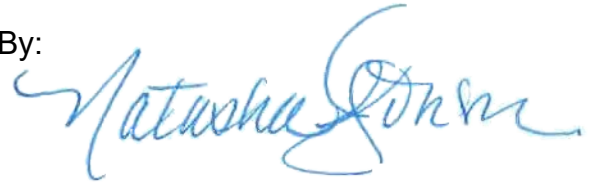
**SECTION 3:** If any provision or clause of this Ordinance or any application of it to any person, firm, organization, partnership or corporation is held invalid, such invalidity shall not affect other provisions of this Ordinance which can be given effect without the invalid provision or application. To this end, the provisions of this Ordinance

are declared to be severable.

SECTION 4. Effective Date. This Ordinance shall become effective thirty (30) days after its adoption.

INTRODUCED on the 1st day of February, 2021, and PASSED AND ADOPTED at the regular meeting of the Board of Directors at the Western Riverside County Regional Conservation Authority held this 1st day of March 2021.

By:

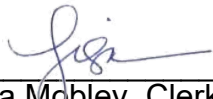


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Natasha Johnson, Chair  
Western Riverside County  
Regional Conservation Authority

ATTEST:

By:



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Lisa Mobley, Clerk  
Western Riverside County  
Regional Conservation Authority

**EXHIBIT "A"**  
**PROCUREMENT POLICY MANUAL**

[attached behind this page]



Riverside County Transportation Commission  
and  
Western Riverside County  
Regional Conservation Authority Procurement  
Policy Manual

(Revised February 2021,  
Effective March 31, 2021)

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## CHAPTER 1 – PROCUREMENT PROCESS

### 1.0 PURPOSE AND SCOPE

- A. The Riverside County Transportation Commission (hereinafter “RCTC” or “Commission”) and the Western Riverside County Regional Conservation Authority (“RCA” or “Authority”) procure goods and services using public funds. The Commission and Authority (collectively, “Agencies”) have a responsibility to uphold the public trust and maximize the value of public funds by using them as efficiently and cost-effectively as possible. As used herein, the term “Agency” is intended to refer individually, and interchangeably, to the Commission or Authority, as applicable.
- B. Employees of the Commission conduct the operations of both Agencies.
- C. This Procurement Policy Manual (Manual) sets forth a general procurement policy and set of standards that will govern the conduct of Agencies’ procurement activities and of Commission personnel engaged in those activities. The policies contained herein are advisory, not mandatory, except as related to applicable state or federal laws, and any deviation therefrom shall not render any contract of either Agency void or voidable. This manual is for the Agencies’ internal purposes only and shall not create any rights in any third parties. Compliance with the provisions in this Manual related to state or federal funding is required in order to maintain funding eligibility.
- D. This Manual is intended to supersede, in its entirety, the Commission’s *Procurement Policies Manual* which was adopted on September 11, 2019, and the Authority’s procurement ordinance, Ordinance No. 08-02, adopted on September 8, 2008.
- E. As used herein, “FHWA” refers to the Federal Highway Administration; “FTA” refers to the Federal Transit Administration; and “Caltrans” refers to the California Department of Transportation.

### 2.0 PROCUREMENT POLICY STATEMENT

- A. These procurement policies establish the guidelines and policies for procuring the goods and services necessary for the Agencies to carry out their responsibilities and duties. The policies are intended to maintain the integrity of each Agency’s procurement process, while ensuring that purchases are made in a cost effective, timely manner; with fair and open competition; and in accordance with all applicable laws and regulations.
- B. The objectives of this Procurement Policy Manual are to:
  - 1. Maximize the value received for each Agency expenditure of public funds;
  - 2. Protect assets and/or services purchased with public funds and ensure their application in each Agency’s interests;

3. Provide all vendors an equal opportunity to provide needed goods and/or services; and
  4. Protect the integrity and reputation of the Authority and its officers, and the Commission, its officers and employees.
  5. Ensure compliance with state and federal funding requirements, as applicable.
- C. Notwithstanding reference in this Manual to a single Agency, when in the best interest of the Agencies and consistent with legal requirements applicable to each Agency, the procurements described herein may be conducted as joint procurements.

### 3.0 PROCUREMENT STANDARDS

#### A. General

1. Contract Administration System. Each Agency will maintain a contract administration system that helps ensure that contractors perform in accordance with the terms, conditions, and specifications of their respective contracts.
  - a. Contract administration activities may include the following:
    - i. Receive, evaluate, and act on value engineering and other change proposals.
    - ii. Negotiate cost and schedule impact related to change orders and other contract modifications.
    - iii. Process disputes under the contract's disputes clause.
    - iv. Review and approve payments under any progress payments clause.
    - v. Ensure that invoiced personnel charges are for positions and classifications included in the contract. If new positions or classifications are required, they must be included pursuant to a written contract amendment dated prior to the date costs are incurred.
    - vi. Ensure that hourly rates and other costs are billed at the contracted rates. The contracted rates may not be changed, except in accordance with the terms of the contract, or as legally allowed based on specific findings approved by the applicable Agency members.
    - vii. Monitor progress and ensure timely notification of anticipated overrun.
    - viii. Monitor financial status and advise if contract performance is jeopardized.



- ix. Issue task orders and ensure that the basis for payment set forth in any task order is consistent with the terms of the contract and the hourly rates included in the contract, as applicable.
  - x. Perform property administration.
  - xi. Ensure contractor compliance with quality assurance requirements.
  - xii. Evaluate, for adequacy, the contractor's engineering efforts and management systems that relate to design, development, production and testing.
  - xiii. Evaluate and make recommendations on contractor requests for waivers and deviations.
  - xiv. Monitor contractor's small and disadvantaged business subcontracting.
  - xv. Ensure timely submission of required reports.
  - xvi. Administer special clauses such as drug and alcohol testing.
  - xvii. Receive, inspect, and accept or reject partial deliveries and final deliveries of all contract deliverables.
  - xviii. Assist in contract close out.
- b. For Commission contracts, the administration of construction contracts may be further supplemented by the Caltrans Construction Manual or other manual developed for a specific project, as required.
2. Avoid Duplicative Purchases. Commission staff should regularly review proposed and planned procurements to avoid purchase of unnecessary or duplicative items for either Agency.
  3. Lease vs. Purchase Analysis. Where appropriate, an analysis should be made of lease versus purchase alternatives and any other appropriate analysis to determine the most economical procurement approach.
  4. Value Engineering. When appropriate and in the Agency's best interests, the Agency will encourage the use of value engineering by including applicable clauses in contracts for appropriate equipment purchases and construction projects.
  5. Award to Responsive and Responsible Contractors. The Agency will make awards only to responsive and responsible contractors, as determined by the Agency, possessing the ability to perform successfully under the terms and conditions of a proposed contract. Consideration will be given to such matters as contractor integrity, compliance with public policy as implemented by applicable laws and regulations, record of past performance, and financial and technical resources.

- a. In connection with the responsibility determination for federally funded procurements, a check of debarment and suspension must be performed and documented in the procurement records.
- 6. Agency Rejection of Bids, Quotes, and/or Proposals. The Agency, to the extent permitted by applicable laws, may reject any and all bids, quotes and/or proposals and re-advertise at its sole discretion. The Agency should ensure that such rights are clearly stated in all Agency bid documents.
- 7. Procurement Records. Records sufficient to document the significant history of each procurement activity should be maintained and retained by each Agency in accordance with the applicable Agency’ records retention policy. At a minimum, these records should include:
  - a. The rationale for the method of procurement;
  - b. Selection of contract type;
  - c. Reasons for contractor selection or rejection; and
  - d. The basis for the contract price.
- 8. Specifications. The Agency will have clear and accurate contract specifications or statements of work that identify all requirements that offerors must fulfill. Additionally, written selection procedures for formal procurements shall be prepared to help ensure fair, unbiased evaluation of competing proposals.
  - a. For federally funded procurements, the Agency is prohibited from unduly restricting competition or placing unreasonable requirements on firms in order for them to qualify to do business (e.g., unnecessary experience and excessive bonding requirements).
- 9. Brand Name or Equal. The use of “brand name or equal” purchase descriptions may be permitted:
  - a. Only when an adequate specification cannot be provided without performing an inspection and analysis in time for the acquisition under consideration; and
  - b. When minimum needs are carefully identified and those salient physical and functional characteristics of the brand name product are clearly set forth in the solicitation.
  - c. For non-federally funded procurements, as otherwise permitted by state law.

This section is not intended to impose limitations on the Agency’s ability to require a brand name when the procurement is not federally funded and is not a “public work” or “public project” subject to the requirements contained in the California Public Utilities Code (PUC), for the Commission, or the Public Contract Code (PCC), for the Authority.

10. Audit Provisions. Every Agency contract wherein contractor or other entity is receiving Agency funds in excess of \$10,000 should include a provision allowing examination and audit of records related to the contract by the Agency's auditor for a period of three years after final payment under the terms of the contract.
11. Violations or Breach of Contract. All contracts exceeding \$100,000 should include administrative, contractual, or legal remedies for violations or breach of the contract by the contractor.
12. Termination Clause. All contracts in excess of \$25,000, and public works contracts in excess of \$2,000, should provide for the termination of the contract for the Agency's convenience, and all contracts should provide for the termination of the contract for default in cases of contractor breach or non-performance. Federally funded contracts in excess of \$10,000 must provide for both termination for convenience and cause.
13. Issues not Included in the Procurement Policy Manual. If a policy, procedure or particular strategy or practice is in the best interest of the Agencies, or either of them, and is not specifically addressed, nor prohibited by statute or case law, users of this Manual should not assume it is prohibited. Rather, the absence of direction should be interpreted as permitting the Executive Director to innovate and use sound business judgment that is otherwise consistent with law and within the limits of his or her authority.

B. Written Standards of Conduct

1. Conflicts of Interest. All members, officers, and other agents of each Agency, and Commission employees, must conduct the procurement process so as to avoid conflicts of interest, real or apparent. To maintain full and open competition, no Agency member, officer, employee or other agent, or his or her immediate family member, partner, or organization that employs or is about to employ any of the foregoing individuals may participate in the selection, award, or administration of any Agency contract of the applicable Agency if a conflict of interest, prohibited by law, would be involved. For federally-funded contracts, the foregoing shall also apply when any of those individuals previously listed has a financial or other interest in the firm selected for award. In addition to the foregoing, all procurements must be conducted in accordance with, as applicable, the most current version of the "Conflict of Interest Code for the Riverside County Transportation Commission" or the "Conflict of Interest Code for the Western Riverside County Regional Conservation Authority," both adopted pursuant to the Political Reform Act of 1974 (as amended).
2. Lobbying and Gifts. Agency officers, agents and members, and Commission employees must comply with applicable state and federal law regarding acceptance of gifts, gratuities, or favors from contractors, potential contractors, or parties to subcontractor agreements. For federally-

funded procurements, the procuring Agency officers, agents or members, and Commission employees, may neither solicit nor accept gifts, gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subcontracts; provided that exceptions may apply if, as determined by the Executive Director, the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. For federally-funded procurements, nominal value shall mean under fifty dollars (\$50).

3. Violations.

- a. The violation of these Standards of Conduct by Commission employees will subject the violator to any disciplinary proceedings or action deemed appropriate by the Executive Director. Employees may correct a violation in any manner provided for under the Political Reform Act, and its implementing regulations.
- b. The violation of any of these Standards of Conduct by members or officers of either Agency will require correction of the violation in any manner provided for under the Political Reform Act, and its implementing regulations.
- c. Contractors or subcontractors that violate these Standards of Conduct as relates to an active federally-funded procurement may be prohibited from bidding on the procurement, or may be subject to other action as deemed appropriate by the Executive Director.
- d. Agents of either Agency that violate these Standards of Conduct as relates to federally-funded procurements may be prohibited from participation on behalf of that Agency on federally funded projects, or subject to other action as deemed appropriate by the Executive Director.

4. Prohibited Communications. To avoid any appearance of impropriety, instructions to bidders in solicitation documents should prohibit contacts of any kind from proposers/bidders with any member of the procuring Agency or any Commission staff, other than the Procurement Officer, or designee, during an open procurement. Violation of this condition may result in immediate disqualification of a bid or proposal. This provision is not meant to prohibit communications between Commission staff and existing consultants/contractors related to existing business which the consultant/contractor is under contract to perform on behalf of the Agency.

## 4.0 TYPES OF CONTRACTS

### A. General Provisions

1. The Procurement Officer should use the types of contracts described in this Chapter for most types of procurement, except as otherwise provided for certain small purchases described hereunder in Chapter 6. Innovative contracting arrangements are not prohibited, but require the advance

approval of the Executive Director or the applicable Agency, as specified herein.

2. The “cost-plus-percentage-of-cost” method of contracting shall not be used for state or federally funded contracts.
3. The Procurement Officer, in consultation with the project manager, should select the type of contract that is most appropriate to the circumstances of each procurement, in accordance with the provisions of this Chapter.
4. In procurements by other than competitive sealed bidding, the Procurement Officer may negotiate a contract type and price (or estimated cost and fee) that will result in reasonable contractor risk and provide the contractor with the greatest incentive for efficient and economical performance.

#### B. Selecting Contract Types

1. The type of contract to be used should be determined prior to the solicitation, and the solicitation should inform bidders of the type of contract that will be used.
2. When procurement is by competitive sealed bidding, the Procurement Officer must use a firm fixed-price contract.
3. Except when procurement is by competitive sealed bidding as required by law, the Procurement Officer should select the most effective contract type and should consider contract type together with the issues of price, risk, uncertainty, and responsibility for costs. The type of contract used should reflect the cost risk and responsibility assumed by the contractor or supplier.
4. The Procurement Officer should avoid the continued use of a cost reimbursement or time-and-materials contract after experience provides a basis for firmer pricing.
5. The Procurement Officer should include documentation in each contract file to show why the particular contract type was selected, except for purchase orders under the small purchase threshold.

#### C. Fixed-Price Contracts

1. Fixed-price contracts may provide for a firm price or, in appropriate cases, an adjustable price.
2. Fixed-price contracts providing for an adjustable price may include a ceiling price, a target price (including target cost), or both. Unless otherwise specified in the contract, the ceiling price or target price will be subject to adjustment only by operation of contract clauses providing for equitable adjustment or other revision of the contract price under stated circumstances.
3. A firm-fixed-price contract should provide for a price that is not subject to any adjustment on the basis of the contractor's cost experience in performing the contract.

4. A firm-fixed-price contract should be used for acquiring commercial products or commercial-type products, or for acquiring other supplies or services, on the basis of reasonably definite functional or detailed specifications if the Procurement Officer can establish fair and reasonable prices at the outset, including the following circumstances:
    - a. When there is adequate price competition;
    - b. When there are reasonable price comparisons with prior purchases of the same or similar supplies or services made on a competitive basis;
    - c. When available cost or pricing information permits realistic estimates of the probable costs of performance;
    - d. When performance uncertainties can be identified and reasonable estimates of their cost impact can be made, and the contractor is willing to accept a firm-fixed-price contract; or
    - e. When required by law unless a sole source exception applies.
- D. Cost Reimbursement/Cost-Plus-Fixed-Fee Contracts
1. Cost reimbursement contracts provide for payment of the contractor's reasonable, allocable and allowable incurred costs plus a negotiated fixed fee, to the extent prescribed in the underlying contract and Federal Acquisition Regulation (FAR) Part 31.
  2. A cost reimbursement contract establishes an estimate of total cost for the purpose of obligating funds and establishing a ceiling on expenditures that the contractor may not exceed without the approval of the Agency.
  3. Cost reimbursement contracts are suitable for use when the uncertainties of performance do not permit costs to be estimated with sufficient accuracy to use a fixed-price contract.
  4. The Agency must determine the adequacy of the contractor's accounting system for cost-type contracts before awarding such a contract.
- E. Time-And-Materials Contracts
1. A time-and-materials contract should include direct labor hours at specified fixed hourly rates that include wages, overhead, general and administrative expenses, profit, and materials required at cost.
  2. The user department/project manager should ensure that there is adequate surveillance of contractor performance when a time-and-materials type contract is used.
  3. For federally funded procurements, a time-and-materials contract should be used only after the Procurement Officer determines:
    - a. In writing, that no other type of contract is suitable; and
    - b. A ceiling price to be included in the contract that the contractor shall not exceed except at its own risk.

4. For federally funded procurements, a time-and-materials contract should be used only when it is not possible at the time of executing the contract to estimate accurately the extent or duration of the work or to anticipate costs with any reasonable degree of certainty or confidence.

F. Labor-Hour Contracts

1. When materials are not required, the Procurement Officer may use a labor-hour contract, a variation of the time-and-materials contract.
2. The use of a labor-hour contract should be in accordance with the above-referenced provisions related to time-and-materials contracts.

G. Letter Contracts (Letter Of Intent Contracts)

1. A letter contract is an interim type of contractual agreement that gives the contractor a limited notice of award for the delivery of the required goods/supplies or the performance of services.
2. The Procurement Officer may use a letter contract when the Agency's interests demand that the contractor be given a binding commitment so that work can start immediately and executing a definitive contract is not possible in sufficient time to meet the requirement. Each letter contract should be as complete and definitive as possible under the circumstances and should include clauses approved and required by the Procurement Officer.
3. The estimated cost of the definitive contract should determine the type and level of review and approval required for approval of a letter contract.
4. A letter contract may not be entered into without competition except as provided for under Non-Competitive and/or Emergency Procurements provisions of this Manual.
5. A letter contract may not be amended to satisfy a new requirement unless the new requirement is inseparable from the existing contract. Any amendment should be subject to the same requirements as a new letter contract.
6. The total value of the letter contract should be the estimated sum necessary to cover the contractor's requirement for funds before execution of the definitive contract. However, the total value of a letter contract should not, under any circumstances, exceed fifty percent (50%) of the overall price ceiling for the term of the final negotiated (i.e., definitive) contract.
7. A letter contract should contain a negotiated schedule for execution of the definitive contract, including dates for submission of the contractor's price proposal, cost or pricing data (if required), a date for start of negotiations, and a target for execution of the definitive contract.
8. The letter contract should provide that if the Procurement Officer and the contractor cannot negotiate a definitive contract because of failure to reach agreement regarding price or fee: 1) the Procurement Officer may terminate

the letter contract; or 2) if a “contract definitization” clause is included in the letter contract, the Agency may unilaterally require the contractor to continue the work and the Procurement Officer may, with the approval of the Executive Director, determine a reasonable price or fee.

#### H. Multiple Year Contracts

Multiple year contracts may be used with competitive sealed bids, competitive proposals, or by non-competitive procurement. The contract term, and any extensions thereof, shall be established based on sound business judgment of the Agency. Multiple year contracting is a method by which the Agency awards a contract for a base period of one or more years, with option provisions for future years' requirements. The option provision in the contract should provide for unilateral exercise at the discretion of the user department/project manager, as additional requirements and funding become available. See below under Section 5.0 of this Chapter for further information regarding Options.

For federally-funded procurements, the procurement file shall document the rationale for determining the term. Considerations should include the time necessary to accomplish the purpose of the contract, competition, pricing, and fairness.

#### I. Indefinite Delivery/Indefinite Quantity (ID/IQ) Contracts

1. The Procurement Officer may use an ID/IQ type of contract when the Agency anticipates a recurring requirement, but cannot predetermine the precise quantities of supplies or services at the time of contract award.
2. FHWA or Caltrans funded ID/IQ on-call contracts and FTA funded ID/IQ contracts for rolling stock and replacement part contracts may not exceed five (5) years.
3. ID/IQ contracts should specify maximum or minimum estimated quantities that the Agency may require during the term of the agreement. An ID/IQ contract should make no promise of exclusivity and may in fact be one of several (multiple) contracts awarded for the same item or service.
4. There are several types of ID/IQ contracts, including:
  - a. Definite-quantity contracts
  - b. Requirements contracts
  - c. Indefinite quantity (IQ) contracts (commodities)
  - d. Task order contracts (services)
5. If possible under the circumstances, the Procurement Officer should ensure that original solicitation and resultant ID/IQ contract contain both a minimum and a maximum quantities, which represent the reasonably foreseeable needs of the parties to the solicitation, and a clause stating that the estimate is not a representation to a bidder, offeror, or consultant that



the estimated quantity or dollar amount above the estimated minimum will actually be required or ordered by the Agency.

6. For task orders contracts, the procurement documents and executed contracts must specify the procedures to be used in awarding task orders. Such procedures must comply with state and federal regulations, as applicable.

## 5.0 OPTIONS

### A. General

1. When it is in the best interest of the Agency, a contract option may be included providing the Agency the unilateral right to extend the term of the contract and/or to purchase additional supplies or services called for by the contract.
2. Any written findings required for a contract option shall specify both the base requirement(s) and the increase permitted by subsequent options. Contract provisions setting forth the cost of the option may include, but are not limited to, the following:
  - a. A specific dollar amount;
  - b. An amount to be determined by applying provisions (or a formula) provided in the basic contract, but not including renegotiation of the price for work in a fixed-price type contract;
  - c. In a cost-type contract, a stated fixed or maximum fee, or a fixed or maximum fee amount determinable by applying a formula contained in the basic contract;
  - d. A specific price that is subject to an economic price adjustment provision; or
  - e. A specific price that is subject to change as a result of changes to the prevailing labor rates provided by the U.S. Department of Labor (DOL) or the California Department of Industrial Relations (DIR) prevailing rates, whichever is applicable.

### B. Solicitation of Contracts with Options

1. If a contract provides for an option, the solicitation should include appropriate option clauses.
2. Each contract should state the period within which an option may be exercised.
3. In order to meet the requirements of this Manual for full and open competition, the option should be evaluated as part of the initial competition and be exercisable at an amount specified from the terms of the basic contract. When options have not been evaluated as part of the award, the exercise of such options will be considered a non-competitive procurement

and must comply with the non-competitive procurement policies in described in this Manual.

C. Exercise of Options

1. The user department/project manager, in cooperation with the Procurement Officer, should initiate the exercise of an option only after determining the following for the Agency:
  - a. That sufficient budget authority is available;
  - b. That the requirement covered by the option fulfills an existing Agency need; and
2. The Procurement Officer, after considering price and other factors, should make the determination whether to recommend exercising the option on the basis of one of the following:
  - a. A new solicitation fails to produce a better price or a more advantageous offer than that offered by the option; provided, that if it is anticipated that the best price available is the option price (or that the option provides the more advantageous offer), the Procurement Officer should not use this method to test the market;
  - b. An informal analysis of prices or an examination of the market indicates that the option price is better than prices available in the market or that the option is the most advantageous offer; or
  - c. The short time between the award of the contract containing the option and the exercise of the option indicates that the option price is the lowest price obtainable or the most advantageous.
3. The contract modification or other written document, which notifies the contractor of the exercise of the option, shall cite the option provision as authority for the action and should be issued within the time period specified in the contract.

## 6.0 COOPERATIVE AGREEMENTS

A. Policy on Intergovernmental or Inter-entity Agreements

To promote economy and efficiency, the Agency may enter into state and local intergovernmental agreements or inter-entity agreements, where such agreements are in the best interest of the Agency and are appropriate for procurement or use of common or shared goods and services. The use of purchasing schedules may be prohibited for federally funded procurements. Out-of-state purchasing agreements are prohibited for FTA-funded procurements.

B. Memorandum of Understanding

A memorandum of understanding (MOU) is a contract document describing a bilateral or multilateral agreement outlining the terms and details of an arrangement between the parties to the MOU, including each party's requirements and responsibilities. An MOU is used when substantial involvement is expected

between the Agency and another agency or entity when carrying out the activity contemplated in the MOU, and there exists some public or mutually beneficial purpose in carrying out this activity.

C. Piggybacking

1. Piggybacking is the post-award use of an acceptable contract/solicitation process that allows an entity not contemplated in the original procurement to purchase the same supplies or equipment under the original contract/solicitation process.
2. Piggybacking is permissible when:
  - a. The underlying solicitation document and the resultant contract contain an assignability clause that provides for the assignment of all or part of the specified deliverables as originally advertised, competed, evaluated, and awarded; and
  - b. For federally funded agreements, the original solicitation and resultant contract contain a minimum and a maximum quantity, which represent the reasonably foreseeable needs of the parties to the solicitation.

D. California Multiple Award Schedule and State Master Agreements

1. A California Multiple Award Schedule (CMAS) and State Master Agreements are agreements established between the California Department of General Services (DGS) and multiple vendors who agree to the State of California terms and conditions, and may be used by the Agency.
2. Acquisitions based on CMAS or State Master Agreements shall be competitively bid so as to result in offers from three or more vendors including one small business, if available. If less than three offers are received, documentation of solicitation methods must be included with the contract documentation.
3. Three offers are not required for CMAS and State Master Agreements based on competition, such as Cal-Store, the Master Rental Agreement, Western States Contracting Alliance (WSCA), etc. Information on specific CMAS and State Master Agreements are available on DGS-PD's website at: [www.dgs.ca.gov/pd](http://www.dgs.ca.gov/pd).
4. Notwithstanding PUC section 130232(a), PCC sections 10298(b) and 10299(a) provide authority for the Commission to use CMAS or State Master Agreements for acquiring supplies, equipment and materials that exceed \$25,000 without engaging in further competitive bidding.

## 7.0 RECURRING CONTRACTS

- A. Each Agency may, on an annual basis, evaluate existing contracts for professional services that are due to expire within the next fiscal year. While some of these contracts may be placed on the calendar for a new procurement solicitation or allowed to expire because they are no longer required, notwithstanding any other provision herein, some contracts may be included in an annual recurring contracts

list that must be approved by the applicable Agency. Most contracts for professional services should be subject to a competitive process; however, there may be limited circumstances in which staff believes it is more efficient and cost effective to retain such consultants on the recurring contracts list rather than rebidding the services. Those circumstances generally are due to the consultant's historical knowledge, unique experience, and understanding of the applicable Agency and/or specific Agency projects. Approval of the recurring contracts list allows each Agency to continue work on existing projects without interruptions and maintain consistency.

1. State or federally-funded contracts may not be included in the annual recurring contracts list.

## CHAPTER 2 – PROCUREMENT GENERALLY

### 1.0 IMPLEMENTATION BY EXECUTIVE DIRECTOR; COMMISSION CONTROLS AND LIMITATIONS

- A. Final authority for purchasing actions and decisions rests with each Agency , except as delegated by the Agency to the Executive Director.
- B. Each Agency, respectively, authorizes the Executive Director to execute contracts approved by the Agency. The Executive Director may designate the Deputy Executive Director, Chief Financial Officer or Directors to execute contracts under his or her signature authority on his/her behalf.
- C. The policies set forth herein will be implemented by the Chief Financial Officer. The Chief Financial Officer has primary responsibility for ensuring that each Agency’s procurement process is in accordance with applicable laws and regulations, as interpreted by the General Counsel and Agency policy.
- D. The Executive Director is authorized to approve and enter into contracts on behalf of the Agencies under his/her single signature authority as follows:
  - 1. For the Commission: When the expenditure is less than fifty thousand dollars (\$50,000) for the purchase of all supplies, equipment, materials and for the construction of all facilities and works in accordance with PUC § 130232; and
  - 2. For the Commission: When the expenditure is less than two hundred fifty thousand dollars (\$250,000) for the purchase of services; however, (i) the aggregate amount of contracts executed under the single signature authority shall not exceed \$2,000,000 in any given fiscal year; (ii) the aggregate value of all contracts awarded to any one entity under the Executive Director’s single signature authority shall not exceed \$250,000 in any fiscal year; and (iii) the Executive Director may execute contract amendments that do not exceed \$250,000 for existing contracts. The Commission’s fiscal year is from July 1 to June 30.
  - 3. For Authority: When the expenditure is less than \$100,000; however, (i) the aggregate amount of contracts executed under the single signature authority shall not exceed \$300,000 in any given fiscal year; (ii) the aggregate value of all contracts awarded to any one entity under the Executive Director’s single signature authority shall not exceed \$100,000 in any fiscal year; and (iii) the Executive Director may execute contract amendments that do not exceed \$100,000. The Authority’s fiscal year is from July 1 to June 30.
- E. The powers of the Executive Director pursuant to Paragraph “D” above are subject to: (i) the existence and provisions of an approved budget for the applicable Agency; and (ii) applicable laws and regulations.
- F. The Executive Director must provide each Agency with a quarterly report of all contracts entered into pursuant to the single signature authority provided in

Paragraph “D” above by that Agency, and must report to the applicable Agency at its next regularly scheduled meeting each new contract awarded on an emergency basis or other contracts in excess of the Executive Director’s single signature authority.

G. Approval Limits and Solicitation Types

1. Commission- Supplies, Equipment, and Materials (PUC § 130232).

<b>PURCHASE AMOUNT</b>	<b>SOLICITATION TYPE</b>	<b>SOLICITATION PROCESS</b>	<b>APPROVER</b>
Less than \$1,000	Micro-purchase	<u>Informal</u> : Commercial availability, Rotate Vendors	Procurement Officer*
\$1,000 to \$25,000	Small Purchase	<u>Informal</u> : Three (3) Quotes	Procurement Officer*
\$25,001 to \$50,000	Formal Procurement	<u>Formal</u> : Advertisement, Clauses, Competitive Sealed Bids	Executive Director
Greater than \$50,000	Formal Procurement	<u>Formal</u> : Advertisement, Clauses, Competitive Sealed Bids	Commission

2. Commission Public Works (PUC § 130232).

<b>PURCHASE AMOUNT</b>	<b>SOLICITATION TYPE</b>	<b>SOLICITATION PROCESS</b>	<b>APPROVER</b>
Less than \$1,000	Micro-purchase	<u>Informal</u> : Commercial availability, Rotate Vendors, Non-Collusion Declaration, Insurance	Procurement Officer *
\$1,000 to \$25,000	Small Purchase	<u>Informal</u> : Three (3) Quotes, Prevailing Wage, Clauses, Insurance, License, Non-Collusion Declaration	Procurement Officer*
\$25,001 to \$50,000	Formal Procurement	<u>Formal</u> : Advertisement, Clauses, Prevailing Wage, Insurance, License, Competitive Sealed Bids, Payment Bond, Non-Collusion Declaration	Executive Director
Greater than \$50,000	Formal Procurement	<u>Formal</u> : Advertisement, Clauses, Prevailing Wage, Insurance, License, Competitive Sealed Bids, Payment Bond, Non-Collusion Declaration	Commission

3. Commission Services.

<b>PURCHASE AMOUNT</b>	<b>SOLICITATION TYPE</b>	<b>SOLICITATION PROCESS</b>	<b>APPROVER</b>
Less than \$10,000	Micro-purchase	<u>Informal</u> : Commercial availability, Rotate Vendors, Insurance	Procurement Officer*
\$10,000 to \$50,000	Small Purchase	<u>Informal</u> : Three (3) Quotes, Clauses, Insurance	Procurement Officer*
\$50,001 to \$250,000	Small Purchase	<u>Informal</u> : Three (3) Quotes, Clauses, Insurance; <i>or</i> <u>Formal</u> : Advertisement, Clauses, Insurance, and Negotiated Agreement, or Competitive Sealed Bids, or A/E Contract procedures	Executive Director
Greater than \$250,000	Formal Procurement	<u>Formal</u> : Advertisement, Clauses, Insurance, Certifications, and Negotiated Agreement, or Competitive Sealed Bids, or A/E Contract procedures	Commission

4. Authority Public Projects (PCC §20160, et. seq.).

<b>PURCHASE AMOUNT</b>	<b>SOLICITATION TYPE</b>	<b>SOLICITATION PROCESS</b>	<b>APPROVER</b>
Less than \$1,000	Micro-purchase	<u>Informal</u> : Commercial availability, Rotate Vendors, Non-Collusion Declaration, Insurance	Procurement Officer *
\$1,000 to \$5,000	Small Purchase	<u>Informal</u> : Three (3) Quotes, Prevailing Wage, Clauses, Insurance, License, Non-Collusion Declaration	Procurement Officer*
\$5,001 to \$100,000	Formal Procurement	<u>Formal</u> : Advertisement, Clauses, Prevailing Wage, Insurance, License, Competitive Sealed Bids, Payment Bond, Non-Collusion Declaration	Executive Director
Greater than \$100,000	Formal Procurement	<u>Formal</u> : Advertisement, Clauses, Prevailing Wage, Insurance, License, Competitive Sealed Bids, Payment Bond, Non-Collusion Declaration	Authority

5. Authority Supplies, Equipment, Materials and Services.

<b>PURCHASE AMOUNT</b>	<b>SOLICITATION TYPE</b>	<b>SOLICITATION PROCESS</b>	<b>APPROVER</b>
Less than \$10,000	Micro-purchase	<u>Informal</u> : Commercial availability, Rotate Vendors, Insurance	Procurement Officer*
\$10,000 to \$50,000	Small Purchase	<u>Informal</u> : Three (3) Quotes, Clauses, Insurance	Procurement Officer*
\$50,001 to \$250,000	Small Purchase	<u>Informal</u> : Three (3) Quotes, Clauses, Insurance; <i>or</i>  <u>Formal</u> : Advertisement, Clauses, Insurance, and Negotiated Agreement, or Competitive Sealed Bids, or A/E Contract procedures	Under \$100,000: Executive Director  Over \$100,000: Authority
Greater than \$250,000	Formal Procurement	<u>Formal</u> : Advertisement, Clauses, Insurance, Certifications, and Negotiated Agreement, or Competitive Sealed Bids, or A/E Contract procedures	Authority

\* As delegated by the Executive Director

H. In addition to the authority granted above, and except as otherwise prohibited by applicable state or federal law, the Executive Director is authorized to approve and enter into contracts on behalf of the Commission, where the relevant contract is directly related to and necessary to implement a project that has been approved by the Commission, the contract is within the approved project budget and, based on the circumstances, exercise of this authority is in the best interest of the Commission.

2.0 PROCUREMENT OFFICER—DESIGNATION AND DELEGATION

A. The Deputy Director of Financial Administration is the designated “Procurement Officer” for the Agencies. The Deputy Director of Financial Administration may delegate all or part of the Procurement Officer duties described in this Manual.

3.0 PROCUREMENT OFFICER—DUTIES

A. The Procurement Officer has the duty to oversee all procurement activities of the Agencies, and to implement the policies and standards set forth in this Manual, subject to the limitations of the authority that has been delegated to the Procurement Officer by the applicable Agency or the Executive Director.

B. The Procurement Officer may issue instructions for the implementation of each Agency’s procurement policies.



- C. The Procurement Officer has the duty to ensure each Agency's contracts, purchase orders, modifications, and supplemental agreements are executed in accordance with established thresholds and delegated authority.
- D. The Procurement Officer, subject to the review of Agency General Counsel, has the authority to draft and determine the final form of the contract to be used for each procurement.
- E. The Procurement Officer should ensure that a complete record of each procurement action is maintained in accordance with each Agency's records retention policy by establishing files containing the records of all major procurements and contractual actions pertinent to that office's responsibilities.
  - 1. The Procurement Officer is responsible for maintaining the original contract file pursuant to applicable state and/or federal records retention policies.
  - 2. The documentation in each contract file maintained by the Procurement Officer should be sufficient to constitute a complete history of the transaction for the following purposes:
    - a. Providing a complete background as a basis for informed decisions at each step of the procurement process;
    - b. Supporting actions taken;
    - c. Providing information for reviews, audits, and investigations; and
    - d. Furnishing essential facts in the event of litigation.
- F. The Procurement Officer has the duty to ensure Commission staff engaged in procurement activities are trained in the procurement requirements set forth in this Manual.

#### 4.0 IMPLEMENTATION OF PROCUREMENT PROCEDURES AND GUIDELINES

- A. The Procurement Officer, in his or her discretion and subject to the review and concurrence of Agency General Counsel, may adopt procurement and materials management procedures and guidelines needed to implement and supplement the policies and standards set forth in this Manual. Any such procedures and guidelines shall:
  - 1. Provide for timely review and processing of all procurement actions;
  - 2. Ensure that procurements proceed timely, efficiently and economically;
  - 3. Ensure that procurements adhere to principles of good public policy practices and sound business judgment; and
  - 4. Prohibit arbitrary actions. An example of an arbitrary action is the award of a construction contract, using the competitive sealed bids method of procurement, to a bidder other than the lowest responsive, responsible bidder.

## 5.0 AUTHORIZED METHODS OF PROCUREMENT; SELECTION

### A. Selection

As part of the procurement initiation process, the Procurement Officer will determine which method of procurement is appropriate.

### B. Authorized Methods

The following methods of procurement may be used, as appropriate, in accordance with the policies and procedures included in the Procurement Manual for all federal and non-federal procurement actions contemplated under this Procurement Manual:

1. Micro Purchase Procedures, pursuant to Chapter 6 of this Manual;
2. Small Purchase Procedures, pursuant to Chapter 6 of this Manual;
3. Competitive Sealed Bid (“Low Bid”), pursuant to Chapter 3 of this Manual;
4. Competitively Negotiated Procurement, pursuant to Chapter 5 of this Manual;
5. Non-Competitive and Emergency Procurement, pursuant to Chapter 7 of this Manual; and
6. Alternate Delivery, pursuant to Chapter 4 of this Manual.

## 6.0 INDEPENDENT COST ESTIMATE

A. An independent cost estimate is a determination of price reasonableness. An estimate shall be completed prior to the receipt of bids or proposals. Key elements of the independent cost estimate include, but are not limited to:

1. Date of the independent cost estimate;
2. Basis for the independent cost estimate, including applicable supporting documentation; and
3. The value determined by the independent cost estimate.

B. The method and means of establishing the estimate may vary based on the circumstances and can range from checking historical records or published price guides to a detailed estimate in the same level of detail that is required for contractors submitting proposals. Estimates can be obtained from a design firm or in-house technical personnel for construction work or from independent third-party staff (not impacted by final procurement).

C. The estimate provides the Procurement Officer with essential input during the solicitation process. Independent cost estimates may be used by the Agency to:

1. Provide a determination of value (i.e., do benefits warrant the cost);
2. Support procurement planning;
3. Determine the appropriate solicitation type and process based on the approval limits set forth in Chapter 2, 1.0(G);
4. Establish the competitive range and supplement the evaluation process;

5. Provide a basis for a price analysis, which may eliminate the need for a more burdensome cost analysis;
6. Provide a basis for development of a pre-negotiation objective;
7. Support the Agency's negotiation position with contractor; and/or
8. After contract award, provide essential input with respect to contract amendments, change orders and claims.

## 7.0 COST/PRICE ANALYSIS

- A. A cost/price analysis shall be performed in connection with every federally funded procurement action, including contract modifications, and should be conducted for non-federally funded procurements. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation.
- B. If the contract being awarded is a cost-reimbursement type, the cost/price analysis shall address the *realism* of the various cost elements proposed, and where the costs are unrealistically low, an adjustment shall be made to reflect what the Agency believes the effort will actually cost given that offeror's specific technical approach as well as its direct and indirect cost rates.
  1. The Agency shall, when applicable, or must, if required by law, utilize the guidelines provided in the FAR Part 31 to determine whether of the contractor's proposed costs are reasonable, allowable and allocable.
- C. As applicable, the Agency shall negotiate profit as a separate element of the price for each contract in which there is no price competition and in all applicable cases where cost analysis is performed. 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 its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

## 8.0 VENDOR CONTACTS PRIOR TO ISSUANCE OF A SOLICITATION

- A. Informational and market research contacts with prospective contractors/vendors should be circumscribed based upon legitimate, identifiable business purposes and guided by the exercise of sound judgment. The primary pitfalls to be avoided are promises or implications from Commission staff of a future contract, development by a vendor of a specification or scope of services to be used as part of an Agency solicitation that vendor intends to participate in, requests from Commission staff for complimentary services or supplies, and other activities that may create a real or apparent conflict of interest or the impression of an obligation on the part of either Agency.

## 9.0 ADVERTISING/PUBLICIZING PROCUREMENTS

- A. The Procurement Officer should use the most efficient and effective means to publicize contract actions to increase competition in accordance with the requirements of the specific procurement.

- B. PUC § 130232, applicable to the purchase of all supplies, equipment, materials and for the construction of all facilities and works by the Commission when the expenditure exceeds twenty-five thousand dollars (\$25,000), requires that notice requesting bids shall be published at least once in a newspaper of general circulation. The publication must be made at least 10 days before the date for the receipt of the bids. The Commission, at its discretion, may reject any and all bids and re-advertise.
- C. PUC § 130238 for the purchase by the Commission of computers, telecommunications equipment, microwave equipment, and other related electronic equipment and apparatus that is not available in substantial quantities to the general public requires (i) the procurement be conducted through competitive negotiation, after a finding by the Commission by a two-thirds vote that this particular procurement qualifies under PUC § 130238, and (ii) notice of the request for proposals be published at least twice in a newspaper of general circulation, at least 10 days before the date for receipt of the proposals.
- D. PCC § 20161 defines public projects of the Authority as (i) the erection, improvement, painting, or repair of public buildings and works; (ii) work in or about streams, bays, waterfronts, embankments, or other work for protection against overflow; (iii) street or sewer work excluding maintenance or repair; or (iv) purchase of supplies or materials for any of the foregoing, as well as maintenance or repair of streets or sewers, when the expenditure exceeds five thousand dollars (\$5,000). PCC § 20164 requires that for Authority public projects, notice requesting bids shall be published at least twice in a newspaper of general circulation, not less than five days apart. The first publication or posting of the notice shall be at least 10 days before the date of opening the bids.
- E. Federal Transit Administration  
Section 9.c of FTA Circular 4220.1F requires that invitations for bids are to be "publicly" advertised, and Section 9.d of FTA Circular 4220.1F requires that requests for proposals are to be publicized.
- F. Caltrans and Federal Highway Administration (FHWA)  
Chapter 15, paragraph 15.4 Project Advertisement, of the Caltrans Local Assistance Procedures Manual provides detailed guidance regarding advertising of FHWA- and/or Caltrans-funded projects.
- G. Pre-solicitation advertising prescribed in this section is not required for non-competitive, sole source, or emergency procurements processed in accordance with this Manual.

## 10.0 NON-DISCRIMINATION IN PROCUREMENT

- A. All formal contracts entered into by the Agency should contain appropriate clauses prohibiting discrimination by the contractor against any person or group of persons on account of race, color, religion, creed, national origin, ancestry, physical handicap, medical condition, age, marital status, sex or sexual orientation in the performance of the contract.

## 11.0 ORGANIZATIONAL CONFLICTS OF INTEREST

- A. An unfair competitive advantage could result if a contractor were allowed to submit a bid or proposal for work described in a specification or statement of work that the contractor itself developed. For the purpose of eliminating a potential unfair competitive advantage, and in compliance with applicable state and federal laws and regulations, a contractor that develops or assists in developing specifications, requirements, statements of work, invitation for bids, and/or request for proposals for an Agency procurement is excluded from competing for the resultant procurement, unless an appropriate waiver is issued by the Agency. All waivers will be assessed by the Agency on a case-by-case basis.

## 12.0 DUTIES OF COMMISSION STAFF REGARDING PROCUREMENTS

### A. General

Procuring goods, services, and contracts for the Agencies must be a cooperative effort, and it will be the responsibility of all Commission staff involved in procurement to employ sound business judgment and appropriate standards of ethics and fairness to procure goods and services in a manner most advantageous to each Agency. All employees and departments are instructed to follow the procedures set forth in the Manual, as well as any instructions issued by the Procurement Officer regarding procurements.

1. For FTA-funded procurements, the user department should consider use of the FTA checklists provided in FTA Circular 4220.1F, Appendix C, which address, among other things, undue restrictions on competition, when use of brand name or equal is permitted, and other FTA requirements and limitations.
  2. For FHWA and Caltrans-funded procurements, the user department shall use the Caltrans' Local Assistance Procedures Manual for guidance and shall ensure that appropriate Agency procurement and contract forms for the relevant funding source are used.
- B. In order to initiate a procurement action (including amendments, procurements, exercising of available options, etc.), the user department/project manager should, at a minimum, provide the Procurement Officer with the following items, as applicable:
1. Specification, Scope of Services, or Statement of Work. For a new procurement, a complete and clearly written specification, purchase description, or statement of work suitable for either competition or for negotiation with a sole source contractor, if justified.

For competitive procurements, the description must not (for federally funded procurements) and should not (for non-federally funded procurements) contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform

if it is to satisfy its intended use. For federally funded procurements, detailed product specifications should be avoided. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offerors must (for federally funded procurements) and should (for non-federally funded procurements) be clearly stated.

2. Changes. Changes to existing contracts, including amendments and construction change orders, must be documented pursuant to a written amendment or written construction change order, as applicable, executed by the appropriate parties, and should comply with the following.

a. Amendments

If a contract amendment has been negotiated based upon an existing advanced pricing arrangement or labor rates/categories included in the underlying agreement, the user department/project manager should provide the Procurement Officer with a copy of the final negotiated scope of services for the extra work, associated pricing terms, and/or schedule.

b. Construction Change Orders

Construction change orders should follow the procedures established by the Capital Projects Department, including the Toll Program, and applicable contract specifications. Documentation of the change order does not need to be provided to the Procurement Officer, but should be maintained by the user department/project manager as specified herein. If a construction change order has been negotiated based upon an existing advanced pricing arrangement or labor rates/categories included in the underlying agreement, the user department/project manager should maintain a record of the change order and supporting documentation in the project files including an independent cost estimate and cost and/or price analysis, as applicable.

i. Any change order must be administered in accordance with its terms, and appropriate documentation must be generated and maintained supporting payment in accordance with state or federal requirements, as applicable.

ii. All change orders must be signed by a Commission employee who is a registered civil engineer.

iii. Any change order in excess of \$100,000 also requires approval as follows:

- a) \$100,000 to \$250,000 by the Project Delivery Director or Toll Program Director; or
- b) Greater than \$250,000 by the Executive Director.
- iv. Any change order that will increase the total contract value to an amount that exceeds the contractual authority approved by the applicable Agency may not be executed until additional contractual authority has been obtained through the Agency.
- v. The Project Delivery Director and/or Toll Program Director, as applicable, is responsible for determining that change orders are processed and approved in accordance with departmental and contractual requirements.
- c. Changes to Federally Funded Contracts

For federally funded contracts, findings must be included in the project file that the change is in the general scope of the original contract. A significant change in contract work that causes a major deviation from the original purpose of the work or the intended method of achievement, or causes a revision of contract work so extensive, significant, or cumulative that, in effect the contractor is required to perform very different work from that described in the original contract, is considered a “cardinal change” or “tag-on” contract, and is not permitted unless it meets the requirements of Chapter 8, Section 3.0.

- 3. Agreement Summary Sheet. The user department/project manager must provide a complete and executed Agreement Summary Sheet for all procurement actions, including applicable small purchases, formal procurements, MOUs, agreements, change order modifications and the like. The Agreement Summary Sheet identifies the nature of funding for the subject goods/services, provides a record that the requirement was budgeted and properly approved before the procurement process began, and ensures that the procurement action is assigned a unique agreement number for purposes of contract administration, payment, and recordkeeping.
- 4. Cost Estimate. The user department/project manager shall provide the Procurement Officer with a cost estimate for the anticipated procurement of goods/services. See paragraph 6.0 above for additional guidance regarding the development of an independent cost estimate.
- 5. Justification for Sole Source/Non-competitive Procurement (if applicable). The user department/project manager must prepare and submit to the Procurement Officer a written statement recording all the facts that provide justification for avoiding mandated competitive procurement practices explicitly defined in this Manual and/or required by relevant state and federal law in favor of a non-competitive/sole source award. The Procurement Officer must approve the sole source procurement methodology before the procurement can proceed. If the procurement is

funded with state or federal funds, the appropriate findings required by the applicable funding entity must be made. For Caltrans or FHWA funded contracts, a Public Interest Finding (PIF) must be approved by the appropriate funding entity.

### 13.0 INSURANCE

- A. Contractors providing goods and services should be required to carry sufficient insurance to protect the Agency from third party lawsuits for personal injury (including death) and property damage. Insurance may also be required for damage to the Agency's property and for errors and omissions in the provision of professional services.
- B. The following types of procurement actions should be reviewed by the Procurement Officer for appropriate levels, types and limits of coverage on a case-by-case basis:
  - 1. All operations and non-operational construction contracts.
  - 2. All professional services contracts.
  - 3. All contracts where work will be performed within "50 feet" of railroad.
  - 4. All environmental contracts, including engineering services.
  - 5. All procurement contracts and/or purchase agreements where outside vendors will be conducting work or performing installation services on Agency premises.
  - 6. All procurement contracts and/or purchase agreements where outside vendors will be delivering products to an Agency facility.
- C. The contract documents should ensure that the Agency's contractors will be required to comply with insurance requirements imposed by state and local governments.
- D. At a minimum, the contract documents should require the contractor and subcontractor to carry general liability, workmen's compensation, and automobile insurance coverages for public works contracts.
- E. In certain limited cases, the Procurement Officer may permit the contractor to substitute an approved program of self-insurance in order to obtain such approval. The contractor will have to demonstrate that it can sustain the potential losses being self-insured.
- F. The Procurement Officer should include insurance and indemnification provisions in equipment, supply, and services contracts in accordance with the policies described herein.

### 14.0 SUBCONTRACTING

- A. The Agency may consider requiring a prime contractor to perform certain tasks or a minimum percentage of the work, in order to ensure that the prime contractor maintains a specified degree of control over the project.



- B. Approval of contractor proposed subcontractors usually involves an evaluation of three primary areas:
  - 1. Assurance that the prime contractor has included the required “flow-down” provisions (clauses) from the prime contract in the subcontract.
  - 2. The prime contractor’s compliance with the Disadvantaged Business Enterprise (DBE) requirements in its prime contract.
  - 3. Assurance that the prime contractor has selected its critical subcontractors in a prudent fashion, so as to protect the Agency’s interests.

#### 15.0. DETERMINATION OF FAIR AND REASONABLE PRICE

- A. The Procurement Officer should determine, in writing, that the price to be paid to the successful offeror is fair and reasonable. Typically, adequate price competition is sufficient to establish price reasonableness; however, price reasonableness may also be established through:
  - 1. Prices established by law or regulation;
  - 2. Published catalog or market price for commercial product sold to the public in substantial quantities;
  - 3. Previous or relevant historical pricing for same or similar terms;
  - 4. Valid cost estimate;
  - 5. Value analysis; or
  - 6. Cost/price analysis.
- B. Single Offer/Lack of Adequate Competition
  - 1. Upon receiving a single bid or single proposal in response to a solicitation, the Procurement Officer should determine if competition was adequate.
    - a. Such determination should include a review of the specifications for undue restrictiveness and may include a survey of potential sources that chose not to submit a bid or proposal.
    - b. If the results of the review are that the scope of work was so restrictive that only one firm could have responded, then there is a lack of competition. The Procurement Officer should (1) cancel and re-procure the solicitation or (2) treat the solicitation as a sole source procurement, if it meets the requirements of Chapter 7 of this Manual.
    - c. If the results of the review are that the scope of work was not restrictive and more than one firm could have responded, then there is adequate competition. The Procurement Officer may recommend an award of the agreement to the single offeror, as determined by the Agency, in accordance with this Manual and in accordance with applicable legal requirements.

2. When the price variance between multiple responses reflects a lack of adequate competition, the Procurement Officer may re-solicit quotes or, if appropriate, recommend an award of the agreement to the lowest or best offeror, as determined by the Agency, in accordance with this Manual and in accordance with applicable legal requirements.
3. A recommendation for award under either of the above circumstances should include a statement in the contract file giving the basis for the determination (e.g., that there was adequate competition and/or the pricing terms are fair and reasonable).

## 16.0 CONTRACT APPROVAL, AWARD, AND EXECUTION

- A. Following authorization for contract award by the Agency, the following actions should be taken:
  1. The Procurement Officer requests all Agency required documents and contract contingency requirement (e.g., bonds, proof of insurance) from the successful contractor.
  2. The Procurement Officer conforms and sends copies of the final contract or amendment to the contractor for signature, and obtains the appropriate Agency authorization by ensuring full execution of the contract.
  3. The contract or amendment may be executed in one or more counterparts. The Procurement Officer may accept facsimile signatures, including signatures transmitted via electronic mail, as original signatures. Electronic signatures may be used, and the Procurement Officer may accept electronic signatures in accordance with adopted Agency policy.
  4. After full execution of the contract and the contractor's submittal of the required contract contingency items, unless otherwise agreed, the Procurement Officer coordinates with the user department/project manager to prepare a "Notice to Proceed" letter, if required.
  5. The Procurement Officer transmits a fully executed contract to the contractor. Conformed copies should be sent to the project manager for use in the administration of the contract.
  6. Contract Administration Responsibilities
    - a. The user department/project manager conducts all further coordination on technical issues between the contractor and the Agency, subsequent to the issuance of the "Notice to Proceed" letter.
    - b. Issues affecting the business or legal terms in the contract and/or requests for modification or supplemental agreements to the contract should immediately be brought to the attention of the Procurement Officer.
    - c. The contract and all documents pertaining thereto should be maintained by the Procurement Officer, except for construction change orders which will be maintained by the project management team.

## 17.0 PROTEST PROCEDURES

- A. Under formal procurement processes described under this Manual, an interested party that has timely submitted a bid or proposal in response to any procurement of the Agency may file a protest, to the applicable Agency, objecting to the award of a contract.
- B. In order for a protest to be considered properly and timely filed, the protest must:
1. Be filed in writing with the Executive Director, within seven (7) calendar days after (i) all requests for clarifications and requests for approved equals have been answered by the Agency or, if no requests for clarification or approved equals are received, after the period for requests for clarifications or approved equals has closed; (ii) after the Agency takes action, or such other time period as may be specified in the solicitation document; or (iii) the date certain contained in the solicitation for any solicitation for which a contract award is not made by the Agency.
  2. Be filed by an actual bidder or proposer responding to the procurement and signed by a properly authorized representative. No other party has standing to protest or is considered an interested party.
  3. Identify the specific procurement number involved.
  4. Identify the specific recommended action or decision being protested.
  5. Specify in detail the grounds for the protest, the facts supporting the protest and the status of the protester.
  6. Include all relevant supporting documentation with the protest at the time of submittal.
  7. Describe the resolution to the protest desired by the protesting party.
- If a protest does not comply with each of the seven (7) requirements listed above, the protest will not be considered and will be returned to the protester.
- C. The Procurement Officer will attempt to resolve a properly filed protest or perform additional fact-finding, including establishing a protest evaluation team to evaluate the merits of the protest. The Procurement Officer, in consultation with Agency General Counsel, will prepare a recommended resolution of the protest for consideration by the Executive Director. The Executive Director will review the recommendation of the evaluation team and will render a determination to uphold or deny the protest.
- D. If the Executive Director's decision is to deny the protest, the solicitation may be continued without further delay or the contract will be recommended to the applicable Agency for award, or executed, if previously awarded by the Agency subject to resolution of the protest. If the Executive Director's decision is to uphold the protest, a recommendation will be made to the applicable Agency to amend the solicitation and the date for receipt of proposals or bids, reject all proposals or bids, cancel the request for proposals or invitation for bids and solicit new proposals or

bids, award the contract to another proposer, or other such actions as he/she deems appropriate.

- E. The Executive Director's decision shall be final, and there shall be no further administrative recourse at the local level, except for protests related to federally funded procurements.
- F. The procedures set forth in this Chapter 2, Section 17.0 are not intended to reduce or restrict protest rights specifically provided under applicable funding agreements, or state or federal laws authorizing the use of money funding applicable contracts.
  - 1. In any procurement involving FTA funds, the Procurement Officer shall, if required by FTA, disclose information regarding the protest to FTA and keep FTA informed about the status of the protest.
  - 2. An interested party that has filed a protest must exhaust all administrative remedies with the Agency before pursuing a protest with FTA.
- G. A debrief will be available for proposers to whom award was not made, for a period of ten (10) days following award of the contract by the Agency.

## 18.0 PUBLIC RECORDS REQUESTS

- A. All requests for procurement related records and/or information must be submitted to the Clerk of the Board for appropriate action. Procurement related records should not be disclosed as public information until staff recommendation for award has been forwarded to all interested parties or as otherwise appropriate under the California Public Records Act and applicable state and federal laws, guidelines and requirements.

## CHAPTER 3 – COMPETITIVE SEALED BIDS (“LOW BID”)

- A. PUC § 130232, applicable to the Commission, requires that the purchase of all supplies, equipment, and materials, and the construction of all facilities and works, when the expenditure required exceeds twenty-five thousand dollars (\$25,000), must be by competitive sealed bidding, also known as “low bid”, contracting, with the contract let to the lowest responsive, responsible bidder. Notice requesting bids must be published in at least one newspaper of general circulation. The publication must be made at least ten (10) days before the date for receipt of bids.
- B. PCC § 20160, et. seq. requires that public projects of the Authority, as defined in PCC § 20161 and as set forth in Chapter 2, Section 9.D of this Manual, when the expenditure required exceeds five thousand dollars (\$5,000), must be by low bid, with the contract let to the lowest responsive, responsible bidder. PCC § 20164 requires that for Authority public projects, notice requesting bids shall be published at least twice in a newspaper of general circulation, not less than five days apart. The first publication or posting of the notice shall be at least 10 days before the date of opening the bids.
- C. Notwithstanding the notice periods above, based on the nature of the procurement, a longer period of time shall be provided, as necessary, to ensure that bidders are allowed adequate and sufficient time to prepare bids before the date of bid opening. The resulting contract will be a fixed price contract.
- D. In order for competitive sealed bidding to be most effective, the following conditions should be present in the development of an Invitation for Bids (IFB):
  - 1. A complete, adequate and sufficiently generic specification is developed;
  - 2. Adequate competition is available in the marketplace (two or more responsive and responsible bidders will compete); and
  - 3. The procurement lends itself to a firm-fixed price contract.
- E. Discussions and Communications
  - 1. Bids shall be evaluated without discussions with bidders.
  - 2. Information concerning proposed procurements should not be released outside the Agency before an IFB is released, except for pre-solicitation notices and publicly available general project information.
- F. Pre-Bid Conferences
  - 1. The Contracting Officer may use pre-bid conferences to explain procurement requirements.
  - 2. If the Agency requires any type of mandatory pre-bid conference, site visit, or meeting, the IFB should include the time, date, and location of the mandatory pre-bid site visit, conference or meeting, and when and where project documents, including final plans and specifications are available. Any mandatory pre-bid site visit, conference or meeting should be no

sooner than a minimum of five (5) calendar days following the publication of the IFB.

G. Bid Addenda

1. If it becomes necessary to make changes in quantity, specifications, delivery schedules, opening dates, or other items, or to correct a defective or ambiguous IFB, the change should be accomplished by addendum of the IFB.
2. Addenda to an IFB should be identified as such and should require the bidder to acknowledge receipt of all addenda issued.

H. Time Of Bid Receipt

The IFB must specify a time for receipt of bids. Bids must be received in the office designated in the IFB or be submitted electronically through the electronic bid management system used by the Agency for the applicable procurement not later than the time identified in the IFB. For electronically submitted bids, the Agency will only consider bids that have transmitted successfully and have been issued a confirmation number with a time stamp from the electronic bidding system indicating that the bid was submitted successfully.

I. Late Bids

Unless otherwise specified in a particular bid solicitation, bids are considered late based on the time clock at the 3<sup>rd</sup> floor Commission Receptionist Desk, located at 4080 Lemon Street, Riverside, CA 92501 or, as applicable, as determined by the electronic bid management system. Bids are considered late if the time stamped by the Agency upon receipt of the bid is later than the deadline/time identified in the IFB. If the procurement is pursuant to an electronic bidding process, the electronic bid management system will not accept bids submitted later than the deadline/time identified in the IFB. Late bids will not be accepted by the Agency, unless a bid is late owing solely to Agency mishandling or some other legitimate extenuating factor, as determined in the Agency's sole discretion.

J. Receipt Of Bids

As bids are received, the Procurement Officer should secure and safeguard the bids until the established time for bid opening. For electronic bids, the electronic bid management system ensures that the bids are not accessible until the time for bid opening.

K. Opening Of Bids

The Procurement Officer will coordinate the bid opening. Bids may be opened electronically through the electronic bid management system, or will be publicly opened, read aloud to the persons present, and recorded. Bids may also be publicly opened via webconference or videoconference, as may be appropriate based on the circumstances. Bid opening documentation should include the date, time, and place of bid opening, if applicable, and a tabulation of bidder names and related bid amount.

L. Recording Of Bids

Construction bids over the small purchase threshold of \$25,000 for the Commission and \$5,000 for the Authority that are publicly opened will be recorded on a bid summary or bid tabulation sheet. The Procurement Officer should certify the accuracy of the bid summary sheet by placing his/her signature thereon. The Procurement Officer should ensure that these results are posted on the applicable Agency internet site within a reasonable time after bid opening.

M. Tie Bids

If two or more responsible and responsive bids are received for the same total or unit price, quality and service being equal, the Agency shall establish a date and time to draw lots, which shall be accomplished by tossing a coin or pulling bidder names out of a hat, to determine the winner. Using the lottery method, the Agency shall:

1. Advise the tied bidders in writing that a tie has occurred, advise them a winner will be determined by drawing lots, and invite them to attend the drawing.
2. Conduct the drawing of lots on the date and time previously established with at least two individuals as witnesses. The procurement file should reflect the names, titles, and departments of the witnesses. If the witnesses are not Commission staff, the name, organization, address, and telephone number of the individuals should be listed.
3. Declare the winner of the drawing of lots as the apparent low bidder for bid evaluation and award purposes.

N. Alternative Sources of Procurement Authority

Notwithstanding the requirements of PUC § 130232 or PCC 20160, et. seq., and the provisions set forth in this Chapter, the Agencies may use Cooperative Agreements (as described in Chapter 1, Section 6.0) where such use is otherwise permitted by law.

## CHAPTER 4 – ALTERNATE DELIVERY CONTRACTS

### 1.0 PURPOSE

- A. For the purposes of this Chapter, “Design-Build” means a method of procuring design and construction from a single source. The selection of the single source occurs before the development of complete plans and specifications.

For the purposes of this Chapter, “CM/GC” means a project delivery method in which a construction manager is procured to provide preconstruction services during the design phase of the project and construction services during the construction phase of the project. The structure of the contract for such services is within the discretion of the Agency.

For the purposes of this Chapter, “Alternate Delivery Method” means Design-Build, CM/GC or any other alternate method of project procurement or delivery which the Agency is authorized by law to utilize.

- B. As set forth in PCC Section 6820, et. seq., the Commission is authorized to utilize Design-Build for projects on or adjacent to the state highway system, including related non-highway portions of the project, based on either best value or lowest responsible bid.
- C. As set forth in PCC Section 6700, et. seq., the Commission is authorized to utilize the Construction Manager/General Contractor (CM/GC) method, contingent upon delegation of authority by Caltrans, for two highway projects in Riverside County.
- D. As set forth in AB 115 (Chapter 20, Statutes of 2017), the Commission is authorized to utilize CM/GC for the 91 Toll Connector to Interstate 15 North project.
- E. As set forth in PCC Section 6700, et. seq., the Commission is authorized to utilize CM/GC method for certain expressways that are not on the state highway system, provided that the required findings are made, consistent with PCC Section 6701, and the Commission adopts the CM/GC method.
- F. As set forth in AB 115 (Chapter 20, Statutes of 2017), the Commission is authorized to amend or change any existing contract for the Interstate 15 express lanes construction project or the State Highway Route 91 express lanes to include work or services on the 91 Toll Connector to Interstate 15 North project, if the Commission, with the concurrence of Caltrans, finds that to be a cost-effective method to accelerate the delivery of that project.

### 2.0 PROCEDURES FOR ALTERNATE DELIVERY CONTRACTS

- A. The Executive Director may adopt any lawful methods, procedures and criteria that he or she determines are in the best interest of each Agency.



- B. The Toll Program Director, through coordination with the Procurement Officer, will prepare documents for the solicitation of proposals for highway-related Alternate Delivery procurements by the Commission.
- C. Where an Alternate Delivery Method does not require a solicitation of proposals, the Toll Program Director shall, through coordination with the Procurement Officer, prepare the contract documents for such procurement by the Commission.
- D. Contract documents for an Alternate Delivery Method to be used by the Authority shall be prepared as directed by the Procurement Officer.
- E. The documents prepared for Alternate Delivery procurements shall control over any conflicting provisions contained herein.
- F. The Commission shall use a procurement method permitted by law and appropriate for the elements of the services (design v. construction) representing the preponderance of work and having the greatest cost, even though other necessary services would not typically be procured by that method. For example, the construction costs of a Design-Build project are usually predominant, so the Commission would use competitive negotiations or sealed bids for the entire procurement rather than the qualification-based “Brooks Act” procurement procedures.
  - 1. The use of the Design-Build procurement method for FTA-funded projects shall comply with FTA Circular 4220.1F, Section VI.3.h.
  - 2. The use of the Design-Build procurement method for FHWA-funded projects shall comply, as applicable, with any requirements specified by Caltrans in the relevant project agreements.

## **CHAPTER 5 – COMPETITIVELY NEGOTIATED PROCUREMENTS**

### **1.0 NEGOTIATED PROCUREMENTS—GENERAL**

- A. This Chapter outlines the procedures for competitively negotiated procurements for contracts:
  - 1. Not legally required to be procured through the low-bid competitive procurement method pursuant to PUC §130232 as applies to the Commission, or PCC § 20160, et. seq., as applies to the Authority; and
  - 2. Intended to be awarded on the basis of both price and non-price factors.
- B. A procurement is “negotiated” if discussions, negotiations, or other exchanges between the Agency and the offerors are anticipated and planned in order to maximize the Agency’s ability to communicate, understand, and obtain the best value for contract award.
  - 1. The exchanges involve bargaining, persuasion, alteration of assumptions and positions, and give-and-take applied to price, schedule, technical requirements, type of contract, and other proposed terms.
  - 2. The exchanges after establishment of the competitive range of price and terms are done with the intent of allowing the offeror to revise its proposal, once and potentially several times.
- C. Though not an all-inclusive listing, competitively negotiated procurements can be used for the following types of procurements:
  - 1. Professional services contracts for non-architect-engineer related services; miscellaneous service contracts;
  - 2. Architect-Engineer and related services contracts as further defined and subject to the limitations specified in Section 6.0 of this Chapter;
  - 3. Specialized equipment, computers, telecommunications equipment, microwave equipment and other related electronic equipment and apparatus; or
  - 4. Best Value, Alternate Delivery contracts described in Chapter 4.

### **2.0 SOURCE SELECTION TECHNIQUES**

- A. The Procurement Officer can choose from a range of source selection techniques for the competitively negotiated process based on:
  - 1. What is suitable for the specific circumstances of a requirement, and
  - 2. Which technique provides the best opportunity to tradeoff price/cost and qualitative benefits in order to gain the best value for the Agency.
- B. In acquisitions where the requirement is clearly definable and the risk of unsuccessful contract performance is minimal, and excluding contracts for Architect-Engineer and related services, cost or price may play a dominant role as a significantly important evaluation factor for award.

- C. On the other hand, the less definitive the requirement, a requirement for technical superiority, more development work required, or the greater the performance risk, then the technical or past performance considerations play a more dominant role as significantly important evaluation factors for award.
- D. The Agency obtains best value in negotiated acquisitions by using any one or a combination of selection approaches wherein the relative importance of cost or price may vary with other non-cost or price factor(s). The Procurement Officer and user department/project manager shall select an approach that will provide the Agency with the best offer based on the requirements, and on applicable legal requirements.
- E. All evaluation factors associated with a particular proposal shall be identified along with their relative importance. The Procurement Officer, in cooperation with the user department/project manager, may utilize explicit factors, price performance trade off, technically qualified/lowest price or other reasonable and appropriate means of evaluating proposers.
- F. Proposals will be solicited from an adequate number of qualified sources. In determining sources to solicit, the Procurement Officer should use all reasonable means available to ensure that an adequate number of potential qualified proposers receive the solicitation in order to obtain maximum fair and open competition.

### 3.0 PROPOSAL EVALUATION

- A. The evaluation factors that will be considered in evaluating proposals shall be tailored to each procurement and shall include only those factors that will have an impact on the source selection decision. The evaluation factors that apply to a particular procurement and the relative importance of those factors are within the broad discretion of the Procurement Officer and/or the user department/project manager.
- B. The Procurement Officer shall establish a formal evaluation committee, of at least two persons, referred to as the "Evaluation Committee." The size of an evaluation committee should be (1) based on the size and complexity of the goods or services being procured and (2) well balanced and represented by individuals involved with the procurement and/or affected by the goods or services being procured. The Evaluation Committee will be charged with responsibility for evaluating proposals, short listing firms, establishing a competitive range, and/or recommending a firm or firms for contract award.
  - 1. Personnel engaged in the evaluation process shall not discuss or reveal information concerning the evaluations except to those individuals participating in the same proceedings and only to the extent that information is required in connection with such proceedings.
  - 2. Divulging information during the evaluation, selection, and negotiation phases to offerors or to personnel not having a need to know is prohibited as it could jeopardize the evaluation process and resultant award.

- C. The Evaluation Committee will evaluate each proposal in accordance with the evaluation criteria in the solicitation. The Evaluation Committee's selection decision is subject to the final approval of the applicable Agency or the Executive Director, as required under this Manual.

#### 4.0 REJECTION OF PROPOSALS

- A. The Evaluation Committee may reject all proposals received that are determined not to be in the competitive range, including those proposals made by offerors who refuse to execute any reasonably required representations and/or certifications.
- B. The Executive Director may, in his or her discretion, do any of the following (i) reject any or all proposals received, (ii) cancel the procurement process, and/or (iii) direct commencement of a new procurement process for the same services because:
  - 1. All otherwise acceptable proposals received are at unreasonable prices;
  - 2. The proposals were not independently arrived at in open competition, were collusive or were submitted in bad faith; or
  - 3. For other reasons, rejection is clearly in the Agency's best interest.

#### 5.0 NEGOTIATION; SELECTION

- A. The methods and procedures for selection and negotiation will be determined by the Procurement Officer, in coordination with the user department/project manager, and set forth in the request for proposals.

#### 6.0 SPECIAL PROVISIONS APPLICABLE TO ARCHITECT-ENGINEER AND RELATED SERVICES

- A. This Section prescribes guidelines and requirements for the procurement of Architectural-Engineering ("A-E") and related services. A-E Services are defined as professional services of an architectural or engineering nature that are required by law to be performed by a registered or licensed architect or engineer. Related services include: land surveying and construction project management. For the procurement of A-E and related services, the Procurement Officer shall follow the procedures set forth in this Section 6.0, in addition to the pertinent procedures set forth elsewhere in this Chapter.
- B. If the procurement is for A-E and related services, the selection must be based on the demonstrated competence and qualifications of prospective contractors, and shall comply with Government Code 4525, et seq., and, when applicable, the laws and regulations that govern the procurement of design-related services with federal funds (see e.g., Title 23 U.S.C. 112, Letting of Contracts and 23 CFR 172, Administration of Engineering and Design Related Service Contracts). These services shall be acquired based on a two-step, sealed bidding procedure, whereby qualifications are presented in a separate sealed envelope from a firm's price proposal. The proposals shall be evaluated based on qualifications only, and price negotiations shall then be commenced with the proposer determined by the Agency to be most qualified. If the Agency is unable to negotiate satisfactory terms, at a fair and reasonable price, with the proposer considered to be most qualified, then

negotiations shall be terminated with that proposer and commenced with the next most qualified proposer. This process shall be continued with successive qualified proposers until agreement is reached that is determined to be fair and reasonable.

## **CHAPTER 6 – SIMPLIFIED PURCHASE PROCEDURES**

### **1.0 GENERAL**

- A. Procurement of materials, supplies, or services by each Agency should adhere to the procedures in this Manual, as described in Chapter 2, Section 1.G. The procedures ensure that the appropriate authorizations are secured for the type of procurement made, and that the minimum requirements associated with the materials, equipment, supplies or services requested are procured in a fair and open manner.
- B. This Chapter sets forth the procedures for small purchases and other simplified purchase procedures. These purchases should be made competitively except where it is in the best interests of the Agency to accomplish such purchases non-competitively. Justification for such non-competitive procurement should be made, in writing, and maintained in the procurement record.

### **2.0 REQUIREMENTS FOR MICROPURCHASES**

- A. If the purchase price for required supplies, equipment, services and/or materials is considered a micropurchase as defined in Chapter 2, Section 1.G, then multiple quotes are not required; however, such purchases should be fairly priced using a purchase technique that best serves the needs of the Agency, and rotated among commercial vendors offering competitive pricing.
- B. Micropurchases may be accomplished by securing one proposal or quotation from a commercial vendor offering supplies, equipment or materials to the public in substantial quantities and the price is deemed to be fair and reasonable.
  - a. For federally-funded procurements, the determination that the price is fair and reasonable and how the determination was derived must be included as documentation in the procurement file.
- C. If oral quotes are obtained, written record of the quotes should be retained. The record should include, at a minimum, vendor name, telephone number and address, name of person providing the quote, and terms.

### **3.0 USE OF SMALL PURCHASE PROCEDURES**

- A. For small purchases as defined in Chapter 2, Section 1.G, staff should obtain a minimum of three (3) written quotations with reasonable efforts to include at least one DBE vendor if federally funds are utilized and, when practicable and appropriate, an award should be made on the basis of lowest price.
- B. For Commission public works projects (i.e., maintenance, repair or construction work), Authority public projects, as defined in Chapter 2, Section 9.D of this Manual, and planned solicitations for services defined as small purchases in accordance with Chapter 2, Section 1.G, review by the Procurement Officer prior to the solicitation of quotes is required in order to ensure compliance with relevant insurance requirements, applicable legal mandates, e.g., insurance, bonding, prevailing wage, and payroll records.

- C. The Procurement Officer should use and/or authorize the Small Purchase Procedures that are most suitable, efficient, and economical based on the circumstances of each procurement and determine that the price is fair and reasonable.

#### 4.0 PROHIBITED USE OF SMALL PURCHASE PROCEDURES

- A. The Procurement Officer and or Commission staff may not divide, split or fragment a procurement totaling more than the Agency's small purchase limitation into several purchases that are less than the limit in order to use the Small Purchase Procedures.

## **CHAPTER 7 – NON-COMPETITIVE AND EMERGENCY PROCUREMENTS AND REMEDIAL MEASURES**

### **1.0 NON-COMPETITIVE PROCUREMENTS**

- A. The non-competitive procurement of non-federally funded goods and services, which otherwise require competitive procurement may be authorized under one or more of the following circumstances, subject to any minimum Agency vote required by applicable law, or any other requirements of applicable law:
1. The Agency has advertised the contract as required by this Manual and has undertaken reasonable efforts to solicit potential contractors, but has determined that competition is inadequate;
  2. There is only a single source of supply available, or only one contractor is qualified to provide the service or product;
  3. The goods or services are to be provided by a government or other public entity;
  4. The goods or services are to be provided pursuant to an amendment of an existing contract that does not materially alter the terms and conditions of the contract (other than to extend the term and/or increase compensation to provide for the extended term or for additional goods/services to be provided under substantially the same terms of the original contract), provided that such renewal, extension or amendment is authorized or permitted by the contract;
  5. The equipment to be purchased is of a technical nature and the procurement thereof without advertising is necessary in order to assure standardization of equipment and interchangeability of parts;
  6. The item to be purchased is a capital maintenance item that is available only from the original manufacturer or supplier or is required to maintain system operational compatibility and connectivity with the existing system(s);
  7. The contract is for employment services;
  8. The contract is one for which only per diem and travel expenses are paid and there is no payment for services rendered;
  9. The Agency is piggybacking on an existing agreement between a contractor and any public agency or entity if: (a) the proposed Agency contract is for the same material scope of work as the other contract; (b) the proposed Agency contract contains substantially the same terms as the other contract; (c) the other contract was competitively procured in accordance with requirements applicable to such other agency's procurements; and (d) the procurement is otherwise in compliance with legal requirements applicable to Agency.



10. The provisions listed under Chapter 8, Section 3.0 regarding federally funded sole source, non-competitive, sole source procurements are applicable; or
  11. Except as may otherwise be limited by applicable law, the Agency determines that a non-competitive procurement is in the public interest and in the best interest of the Agency.
- B. Except as limited by applicable law, the Executive Director shall have authority to determine that non-competitive procurements are permitted under paragraph A, subparagraphs (1) through (11) for contracts for amounts less than or equal to \$250,000. Approval of the applicable Agency is required for contracts over \$250,000. Each decision to proceed with a non-competitive procurement must be supported by a written justification that is approved by the Executive Director or Procurement Officer, as required under this Manual.
  - C. The Procurement Officer will take action, whenever possible and in coordination with the user department/project manager, to avoid the need to continue to procure the same supply, service, or construction without competition.
  - D. A non-competitive or sole source procurement, where competition is legally required, should not be justified on the basis of any of the following circumstances:
    1. The lack of adequate advance planning for the procurement of the required commodities, services, or other items;
    2. Delays in the procurement caused by administrative delays, lack of sufficient procurement personnel, or improper handling of procurement requests or competitive procedures; or
    3. Pending expiration of budget authority.
  - E. The Procurement Officer should ensure that each non-competitive contract contains all of the required clauses, representations, and certifications, in accordance with the applicable laws, regulations, or Agency adopted policy.
  - F. The Procurement Officer should ensure that proper records of each non-competitive procurement are maintained.

## 2.0 EMERGENCY PROCUREMENTS; REMEDIAL MEASURES

- A. The Agency may award a contract on an emergency basis if the requirement is essential to deal with an existing emergency condition, as defined below in Paragraph “B”, and the Executive Director may award a contract when necessary as a remedial measure as defined below in Paragraph “C” or when permitted under Paragraph “D”. Such award by the Commission shall be made in compliance with PUC § 130234, as applicable. The emergency procurement of supplies or services and procurements as a remedial measure should be limited to quantities and time periods sufficient to meet the immediate threat and should not be used to meet long-term requirements.
- B. For purposes of an emergency procurement under this Chapter, an “emergency condition” is a situation (such as a flood, epidemic, riot, equipment failure, or any

other reason declared by the Agency) which creates an immediate threat to the public health, welfare, or safety. The existence of an emergency condition creates an immediate need for supplies, services, or construction which cannot be met through normal procurement methods, and the lack of which would seriously threaten one (1) or more of the following:

1. The health or safety of any person;
2. The preservation or protection of property;
3. The continuation of necessary Agency functions; or
4. Contract delays that could result in an increase to the cost of the project.

In the case of contracts for services, the Executive Director may declare the emergency condition.

- C. The Executive Director may authorize the expenditure of funds previously appropriated by the Commission for the direct purchases of goods and services, without following bid requirements (i) when a finding is made that immediate remedial measures are necessary to avert or alleviate damage to property, or to replace, repair, or restore damaged or destroyed property, of the Commission and are necessary in order to ensure that the facilities of the Commission are available to serve the transportation needs of the general public, and upon determining that available remedial measures, including procurement or construction in compliance with PUC § 130232, 130233, and 130234, are inadequate.
- D. In addition, for procurements that are not subject to the PUC for the Commission, or the PCC for the Authority, the Executive Director may authorize and complete Agency procurements on a noncompetitive, emergency basis as necessary to address emergency conditions, as described herein.
- E. A contract procured on an emergency basis or as a remedial measure should not be modified to expand the scope or extend the time of the procurement unless a limited number of additional commodities, services, or other items are needed to fill an ongoing emergency requirement until regular procurement action procedures initiated under other Chapters in this Manual can be completed.
- F. The Executive Director must, after an emergency expenditure in excess of his/her delegated signature authority, and after an expenditure necessary as a remedial measure, submit to the Agency a procurement summary explaining the necessity for the expenditure.
- G. The Procurement Officer should ensure that each emergency procurement contract and/or contract entered into as a remedial measure contains the required clauses, representations, and certifications, in accordance with the requirements of this Manual.
- H. The Procurement Officer should ensure that proper records of each non-competitive procurement are maintained in accordance with the requirements of this Manual.
- I. For a public project of the Authority, as defined in Chapter 2, Section 9.D of this Manual, the provisions above shall not apply. In such case, the Authority shall

comply with the provisions set forth in PCC § 20168 applicable to emergencies requiring the immediate expenditure of public money to safeguard life, health, or property.

### 3.0 WRITTEN JUSTIFICATION FOR EMERGENCY AND OTHER NON-COMPETITIVE PROCUREMENTS

- A. In each instance where the non-competitive procurement procedures set forth in this Chapter are used, the user department/project manager is required to prepare a written statement recording all of the facts that provide justification for proceeding with the non-competitive or emergency procurement.
- B. The Procurement Officer must approve the justification for all non-competitive procurements described under this chapter before such a procurement can proceed.

## CHAPTER 8 – REFERENCES TO APPLICABLE LAWS /REGULATIONS

### 1.0 GENERAL

- A. This Manual lists references to the various federal, state, and local regulations, to which the Manual was written to conform and/or comply.
- B. The Procurement Officer will be responsible, in cooperation with the Agency General Counsel, for reviewing these references from time to time in order to review new requirements and to note updates to the existing regulations. Notwithstanding any provision of this Manual, updates or changes to existing law shall apply regardless of whether the Manual has been changed.
- C. The majority of Chapter 8 of this Manual applies to FTA and FHWA funding. Since the Authority does not use these funding sources, these sections are applicable to the Commission only. The Procurement Officer, in cooperation with General Counsel, will ensure that the Authority complies with procurement requirements applicable to any state or federal grants received by the Authority.

### 2.0 REFERENCES

- A. For the Commission capital projects and contracts for goods and services utilizing FTA or FHWA funds, the provisions included in the Manual will apply only to the extent that they do not conflict with FTA or FHWA requirements, including the standards of FTA Circular 4220.1F, or the most current version thereof, entitled “Third Party Contracting Requirements” or FHWA Form FHWA-1273 entitled “Required Contract Provisions Federal-Aid Construction Contracts.” In case of any conflict, the applicable federal standards shall govern. The foregoing documents, though not all-inclusive, set forth requirements that the Commission must comply with in the solicitation, selection and administration of contracts funded by the FTA and FHWA, respectively.
- B. For projects funded by Caltrans and/or FHWA, the selection process shall be in accordance with Caltrans’ Local Assistance Procedures Manual.
- C. FTA Circular 4220.1F (or the most current version thereof) sets forth the requirements the Commission must adhere to in the solicitation, award, and administration of its third party contracts. FTA Circular 4220.1F applies to all FTA grantees and subrecipients that contract with third parties under FTA assistance programs.
  - a. In addition to the requirements set forth in this Chapter 8, the FTA standards for competition are set forth generally in Chapter 1 hereof and the FTA procedures for competitive sealed bid (“low bid”) procurements and competitively negotiated procurements are set forth in Chapters 3 and 5 hereof, respectively.
- D. Some of the requirements include the following:
  - 1. Pre-Award Audits. A pre-award (pre-negotiation) audit shall be completed, as required based on the participating state or federal funds, for each consultant contract.

2. Brooks Act Provisions. The provisions of the Brooks Act (40 U.S.C. 544) require local agencies to award federally funded engineering and design contracts on the basis of fair and open competitive negotiations, demonstrated competence, and professional qualifications (23 CFR, Section 172).
3. Required Contract Provisions/Forms.
  - a. Disadvantaged Business Enterprise
    - i. Notice to Proposers Disadvantaged Business Enterprise Information
    - ii. Standard Agreement for Subcontractor/DBE Participation
    - iii. Local Agency Proposer DBE Commitment (Consultant Contracts)
    - iv. Local Agency Proposer DBE Information (Consultant Contract)
    - v. Final Report-Utilization of DBE, First-Tier
    - vi. Subcontractor Listing
  - b. Federal Lobbying Restrictions, Title 31 U.S.C. Section 1352
    - i. Non-lobbying Certification for Federal-aid Contracts
    - ii. Disclosure of Lobbying
  - c. Financial Provisions.
    - i. Compliance with 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
    - ii. Compliance with 48 CFR, Chp. 1, Part 31, Contract Cost Principles and Procedures.
4. Provisions required by Caltrans Master Funding Agreement. Caltrans/FWHA Authorization to Proceed. FHWA or Caltrans acting in FHWA’s behalf must give the local agency an “Authorization to Proceed” with a project prior to the performance of any work for which federal reimbursement is to be requested, including the pre-award audit. Copies of the “Authorization to Proceed” and the consultant contract must be retained in the project files for future audit purposes.
5. Veterans Employment. Pursuant to 49 U.S.C. 5325(k), the Commission shall ensure that contractors working on an FTA-funded capital project give a hiring preference, to the extent practicable, to veterans (as defined in Section 2108 of Title 5) who have the requisite skills and abilities to perform the construction work required under the contract. This subsection shall not be understood, construed or enforced in any manner that would require an employer to give preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an

individual with a disability, or former employee. For FHWA-funded capital projects, the Commission shall comply with the veteran’s preference requirement, as set forth in 23 U.S.C. 114.

- E. Though not an all-inclusive listing, the following laws, regulations and code sections are applicable to Agency contracts funded with federal or state funds, dependent on the specific funding source::

<b>Federal Statute, Regulations, Policies, and Agreements</b>	<b>Subject</b>
2CFR Part 200	Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
49 CFR Part 26	Participation by Minority Business Enterprises; DBE Program
FAR Part 31	Contract Cost Principles and Procedures
FTA Circular 4220.1x	Third Party Contracting Requirements
FTA Circular 5010.1x	Grant Management Guidelines
FTA Master Agreement	Terms & Conditions of Grantee Administration of Projects Supported & Funded by the FTA
Caltrans Local Assistance Master Agreement	Terms & Conditions of Grantee Administration of Projects Supported & Funded by the FHWA or Caltrans
23 U.S.C. 114 / 23 CFR 633 23 U.S.C. 315 / 49 CFR 1.48	Form FHWA-1273 entitled “Required Contract Provisions Federal-Aid Construction Contracts.”
23 CFR 172	Procurement, Management, and Administration of Engineering and Design Related Services

Though not an all-inclusive listing, the following laws, regulations and code sections are applicable to both Agencies.

<b>CA State Codes</b>	<b>Section(s)</b>	<b>Subject</b>
Civil Code	9550-9566	Payment Bond
Civil Code	3320	Payments to Prime Design Professionals
Code of Civil Procedure	995.311	Bond Issuer Requirements
Government Code	4525 et seq.	Architect & Engineering Services
Government Code	6250 - 6270	Public Records Disclosure
Government Code	5956 et seq.	Infrastructure Projects
Labor Code	1777.1	Debarment by California Labor Commissioner
Labor Code	1770-1780	Prevailing Wage, Work Hours, Certified Payroll Records, Apprentices
Public Contract Code	1103	Responsibility on Public Works Contracts
Public Contract Code	1104	Plans and Specifications
Public Contract Code	3300	Contractor’s License
Public Contract Code	3400	Brand Name OR Equal; Restrictive Clauses

CA State Codes	Section(s)	Subject
Public Contract Code	4100 - 4114	Subcontracting
Public Contract Code	5100 - 5107	Relief of Bidders
Public Contract Code	6100 - 6610	Awarding of Contracts
Public Contract Code	6700 et. seq.	Construction Manager/General Contractor Authority
Public Contract Code	7100 - 7200	Contract Clauses, Non-Collusion Affidavit
Public Contract Code	9201 - 9204	Claims and Disputes
Public Contract Code	10335 et seq.	Service Contracts
Public Contract Code	20101	Prequalification
Public Contract Code	20103.6	Limitation on Architect's Indemnity Obligation
Public Contract Code	20103.8	Alternative Bids
Public Contract Code	20104-20104.6	Resolution of Construction Claims
Public Contract Code	20104.50	Progress Payments on Public Works
Public Contract Code	22300	Substitution of Securities

Though not an all-inclusive listing, the following laws, regulations and code sections are applicable to the Commission only.

CA State Codes	Section(s)	Subject
Public Contract Code	6820 et seq.	Design/Build Authority
Public Utilities Code	130232 130239	- Award of Contracts Based On Price or Price and Other Factors; Bid Security; Emergency Procurements; Advertising; Immediate Remedial Measures; Rejecting Bids
Public Utilities Code	130232(c)	Authorization of Executive Director for Bid Expenditures <\$50,000.
Public Utilities Code	130232(d)	Bid Security for Construction Work >\$25,000

Though not an all-inclusive listing, the following laws, regulations and code sections are applicable to the Authority only.

CA State Codes	Section(s)	Subject
Public Contract Code	20160, et. seq.	Low Bid Procurement of Public Projects; Bid Security; Emergency Procurements; Advertising; Rejecting Bids
Public Contract Code	22050	Emergency Contracting Procedures

### 3.0 FTA/FHWA-FUNDED PROCUREMENT BY NON-COMPETITIVE (SOLE SOURCE) PROPOSALS

- A. Notwithstanding any other provision herein, federally funded contracts must comply with the federal requirements for non-competitive or sole source procurements. Non-competitive or sole source procurements are accomplished through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate. A contract change that amounts to a “cardinal change” or a “tag-on” as defined in FTA Circular 4220.1f that involves a major deviation from the original purpose is considered a sole source procurement on a federally funded contract that must comply with this paragraph.
1. Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, competitive sealed bids, or competitive proposals and at least one of the following circumstances applies:
    - a. The item is available only from a single source;
    - b. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
    - c. FTA/FHWA, as applicable, authorizes noncompetitive negotiations—e.g., if FTA/FHWA, as applicable, provides a joint procurement grant or a research project grant with a particular firm or combination of firms, the grant agreement is the sole source approval;
    - d. After solicitation of a number of sources, competition is determined inadequate;
    - e. The item is an associated capital maintenance item as defined in 49 U.S.C. §5307(a)(1) that is procured directly from the original manufacturer or supplier of the item to be replaced. The grantee must first certify in writing to FTA:
      - i. that such manufacturer or supplier is the only source for such item; and
      - ii. that the price of such item is no higher than the price paid for such item by like customers; or
    - f. Any other circumstance justifying sole source procurement set forth in the applicable federal rules and regulations.
  2. For Caltrans or FHWA funded procurements, a PIF has been approved by the applicable funding entity.
  3. A cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profit, is required.



#### 4.0 DISADVANTAGED BUSINESS ENTERPRISE AND OTHER REQUIREMENTS

- A. In order to ensure the Commission's compliance with the federal DBE Program on all applicable procurements funded with United States Department of Transportation (DOT) dollars, the Commission will make reasonable efforts to utilize disadvantaged business enterprises in compliance with applicable federal regulations.
- B. The Commission's procurement process is structured to ensure that its DBE Program supports the Commission's commitment to promote, foster and utilize disadvantaged business enterprises as required and defined by applicable federal regulations.
- C. As a condition of funding assistance, and in accordance with DOT DBE regulations published in applicable federal regulations, the Commission is required to submit for approval a DBE Program and regular DBE goals, which it will make good faith efforts to achieve through procurement actions carried out under this Manual.
- D. Pursuant to 2 CFR Part 200.321, the Commission shall also take affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible on federally funded projects.

#### 5.0 GEOGRAPHICAL PREFERENCES

- A. For any federally-funded contracts, except when procuring A-E services, the Commission is prohibited from using statutorily or administratively imposed in-state or local geographical preferences in the evaluation of bids or proposals unless federal statutes expressly mandate or encourage geographic preference.

#### 6.0 REVENUE CONTRACTS

- A. The Commission may enter into revenue contracts with a third party whereby the primary purpose is to either generate revenues in connection with a transit-related activity or create business opportunities utilizing an FTA-funded asset. The FTA requires such third party revenue contracts to be awarded utilizing competitive selection procedures and principles. The extent of and type of competition required is within the discretionary judgment of the Commission.

#### 7.0 STATUTORY AND REGULATORY REQUIREMENTS

- A. The Commission shall comply with applicable federal statutory and regulatory requirements (such as Davis-Bacon Act, DBE, Debarment and Suspension, Clean Air, Environmental and Conservation Requirements, Buy America and Cargo Preference) in carrying out federally-funded procurement actions under this Manual. Below is a contract clause matrix that is applicable to third-party contract provisions for federally funded contracts, excluding micropurchases and except for Davis-Bacon requirements which apply to construction contracts exceeding \$2,000. The matrix should be reviewed at least annually for any regulatory changes.

TYPE OF PROCUREMENT					
PROVISION	Professional Services/A&E	Operations/ Management	Rolling Stock Purchase	Construction	Materials & Supplies
No Federal Government Obligations to Third Parties (by Use of a Disclaimer)	All	All	All	All	All
False Statements or Claims Civil and Criminal Fraud	All	All	All	All	All
Access to Third Party Contract Records	All	All	All	All	All
Changes to Federal Requirements	All	All	All	All	All
Termination	>\$10,000 if 2 CFR Part 200 applies.	>\$10,000 if 2 CFR Part 200 applies.	>\$10,000 if 2 CFR Part 200 applies.	>\$10,000 if 2 CFR Part 200 applies.	>\$10,000 if 2 CFR Part 200 applies.
Civil Rights (Title VI, ADA, EEO except Special DOL EEO clause for construction projects)	All	All	All>\$10,000	All	All
Special DOL EEO clause for construction projects				>\$10,000	
DBEs	All	All	All	All	All
* Incorporation of FTA Terms	All	All	All	All	All
Debarment and Suspension	>\$25,000	>\$25,000	>\$25,000	>\$25,000	>\$25,000
Buy America			>\$150,000	>\$150,000	>\$150,000
Resolution of Disputes, Breaches, or Other Litigation	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000

TYPE OF PROCUREMENT					
PROVISION	Professional Services/A&E	Operations/ Management	Rolling Stock Purchase	Construction	Materials & Supplies
Lobbying	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Clean Air	>\$150,000	>\$150,000	>\$150,000	>\$150,000	>\$150,000
Clean Water	>\$150,000	>\$150,000	>\$150,000	>\$150,000	>\$150,000
Cargo Preference			Transport by ocean vessel.	Transport by ocean vessel.	Transport by ocean vessel.
Fly America	Foreign air transp./travel.	Foreign air transp./travel.	Foreign air transp./travel.	Foreign air transp./travel.	Foreign air transp./travel.
Veterans Hiring Preference				All	
Davis-Bacon Act				>\$2,000 (also ferries).	
Contract Work Hours and Safety Standards Act		>\$100,000 (transportation services excepted).	>\$100,000	>\$100,000 (also ferries).	

<b>TYPE OF PROCUREMENT</b>					
<b>Professional Services/A&amp;E</b>	<b>Operations/ Management</b>	<b>Rolling Stock Purchase</b>	<b>Construction</b>	<b>Materials &amp; Supplies</b>	
Copeland Anti-Kickback Act Section 1 Section 2				All > \$2,000 (also ferries).	
Bonding				\$100,000	
Seismic Safety	A&E for new buildings & additions.			New buildings & additions.	
*Transit Employee Protective Arrangements		Transit operations.			
* Charter Service Operations		All			
* School Bus Operations		All			
* Drug Use and Testing		Transit operations.			
* Alcohol Misuse and Testing		Transit operations.			
Patent Rights	R & D				
Rights in Data and Copyrights	R & D				
Energy Conservation	All	All	All	All	All
Recycled Products		EPA-selected items \$10,000 or more annually.		EPA-selected items \$10,000 or more annually.	EPA-selected items \$10,000 or more annually.
Conformance with ITS National Architecture	ITS projects.	ITS projects.	ITS projects.	ITS projects.	ITS projects.
ADA Access	A&E	All	All	All	All
Notification of Federal Participation for States	Limited to States.	Limited to States.	Limited to States.	Limited to States.	Limited to States.

\* Applies only to FTA funding

### Caltrans Fiscal Provisions Checklist

**All** contract fiscal provisions must utilize the language specified by Caltrans and set forth in the LAPM sample contract language form. The clauses that must be used verbatim are for the items specified below (except as otherwise noted). Consult the LAPM form, and the latest RCTC model contract for Caltrans/FHWA funded projects.

Performance Period: Beginning date cannot be prior to the date Caltrans issues the conformance letter, if applicable.

Allowable Costs and Payments: The contract method of payment must be one of the four methods required as listed in Section 10.2 of the LAPM.

Termination: The provision must contain language regarding termination for cause and convenience Per 23 CFR 172.9 (c)(1)(xii).

Cost Principles and Administrative Requirements.

\* Travel and subsistence in accordance with DPA regulations

\* Maintain an accounting system that accumulates and segregates project costs

\* Accounting system must conform to GAAP

Retention of Records/Audit.

Audit Review Procedures, including the Audit Clause. Ensure use of appropriate clauses for (i) contracts \$150,000 or greater; or (ii) contracts \$3,500,000 or greater.

Subcontracting

Equipment Purchase

State Prevailing Wage Rates.

Conflict of Interest.

Rebates, Kickbacks, or other Unlawful Considerations.

Prohibition of Expending State or Federal Funds for Lobbying.

\* Specific provisions addressing these items are not included in LAPM form, but are required and are included in the RCTC model contract.

## **CHAPTER 9 – DISPOSAL OF SURPLUS PERSONAL PROPERTY**

### **1.0 DEFINITIONS**

- A. “Surplus personal property” shall mean personal property of the Agency which is no longer needed or fit for its intended purpose or has exceeded its useful life.

### **2.0 DISPOSAL OF PERSONAL PROPERTY**

- A. Upon recommendation by the Executive Director and in accordance with applicable state or federal funding requirements, designated Commission staff may dispose of all surplus and obsolete personal property by donation, bid, auction, negotiated sale or exchange. If the disposal of such items is conducted by bid, the sale shall be conducted in accordance with generally accepted best practices and applicable laws and regulations. The Commission staff shall attempt to obtain the best value for the property that can reasonably be obtained.

## CHAPTER 10 – OTHER PROCUREMENT MATTERS

### 1.0 DISPUTES, CLAIMS, AND CHANGES—DEFINITIONS

- A. Change Orders – the commercial and technical resolution of a contract modification. The change order document can be unilateral or bilateral in execution.
- B. Potential Claim – written notice provided to the Agency by the contractor when the:
  - 1. Parties are unable to reach bilateral agreement on a change and the contractor is provided a unilateral change order (“protest”); or,
  - 2. Contractor perceives that it is entitled to additional compensation (time or money) for something it believes to constitute extra work performed or to be performed.
- C. Claim – differences that have developed during the contract, under protest or under notice of potential claim, which are not resolved at the time the contractor returns the proposed final pay estimate.
- D. Dispute – a disagreement between the parties as to the merits, amount or remedy arising out of an issue in controversy, including a disagreement regarding a Claim or asserted default.
- E. Amendment – a modification considered outside the original contract scope or terms and formalized with a written agreement signed by both parties.

### 2.0 DISPUTES, CLAIMS, AND CHANGES—GENERAL

- A. The Procurement Officer is responsible for documenting negotiation activities for the record, and should be present at all professional services and construction contract negotiations.
- B. The Procurement Officer or project manager, as required, prepares the appropriate documentation (e.g., change order forms) for review and approval by the Executive Director or Agency, prior to issuance to the consultant/contractor for signature. This document includes full definition of work scope, impact on DBE goals, definition of time and schedule impacts, and price. The change order language stipulates that the agreed-upon terms are all inclusive, and no other relief will be available regarding this work.
  - 1. For federally-funded contracts, any damages recovered must be credited to the project involved unless the FTA/FHWA, as applicable, permits otherwise.
  - 2. For federally-funded contracts, change orders that amount to cardinal changes or tag-ons shall comply with Chapter 8, Section 3.0(A).

### 3.0 TERMINATION

- A. All Agency contracts exceeding \$25,000 should contain provisions enabling the Agency to terminate such contracts for the convenience of the Agency, and all

federally funded contracts must contain such provisions. These provisions should specify the manner in which such termination will be effected and the basis for settlement. There should also be included in such contracts appropriate provisions specifying causes for which the contracts may be terminated for default.

B. Terminations for Convenience of the Agency

1. Agency contracts will be terminated for convenience only when this is determined to be in the best interests of the Agency. In lieu of issuing a notice of termination for convenience, the Procurement Officer will effect a no-cost settlement agreement where possible and appropriate.
2. Formal written notice to the contractor is necessary to terminate a contract for convenience. Such notice will state that the contract is being terminated pursuant to the termination for convenience provision of the contract, the effective date, the extent of termination and instructions to the contractor to cease performance under the contract.
3. The Procurement Officer will negotiate a no-cost settlement with the contractor if possible. Otherwise, the Procurement Officer will negotiate an appropriate settlement agreement with the contractor pursuant to the provisions of the termination for convenience clause of the contract.

C. Terminations For Default

1. If a contractor's right to proceed is terminated for default, the Agency may take over and complete the work or cause it to be completed, and the contractor and its sureties, if any, shall be liable to the Agency for any increased costs caused thereby. The contractor and its sureties should, in addition to increased costs in completing the work, be liable for liquidated damages, if liquidated damages are provided in the contract, or for actual damages, if liquidated damages are not so provided.
2. If the Procurement Officer determines that the contractor's failure to perform arises from causes which are excusable under the terms of the contract, the Procurement Officer shall not terminate the contractor's right to proceed, nor shall he/she charge the contractor with liquidated damages (or if no liquidated damages, then actual damages) because of any delays occasioned by such causes.
3. Where the surety does not complete performance of the contract, the Procurement Officer normally will complete the performance of work by awarding a new contract based on the same plans and specifications. Such award may be the result of competitive bidding or negotiation; whichever procedure is most appropriate under the circumstances. The Procurement Officer must use reasonable diligence to obtain the lowest price available for completion.
4. If, after due consideration, the Procurement Officer determines that termination is not in the best interest of the Agency although the contractor is in default, the Procurement Officer may permit the contractor to continue

the work, and the contractor and its sureties shall be liable to the Agency for liquidated damages, as specified in the contract, or if liquidated damages are not so specified, for any actual damages occasioned by the failure of the contractor to complete the work in accordance with the terms of the contract.

5. Any provision for a liquidated damages assessment must be at a specific rate per day for each day of overrun and must be specified in the contract.
  - a. For FTA-funded contracts, any damages recovered must be credited to the project involved unless the FTA permits otherwise.

#### 4.0 BONDS, OTHER SECURITIES AND INSURANCE

- A. The Agency should specify bonding, in compliance with applicable federal and state requirements for all public works contracts.
  1. In general, all construction contracts over \$25,000 require a payment bond in the amount of 100% of the contract value.
  2. All FTA-funded construction contracts over \$100,000 require a performance bond in the amount of 100% of the contract value and a bid guarantee in the amount of no less than 5% of the contract value.
  3. For Commission, bids for construction of facilities where the work is anticipated to exceed \$25,000 require bid security as set forth in PUC § 130232.
  4. For Authority, bids for public projects where the work is anticipated to exceed \$5,000 require security as set forth in PCC § 20171.
- B. The Procurement Officer may require any of the following types of security for any solicitation or contract subject to this Manual, other than a small purchase, regardless of the estimated amount of the contract:
  1. Bid bonds;
  2. Other bid or proposal security;
  3. Construction performance and payment bonds; and
  4. Performance or payment bonds or other security on non-construction contracts.
- C. Requirement for Bonds To Be Executed By An Admitted Surety Insurer
  1. California Code of Civil Procedure § 995.311 calls for any bond required on a public works contract to be executed by an admitted surety insurer.
  2. The Agency has a duty to verify that an admitted surety insurer executes the bond. The Procurement Officer should print out information from the website of the California Department of Insurance (<http://www.insurance.ca.gov/docs/FS-CompanyProfiles.htm>) confirming that the surety is an admitted surety insurer and attach it to the bond.



- D. For federally funded procurements, the Agency shall not require unnecessary experience or excessive bonding.

## 5.0 CONTRACT CLOSEOUT

- A. A completed contract is one which is both physically and administratively complete and in which all aspects of contractual performance have been accomplished, terminated, or otherwise disposed of by contract modification. A contract is physically complete only after all articles and services called for under the contract, including such related items as reports, spare parts, and exhibits, have been delivered to and accepted by the Agency, including those articles and services for which no specific compensation may have been stipulated. A contract is administratively complete when all payments have been made and administrative actions accomplished.
- B. The project manager, in cooperation with the Procurement Officer, is responsible for review of the contract file and obtaining all necessary documentation to ensure that: (1) all deliverables and/or services (including any reports) required under the contract have been received and accepted; (2) the terms and conditions of the contract have been complied with; (3) disposition of accountable property under the contract has been accomplished; all necessary actions including final payment and releases required to close the contract are completed and documented.
- C. Small purchase files should be considered closed when the Procurement Officer receives evidence of receipt of property and final payment.
- D. A contract file should not be closed in any of the following situations:
  - 1. If the contract is the subject of a claim or dispute;
  - 2. If the contract is in litigation or under appeal;
  - 3. In the case of a termination, if all termination actions have not been completed;  
or
  - 4. If state or federal approval is required and has not been received.

## CHAPTER 11 – PAYMENT

### 1.0 AGENCY PAYMENT PROCESS

- A. The Agency will promptly process all contract payments with necessary controls to assure compliance with all contract terms and conditions in accordance with internal procedures recommended by the Chief Financial Officer and authorized by the Executive Director.
- B. The Procurement Officer should clearly specify in solicitations and contracts the form and content of an acceptable invoice, including a requirement that invoices be sequentially numbered, that they contain a date and contract number and the services for which they are invoicing, the period of performance being invoiced, and to whom invoices are to be sent.

### 2.0 PROGRESS PAYMENTS

- A. The Agency may provide for progress payments under contracts that require long time periods to complete contract performance or if the use of progress payments contributes to the effective and efficient administration of consultant/contractor work. Progress payments will be made on the basis of allowable costs incurred by the consultant/contractor, and the stage of completion of the contract.
  - 1. Criteria. Contract clauses providing for progress payments should be used when the investment in work and progress is expected to be great enough to add substantial costs to the contract or strain the consultant/contractor's cash flow or ability to obtain financing. Under no circumstances should payments exceed the consultant/contractor's physical completion of the Work, nor should they amount to advance payments. Progress payments can be based on a periodic voucher for expenditures, a milestone, or the Agency's estimate of work accomplished as defined in the contract.
  - 2. For federally funded procurements, the Agency must obtain adequate security (i.e., title to work in progress; letter of credit) for any progress payments made.
  - 3. For FTA-funded procurements, advance payments are prohibited unless prior written concurrence is obtained from the FTA.
- B. Progress Payments on Public Works

In accordance with PCC § 20104.50, the Agency must make progress payments within 30 days after receipt of an undisputed and properly submitted payment request from a contractor on a construction contract. If the Agency fails to make timely payment, the Agency may be required to pay interest to the contractor equivalent to the legal rate set forth in subdivision (s) of Section 685.010 of the Code of Civil Procedure.
- C. Progress Payments and Retentions on Architect, Engineer, and Land Surveyor Contracts

Pursuant to California Civil Code §3320, for any contract for public works or improvement, the Agency shall pay to the prime design professional any progress payment within 30 days of receipt of a written demand for payment in accordance with the contract, and the final retention payment, if applicable, within 45 days of receipt of a written demand for payment in accordance with the contract. If any amount is wrongfully withheld or is not timely paid, the prime design professional should be entitled to a penalty of 1½ percent for the improperly withheld amount, in lieu of any interest otherwise due, per month for every month that payment is not made.

### 3.0 PROMPT PAYMENT TO SUBCONTRACTORS—FEDERALLY FUNDED AGREEMENTS

- A. In accordance with 49 CFR Part 26, Agency contracts funded by the Department of Transportation above the small purchase threshold must require that the prime contractor or subcontractor shall pay to any subcontractor, not later than 7 days of receipt of each progress payment from the Agency, unless otherwise agreed to in writing, the respective amounts paid to the contractor on account for the work performed by the subcontractors, to the extent of each subcontractor's interest therein. The Agency contract may provide that, in the event that there is a good faith dispute over all or any portion of the amount due on a progress payment from the prime contractor or subcontractor to a subcontractor, then the prime contractor or subcontractor may withhold no more than 150 percent of the disputed amount.
- B. The Agency must also require the prompt return of retainage payments from the prime contractor to the subcontractor within 7 days after the subcontractor's work is satisfactorily completed.

### 4.0 PAYMENT OF RETENTION ON PUBLIC WORKS CONTRACTS

- A. Pursuant to PCC § 7107, within 60 days after the date of completion of the work of improvement, the Agency must release any retention withheld except funds withheld to satisfy outstanding stop notices or otherwise properly withheld. In the event of a dispute between the Agency and the original contractor, the Agency may withhold from the final payment an amount not to exceed 150 percent of the disputed amount.

### 5.0 REQUEST FOR PAYMENT CERTIFICATION

- A. All contracts above the small purchase threshold may contain a clause, which requires the contractor to submit with each request for payment, a certification that the claim for payment is true, correct, and for services rendered and/or supplies delivered in accordance with the contract.
- B. The user department/project manager will disapprove and Accounts Payable will return unpaid any request for payment which does not contain the certification when required.

**REVISION HISTORY:**

<b>Revision No.</b>	<b>Revisions</b>	<b>Adopted</b>
0	Adopted by the Commission	7/11/12
1	Adopted by the Commission	12/12/12
2	Adopted by the Commission	9/9/15
3	Adopted by the Commission	12/13/17
4	Adopted by the Commission	6/13/18
5	Adopted by the Commission	9/11/19
6	Adopted by the Commission	2/ __/21
	Adopted by the Authority	2/ __/21