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# CONTRACTS & PROCUREMENT

## Procurement and Contracting Policies

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## Section 1. Introduction

The Southern California Regional Rail Authority ("Authority") is a Joint Powers Authority organized pursuant to Government Code Section 6500 et seq and specifically enabled pursuant to Public Utilities Code Section 130255. Pursuant both to its Joint Powers Agreement and by statute, the Authority may acquire such property, facilities, equipment, materials, supplies, and services as may be deemed necessary to carry out its duties.

The policies governing procurements of the Authority derive from state law and federal law. By accepting state and federal funding, the Authority is also obligated to comply with certain regulations in its procurement of goods and services. More specifically, certain standards, regulations, and other requirements for grants to local governments issued by the United States Department of Transportation apply to the Authority in connection with contracts financed in whole or in part with federal funds. In the event of a conflict between the Authority's Procurement and Contracting Policies and state or federal law, such state or federal law will supersede these Procurement and Contracting Policies.

These Procurement and Contracting Policies provide a broad overview of the standards and methods which will guide the Authority in obtaining goods and services. By way of this Policy, the Board of Directors (Board) delegates authority for these matters to the Chief Executive Officer (CEO) subject to the limitations contained in this Policy and under applicable law.

## Section 2. Policy Goals

The Authority's Procurement Policy is guided by six basic goals, all of which are equally important:

- A. To foster maximum open and free competition in the expenditure of public funds;
- B. To promote the greatest economy and efficiency for the Authority;
- C. To provide safeguards to maintain a procurement system of quality and integrity;
- D. To instill public confidence in the procurement process of the Authority and adherence to proper standards of conduct by all Authority personnel;
- E. To ensure fair and equitable treatment for all vendors who seek to do business with the Authority, including small businesses and Disadvantaged Business Enterprises (DBEs); and
- F. To maintain procurement policies and procedures to ensure compliance with applicable state, and federal laws and regulations.

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

### Section 3. Chief Executive Officer's Delegated Procurement Approval Authority

The Board authorizes the CEO to act in accordance with the delegations of authority listed below to the extent permitted by law:

- A. The CEO may award and execute agreements, leases, options, amendments, or change orders for equipment, supplies, materials, services or construction when the total contract amount does not exceed \$500,000 (including any options and contingency).
- B. The Board will approve the award of all agreements, leases, options, amendments, or change orders for equipment, supplies, materials, services or construction when the total contract amount exceeds \$500,000 (including any options and contingency).
- C. The CEO is authorized to approve change orders or amendments to contracts awarded by the Board up to the established contract contingency.
- D. The CEO is authorized to approve change orders or amendments to contracts awarded by the Board without an established contract contingency, provided the cumulative increase does not exceed 10% of the original contract price.
- E. The CEO may sub-delegate the Board-granted authority to a designee(s). Such delegation must be in writing, include defined monetary limits, and be consistent with the Board-approved Procurement and Contracting Policies. Wherever in these Procurement and Contracting Policies the CEO is designated authority, such authority will be understood to include the designee of the CEO.

The CEO must provide a quarterly report to the Board of Directors with a list of contracts awarded under the CEO's authority above \$250,000.

### Section 4. Standards of Conduct and Conflicts of Interest

#### A. General

The Ethics Policies separately adopted by the Authority's Board establish standards of conduct that are binding on all Authority employees who may participate in or have access to any phase of the procurement process, including contract administration activities.

#### B. Definition

For purposes of the sections regarding ethical standards and conflicts of interest regarding Authority procurements, the term "Employee" includes Board Members, Board Alternates, contractors, consultants, temporary staff, and all other individuals who, through their relationship with the Authority, have access to information that a bona-fide Authority employee would be prohibited from using for personal benefit or for the benefit of another individual.

### C. "Black-Out" Period

While a procurement is ongoing, the Black-Out period is defined as from the time a procurement is published to the time a notice of intent to award is issued. Communication with prospective proposers or bidders that relates to the procurement should be conducted only with the designated staff member of the Contracts and Procurement Department pursuant to the procedures spelled out in a particular solicitation. This control is in place to ensure no appearance of inappropriate communications or unfair advantages are created. Other than the designated contact person, Employees, as defined broadly in this section, should not participate in communications outside the rules spelled out in a particular solicitation with prospective proposers or bidders that relate to a particular procurement. Any violations may result in rejection or disqualification of the violator's proposal or bid.

### D. Conflict of Interest

No Employee, again defined broadly in this section, may participate in any procedure, task, or decision relative to initiation, evaluation, award, or administration of a contract if a conflict of interest, real or apparent, exists. Such a conflict of interest arises when (a) the Employee, (b) any member of his or her immediate family, (c) his or her business associate, or (d) an organization which employs, or which is about to employ, any of the above described individuals has a financial or other interest in a firm that participates in an Authority procurement process or that is selected for a contract award. The standards governing the determination as to whether such an interest exists are set forth in Sections 1090, 1091, and 1091.5 of the California Government Code and the California Political Reform Act.

## Section 5. Methods of Competitive Procurement

Unless otherwise set forth in this Policy, all purchases and contracts, made by any method, will be made on a competitive basis to the greatest extent practicable. Adequate outreach will be made to ensure open and fair competition, and that small businesses, DBEs, and local vendors are notified of contract opportunities.

The Authority may use any method of procurement, such as informal bids or formal competitive solicitations, that is appropriate for the particular acquisition, complies with statutory and regulatory requirements, and is in the best interest of the Authority.

### A. Informal Procurement

- i. Purchases for \$10,000 or below, defined as "Micro Purchases," need not be awarded competitively, but the price must be determined to be fair and reasonable and should be distributed equitably among qualified suppliers. Micro Purchases do not require advertising or sealed responses.
- ii. Purchases between \$10,001 and \$25,000, defined as "Small Dollar Purchases," should be procured competitively through written price quotations or proposals, via e-mail, obtained from a minimum of three vendors. Small Dollar Purchases do not require advertising or sealed responses.

- iii. Consistent with 2 CFR 200.88, purchases of up to \$250,000 using federal funds may follow “Simplified Acquisition Thresholds” procedures.

B. Formal Procurement

- i. Supplies, Equipment, Materials, and Public Works. Unless an exception applies, a formal competitive bidding process will be used pursuant to Public Utilities Code 130232 to purchase all supplies, equipment, and materials, and the construction of all facilities and other public works, when the expenditure required exceeds \$25,000. Contract award will be to the lowest responsive, responsible bidder.

- a. Specialized Rail Transit Equipment. Notwithstanding the foregoing, the Authority may use a "best value" approach pursuant Public Utilities Code 130238 discussed below, including all applicable statutorily required procedures, to procure specialized rail transit equipment, including railcars, locomotives, computers, and telecommunications, fare collections, microwave, and other related electronic equipment and apparatus, all in accordance with state law.

- ii. Services. While the Authority may use a formal competitive bidding process to procure services under applicable circumstances as determined by the CEO or designee, ordinarily, and unless an exception applies, formal competitive proposals which may consider and evaluate qualifications and other relevant criteria in addition to price to determine best overall value to the Authority (referred to as the "best value" approach), will be used to procure services when the estimated expenditure exceeds \$25,000. The CEO or designee will determine the appropriate categories and weighting of evaluation criteria.

- a. Architecture, Engineering, Land Surveying, and Construction Project Management Services. Specialized state and federal laws, including The Brooks Act (49 USC 5325(b), 40 USC 1102, and California Government Code §4525 et seq), apply to the procurement of architecture engineering, land surveying, and construction project management services, and other related services including landscape architecture services and environmental services performed in connection with project development and permit processing in order to comply with federal and state environmental laws, regardless of the estimated expenditure. Such contracts must be awarded on the basis of demonstrated competence and qualifications for the types of services to be performed and at fair and reasonable prices to the Authority.

- iii. FTA Procurements: Purchases above \$250,000 will follow FTA procedures for FTA-funded procurements.

C. Cooperative Procurement

The Authority may participate in a procurement as the lead or as a participating party with one or more public agencies for procurement or use of goods and services. Joint procurement, state

cooperative purchasing programs, “piggybacking”, and assignment of existing contract rights with other public agencies may be used when consistent with applicable federal, state, and local statutory or grant requirements.

## Section 6. Non-Competitive Procurement

### A. Emergency Contracts

In the case of an emergency, the Authority is not required to follow competitive bidding requirements if the emergency will not permit a delay, and the procurement of equipment, services, and supplies is necessary to respond to the emergency. “Emergency” means a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services. Pursuant to Public Contract Code 22050, the Board, by a four-fifths vote, may take any immediate procurement action required by an emergency, and may procure necessary equipment, services, and supplies without giving notice for bids to let contracts.

In adopting this Policy, the Board authorizes the CEO to take all necessary and proper measures in emergency conditions to repair or replace Authority facilities as necessary. When emergency conditions do not permit a delay resulting from a formal competitive solicitation process, the CEO is authorized to make purchases without giving notice for bids or proposals. The CEO will promptly report on the reasons and necessity for proceeding without a competitive solicitation to the Board at the next available meeting after the emergency action is taken. Board ratification is required for any contract in excess of \$500,000, and must be obtained as soon as it is practicable to do so.

### B. Lower Market Price

Pursuant to PUC § 130233, if a competitive procurement results in all bids being rejected and the Board determines by a two-thirds vote that supplies, equipment, and materials may be purchased at a lower price in the open market, the Board may proceed to direct the purchase be made in the open market.

### C. Sole Source Procurement

Regardless of the estimated cost of the procurement, the Authority is not required to engage in the competitive procurement process, either formal or informal, when a competitive procurement is infeasible and at least one of the following conditions apply:

- i. The item is only available from one source.
- ii. If one of the conditions described below is applies:
  - a. Unique or Innovative Concept – The offeror demonstrates a unique or innovative concept or capability not available from another source. “Unique or Innovative Concept” means a new, novel, or changed concept, approach, or method that is the product of original thinking, the details of which are kept confidential or are patented

or copyrighted, and is available to the Authority only from one source and has not in the past been available to the Authority from another source.

- b. Patents or Restricted Data Rights – Patent or data rights restrictions preclude competition.
- c. Substantial Duplication Costs – In the case of a follow-on contract for the continued development or production of highly specialized equipment and major components thereof, when it is likely that award to another contractor would result in substantial duplication of costs that are not expected to be recovered through competition.
- d. Unacceptable Delay – In the case of a follow-on contract for the continued development or production of a highly specialized equipment and major components thereof, when it is likely that award to another contractor would result in unacceptable delays in fulfilling the Authority’s needs.

iii. After solicitation of a number of sources, the competition is determined inadequate.

In all cases, the Authority must verify that the particular procurement meets the definition of a sole source and the Authority must perform a cost or price analysis to determine the reasonableness of the price of the sole source.

Alternatively, pursuant Public Utilities Code 130237, the Board may direct the purchase of any supply, equipment, or material without engaging in a competitive procurement process upon a finding by two-thirds vote of the Board that there is only a single source of procurement and that the purchase is for the sole purpose of duplicating or replacing supply, equipment, or material already in use.

#### D. Prototype Equipment or Modifications

Pursuant to Public Utilities Code 130236, upon a finding by two-thirds vote of all members of the Board that a competitive process would be inadequate or not in the Authority's best interests, the Board may direct the procurement of prototype equipment or modifications in an amount sufficient to conduct and evaluate operational testing without further observance of any competitive procurement requirements.

### Section 7. Unsolicited Proposals

An Unsolicited Proposal is a written proposal that is submitted to the Authority on the initiative of the submitter that is not a response to a formal or informal request issued by the Authority. It must have the following qualities:

- Innovative and unique;
- Independently originated and developed by the proposer;
- Of sufficient size and benefit to potentially warrant a full review process by the Authority;



- Prepared without the Authority's supervision, endorsement, direction, or direct involvement; and
- Sufficiently detailed that its benefits in support of the Authority's mission and responsibilities are apparent.

The Authority may award a contract in response to an unsolicited proposal if permitted by applicable law, and if the proposal presents an innovative and unique opportunity and is independently originated and developed by the offerors without Authority participation. The Authority does not commit to any particular outcome (including that Authority engagement with the proposer will lead to a procurement or a contract with the proposer). All costs incurred by a proposer in discussing an Unsolicited Proposal with the Authority, in preparing any materials, and in any way engaging with the Authority regarding an Unsolicited Proposal will be borne solely and completely by the proposer.

## Section 8. Procurement Solicitation and Award

### A. Independent Cost Estimate

Prior to commencing a procurement, the department or division requesting the procurement will prepare an independent cost estimate for every procurement valued over \$150,000. An independent cost estimate is not required for micro-purchases.

### B. Solicitation Documents

Solicitations may not be drafted in a manner that limits bidding or proposing unnecessarily or intentionally to any one offeror, nor may solicitations be split to avoid the need for full and open competition or to avoid adhering to a federal or state law or regulation, or Authority policy.

- i. Formal competitive bidding requires preparation of bid documents that clearly set forth all requirements, which must be fulfilled in order for the bid to be responsive, and must be advertised in accordance with legal requirements. An award, if made, will be to the lowest responsive and responsible bidder.
- ii. Formal competitive proposals, such as the "best value" approach, require issuance of Requests for Proposals, which clearly set forth all the requirements, and state the qualitative factors in addition to price, which will be used to evaluate and rank the Proposals. An award, if made, will be to the proposer receiving the highest ranking, subject to successful negotiations with the Authority.

If a contract will be federally-funded, all relevant federal provisions must be included in the solicitation documents.

### C. Advertising

Advertising regarding a procurement must comply with applicable federal and state laws, regulations and requirements.

### D. Bonds

All public works procurements must comply with federal, state, and local requirements concerning bonds and securities. Non-public work procurements may require bonds and securities when determined to be in the best interest of the Authority and legal counsel concurs. If bonds are required, the solicitation documents must specify the required items and their values.

### E. Contingency Fund

A contingency fund may be established by the Board to provide additional contract funding authorization when there is a likelihood that unknown conditions or circumstances may occur during the term of a contract that necessitates an increase in the contractor's compensation.

### F. Fair and Reasonable Determination

For every procurement action, including change orders and contract amendments, the Authority must determine that prices to be paid are fair and reasonable. The Contracts and Procurement Department will have final responsibility for accepting or making such a determination. The analysis must be kept with the procurement record.

### G. Contract Award

Any and all bids or proposals may be rejected by the Authority if it is in the Authority's best interest to do so.

The Authority may only contract with contractors who are trustworthy and are qualified and possess the ability to perform successfully under the terms and conditions of the proposed procurement.

Unsuccessful proposers/bidders may request a debrief after the contract is awarded.

## Section 9. Protests

A protest may be filed for contracts in excess of \$25,000 only by an Interested Party, defined as an actual or prospective bidder or proposer whose direct economic interest could be affected by the Authority's conduct of the solicitation. Interested Parties do not include subcontractors or suppliers of an actual or prospective bidder/proposer, or individual firms that make up a Joint Venture, acting independently of the Joint Venture. Notice of the protest procedures and the applicable protest deadlines will be provided in all formal solicitations. To be considered, a protest must be filed in a timely manner and must satisfy all of the applicable requirements set forth in the solicitation documents.

Except pursuant to statutory rules requiring Board determination of protests of contracts for certain specialized equipment, including railcars and locomotives, the CEO is authorized to review and determine all protests, in consultation with legal counsel, and will report on the disposition of protests to the Board. All protests must be in accordance with the written procedures set forth in the Procurement and Contracting Procedures Manual.

## Section 10. Execution of Contract

All Authority contracts will be in writing and executed prior to beginning performance under the contract. The CEO or designee may execute all contracts on behalf of the Authority that are duly approved. Actions of the Board approving the award of a contract or modification shall not give rise to contractual rights, duties or obligations until such a contract has been executed by the CEO or designee in accordance with their established limits of their authority.

The Authority is authorized to use of electronic signature (e-signature) technology. To the fullest extent permitted by law, the Authority accepts e-signatures as legally binding and equivalent to handwritten signatures to signify an Agreement.

Individuals who falsify e-records, e-transactions, or e-signatures are subject to disciplinary action, up to and including termination of employment and criminal prosecution.

## Section 11. Amendments and Modifications

All contract amendments and modifications (including Change Orders) must comply with applicable laws and regulations, be within the scope of the original contract, and be appropriately documented in writing and approved before the work is performed. No contract, modification, or other commitment of the Authority's resources is binding until such has been put in writing in an appropriate legal form and executed by the CEO or authorized Contract Administrator.

## Section 12. Disadvantaged Business Enterprise (DBE) Program

The Authority is committed to and has adopted a DBE Program for DBE participation in Authority contracting opportunities in accordance with 49 CFR Part 26, as amended. It is the policy of the Authority to ensure nondiscrimination on the basis of race, color, national origin, or sex in the award and administration of U.S. Department of Transportation assisted and Authority contracts. It is the intention of the Authority to create a level playing field on which DBEs can compete fairly for contracts and subcontracts relating to the Authority's construction, procurement and services activities.

The Authority may require a Mentor Protégé Program for procurements valued at more than \$25,000,000. A Mentor-Protege Program is designed to further the development of DBEs, including, but not limited to, assisting them to move into non-traditional areas of work and/or compete in the marketplace outside the DBE program through training and assistance from other firms.

## Section 13. Small Business Partnership Program Policy

In order to provide economic opportunity for small businesses, and to stimulate economic development in communities served by the Southern California Regional Rail Authority (Authority), it is the policy of the Authority to ensure that small business enterprises (SBEs), as defined by the Small Business Administration and local small business enterprises with a principal office within the Authority's six-county service area, have equitable opportunity to participate in the agency's procurement of all goods, materials and services.

As a separate and distinct program, the objectives of the proposed Small Business Partnership Policy are:

1. To ensure nondiscrimination in the award and administration of non-federally funded contracts;
2. To create a level playing field on which SBEs can compete fairly for non-federally funded contracts;
3. To ensure that firms fully meet certified eligibility standards as determined by federal, state, or local agencies, or an agreed upon, third-party certifying entity;
4. To expand business building opportunities by establishing specific and distinct business building opportunities for SBEs participating in non-federally funded contracts;
5. To help remove barriers to the participation of SBEs in non-federally funded contracts. Barriers to be removed may include but not be limited to adjusting contract requirements related to bonding and insurance requirements;
6. To support improved cash flow for SBEs by documenting prompt payment terms; and
7. To provide local small businesses non-federally funded contract incentives such as set aside programs and local preference points. The Authority will apply five (5) local preference points to the score of a response to a procurement received from a local small business that is designated as Contract Ready.

## Section 14. Public Works

All public works contracts, as defined by California Public Contract Code §1101 and Labor Code §1720, must comply with all federal and state requirements, including applicable labor compliance requirements.

## Section 15. Revenue Generating Contracts/Concessions

To the extent they are not otherwise governed by Authority policies, revenue generating agreements or concession agreements are contracts where the Authority grants permission to use Authority facilities or property to vendors to sell products or services, for which the Authority

receives a percentage of the proceeds and/or a flat rate of compensation. Generally, these arrangements are at no direct cost to the Authority. Examples of such agreements include advertising on rolling stock and/or the sale of food or beverages on Authority facilities, including rolling stock.

Where it is determined that a number of potential vendors are available to provide similar products or services, a competitive proposal "best value" procedure should be followed, and award made to the highest ranked proposer, taking into consideration the economic return to the Authority, quality of the product, service and experience of the vendor.

This Policy does not apply to permits or licenses to enter Authority property for the purposes of filming, photographing, or other such purposes.

## Section 16. Disposal of Surplus Property

The CEO, in consultation with legal counsel and the Chief Financial Officer as appropriate, may determine the manner of disposition of surplus supplies, equipment, and materials, that are beyond their useful life and whose depreciated value does not exceed \$500,000. The Board must approve all other disposal of surplus property.

## Section 17. Implementation

These Procurement and Contracting Policies set forth the standards and methods to be followed by the Authority in obtaining goods and services. Upon adoption by the Board of Directors, these Procurement and Contracting Policies shall supersede all prior Procurement and Contracting Policies and Procedures, also referred to as the CONs (approved by the Board on February 25, 2016 and most recently revised on April 22, 2016). All solicitations in progress and unexecuted contracts as of the implementation date will continue to be governed by the CONs. Once the contracts are fully executed, contract administration shall be governed by these Policies outlined in this document.

The CEO or designee will have the authority to develop, maintain, and update as necessary a Procurement and Contracting Procedures Manual that sets forth implementing procedures consistent with the Board's policies. The CEO or designee will maintain and update the Procurement and Contracting Procedures Manual as necessary to give effect to these policies and may make subsequent revisions if necessary to implement changes in applicable laws and regulations and best procurement.

The CEO or designee will ensure that there will be periodic training to ensure that all Authority staff with responsibility for procurement activities are trained in, and adhere to, these policies and the Procurement and Contracting Procedures Manual.

Changes or deviations from these Policies shall thereafter be approved by the Board, unless the change results from federal or state law or regulation, in which case the CEO is authorized to amend these Policies and provide a report to the Board advising them of the change.