



Tri-Valley ▲ San Joaquin Valley
REGIONAL RAIL AUTHORITY

Board of Directors

Meeting Packet

April 12, 2023 at 2 p.m.



Tri-Valley San Joaquin Valley
REGIONAL RAIL AUTHORITY

AGENDA – BOARD OF DIRECTORS
April 12, 2023 at 2:00 p.m.
333 Civic Center Plaza, Tracy, CA 95376

TELECONFERENCE LOCATIONS

Business Center
Hyatt Regency Hotel
1209 L Street
Sacramento, 95814

Heritage House
Alameda County Fairgrounds
4501 Pleasanton Drive
Pleasanton, CA

MEETING PROCEDURE

This Board of Directors meeting will be conducted in person and on the web-video communication platform, Zoom. To view and/or participate in this meeting remotely, members of the public will need to download Zoom from its website at www.zoom.us. It is recommended that anyone wishing to participate in the meeting remotely complete the download process before the start of the meeting.

We encourage members of the public to access the meeting online using the web-video communication application Zoom. Zoom participants will have the opportunity to speak during public comment.

Public comments will also be accepted via email until 5:00 p.m. on the day before the meeting at comments@valleynlinkrail.com. Please include “Public Comment – April 12, 2023” and the agenda item to which your comment applies in the subject line. In the body of the email please include your name. A list of the public comments submitted by the deadline will be read during public comment and copies of correspondence will be posted on the Authority’s website along with other meeting material. Public comments will be subject to the regular two-minute time restriction.

There will be zero tolerance for any person addressing the Board making profane, offensive, and disruptive remarks, or engaging in loud, boisterous, or other disorderly conduct, that disrupts the orderly conduct of the public meeting.

Upon request, the Tri-Valley-San Joaquin Valley Regional Rail Authority will provide written agenda materials in appropriate alternative formats, or disability-related modification or accommodation, including auxiliary aids or services, to enable individuals with disabilities to participate in public meetings. A speech-to-text option (live transcription) is now available on all Zoom meetings. Live transcription currently only supports English, and the accuracy of the feature depends on many variables, such as but not limited to background noise, volume and clarity of the speaker’s voice, lexicons and dialects. Requests for any other reasonable accommodation should be submitted in writing, and must include your name, mailing address, phone number and brief description of the requested materials and the preferred alternative format or auxiliary aid or service at least 2 working days before the meeting. Requests should be sent to: comments@valleynlinkrail.com.

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How to listen and view meeting online:

- From a PC, Mac, iPad, iPhone or Android device click the link below:
<https://zoom.us/j/93548110883>
Password: **ValleyLink**
- To supplement a PC, Mac, tablet or device without audio, please also join by phone:
Dial: 1 (669) 900-6833
Webinar ID: 935-4811-0883
Password: **898381**

To comment by video conference, click the “Raise Your Hand” button to request to speak when Public Comment is being taken on the agenda item. You will then be unmuted, when it is your turn, to make your comment for up to 2 minutes. After the allotted time, you will be muted.

- Livestream online at: [Valley Link Rail YouTube Channel](#)

No option to make Public Comment on YouTube live stream.

How to listen via telephone to the meeting:

- For audio access to the meeting by telephone, use the dial-in information below:
Dial: 1 (669) 900-6833
Webinar ID: 935-4811-0883
Password: **898381**

*Please note to submit public comment via telephone dial ***9 to raise your hand**. The meeting’s host will be informed that you would like to speak. If you are chosen, you will be notified that your request has been approved and you will be allowed to speak. You will then press ***6 to unmute yourself**. Comments are limited to up to 2 minutes at the discretion of the board chair. After the allotted time you will be muted by the host.*

To submit written comments:

- Send public comments prior to the meeting by email, to comments@valleylinkrail.com

If you are submitting public comment via email, please do so by 5:00 p.m. the day before the meeting to comments@valleylinkrail.com

Please include “Public Comment – April 12, 2023” and the agenda item to which your comment applies in the subject line. In the body of the email please include your full name. A list of the public comments submitted will be read during public comment and letters will be posted on the Authority’s website along with other meeting material.

TRI-VALLEY – SAN JOAQUIN VALLEY REGIONAL RAIL AUTHORITY

AGENDA – BOARD OF DIRECTORS

April 12, 2023 at 2:00 p.m.

333 Civic Center Plaza

Tracy, CA 95376

1. Call to Order and Pledge of Allegiance
2. Roll Call of Members and Confirmation of Quorum at Physical Meeting Location
3. Public Comments:
Members of the public may address the Board on any issues not listed on the agenda that are within the purview of the Authority. Comments on matters that are listed on the agenda may be made at the time the Board is considering each item. Time limits on public comments may be established by the Chair.
4. Consent Agenda – **ACTION**
Recommend approval of all items on Consent Agenda as follows:
 - a. Minutes of February 8, 2023 Board of Directors Meeting
 - b. Treasurer’s Reports for January and February 2023
 - c. Draft Fiscal Year 2024 Budget
 - d. Meetings of the Board of Directors
5. Adoption of a Locally Preferred Alternative for Evaluation in National Environmental Policy Act (NEPA) Environmental Clearance – **ACTION**
6. Acceptance of a New Procurement Manual and Adoption of Chapter 10 of the Caltrans Local Assistance Procedures Manual – **ACTION**
7. Executive Management Assistant Position/ Employment Agreement – **ACTION**
8. Executive Director’s Report – **INFORMATION**
9. Directors’ Discussion – Comments, Questions and Agenda Requests
10. Upcoming Meeting Details
11. Adjourn

AGENDA

ITEM 4 A



Tri-Valley San Joaquin Valley Regional Rail Authority (TVSJVRRA)
Minutes of Board meeting on February 8, 2023 via Zoom Teleconference

1. **Call to Order**

The meeting of the board of directors was called to order by Chair Melissa Hernandez at 2:01 p.m.

- a. Oath of Office - Director Haubert, Supervisor for Alameda County, swore in new member of the board; Valerie Arkin, City of Pleasanton.

2. **Roll Call of Members**

Members Present

Chair Melissa Hernandez, City of Dublin
Vice Chair Dan Wright, City of Stockton
Director Paul Akinjo, City of Lathrop
Director Mateo Bedolla, City of Tracy (*joined during item #5*)
Director David Haubert, Alameda County
Director Brittni Kiick (Livermore), LAVTA
Director Bernice King Tingle, Mountain House
Director John Marchand, City of Livermore
Director Jose Nuño, City of Manteca
Director Robert Rickman, San Joaquin County
Director Karen Stepper, Town of Danville
Director Leo Zuber (Ripon), ACE

Members Absent

Director John McPartland (District 5), BART
Director David Hudson, San Ramon

3. **Public Comments**

Public comment was heard from: Kelly A., Karen Moore and Mark Armstrong.

4. **Consent Calendar – ACTION**

Motion to approve all items on Consent Calendar as follows:

- a. Minutes of January 11, 2023 Board of Directors Meeting.
- b. Treasurer's Report for December 2022.

Motion: Haubert/Marchand

Aye: Akinjo, Arkin, Bedolla, Haubert, Hernandez, Kiick, King-Tingle, Marchand, Nuño, Rickman, Stepper, Wright, Zuber

Nay: None

Abstain: None

Absent: Hudson, McPartland

Motion Passed

5. **Administrative Support Services Agreement with the Livermore Amador Valley Transit Authority (LAVTA) – ACTION**

Deputy Director, Wil Ridder, introduced this item and summed up the details of the staff report and requested the board authorize the Executive Director/CEO to prepare, negotiate the terms and conditions, and execute an administrative support services agreement with LAVTA, with the condition that the Executive Director/CEO not authorize task orders in any one year that exceed \$180,000. Directors discussed this item. Public comment was heard from Kelly A.

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Motion: Zuber/Wright

Aye: Akinjo, Arkin, Bedolla, Haubert, Hernandez, Kiick, King-Tingle, Marchand, Nuño, Rickman, Stepper, Wright, Zuber

Nay: None

Abstain: None

Absent: Hudson, McPartland

Motion Passed

6. Authorize Executive Director/CEO to exercise Option 1 with Red Oak Engineering & Consulting for Regional Advocacy Services – ACTION

Executive Director/CEO Kevin Sheridan summarized the staff report and requested that the board authorize him to exercise Option 1 of the contract for Regional Advocacy Services with Red Oak Engineering and Consulting to extend the contract term one year, for an amount not to exceed \$100,800. Directors discussed this item. Public comment was heard from Kelly A.

Motion: Arkin/Wright

Aye: Akinjo, Arkin, Bedolla, Haubert, Hernandez, Kiick, King-Tingle, Marchand, Nuño, Rickman, Stepper, Wright, Zuber

Nay: None

Abstain: None

Absent: None

Motion Passed

7. Meetings of the Board of Directors – ACTION

Sheridan introduced this item and gave the floor to Legal Council Michael Conneran. Conneran discussed the remote meeting exceptions to the Brown Act as they relate to Assembly Bill 2449 and the anticipated withdrawal of the COVID-19 State of Emergency protocols. He outlined options for future in-person meetings and possible remote meeting sites. Staff requested that the board cancel the March Board of Directors meeting and reconvene in April to approve a revised 2023 Board of Directors meeting calendar. Directors discussed this item. There was no public comment.

Motion: Stepper/Marchand

Aye: Akinjo, Arkin, Bedolla, Haubert, Hernandez, Kiick, King-Tingle, Marchand, Nuño, Rickman, Stepper, Wright, Zuber

Nay: None

Abstain: None

Absent: None

Motion Passed

8. State Funding and Legislative Update – INFORMATION

Chair Hernandez gave the floor to the Authority's legislative advocate, Gus Khouri, who presented this item. Khouri gave a brief update on actions taking place in Sacramento that affect the Valley Link project and course of action for the next legislative session. He discussed the current re-districting and the changes taking place after the last election and the proposed state budget for FY 2024.

Khouri stated that the Authority's recent Transit and Intercity Rail Capital Program (TIRCP) Cycle 6 application received about 30 letters of support. From various cities, counties, and legislative representatives. He thanked everyone involved in the process and highlighted Vice Chair Wright's

**Tri-Valley San Joaquin Valley Regional Rail Authority (TVSJVRRRA)
Minutes of Board meeting on February 8, 2023 via Zoom Teleconference**

involvement in attaining a letter of support from the San Joaquin Valley Regional Policy Council (SJVRPC). Finally, Khouri addressed the subject of the Brown Act requirements and expectations of updates and changes that he expects would allow for greater flexibility for meeting remotely. He agreed to forward updated information as relevant.

Wright reiterated the strong partnership between the Authority and the SJVRPC and how vital Valley Link is making strides toward the vision of connecting Northern and Southern California. Director Haubert suggested compiling a list, as well as tracking, of possible grant opportunities and applications. There was no public comment.

9. Executive Director’s Report - INFORMATION

Continuing the topic of funding and grant applications, Executive Director/CEO, Kevin Sheridan advised the board on current staff activity related to funding. He outlined the details of the current Pre-Award audit being conducted by the state, and how this would position the Authority to apply for and receive additional funds. Sheridan shared a photo taken last month on his commute to the office heading west bound over the Altamont. He stressed just how important Valley Link is and why the state is investing heavily in rail. Directors discussed this item. There was no public comment.

10. Directors’ Discussion

Chair Hernandez shared that she, along with other Tri-Valley Mayors, Directors Hudson and Marchand went to Washington D.C. to advocate for the Valley Link project. Director Marchand noted that there was much discussion at the conference about increasing the capacity to move freight by removing cars from the freeway versus widening.

11. Upcoming Meeting Details

The next regular meeting of the board will be held on April 12, 2023.

12. Adjourn

Meeting adjourned without objection at 3:15 p.m.

AGENDA

ITEM 4 B





Tri-Valley San Joaquin Valley **REGIONAL RAIL AUTHORITY**

STAFF REPORT

SUBJECT: Treasurer's Report for December 2022

FROM: Tamara Edwards, Director of Finance

DATE: April 12, 2023

Action Requested

Staff requests that the Tri-Valley – San Joaquin Valley Regional Rail Authority Board accept the Treasurer's Reports for January and February 2023.

Background/Discussion

The Treasurer's Reports shows all expenses and revenues for the months of January and February as well as the year-to-date totals.

The fund balance reflected on both the balance sheet and the expense report is the difference between the revenue received and the expenses. As the Rail Authority's funding is all on a reimbursement basis this will be reflected as a negative amount (expenses higher than revenues) until year end when accruals are done at which time the fund balance will be zero. Additionally, as all the Rail Authority's funding is on a reimbursement basis LAVTA continues to provide the cash flow for the Rail Authority which is reflected in the funds due to LAVTA line item.

Attachments:

1. January 2023 Treasurer's Report
2. February 2023 Treasurer's Report

ATTACHMENT 1



Tri-Valley San Joaquin Regional Rail Authority
BALANCE SHEET
FOR THE PERIOD ENDING:
January 31, 2023

ASSETS:

108 CASH-GENERAL CHECKING	395,044
120 ACCOUNTS RECEIVABLE	202,073
150 PREPAID EXPENSES	0
111 NET PROPERTY COSTS	8,263

TOTAL ASSETS	605,380
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LIABILITIES:

205 ACCOUNTS PAYABLE	16,039
20501 DUE TO LAVTA	2,929,055
22110 PAYROLL CLEARING	0
211 PRE-PAID REVENUE	45,152
22000 FIT	8,194
22010 SIT	2,800
22020 FICA	1,257
22030 SDI	0
22090 Worker's Comp	18,407
22100 457	15,389

TOTAL LIABILITIES	3,036,294
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FUND BALANCE:

301 FUND RESERVE	0
304 GRANTS, DONATIONS, PAID-IN CAPITAL	0
30401 SALE OF BUSES & EQUIPMENT	0
FUND BALANCE	(2,430,914)

TOTAL FUND BALANCE	-2,430,914
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TOTAL LIABILITIES & FUND BALANCE	605,380
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Tri-Valley San Joaquin Regional Rail Authority
REVENUE REPORT
FOR THE PERIOD ENDING:
January 31, 2023

ACCOUNT	DESCRIPTION	BUDGET	CURRENT MONTH	YEAR TO DATE	BALANCE AVAILABLE	PERCENT BUDGET EXPENDED
	MTC-Bridge Tolls	21,740,864	241,337	380,267	21,360,598	1.7%
	Alameda County/Strategic Development	0	0	0		
	TOTAL REVENUE	21,740,864	241,337	380,267	21,360,598	1.7%

Tri-Valley San Joaquin Regional Rail Authority
EXPENDITURE REPORT
January 31, 2023

ACCOUNT	DESCRIPTION	BUDGET	CURRENT MONTH	YEAR TO DATE	BALANCE AVAILABLE	PERCENT BUDGET EXPENDED
Direct Labor and Benefits						
	Executive Director	252,000	23,625	188,662	63,338	74.87%
	Deputy Executive Director	212,800	19,968	157,910	54,890	74.21%
	Administrative Assistant	61,750	0	19,737	42,013	31.96%
	Finance Director	45,000	0	10,500	34,500	23.33%
	Manager of Policy, Planning, and Environmental	184,800	17,756	140,554	44,246	76.06%
	Rail Engineering, and Construction Project Manager	198,400	19,083	148,843	49,557	75.02%
	Employee Benefits	266,250	(4,324)	49,501	216,749	18.59%
	TOTAL - Direct Labor	1,221,000	76,108	715,708	505,292	58.62%
Consultants/seconded staff						
	General Engineering Consultants	15,000,000	0	1,707,613	13,292,387	11.38%
	AECOM	3,564,684	0	102,532	3,462,152	2.88%
	Hydrogen Proof of Concept	-	0	24,605	(24,605)	
	Financial Advisory Services	150,000	0	0	150,000	0.00%
	Government Relations/Community Engagement	450,000	0	110,000	340,000	24.44%
	TOTAL - Consultants	19,164,684	0	1,944,750	17,219,934	10.15%
Other Direct Costs						
	Legal	430,000	0	75,144	354,856	17.48%
	Insurance	50,000	0	10,543	39,457	21.09%
	Audits	25,000	0	7,600	17,400	30.40%
	HR	-	0	335	(335)	
	Line of Credit	125,000	0	0	125,000	0.00%
	Travel/Mileage/Mis	25,000	208	1,038	23,962	4.15%
	Office space/furnishings	150,000	6,846	45,520	104,480	30.35%
	Professional Development	2,500	0	201	2,299	8.06%
	Memberships	2,500	1,400	1,400	1,100	56.00%
	Information Technology/Software	15,000	0	0	15,000	0.00%
	ACTC	250,000	0	0	250,000	0.00%
	SJRRRC	100,000	0	0	100,000	0.00%
	BART	100,000	0	0	100,000	0.00%
	Caltrans Reimbursement	-	0	8,720	(8,720)	
	Union Pacific Reimbursement	80,000	0	0	80,000	0.00%
	TOTAL OTHER DIRECT COSTS	1,355,000.00	8,453.97	150,501.52	1,204,498	11.11%
	TOTAL OPERATING EXPENDITURES	21,740,684	84,562	2,810,959	18,929,725	12.93%
	LAVTA Expense		0	0		
	FUND BALANCE (OPERATING)		156,774	(2,430,693)		

ATTACHMENT 2



Tri-Valley San Joaquin Regional Rail Authority
BALANCE SHEET
FOR THE PERIOD ENDING:
February 28, 2023

ASSETS:

108 CASH-GENERAL CHECKING	192,714
120 ACCOUNTS RECEIVABLE	202,073
150 PREPAID EXPENSES	0
111 NET PROPERTY COSTS	8,263

TOTAL ASSETS **403,050**

LIABILITIES:

205 ACCOUNTS PAYABLE	16,039
20501 DUE TO LAVTA	2,929,055
22110 PAYROLL CLEARING	0
211 PRE-PAID REVENUE	45,152
22000 FIT	(1,257)
22010 SIT	(420)
22020 FICA	1,257
22030 SDI	0
22090 Worker's Comp	19,277
22100 457	15,389

TOTAL LIABILITIES **3,024,493**

FUND BALANCE:

301 FUND RESERVE	0
304 GRANTS, DONATIONS, PAID-IN CAPITAL	0
30401 SALE OF BUSES & EQUIPMENT	0
FUND BALANCE	(2,621,443)

TOTAL FUND BALANCE **-2,621,443**

TOTAL LIABILITIES & FUND BALANCE **403,050**

Tri-Valley San Joaquin Regional Rail Authority
REVENUE REPORT
FOR THE PERIOD ENDING:
February 28, 2023

ACCOUNT	DESCRIPTION	BUDGET	CURRENT MONTH	YEAR TO DATE	BALANCE AVAILABLE	PERCENT BUDGET EXPENDED
	MTC-Bridge Tolls	21,740,864	0	380,267	21,360,598	1.7%
	Alameda County/Strategic Development	0	0	0		
	TOTAL REVENUE	21,740,864	0	380,267	21,360,598	1.7%

Tri-Valley San Joaquin Regional Rail Authority
EXPENDITURE REPORT
February 28, 2023

ACCOUNT	DESCRIPTION	BUDGET	CURRENT MONTH	YEAR TO DATE	BALANCE AVAILABLE	PERCENT BUDGET EXPENDED
Direct Labor and Benefits						
	Executive Director	252,000	23,625	212,287	39,713	84.24%
	Deputy Executive Director	212,800	19,968	177,878	34,922	83.59%
	Administrative Assistant	61,750	11,321	31,058	30,692	50.30%
	Finance Director	45,000	7,000	17,500	27,500	38.89%
	Manager of Policy, Planning, and Environmental	184,800	17,756	158,310	26,490	85.67%
	Rail Engineering, and Construction Project Manager	198,400	19,083	167,926	30,474	84.64%
	Employee Benefits	266,250	9,192	58,693	207,557	22.04%
	TOTAL - Direct Labor	1,221,000	107,945	823,653	397,347	67.46%
Consultants/seconded staff						
	General Engineering Consultants	15,000,000	18,960	1,726,573	13,273,427	11.51%
	AECOM	3,564,684	0	102,532	3,462,152	2.88%
	Hydrogen Proof of Concept	-	0	24,605	(24,605)	
	Financial Advisory Services	150,000	0	0	150,000	0.00%
	Government Relations/Community Engagement	450,000	28,000	138,000	312,000	30.67%
	TOTAL - Consultants	19,164,684	46,960	1,991,710	17,172,974	10.39%
Other Direct Costs						
	Legal	430,000	22,157	97,301	332,699	22.63%
	Insurance	50,000	0	10,543	39,457	21.09%
	Audits	25,000	1,900	9,500	15,500	38.00%
	HR	-	0	335	(335)	
	Line of Credit	125,000	0	0	125,000	0.00%
	Travel/Mileage/Mis	25,000	0	1,038	23,962	4.15%
	Office space/furnishings	150,000	11,567	57,086	92,914	38.06%
	Professional Development	2,500	0	201	2,299	8.06%
	Memberships	2,500	0	1,400	1,100	56.00%
	Information Technology/Software	15,000	0	0	15,000	0.00%
	ACTC	250,000	0	0	250,000	0.00%
	SJRRRC	100,000	0	0	100,000	0.00%
	BART	100,000	0	0	100,000	0.00%
	Caltrans Reimbursement	-	0	8,720	(8,720)	
	Union Pacific Reimbursement	80,000	0	0	80,000	0.00%
	TOTAL OTHER DIRECT COSTS	1,355,000.00	35,623.97	186,125.49	1,168,875	13.74%
	TOTAL OPERATING EXPENDITURES	21,740,684	190,529	3,001,488	18,739,196	13.81%
	LAVTA Expense		0	0		
	FUND BALANCE (OPERATING)		(190,529)	(2,621,222)		

AGENDA

ITEM 4 C





Tri-Valley San Joaquin Valley REGIONAL RAIL AUTHORITY

STAFF REPORT

SUBJECT: Draft Fiscal Year 2024 Budget

FROM: Wil Ridder, Deputy Director

DATE: April 12, 2023

Action Requested

Information only. The final Fiscal Year (FY) 2024 Budget will be brought to the Board for approval at the June 2023 Board meeting.

Background/Discussion

The Tri-Valley – San Joaquin Valley Regional Rail Authority continues to receive funding from the allocation of funds approved by the Metropolitan Transportation Commission to advance the Valley Link Project. These funds are received on a reimbursement basis. In FY 2024 these funds will be augmented by \$5 million in State budget funds approved by the legislature in 2023. The draft budget for FY 2024 focuses primarily on the Project Approval and Environmental Documentation (PA&ED) work in the I-580 corridor, federal environmental clearance, 30% design, and Federal Transit Administration (FTA) requirements under the Capital Investment Grants (CIG) Program.

Authority staff recognize that during FY 2024 additional funds could flow from the State based upon the award of a discretionary grant the Authority applied for this year. As these funds are received staff will bring back to the Board budget updates and amendments.

Attached are the anticipated revenues and expenses that make up the Draft FY 2024 Budget. The direct labor and benefits expenses for Authority staff, including the Deputy Director, the Director of Policy, Programming and Environment, and the Director of Rail Engineering and Construction include a 5% increase in salaries based upon annual performance review and approval by the Executive Director/CEO. Below is a brief description of the revenues and expenses:

Revenues

MTC Allocation

MTC provided a multi-year allocation of bridge toll funds in June of 2020 in the amount of \$46.8 million to perform the project development work as noted above in the staff report.

State Budget Funding

The State legislature approved \$5 million to the Authority for the Valley Link rail project as part of the FY 2023 State Budget (Assembly Bill 179) for environmental and preliminary engineering activities.

Expenses

Executive Director/CEO

Executive Director and Chief Executive Officer for the Authority

Deputy Director

Oversees or a wide variety of critical roles within the agency.

Chief Financial Officer

The Chief Financial Officer for the Authority is also the Finance Director for the Livermore Amador Valley Transit Authority (LAVTA) and is paid a stipend for duties performed as Chief Financial Officer of the Authority.

Director, Policy Planning and Environmental

Provides policy planning and environmental analysis, key role in the Authority for all policy and environmental reviews and related consultant contract management.

Director, Rail Engineering and Construction

Provides program management contract oversight over rail engineering and construction, key role in the Authority for all engineering reviews and related consultant contract management.

Executive Assistant

The Executive Assistant is currently seconded from the Livermore Amador Valley Transit Authority (LAVTA), however, staff is recommending that this position be approved as a full-time position within the Authority.

General Engineering Consultant – WSP/PGH Wong

The General Engineering Consultant will continue the progress the preliminary engineering necessary to complete PA&ED within the State's right of way (I-580) and off highway system rail engineering (30% design). This effort includes the work to support the environmental document for the initial operating phase. The Authority has budgeted \$20 million dollars for this effort in FY 2024.

AECOM

AECOM is under contract to complete the National Environmental Policy Act (NEPA) process to meet the requirements under both the Caltrans Project Approval and Environmental Document (PA&ED) process and the FTA Capital Investment Grants (CIG) Program. The PA&ED phase will also include supplemental work pursuant to the California Environmental Quality Act (CEQA) for modifications to the Valley Link initial operating segment from Dublin/Pleasanton to the new Mountain House Community station. This effort is expected to take another year to complete. The Authority has budgeted \$3.5 million for this effort in FY 2024.

Government Relations/Community Engagement/Marketing

Support for Regional Advocacy is provided by Red Oak Consulting. Support for State grants and other State funding opportunities is provided by Khouri Consulting. Federal advocacy, community engagement and marketing support is yet to be determined.

Program Management Support Services

The Authority is budgeting \$1 million to contract these consultant support services in FY 2024.

Financial Advisory Services

Support for financial advisory and planning services are provided by PFM Financial Advisors.

Insurance

The Authority carries liability insurance for the agency.

Financial Audits

Each year the Authority financial statements are audited to ensure the Board that the financial documents are accurately prepared and represented.

Legal and Legal Supplemental

General Counsel is provided by Mr. Michael Conneran of Hanson Bridgett LLP. Legal services have been used extensively to review the environmental work ongoing by the agency and to prepare and review contracts and Authority policies and procedures.

Line of Credit

Thus far, cash flow management has been provided through the Livermore Amador Valley Transit Authority (LAVTA). Staff anticipates the need for a line of credit as more significant work is performed by consultant teams.

Office Space/Furnishings/Office Supplies/Utilities

The Authority leases an office suite as provided within the MTC allocation of funds for the project. This line item covers cost associated with effective day-to-day operations.

Travel/Mileage/Meetings

This budget item is set up for meetings that require staff travel. Included in this line item are the costs associated with meetings, including Authority Board meetings.

Professional Development

This budget item is set up for staff development, training and related activities.

Memberships

This budget item is set up for corporate memberships.

Information Technology/Software

This budget item is set up for computer software and information technology support.

SJRRC/UPRR

Included in the June 2020 MTC allocation is funding to reimburse key partner agencies that are critical in the planning and delivery of Valley Link. For FY 2024 these agencies are anticipated to include San Joaquin Regional Rail Commission (SJRRRC) and the Union Pacific Railroad (UPRR).

Attachments:

1. FY 2024 Revenues and Expenses

ATTACHMENT 1



**TRI-VALLEY — SAN JOAQUIN VALLEY REGIONAL RAIL AUTHORITY
DRAFT FISCAL YEAR 2024 BUDGET**

REVENUES

	MTC Allocation	\$	22,201,750.00
	State Budget Funding	\$	5,000,000.00
	Grand Total Revenues	\$	27,201,750.00

EXPENSES

Direct Labor and Benefits

	Executive Director/CEO	\$	336,000.00
	Deputy Director	\$	279,300.00
	Director, Rail Engineering and Construction	\$	260,400.00
	Director, Policy Planning and Environmental	\$	242,550.00
	Chief Financial Officer	\$	42,609.00
	Executive Assistant	\$	127,000.00
	Other LAVTA Administrative Support Activities	\$	10,391.00
	Total	\$	1,298,250.00

Consultants

	General Engineering Consultant	\$	20,000,000.00
	AECOM	\$	3,500,000.00
	Administrative Support	\$	50,000.00
	Program Management Support Services	\$	1,000,000.00
	Government Relations/Community Engagement/Marketing	\$	450,000.00
	Financial Advisory Services	\$	150,000.00
	Total	\$	25,150,000.00

Other Direct Costs

	Insurance	\$	50,000.00
	Financial Audits (incl software)	\$	25,000.00
	Legal / Legal Supplemental	\$	270,000.00
	Line-of-Credit	\$	125,000.00
	Office Space/Furnishings/Office Supplies/Utilities	\$	137,500.00
	Travel/Mileage/Meetings	\$	15,000.00
	Professional Development	\$	2,500.00
	Memberships	\$	8,500.00
	Information Technology/Software	\$	20,000.00
	SJRRRC	\$	50,000.00
	UPRR	\$	50,000.00
	Total	\$	753,500.00

	Grand Total Expenses	\$	27,201,750.00
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AGENDA

ITEM 4D





Tri-Valley San Joaquin Valley
REGIONAL RAIL AUTHORITY

STAFF REPORT

SUBJECT: Amend Board of Directors Meeting Dates for 2023

FROM: Kevin Sheridan, Executive Director/CEO

DATE: April 12, 2023

Action Requested

Approve the amended 2023 meeting calendar for Tri-Valley – San Joaquin Valley Regional Rail Authority Board of Directors.

Background/Discussion

Staff proposes to hold the regular meeting of the Tri-Valley – San Joaquin Valley Regional Rail Authority Board of Directors on the 2nd Wednesday of every other month at 2 p.m.

Attachments

1. Amended schedule of Meeting Dates for Calendar Year 2023

ATTACHMENT 1





Board of Directors
Meeting Calendar 2023
effective 04/12/2023

2nd Wednesdays from 2 to 4 p.m.

DATES

January	11
February	8
March	Cancelled
April	12
May	No meeting
June	14
July	No meeting
August	9
September	No meeting
October	11
November	No meeting
December	13

AGENDA

ITEM 5





Tri-Valley San Joaquin Valley **REGIONAL RAIL AUTHORITY**

STAFF REPORT

SUBJECT: Adoption of a Locally Preferred Alternative for Evaluation in National Environmental Policy Act (NEPA) Environmental Clearance

FROM: Marianne Payne - Director of Policy, Planning & Environmental

DATE: April 12, 2023

Action Requested

Staff requests that the Board adopt Resolution R05-2023 to designate a Locally Preferred Alternative (LPA), as identified in Attachment A, to serve as the focus of National Environmental Policy Act (NEPA) environmental clearance for the Valley Link Project.

Background/Discussion

Consistent with the requirements of NEPA, the Authority is currently advancing environmental review of the Valley Link Project with the Federal Transit Administration (FTA) as NEPA Lead Agency. To meet NEPA requirements, the Authority must designate a Locally Preferred Alternative (LPA) to serve as the focus of the environmental evaluation. This designation is required to qualify for federal funding under FTA and meet the requirements associated with Caltrans Federal Highway Administration NEPA delegation for projects occurring within the State's right-of-way. This designation is to assist the environmental review process, but does not require the Authority to ultimately adopt the LPA.

Proposed NEPA LPA

As shown in the Project Location Map (Attachment A), the proposed LPA would establish a new passenger rail service along a 22-mile corridor between the existing Dublin/Pleasanton BART Station in Alameda County and the proposed Mountain House Community Station in San Joaquin County with all-day bi-directional service at frequent intervals using zero-emission multiple-unit vehicles. The alignment would be constructed within a combination of the existing Interstate 580 (I-580) freeway median, the existing transportation corridor owned by Alameda County, existing Caltrans right-of-way adjacent to the westbound (I-580) freeway, and new right-of-way to be acquired for the Project. The LPA includes four new stations as well as a Layover Facility (LF) and an Operations and Maintenance Facility/Operations Support Site (OMF/OSS) in areas at the east end of the alignment. The basis for the technical development of the proposed LPA relies upon the previously-approved CEQA environmental study by the Authority, coordination with ongoing Caltrans District 10/San Joaquin Council of Governments (SJCOG) Interstate 205 Managed Lanes Project environmental documents, and the approved SJCOG Congested Corridors Plan.

2021 Adopted CEQA Project

The proposed NEPA LPA builds on the CEQA project adopted by the Authority Board on May 12, 2021 (the "Adopted CEQA Project"), but makes certain modifications in response to recent developments, further evaluations and the actions of other transportation agencies. The Adopted

CEQA Project, which was analyzed in the certified Final Environmental Impact Report (FEIR), included the construction of a 42-mile, 7-station passenger rail service that would link the Dublin/Pleasanton BART Station in Alameda County and the proposed Altamont Corridor Express (ACE) North Lathrop Station in San Joaquin County included in the ACE Extension Lathrop to Ceres/Merced Project. A wide range of alternatives were considered during the initial planning and initial environmental screening process for the Valley Link Project prior to advancing the 2021 CEQA document. The Adopted CEQA Project included two initial operating segments (IOS), which would establish initial service from the Dublin/Pleasanton BART Station to either the Southfront Road Station Alternative or the Mountain House Station Alternative. The Mountain House Station Alternative IOS and adopted mitigation measures are now the basis of the proposed LPA for analysis under NEPA, which reflects certain proposed modifications to the Valley Link Project. In conjunction with the NEPA study, the Authority plans to prepare a Subsequent EIR reflecting the changes to the project described below. Mitigation measures for the Valley Link project will be assessed in the NEPA/CEQA document.

Regional Planning

The proposed Valley Link LPA is based on stakeholder and community input as well as previous and ongoing regional planning. Some of the key regional planning efforts that informed the definition of the LPA are discussed below. Valley Link is included in the Regional Transportation Plan and Sustainable Communities Strategy (RTP/SCS) of both the Metropolitan Transportation Commission (MTC) and SJCOG as well as the Countywide Transportation Plan of the Alameda County Transportation Commission (ACTC).

SJCOG 2020 Congested Corridors Plan

The San Joaquin Council of Governments (SJCOG) developed the Congested Corridors Plan, which is a comprehensive multi-modal study that assessed conditions along the I-205, I-5, State Route 120, and State Route 99 corridors and includes road, parallel passenger rail, bus transit, and bicycle and pedestrian facilities. The plan identifies improvements that will help improve safety, congestion, accessibility, economic development, and air quality. The Mid-term projects include Valley Link track construction and station at Mountain House. Long-term projects include a fixed guideway concept on I-580 / I-205 from Grant Line Road to Paradise Cut. The proposed Valley Link LPA is consistent with this plan's project recommendations for the mid- and long-term.

Caltrans I-205 Managed Lanes Project

Following the Congested Corridors Plan, California Department of Transportation (Caltrans) in cooperation with SJCOG began preparation of an environmental document as part of the Project Approval and Environmental Document (PA&ED) process that complies with state and federal laws (CEQA/NEPA) for the plan's recommended long-term fixed guideway concept on I-580 / I-205, now referred to as the I-205 Managed Lanes project. The I-205 Managed Lanes project proposes to install managed lanes on I-205 between I-5 and I-580 and could include interchange improvements and transit hubs. Four alternatives and the no-build alternative are being considered. Under consideration are options reserving the center median for various types of transit (bus and/or rail), as well as potential locations for stations, park and ride lots, and other transit systems. The proposed Valley Link LPA is consistent with these options reserving the center median for transit in this environmental process.

Stakeholder Engagement and Project Changes

The NEPA lead agency was formally recognized in June 2022 after the Federal Transit Administration approved the Valley Link project into the Capital Investment Grants program.

Caltrans is also identified as a NEPA cooperating permitting agency within the State's Right of Way. As part of updating the previously approved CEQA EIR, and initiation of the NEPA environmental studies, Valley Link staff reengaged the public and stakeholders to solicit input. Valley Link advertised a Notice of Preparation in November 2022 for 30-day public scoping period. Public scoping meetings were held to receive comments during the formal scoping period, which closed on December 19, 2022. During the period leading up to the NOP and in combination with the NOP formal scoping period, approximately 250 meetings with stakeholders (see Attachment B) were held. The following changes are being considered to the Adopted CEQA Project to be responsive to stakeholder feedback and regional planning in order to minimize impacts, and/or to improve future operations, and are proposed to be included in the LPA being analyzed under NEPA:

Relocation of the Valley Link Dublin/Pleasanton Station Platform

The proposed relocation of the median Dublin/Pleasanton Station platform to an aerial station platform south of I-580 and north of the BART parking lot will eliminate the need for right-of-way acquisitions and disruptions to the operations of existing businesses in the vicinity of Scarlett Court. It will specifically remove the need to widen I-580 to the north of the existing median and realign the I-580 offramp to Dougherty Road. This change in the project will eliminate the need to reconstruct Scarlett Court to accommodate the freeway widening and subsequently avoid permanent right-of-way acquisitions and temporary access impacts during construction for six businesses and two public agency facilities that are served by Scarlett Court.

Track Guideway Realignment in the Altamont Pass

The proposed realignment of track guideway in the Altamont Pass will improve operations, minimize impacts to sensitive biological resources, and provide an opportunity to include crossover tracks for interoperability with the Union Pacific Railroad (UPRR) trackway during construction. Subject to a future UPRR Trackage Rights Agreement, these crossover tracks could be left in place to provide potential future interoperability with ACE service and future Valley Rail network of passenger rail service. However, this potential interoperability with UPRR and ACE service is not part of the LPA and will not be included in the NEPA analysis. Such service would be subject to separate, stand-alone NEPA and CEQA documentation, as appropriate.

This track guideway segment previously extended along the Alameda County Transportation Corridor (the historic Southern Pacific Railroad/Transcontinental Railway corridor) with significant curvatures projected to result in reduced travel speed and an increased overall travel time through the corridor. The track guideway realignment would result in the reduction of approximately four miles of trackwork with an accompanying savings in travel time as well as capital costs. In addition, impacts to sensitive biological resources will now be avoided through this alignment segment.

A New Mountain House Community Station and Layover Facility

The Mountain House Community Station would be constructed north of I-205 on an approximately 50-acre site west of Mountain House Parkway near the I-205/Mountain House Parkway interchange in closer proximity to Mountain House community residents with more convenient freeway access and provide an opportunity to maximize transit-oriented development and overall station access. This new station location responds to stakeholder requests received throughout all phases of project development for a station

in closer proximity to Mountain House community residents. The station location in the Adopted CEQA Project was not considered to be conveniently located, did not have convenient freeway access, and did not allow for the opportunity to meet Valley Link Transit Oriented Development (TOD) policy objectives.

The newly proposed Mountain House Layover Facility (LF) is required at the end of the rail line east of the new Mountain House Community Station to accommodate train layovers, light maintenance activities, and administrative offices with a central control tower. The Mountain House LF would be constructed on an approximately 86-acre site east of Mountain House Parkway and north of I-205. These facilities would be in addition to the Tracy Operations and Maintenance Facility/Operations Support Site (OMF/OSS) that would accommodate heavy maintenance activities, a backup control center, warehouse storage and energy production facilities.

Relationship of the LPA to Potential Future Projects

The new Mountain House Community station location provides for the possibility of accessing the I-205 fixed guideway, which is identified in the SJCOG Congested Corridors Plan and currently under environmental review as an alternative in the I-205 Managed Lanes Project, should it be advanced. This new station site also does not preclude other future potential options, including the use of the alignment through Downtown Tracy that is included in the Adopted CEQA Project. However, improvements beyond the Mountain House Community Station are not included in this NEPA LPA due to the absence of an identified funding source.

Next Steps

Upon adoption of the NEPA LPA, staff will continue coordination with FTA and the advancement of federal NEPA clearance for the project, concurrent with the preparation of a CEQA Subsequent EIR (SEIR) for the revised project. This will include the evaluation of a No Project alternative. Continued stakeholder outreach and coordination on the project will also occur. These efforts, once complete, will provide the information necessary for the Authority Board to make an informed decision about the approval of any revisions to the project.

Fiscal Impact

There are no fiscal impacts associated with this action.

Recommendation

Approve Resolution R05-2023 of the Board of Directors of the Tri-Valley San Joaquin Valley Regional Rail Authority to designate a Locally Preferred Alternative (LPA), as identified in Attachment A, to serve as the focus of National Environmental Policy Act (NEPA) environmental clearance for the Valley Link Project.

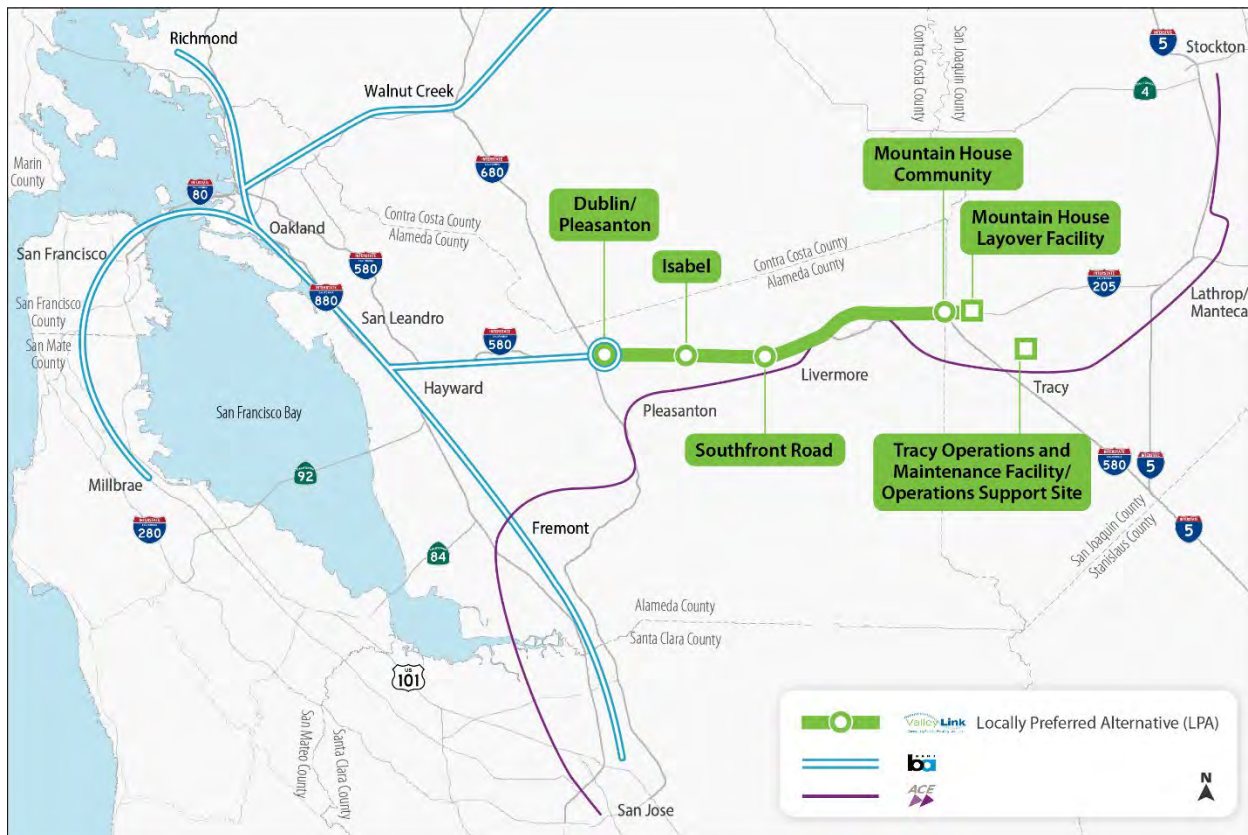
Attachments

- 1 – Locally Preferred Alternative
- 2 – Key Stakeholder Coordination

ATTACHMENT 1



Locally Preferred Alternative



Overview

The Locally Preferred Alternative (LPA) would establish a new passenger rail service along a 22-mile corridor between the existing Dublin/Pleasanton BART Station in Alameda County and the proposed Mountain House Community Station in San Joaquin County with all-day bi-directional service at frequent intervals using zero-emission multiple-unit vehicles. The alignment would be constructed within a combination of the existing Interstate 580 (I-580) freeway median, the existing transportation corridor owned by Alameda County, existing Caltrans right-of-way adjacent to the westbound (I-580) freeway, and new right-of-way to be acquired for the Project. The LPA includes four new stations as well as a Layover Facility (LF) and an Operations and Maintenance Facility /Operations Support Site (OMF/OSS) in areas at the east end of the alignment.

Stations

Consistent with implementing strategies identified in the Board-adopted Sustainability and Transit-Oriented Development (TOD) Policies, Valley Link station facilities are intended to provide baseline transportation infrastructure needed to initiate service and support station area plans to be developed by local jurisdictions prior to completion of final project design. These plans are intended to facilitate transit-oriented, pedestrian-friendly station areas; enhance seamless connections between rail, shuttle buses, and fixed bus service; and promote active transportation (bicycling and walking), use of zero emission vehicles, and shared rides. The Authority will work in partnership with local jurisdictions to support station area planning efforts, but these plans are not a part of the LPA.

The LPA includes the construction and operation of four stations, described below (listed from west to east).

Dublin/Pleasanton Station

The Dublin/Pleasanton Station would be constructed south of the eastbound I-580 freeway lanes in proximity to the existing Dublin/Pleasanton BART Station and would be designed to provide seamless intermodal passenger service between Valley Link, BART and local bus transit services. Improvements that would be constructed include:

- A double-track Valley Link aerial station platform
- Stairs, escalators, and elevators for vertical circulation within the station

The LPA does not include the construction of additional parking at the Dublin/Pleasanton BART Station.

Isabel Station

The Isabel Station would be constructed within the I-580 median with adjacent parking on a 24-acre site along East Airway Boulevard south of I-580 and east of the Isabel Avenue I-580 overcrossing in Livermore. The station site is within the City of Livermore's Isabel Neighborhood Specific Plan, which envisions more than 4,000 new housing units, parks, offices, and retail all within walking distance to the station. Vehicular access to the station would be provided from East Airway Boulevard and would include restriping for left-turn lanes and a traffic signal at the East Airway Boulevard/Rutan Drive intersection. Improvements that would be constructed as part of the Isabel Station include:

- A double-track, at-grade Valley Link station platform in the median of a widened I-580
- A surface parking lot providing parking spaces (including accessible spaces), kiss and ride, and bus bays
- A pedestrian overcrossing from the parking lot over Arroyo Las Positas and eastbound I-580 to the median station platform, as well as a pedestrian overcrossing of westbound I-580 (construction depending on available funding), including elevators and stairs to the station platform and at both ends of the bridge

Southfront Road Station

The Southfront Road Station in Livermore would be constructed within the I-580 median with adjacent parking located south of I-580 on a 7-acre site along Southfront Road between McGraw Avenue and Franklin Lane. The City of Livermore is currently undertaking a General Plan Update that will include a station area Specific Plan for the Southfront Road Station. Vehicular access to the station would be provided from Southfront Road and station improvements would include:

- A double-track, at-grade Valley Link station platform in the median of a widened I-580
- A surface parking lot providing parking spaces (including accessible spaces), kiss and ride, and bus bays
- A pedestrian overcrossing from the parking lot over Southfront Road and eastbound I-580 to the median station platform including elevators and stairs to the station platform and at both ends of the bridge
- Realignment of Southfront Road to accommodate the I-580 median widening, and new driveways for buses and vehicles into the station
- Platform design that accommodates a potential pedestrian overcrossing to the north of the I-580 (construction depending on available funding) subject to station area planning by the City of Livermore

Mountain House Community Station

The Mountain House Community Station would be constructed north of I-205 on an approximately 54-acre site west of Mountain House Parkway near the I-205/Mountain House Parkway interchange. The Mountain House Community Services District is advancing initial phases of a transit-oriented development analysis for this site. Access to the station would be provided from a new driveway along Mountain House Parkway. Improvements that would be constructed as part of the Mountain House Community Station include:

- An at-grade, double-track Valley Link station platform
- A surface parking lot north of the tracks providing parking spaces (including accessible spaces), kiss and ride, and bus bays
- At-grade pedestrian crossings (including crossing gates, warning lights, and signals) on both ends of the platform across the Valley Link tracks to access the platform from the parking lot
- Evaluation of a grade-separated pedestrian crossing to the platform (construction depending on available funding)

Operations and Maintenance Facilities

Facilities to support the operations and maintenance and ancillary project activities are planned at the two locations described below.

Mountain House Layover Facility (LF)

To support train layovers, storage, and light maintenance associated with the LPA, a new LF would be constructed on an approximately 86-acre site east of Mountain House Parkway and north of I-205. Access to the site would be provided from Mountain House Parkway. Administrative offices with a central control center, vehicle storage and maintenance activities would take place at the proposed Mountain House LF.

Tracy OMF / OSS

The Tracy OMF / OSS would be constructed on an approximately 200-acre property along West Schulte Road just west of the Owens-Brockway Glass Container Plant west of Tracy. The site would accommodate heavy maintenance activities as well as a backup control center and warehouse storage. Consistent with implementing strategies identified in the Board adopted Sustainability Policy, energy production facilities are included at the Tracy OMF/OSS as part of the LPA. An array of solar panels is assumed for the environmental document. A hydrogen production plant could also be accommodated on this site, but it is not a part of this NEPA LPA. If the hydrogen production plant is advanced, it will be evaluated as a separate project.

Alignment

The alignment would be constructed within a combination of the existing I-580 freeway median, an existing transportation corridor owned by Alameda County, existing Caltrans right-of-way adjacent to the westbound (I-580) freeway, and new right-of-way to be acquired for the Project.

I-580 Freeway Median

In the Tri-Valley, the LPA would transition from the Valley Link Dublin/Pleasanton Station platform via an elevated viaduct over the eastbound I-580 freeway lanes to the median of I-580. The LPA would operate in the median of I-580 from east of the existing Dublin/Pleasanton BART Station to Greenville Road in Livermore. East of Greenville Road, the alignment would transition from the median of I-580 to the Alameda County Transportation Corridor (formerly part of the Southern Pacific Transcontinental Railroad) via an elevated viaduct. I-580 would be widened

throughout this segment as necessary to accommodate the LPA while maintaining existing freeway lanes and interchange ramp configurations including existing express lane facilities. The majority of the LPA alignment would be single-track in this section to minimize impacts on the existing freeway configuration. However, to facilitate the passing of opposing trains, sidings would be constructed at the proposed stations in the Tri-Valley.

Altamont Pass to Mountain House

Across the Altamont Pass, the LPA would operate within the Alameda County Transportation Corridor right-of-way from just east of Greenville Road in Livermore to a point north of the existing railroad tunnel under I-580. From there, the alignment would transition out of the Alameda County Transportation Corridor right-of-way, extend southeast toward the westbound lanes of I-580, and then extend east staying generally within the existing Caltrans right-of-way to the Mountain House Community Station just east of Mountain House Parkway and North of I-205 westbound lanes. The alignment would then cross under Mountain House Parkway into the proposed Mountain House OMF site. Within this segment, new grade separations would be constructed along Altamont Pass Road west of Carroll Road and west of the Union Pacific Railroad (UPRR) bridge near the entrance to the Waste Management Altamont Landfill.

The alignment would include retaining walls and two Altamont Pass Road grade-separations over Valley Link tracks west of the transition point, a combination of retaining walls and 14 railroad viaducts south of Altamont Pass Road east of the transition point including crossings of Grant Line Road and Midway Road and new bridges across the California Aqueduct and the Delta-Mendota Canal, down to an at-grade guideway at Mountain House Community Station, a grade separation of Mountain House Parkway over Valley Link tracks which terminate at the Mountain House Parkway (OMF). The LPA also includes the potential for new crossover tracks needed to provide interoperability with the UPRR trackway during construction. Subject to a future UPRR Trackage Rights Agreement, these crossover tracks could be left in place to provide potential future interoperability with ACE service and future Valley Rail network of passenger rail service. However, this potential interoperability with UPRR and ACE service is not part of the LPA and will not be included in the NEPA analysis. Such service would be subject to separate, stand-alone NEPA and CEQA documentation, as appropriate.

Vehicles

Consistent with implementing strategies identified in the Board-adopted Sustainability Policy, the NEPA LPA includes the use of zero emission multiple unit vehicles (ZEMUs). The use of hydrogen vehicles is assumed for environmental documentation given recent State procurement activities and a key project goal to be consistent with the State Rail Plan.

ATTACHMENT 2



Stakeholder Coordination

Authority Board of Directors (monthly meetings):

15-members representing cities of Dublin, Lathrop, Livermore, Manteca, Pleasanton, Stockton, Tracy, Danville, San Ramon, and the Mountain House Community Services District; the counties of Alameda and San Joaquin; and the Livermore Amador Valley Transit Authority (LAVTA), San Francisco Bay Area Rapid Transit District (BART) and the San Joaquin Regional Rail Commission (SJRRRC).

Valley Link Executive Committee:

MTC, SJCOG, SJRRRC, ACTC, Caltrans, CalSTA, BART

Local Jurisdictions:

Mountain House Community Services District
Cities of Dublin, Pleasanton, Livermore, Tracy, Lathrop, Stockton, Manteca
Counties of Alameda and San Joaquin

Metropolitan Planning Organizations (MPOs):

San Joaquin Council of Governments (SJCOG)
Metropolitan Transportation Commission (MTC)
Megaregion Working Group: SJCOG, MTC, Sacramento Council of Governments (SACOG)
SJCOG I-205 Managed Lanes – PA&ED Technical Advisory Committee (TAC)
San Joaquin Valley Regional Policy Council
MTC Bay Area Regional Rail Partnerships – Project Delivery and Governance TAC

County Transportation Agencies:

Alameda County Transportation Commission (ACTC)
Contra Costa County Transportation Authority (CCTA)
ACTC I-580 Transit and Multimodal Strategy TAC

State and Regional Rail Agencies/Operators:

California High Speed Rail Authority (CHSRA)
Union Pacific Railroad
San Joaquin Joint Powers Authority (SJJPA – San Joaquins)
San Joaquin Regional Rail Commission (SJRRRC - ACE)
Bay Area Rapid Transit District (BART)
Capitol Corridor - Link21 Planning Process
Northern California Rail Working Group

Local Transit Operators:

Livermore/Amador Valley Transit Authority (LAVTA)
San Joaquin Regional Transit District (RTD)

Special Districts:

Alameda County Flood Control
East Bay Community Energy
Tri-Valley Transportation Council

State Representatives and Agencies:

Caltrans (Districts 10 & 4)
California State Transportation Agency (CalSTA)
California Air Resources Board (CARB)
Senate and Assembly Members and Staff
Governor's Office of Business and Economic Development (GO-Biz)

Federal Representatives and Agencies:

Federal Transit Administration (FTA)
Congressional Members and Staff

Community Stakeholders:

Innovation Tri-Valley Leadership Group
East Bay Economic Development Alliance
Tracy Downtown Association
Tracy Earth Day Event
Quest Science Center
Sandia National Laboratories (Livermore)
Property Owners
Members of the Community – CEQA Public Scoping Meetings

ATTACHMENT 3





RESOLUTION NO. R05-2023

* * *

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE TRI-VALLEY-SAN
JOAQUIN VALLEY REGIONAL RAIL AUTHORITY
ADOPTING A LOCALLY PREFERRED ALTERNATIVE FOR EVALUATION IN
NATIONAL ENVIRONMENTAL POLICY ACT ENVIRONMENTAL CLEARANCE FOR
THE VALLEY LINK PROJECT**

WHEREAS, the Tri-Valley-San Joaquin Valley Regional Rail Authority ("Authority") prepared, in conformance with CEQA, an Environmental Impact Report ("EIR") for the Valley Link Project; and

WHEREAS, the project analyzed in the EIR consists of the establishment of a new passenger rail service along a 42-mile corridor between the existing Dublin/Pleasanton Bay Area Rapid Transit ("BART") Station and the proposed Altamont Corridor Express ("ACE") North Lathrop Station; and

WHEREAS, the EIR was certified and the project studied therein (the "Adopted CEQA Project") was adopted on May 12, 2021; and

WHEREAS, the Authority is conducting a review, under the National Environmental Policy Act (NEPA), of a portion of the Adopted CEQA Project, along with certain potential modifications, in conjunction with obtaining the required federal approvals; and

WHEREAS, as part of that process, the Authority is required to identify a "Locally Preferred Alternative" to assist in the analysis of the project being considered; and



WHEREAS, the Board has reviewed and considered the staff report provided to it and desires to adopted, as the Locally Preferred Alternative, the project described in Attachment A to the staff report.

NOW, THEREFORE, BE IT RESOLVED BY the Board of Directors (“Board”) of the Tri-Valley-San Joaquin Valley Regional Rail Authority hereby adopts as the Locally Preferred Alternative the project described in Attachment A to the staff report for purposes of completion of the environmental review under the National Environmental Policy Act.

Regularly passed and adopted this 12th day of April, 2023 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Melissa Hernandez, Chair

ATTEST:

Kevin Sheridan, Executive Director/CEO



Tri-Valley & San Joaquin Valley
REGIONAL RAIL AUTHORITY

CERTIFICATION

The undersigned duly qualified Executive Director, acting on behalf of Tri-Valley-San Joaquin Valley Regional Rail Authority, certifies that the foregoing is a true and correct copy of a resolution adopted at a legally convened meeting of the Tri-Valley-San Joaquin Valley Regional Rail Authority Board of Directors held on April 12, 2023.

Kevin Sheridan, Executive Director/CEO

Date

AGENDA

ITEM 6





Tri-Valley San Joaquin Valley **REGIONAL RAIL AUTHORITY**

STAFF REPORT

SUBJECT: Acceptance of a New Procurement Manual, Adoption of the Provisions of Chapter 10 of the Caltrans Local Procedures Manual to Apply to Projects for which Compliance with those Provisions are Required, and Authorization for the Executive Director/CEO to Update the Procurement Manual When Required

FROM: Kevin Sheridan, Executive Director/CEO

DATE: April 12, 2023

Action Requested

Staff requests that the Board of Directors (Board) approve Resolution R06-2023 to accept a new Procurement Manual, adopt the provisions of Chapter 10 of the Caltrans Local Procedures Manual (LAPM) to apply to projects for which compliance with those provisions are required, and to authorize the Executive Director/CEO to update the Procurement Manual when required.

Background/Discussion

In January 2018, the Authority adopted a Procurement Policy (Resolution 02-2018) to promote the greatest economy and efficiency to the Authority, and to maintain appropriate safeguards to preserve fairness and accountability in all of the Authority's procurement activities. As the Valley Link project has continued to progress, and is currently preparing to receive State and Federal funding, it is necessary to formally adopt Chapter 10 of the Caltrans LAPM.

Over the course of the past year, staff has developed a new procurement manual. The procurement manual was developed based on staff's expertise in working for various agencies including Caltrans, Bay Area Rapid Transit BART, the San Joaquin Council of Governments (SJCOG), the San Joaquin Regional Rail Commission (SJRRC), the San Joaquin Joint Powers Authority (SJJPA), and LA Metro, that often use a multitude of local, state, and federal funding sources to deliver projects. The procurement manual is comprehensive and will need to be updated periodically, possibly on an annual basis due to changes with the U.S. Department of Transportation, which normally are associated with updates to the LAPM. The Procurement Manual will clarify and guide procurement processes and methods tied to specific funding requirements applicable by various regulatory bodies and grantors. The methods of procurement identified in the manual will comply with State and Federal requirements, but also offer the Authority the greatest flexibility to procure based on the requirements of specific funding sources.

Fiscal Impact

There is no fiscal impact.

Recommendation

Approve Resolution R06-2023 of the Board of Directors of the Tri-Valley San Joaquin Valley Regional Rail Authority to accept a new Procurement Manual, adopt Chapter 10 of the Local Assistance Procedures Manual, and authorize the Executive Director/CEO or Designee to update the Procurement Manual when required to remain compliant with various funding sources.

Attachments

1. Resolution R06-2023
2. Procurement Manual
3. Chapter 10 of Caltrans Local Assistance Procedures Manual (LAPM) - <https://dot.ca.gov/-/media/dot-media/programs/local-assistance/documents/lapm/ch10.pdf>

ATTACHMENT 1





RESOLUTION NO. R06-2023

* * *

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE TRI-VALLEY-SAN
JOAQUIN VALLEY REGIONAL RAIL AUTHORITY ACCEPTING THE
PROCUREMENT MANUAL AND ADOPTING THE PROVISIONS OF CHAPTER 10
OF THE CALTRANS LOCAL ASSISTANCE MANUAL**

WHEREAS, the Legislature adopted AB 758, establishing the Tri-Valley-San Joaquin Valley Regional Rail Authority (Authority) under California Public Utilities Code Section 132651 *et seq.*, to plan, develop and deliver cost-effective and responsive transit connectivity between the Bay Area Rapid Transit District's rapid transit system in the Tri-Valley and the Altamont Corridor Express commuter rail service;

WHEREAS, the Authority is authorized to acquire such property, facilities, equipment, materials, supplies and services as may be deemed necessary to carry out its duties;

WHEREAS, the Authority has an obligation to the population it serves to establish a procurement process that protects the public investment and is consistent, fair and equitable with all vendors and, with regard to the expenditure of federal funds, is in compliance with applicable federal regulations and grant requirements; and

WHEREAS, in January, 2018, pursuant to Resolution 02-2018, the Authority adopted a Procurement Policy to promote the greatest economy and efficiency to the Authority, and to maintain appropriate safeguards to preserve fairness and accountability in all of the Authority's procurement activities.

WHEREAS, Resolution 02-2018 authorized the Executive Director to issue and maintain an updated Procurement Manual to reflect procurement procedures that are consistent with the Procurement Policy, current law, and best procurement practices; and

WHEREAS, staff and legal counsel have prepared a comprehensive Procurement Manual, that is consistent with the Procurement Policy and reflects current law and best procurement practices; and

WHEREAS, in order to receive funding from the State of California, Department of Transportation and the Federal Highway Administration, local agencies are required to adopt the provisions of Chapter 10 of the Caltrans Local Procedures Manual; and

WHEREAS, staff recommends that the Board of Directors accept the Procurement Manual and adopt the provisions of Chapter 10 of the Caltrans Local Procedures Manual, to apply to projects for which compliance with those provisions is required.

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the Tri-Valley-San Joaquin Valley Regional Rail Authority hereby:

1. Accepts the current version of the Authority's Procurement Manual, a copy of which is attached and incorporated herein as Exhibit A, and authorizes the Executive Director or her/his designees to maintain an updated Procurement Manual to reflect procurement procedures that are consistent with the Procurement Policy, current law, and best procurement practices.
2. Adopts the provisions of Chapter 10 of the Caltrans Local Procedures Manual, to apply to projects for which compliance with those provisions is required.

APPROVED AND PASSED, this 12th day of April, 2023.

Melissa Hernandez, Chair

ATTEST:

Kevin Sheridan, Executive Director/CEO

ATTACHMENT 2





Tri-Valley – San Joaquin Valley Regional Rail Authority

Procurement Manual

Prepared By:

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Approved By:

Kevin Sheridan
Executive Director

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CHAPTER 1

GENERAL PROVISIONS

SECTION 1.1. Definitions And Abbreviations. Whenever the following words are used in this Procurement Manual, their intent and meaning shall be interpreted as follows:

1.1.1. "Architectural and Engineering" or "A&E" services include architectural, landscape architectural, engineering, environmental, and land surveying services, and construction project management, as defined in Government Code Section 4525.

1.1.2. "Authority" or "Valley Link" means the Tri-Valley - San Joaquin Valley Regional Rail Authority.

1.1.3. "Best Value" means the overall combination of quality, price, and other elements of a proposal, such as reliability, standardization, vendor track record, warranty, and life cycle costs, that, when considered together, provide the greatest overall benefit to the Authority in response to the requirements described in the solicitation documents.

1.1.4. "Bid" means the offer of the bidder submitted to the Authority in response to an Invitation for Bids, properly signed and guaranteed, including the schedule of bid items, and that is not subject to negotiation.

1.1.5. "Bidder" means any individual, firm, partnership, corporation, LLC, governmental agency, joint venture, not-for-profit organization or combination thereof submitting a bid in response to an Invitation for Bids, acting directly or through a duly authorized representative.

1.1.6. "Board" means the 15-member governing board of the Authority.

1.1.7. "Calendar Days" or "Days" means every day on the calendar, including weekends and public holidays.

1.1.8. "Cardinal Change" means a major deviation from the original purpose of the work or the intended method of achievement, or a revision of contract work so extensive, significant, or cumulative that, in effect, the contractor is required to perform very different work from that described in the original contract. May also be referred to as a "tag-on."

1.1.9. "Change Order" means an order authorized by the recipient directing the contractor to make changes, pursuant to contract provisions for such changes, with or without the consent of the contractor.

1.1.10. "Code of Federal Regulations" or "CFR" means the codification of the general and permanent rules published in the Federal Register by the departments and agencies of the Federal Government, as subsequently amended from time to time. As further described in the Procurement Manual, the CFR contains regulations applicable to purchases made with federal funds and regulations applicable to nondiscrimination and Disadvantaged Business Enterprise participation.

1.1.11. "Competitive Range" means the category in which the Procurement Officer places all offers having a reasonable chance of being selected for award. The determination as to which offers are in this range is based on price or cost, technical, and other salient factors. If there is any doubt as to whether or not an offer should be included, it should be resolved by including the offer in this range.

1.1.12. "Contract" or "Agreement" means a binding understanding, enforceable by law, between two or more competent parties, obligating the seller to furnish the supplies, materials, equipment or services (including construction) and the buyer (the Authority) to pay for them. ("Contract" and "Agreement" may be used interchangeably).

1.1.13. "Construction Manager/General Contractor Method" or "CMGC Method" means project delivery system that entails a commitment by the construction manager to deliver the project within a guaranteed maximum price as defined in subdivision (b) of Section 6951 of the Public Contract Code.

1.1.14. "Construction Manager" means a construction manager as defined in subdivision (c) of Section 6951 of the Public Contract Code.

1.1.15. "Contractor" or "Consultant" means any person or entity who enters into an agreement with the Authority to furnish materials, equipment or supplies to, or performs any service for the Authority.

1.1.16. "Cooperative Procurement" refers generally to cooperative purchasing arrangements between public agencies, including local governments, state governments, non-profits or cooperative organizations, and federal agencies, in order to obtain volume discounts through joint purchasing and to lower the transaction costs of both purchasing agencies and vendors in completing such transactions.

1.1.17. "Davis-Bacon and Related Acts" apply to contractors and subcontractors performing on federally funded or assisted contracts in excess of \$2,000 for the construction, alteration, or repair (including painting and decorating) of public buildings or public works. Contractors and subcontractors must pay their laborers and mechanics employed under the contract no less than the locally prevailing wages and fringe benefits for corresponding work on similar projects in the area. The Department of Labor determines locally prevailing wage rates. See 40 U.S.C. Section 3141 et seq.

1.1.18. "Department of Transportation" or "U.S. DOT" means the department of the federal executive branch responsible for the national highways and railroad and airline safety.

1.1.19. "Department of Industrial Relations" or "DIR" is the California agency responsible for administering and enforcing laws governing wages, hours and breaks, overtime, retaliation, workplace safety and health, apprenticeship training programs, and medical care and other benefits for injured workers.

1.1.20. "Disadvantaged Business Enterprises" or "DBE" means a for-profit small business as defined in 49 CFR Part 26, as may be subsequently amended.

1.1.21. "DBELO" means the Disadvantaged Business Enterprise Liaison Officer, the Authority employee principally responsible for effecting compliance with the Authority's DBE Program and federal laws pertaining to DBE participation.

1.1.22. "Federal Highway Administration" or "FHWA" is the agency within the U.S. Department of Transportation that supports state and local governments in the design, construction, and maintenance of the nation's highway system and various federally and tribal owned lands.

1.1.23. "Federal Transit Administration" or "FTA" means the agency within the U.S. Department of Transportation that provides financial and technical assistance to local public transportation systems, including buses, subways, light rail, commuter rail, trolleys and ferries.

1.1.24. "Independent Cost Estimate" or "ICE" means the independent estimate of the proper price and cost levels for the products or services to be purchased.

1.1.25. "Invitation for Bids" or "IFB" or "Bid Solicitation" means the solicitation document and process used in sealed bid procurements. IFBs must describe the Authority's requirements clearly, accurately, and completely. Bids submitted by vendors are sealed and publically opened at a date and time specified in the IFB. Award is made to the lowest responsive and responsible bidder.

1.1.26. "Local Assistance Procedures Manual" or "LAPM" means the California Department of Transportation's (Caltrans) procedures required to process federal and state funded local transportation projects, which is available on Caltrans' website.

1.1.27. "Notice to Proceed" means written notice from the Procurement Officer that work under the contract, project, task order or work order (as applicable) is to begin as of a specified date.

1.1.28. "Minor Irregularity" means a variance in a bid that the Authority may waive as long as the variance does not affect the amount of the bid, give the bidder an advantage or benefit not allowed other bidders, or otherwise defeat the goals of ensuring economy and preventing corruption in the public contracting process.

1.1.29. "Offeror" means a person or entity who makes a quote, bid, proposal for work contemplated for the Authority. ("Bidder" and "Proposer" may be used interchangeably).

1.1.30. "Options" mean contract provisions that allow the Authority to purchase additional equipment, supplies, or services called for by the contract, or to extend the term of the contract.

1.1.31. "Procurement" means the purchase of equipment, supplies and services, including construction, maintenance, purchase of routine supplies or services, and contracts for large projects. ("Purchase" may be used interchangeably).

1.1.32. "Procurement Department" means the Authority's department responsible for procurement activities with principal responsibility for the processing of requisitions and purchase orders for the Authority as a whole as well as preparation of IFBs and RFPs and support of Project Managers in the administration of contracts that result from the IFB and RFP process.

1.1.33. "Procurement Officer" means the Executive Director/CEO, or designee, responsible for the acquisition of all supplies, materials, equipment, and services.

1.1.34. "Project Manager" or "PM" means the designated Authority employee responsible for monitoring and reviewing the project to determine whether contract terms and conditions are being met and, with the consultation of the Procurement Officer and the Authority's Legal Counsel, if needed, will endeavor to resolve any problems concerning adherence to terms and conditions of the contract.

1.1.35. "Proposal" means an offer submitted to the Authority by a person or entity in response to an RFP to enter into a contract or contract modification.

1.1.36. "Proposer" means any individual, firm, partnership, corporation, LLC, governmental agency, joint venture, not-for-profit organization or combination thereof submitting a proposal for the services, work, materials or goods contemplated, acting directly or through a duly authorized representative.

1.1.37. "Public Works" means, in general, public works projects are those for which work includes construction, alteration, improvement, demolition, installation, maintenance and/or repair work done under contract and paid in whole or in part out of public funds. It can include pre-construction and post-construction activities related to a public works project. Notably, different federal and state statutes use slightly different definitions of "public works" (See e.g., Pub. Contract Code, § 1101 and Lab. Code, § 1720). When preparing contracts for public works projects, the Procurement Officer should consult with the Authority's Legal Counsel as necessary to determine which statutory requirements apply.

1.1.38. "Purchase Order" or "PO" means the form signed by the Executive Director or designee constituting written authorization to a vendor to furnish the Authority with materials, equipment, supplies, services, or work of the kinds and in the amounts specified in this Procurement Manual.

1.1.39. "Request for Informal Proposals" means a letter soliciting proposals or quotations for services costing less than \$100,000 which includes a deadline for responses, a description of the scope of services required, time frame for the services, and deliverables.

1.1.40. "Request for Proposal" or "RFP" or "Competitive Negotiations" means the document issued to procure professional and non-professional services or specialized equipment without formal competitive bidding. In the RFP process, proposals are evaluated based upon qualitative factors in addition to price, and the Authority may negotiate the terms of the contract with the selected firm.

1.1.41. "Request for Statement of Qualifications" means a solicitation document issued by the Authority, often by advertisement, to solicit statements of qualifications and/or interest from prospective contractors as a preliminary step to the submission of contractors' proposals or bids. In the case of professional service contracts, the qualifications submitted may be used to screen firms and develop a list to receive RFPs. However, the Authority is not required to issue a Request for Statements of Qualifications before issuing an RFP if it finds it unnecessary to pre-screen proposers.

1.1.42. "Requisition" means that submittal by a department to formally request the procurement of materials, equipment, supplies or services.

1.1.43. "Responsive Bidder/Proposer" means a bidder/proposer who has submitted a bid/proposal which complies in all material respects with the requirements set forth in the IFB or RFP.

1.1.44. "Responsible Bidder/Proposer" means a bidder/proposer or vendor who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform the contract. (See Pub. Contract Code, § 1103.)

1.1.45. "Revenue contract" means a contract in which the Authority provides access to public transportation assets for the primary purpose of either producing revenues in connection with an activity related to public transportation, or creating business opportunities with the use of FTA assisted property.

1.1.46. "Services" means and includes non-construction services of any type, description or variety including, without limitation, landscape maintenance services, janitorial services, repair of office machines and equipment, security guard services, accountants, actuaries, appraisers, attorneys, consultants (in fields such as public administration, economics, finance, insurance, labor relations, planning, technology or other services germane to the Authority's operations), and doctors. A&E contracts are considered services and are subject to Section 5.19 of this Procurement Manual.

1.1.47. "Simplified Acquisition Threshold" means the dollar amount below which a non-Federal entity may purchase property or services using small purchase methods. Non-Federal entities adopt small purchase procedures in order to expedite the purchase of items costing less than the simplified acquisition threshold. The simplified acquisition threshold is set by the Federal Acquisition Regulation at 48 C.F.R. Subpart 2.1 (Definitions) and in accordance with 41 U.S.C. 1908. As of the publication of this part, the simplified acquisition threshold is \$150,000, but this threshold is periodically adjusted for inflation.

1.1.48. "Solicitation Documents" means the documents sent to prospective contractors/consultants by the Authority, requesting the submission of offers or information. This generic term includes Invitations for Bids, Requests for Proposals, and Requests for Quotations.

1.1.49. “Working Days” means Monday – Friday (excluding the Authority's recognized holidays) for construction contracts unless otherwise authorized by the Authority.

SECTION 1.2. Derivation of Procurement Policy, Rules and Regulations. The Tri-Valley-San Joaquin Valley Regional Rail Authority (Authority) is a political subdivision of the State of California organized pursuant to California Public Utilities Code Section 132651 et seq. and is governed by a fifteen member Board of Directors (Board). The procedures governing the Authority's procurements derive from California Public Utilities Code Section 132651 et seq., applicable state law, and federal law, whichever is more stringent. In addition, federal regulations and grant requirements mandated by the United States Department of Transportation and Federal Highway Administration apply to the Authority in connection with contracts financed in whole or in part with federal funds. If a procurement policy or procedure is not described in this Procurement Manual, defer to the funding source guidelines.

1.2.1. Procedures. The procedures contained herein are designed to:

1.2.1.1. Economy and Efficiency. Promote the greatest economy and efficiency for the Authority. Provide safeguards to maintain a procurement system of quality and integrity.

1.2.1.2. Public Confidence. Instill public confidence in the Authority's procurement processes.

1.2.1.3. Fair Treatment. Ensure fair and equitable treatment for all vendors who seek to deal with the Authority, including Disadvantaged Business Enterprises (DBEs).

1.2.1.4. Competition. Ensure maximum open and free competition in the expenditure of public funds.

SECTION 1.3. Organizational Structure. The Executive Director is the Authority's chief executive officer and may issue written procedures to implement the Authority's Procurement Policy, as may be amended by the Board, and is attached as Appendix A to this Procurement Manual.

1.3.1. Authority of Executive Director. The Executive Director may award and execute agreements for equipment, supplies, materials, services, construction, or leases and licenses of real or personal property as well as revenue-generating agreements when the amount to be paid is within the Executive Director's delegated authority stated in the Authority's Procurement Policy, and sufficient funds are available in the Authority's approved annual budget. A report summarizing contracts between \$50,000 and \$100,000 awarded within the Executive Director's authority will be presented to the Board on a periodic basis or as required in the Authority's Procurement Policy. The Executive Director is authorized to administer all contracts on behalf of the Authority, including approving contract change orders and amendments, when the amount to be paid is within the Executive Director's delegated authority stated in the Authority's most recent

Procurement Policy, and sufficient funds are available in the Authority's approved annual budget.

1.3.2. Board Approval. The Board will approve the award of all contracts and leases for which the amount to be paid by the Authority exceeds the limits of the Executive Director's authority stated in the Authority's most recent Procurement Policy. Upon Board approval, the Chairperson of the Board or authorized designee will sign contracts and leases that require approval by the Board.

1.3.3. Legal Counsel. Legal Counsel for the Authority must approve as to form all contracts over \$50,000 and all contracts that are formally bid, regardless of estimated value.

SECTION 1.4. Principles of Delegation. The Executive Director may delegate the responsibility and authority to execute contracts within the monetary limits of the Executive Director's procurement authority stated in the Authority's most recent Procurement Policy. Any delegation will be in writing, include defined monetary limits, and be consistent with the Authority's Procurement Policy and this Procurement Manual. The Executive Director will maintain a list of authorized employees, titles, and what they are designated to approve.

The following principles apply to all employees with procurement authority, including the Procurement Officer:

1.4.1. Compliance with Law, Regulations and This Procurement Manual. The Project Manager in coordination with the Procurement Officer is accountable for ensuring that all requirements of law, Authority policies, Authority procedures, including internal clearances and approvals, and the provisions of this Procurement Manual, as all may be periodically updated, amended or superseded, have been met.

1.4.2. Conflicts of Interest. The Procurement Officer will exercise the highest standards of professional integrity and ethical conduct and monitor all transactions to ensure that no conflicts of interest (see Chapter 2) exist. If an employee has any questions or doubts as to a conflict of interest, the employee will consult with the Procurement Officer who may consult with the Authority's Legal Counsel.

1.4.3. Available Funds. Before the procurement, the Procurement Officer in consultation with the Executive Director will ensure that sufficient funds are available for the proposed procurement.

1.4.4. Employees to Be Familiar with This Procurement Manual. The Procurement Officer, along with any other positions directed by the Executive Director, will be familiar with this Procurement Manual and participate in available training sessions on ethics and proper procurement practices.

1.4.5. Fundamental Principles of Public Procurement. The Procurement Officer will adhere to fundamental principles of public procurement, as summarized in Section 1.3.1. above.

SECTION 1.5. Types of Funding Sources. Summarized below are the major types of funding sources the Authority uses or anticipates using as of the date of this Procurement Manual:

1.5.1. Local Tax Measures

1.5.2. The Metropolitan Transportation Commission, Alameda County Transportation Commission, and San Joaquin Council of Governments

1.5.3. State of California, including the California Department of Transportation (Caltrans)

1.5.4. U.S. Department of Transportation, including Federal Railroad Administration (FRA), Federal Transit Administration (FTA) and Federal Highway Administration (FHWA)

1.5.5. Other

SECTION 1.6. Funding Sources Guidance. If a funding source requires the recipient to comply with specific procurement guidelines and procedures, the Authority will comply with those guidelines and procedures to the extent that they are different or conflict with this Procurement Manual.

SECTION 1.7. Cost Principles and Procedures. The Authority will follow this Procurement Manual and the principles in 2 CFR Part 200, Subpart E—Cost Principles.

SECTION 1.8. Types of Procurement Methods. When determining which methods of procurement to follow, federal, state, and local procurement laws must be reviewed first to determine which laws and regulations apply. The Authority will follow the strictest regulation, i.e. if local procurement requirements are stricter than the state and federal requirements, the local requirements must be followed.

Summarized below are the major types of procurement methods used by the Authority. Each of these procurement methods, and the procedures to be followed, are described in further detail in Chapters 3-6 of this Procurement Manual. In most cases, the Project Manager will conduct an Independent Cost Estimate (ICE) to determine which procurement method to use. The ICE will vary in complexity and detail based on the cost and type of goods or services being purchased.

1.8.1. Small Purchase Procedures.

1.8.1.1. Micro-Purchases. Whenever the aggregate amount of procuring supplies or services inclusive of all taxes, shipping, and handling does not exceed \$10,000, micro-purchases may be made without obtaining competitive quotations, if the price to be paid is fair and reasonable. Micro-purchases should be equitably distributed among qualified suppliers and should not be used to avoid the requirements for competition for purchases above the \$10,000 threshold.

1.8.1.2. Small Purchases.

1.8.1.2.1. Informal Bidding. Informal bidding may be used for purchases estimated to cost more than \$10,000 but less than \$100,000 for materials, supplies and equipment, and construction. To the extent practicable, the Procurement Officer should obtain at least three written or oral quotations or informal bids and the Authority will strive to obtain at least one of the three quotations from a small business. Contract award will be made to the lowest responsive and responsible bidder, unless it is determined in writing that it is in the Authority's best interest to apply a "best value" approach, in which event, qualitative factors in addition to price may be considered in making the contract award. If three quotations are unable to be obtained, the Procurement Officer will include a justification in the procurement file, explaining why three quotations could not be obtained.

1.8.1.2.2. Informal Proposals. An informal proposal process may be used for purchases of services estimated to cost less than \$100,000. To the extent practicable, the Procurement Officer should obtain at least three written or oral quotations or informal proposals, and the Authority will strive to obtain at least one of the three quotations from a small business. Contract award will be made on a "best value" basis wherein the process will evaluate qualitative factors in addition to price in making the contract award. If three quotations/informal proposals are unable to be obtained, the Procurement Officer will include a justification in the procurement file, explaining why three quotations/informal proposals could not be obtained.

1.8.2. Formal Competitive Bidding (Invitation for Bids). This method must be used for the following: purchases estimated to cost over \$100,000 for materials, supplies and equipment, unless the circumstances warrant a "best value" approach permitted by the Authority's Procurement Policy; "public projects," as defined in the Authority's Procurement Policy, estimated to cost \$100,000 or more; and purchases over \$250,000 (or the current Simplified Acquisition Threshold) for FTA or U.S. DOT construction; and formal competitive bidding may be used for services. The Procurement Officer will prepare and advertise formal bid documents, and contract award will be made to the lowest responsive and responsible bidder.

1.8.3. Formal Competitive Proposals (Request for Proposals). This method may be used for purchases over \$100,000 for professional and non-professional services and specialized equipment over \$100,000. The Procurement Officer will issue a Request for Proposals, and proposals will be evaluated based upon qualitative factors in addition to price. The procurement of certain architectural and engineering services must be conducted in conformity with the qualifications-based competitive proposal procedures set forth in Government Code Sections 4525 et seq. and the Authority's Procurement Policy.

1.8.4. Design-Build Contracts. "Design-build" means a procurement process in which both the design and construction of a project are procured from a single entity. Certain public entities, including local or regional agencies responsible for the construction of transit projects, are permitted to use a design-build solicitation process for

public works contracts under certain circumstances. Public Contract Code Sections 22160 et seq. set forth the per-project dollar limitations and other specific requirements for its use. Except for certain technology applications or surveillance equipment projects, projects must exceed one million dollars in value to use the design-build process (Pub. Contract Code, § 22162). Staff must contact the Procurement Officer and Legal Counsel for further details and assistance complying with mandated statutory requirements if a design-build selection process is selected for an eligible project. Other requirements include, but are not limited to:

1.8.4.1. Request for Proposals. Preparation of a Request for Proposals, defining the scope of the project and other specified components, including the methodology for evaluation of proposals.

1.8.4.2. Pre-Qualification Procedures. Establishment of a procedure to prequalify design-build entities, including the use of a questionnaire requiring specific information from offerors.

1.8.4.3. Final Selection Procedures. Establishment of procedures for final selection of the design-build entity based on either a competitive bidding process resulting in lump sum bids, or based upon best value criteria that have been identified in the contract.

1.8.4.4. Qualifications-based Procedures. Establishment of procedures to use a qualifications-based process based on the requirements of the Brooks Act when the preponderance of work to be performed is considered to be for A&E services as defined in FTA C. 4220.1F, as amended/superseded.

1.8.5. Non-Competitive Purchases. These are used for the purchase of approved sole source procurements, emergency procurements, if inadequate competition is determined or other procurements in which a competitive process is infeasible and would not serve the best interests of the Authority, as permitted in the Authority's Procurement Policy or as determined by the Board or the Executive Director. Non-competitive purchases will be made with consultation with the Authority's Legal Counsel, if needed.

1.8.6. Intergovernmental and Cooperative Agreements. Joint procurements, state cooperative purchasing programs, and piggyback procurements with other public agencies may be used when consistent with applicable state statutory and federal grant requirements.

SECTION 1.9. Splitting Procurements Prohibited. The Authority will not arbitrarily split purchases into smaller segments or partial orders to remain below the authorized dollar threshold level for formal solicitation in an effort to take advantage of the informal solicitation procedures. This prohibition applies to both public works projects and all other procurements.

SECTION 1.10. Vendor Eligibility. Any vendor doing business with the Authority will be required to provide the following:

1.10.1. Statement of Information from the State of California which allows vendor to do business in California.

1.10.2. Current IRS Form W-9 on file with the Authority.

1.10.3. A review of the System for Award Management (SAM) is required for all purchases over \$25,000.

SECTION 1.11. Consideration of Disadvantaged Business Enterprise Participation.

The DBELO has responsibility for implementing the Authority's Disadvantaged Business Enterprise (DBE) Program. In accordance with federal regulations, the Authority is committed to and has adopted a DBE Program to engage DBEs in Authority contracting opportunities. 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 the U.S. Department of Transportation (U.S. DOT) assisted contracts. It is the intention of the Authority to remove barriers and create a level playing field on which DBEs can compete fairly for contracts and subcontracts relating to the Authority's construction, procurement, and professional services activities. The DBELO, or designee, in cooperation with the Executive Director, is responsible for the DBE Program development, implementation, monitoring, goal setting, and reporting in furtherance of the Authority's nondiscrimination policy and in accordance with 49 CFR Part 26.

CHAPTER 2

STANDARDS OF CONDUCT

SECTION 2.1. Duty to Disclose. The Authority's directors, officers, employees and agents will not be involved in any purchasing decision, task, or procedure (including participation in initiation, evaluation, award, or administration of a contract) in which they or persons related to them have a real or apparent conflict of interest, as more particularly defined in Section 2.2, below. In cases where there may be a conflict of interest, employees are responsible for reporting in writing such conflict to the Executive Director at the earliest possible date. Failure to make such disclosure is subject to discipline, as provided in this Chapter.

SECTION 2.2. Conflict of Interest.

2.2.1. Board Conflict of Interest Code. In accordance with the Political Reform Act, the Board has adopted a Conflict of Interest Code under which certain designated employees and consultants are required to disclose economic interests and are prohibited from participating in decisions which will have a reasonably foreseeable material effect on their financial interests. (Gov. Code, § 87100 et seq.)

2.2.2. Specific Conflicts. For purposes of the Standards of Conduct included in this Procurement Manual, it is further required that no director, officer, employee or agent of the Authority will participate in any procurement, 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 (1) the director, officer, employee or agent, (2) any member of their immediate family, (3) their business associate, (4) their partner or (5) 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 as well as the Political Reform Act.

2.2.3. Additional Conflicts. Additional conflict of interest standards may also apply depending on the method of procurement or funding source. To ensure full compliance with conflict of interest rules, please reference the specific section of the Procurement Manual addressing the method of procurement.

SECTION 2.3. Levine Act. California Government Code Section 84308, commonly referred to as the "Levine Act," prohibits any Authority Board member from participating in any action related to a contract if he or she receives any political contributions totaling more than \$250 within the previous twelve months, and for three months following the date a final decision concerning the contract has been made, from the person or entity awarded the contract. The Levine Act also requires an Authority Board member who has received such a contribution to disclose the contribution on the record of the proceeding.

SECTION 2.4. Gratuities and Contingent Fees. In compliance with the Authority's Procurement Policy, no director, officer, employee or agent of the Authority knowingly will solicit, accept, or agree to accept gratuities, contingent fees, favors, or anything worth a monetary value of \$50 or more in connection with actual or potential procurement and contracting activities. A contingent fee is any commission, percentage, brokerage, or other fee that is contingent upon the success of a person or entity securing a contract.

SECTION 2.5. Ex-Parte Communications. Once a solicitation has been initiated, no Authority employee or consultant acting on behalf of the Authority, will engage in any “ex-parte” communication with a potential contractor/consultant or representative of that potential contractor. All communication to and from potential contractors/consultants during the solicitation process will be made through the Procurement Officer. Proposers and their representatives may not communicate with the Authority’s Board members except in writing and if the communication is made public. Proposers and their representatives must communicate in the manner set forth in the solicitation documents. All such communication will be directed to the named Procurement Officer until after a Notice to Proceed has been issued by the Authority. There will be no communication with any officer, director, employee, or agent of the Authority, except as may be reasonably necessary to carry out the procedures specified in the solicitation. Nothing herein prohibits proposers and their representatives from making oral statements or presentations in public to one or more representatives of the Authority during a public meeting.

SECTION 2.6. Confidential Information. No director, officer, employee or agent will use confidential information for his or her actual, anticipated, or apparent personal gain, or for the actual, anticipated, or apparent personal gain of any person related to such employee as such relationship is defined in Section 2.2 above. “Confidential Information” is defined to include any proprietary, privileged, or nonpublic information coming to the person’s attention as a result of an office or employment position with the Authority, the knowledge of which makes possible financial gain.

SECTION 2.7. Post-Employment Restrictions. No person previously in the position of director, officer, employee or agent of the Authority may act as an agent or attorney for, or otherwise represent, a consultant or contractor by making any formal or informal appearance, or any oral or written communication, before the Authority, or any officer or employee of the Authority, for a period of twelve months after leaving office or employment with the Authority if the appearance or communication is made for the purpose of influencing any action involving the issuance, amendment, award or revocation of a permit, license, grant, or contract.

SECTION 2.8. Discipline for Violation. Violation of the Procurement Policy and Standards of Conduct will subject the employee to such disciplinary proceedings or action as required by law, including but not limited to the Political Reform Act and Government Code Sections 1090 et seq., or as deemed appropriate by the Authority.

CHAPTER 3

SMALL PURCHASE PROCEDURES

SECTION 3.1. Authority Credit Card. Credit card purchases are limited to travel, emergencies, and purchases that will not allow the Authority to pay in arrears. Authority credit cards are issued to those approved by the Executive Director. Each Authority credit card has limited spending limits and may not be used to purchase alcoholic beverages, personal items, or to obtain cash advances. The Director of Finance, or designee, manages the Authority credit cards and coordinates payments. The Authority credit cards are subject to all the requirements of this Procurement Manual. Fraudulent use or misuse of the Authority credit cards may result in disciplinary action.

SECTION 3.2. Micro-Purchases.

3.2.1. Less than \$10,000. Micro-purchase procedures may be used whenever the aggregate amount of the purchase, inclusive of all taxes, shipping and handling, does not exceed \$10,000, and the price to be paid is fair and reasonable. Micro-purchases should not be used to avoid the requirements for competition above the \$10,000 threshold.

3.2.2. Procedures. The Authority must use the following procedures for micro-purchases:

3.2.2.1. Requisition. To initiate a procurement, the Project Manager must submit a Requisition specifying the products or service to be purchased to the Procurement Officer for consideration. The Requisition must contain the following information:

3.2.2.1.1. A specific description of the desired products or services, using, whenever possible, dimensions, sizes and catalog numbers;

3.2.2.1.2. The quantity of desired products or services;

3.2.2.1.3. The date on which the products or services are required;

3.2.2.1.4. The place of delivery for the products or services; and

3.2.2.1.5. The General Ledger code;

3.2.2.1.6. The Scope of services and/or special provisions as applicable.

3.2.2.1.7. A breakdown of quotations or justification explaining why quotations were not obtained and a determination that the price to be paid is fair and reasonable.

3.2.3. Price Quotations. Micro-purchases may be made without obtaining competitive proposals or bids if the price to be paid is fair and reasonable. To the extent

practicable, three (3) quotes, either written or oral, will be obtained in order to compare pricing and other terms. To the extent practicable, purchases will be distributed equitably among qualified suppliers with reasonable prices, and the Authority will strive to obtain at least one quotation from a small business.

3.2.4. Selection of Vendor. The Procurement Officer will select the vendor on a best value basis, considering criteria including price, quality, availability of the product, and the vendor's previous work history. The vendor's history of service to the Authority may be considered if it does not create an unfair competitive advantage. After selection, the Procurement Officer will notify the Project Manager of the selected vendor. The Procurement Officer, upon request of the vendor, will send the purchase order, including the purchase order terms and conditions.

3.2.5. File Documentation. The procurement file will include all pertinent determinations made by the Authority, all contractor correspondence that may have any bearing on the Authority's contractual rights or administration, and records of payments and credits. See Chapter 10, Section 10.3, Maintenance of Procurement Records, for additional requirements.

SECTION 3.3. Informal Bidding.

3.3.1. Summary. Informal bidding procedures may be used for procurements of materials, equipment, supplies, and construction above \$10,000 but not in excess of \$100,000.

3.3.2. Informal Bidding Procedures.

3.3.2.1. Initiation of Informal Bidding Process. The requesting department will initiate the informal bidding process by submitting a Requisition to the Procurement Officer specifying the materials or services desired and the estimated cost. The Requisition will be approved by the Executive Director or designee.

3.3.2.2. Preparation of Informal Bid Solicitation. The Procurement Officer will prepare the bid solicitation in the following manner:

3.3.2.2.1. The bid solicitation will specify the basic terms and conditions of the procurement, including but not limited to:

3.3.2.2.1.1. Description of the products or services required;

3.3.2.2.1.2. The quantities required;

3.3.2.2.1.3. F.O.B. point;

3.3.2.2.1.4. Delivery date;

3.3.2.2.1.5. Delivery address;

3.3.2.2.1.6. Components of bid prices;

3.3.2.2.1.7. Technical specifications (if required by the nature of product or services); and

3.3.2.2.1.8. Date, time, and place by which the informal bids must be submitted to the Authority.

3.3.2.2.2. The bid solicitation may specify brand names or manufacturers, but in such event must provide for an approved equal process. The bid solicitation may include bonding and insurance requirements, as appropriate. Generally, workers' compensation and comprehensive general liability insurance will be required for procurements involving work for the Authority.

3.3.2.2.3. The bid solicitation will be sent to potential bidders whose names may be obtained from locator files, the internet, trade journals, trade sources and DBE Vendor Lists. The requesting department will consult with the DBELO for names of potential DBE bidders. The bid solicitation will be sent to an adequate number of potential bidders (a minimum of three) to maximize the possibility of multiple bids. If three bids are unable to be obtained, the Procurement Officer will include a justification in the procurement file.

3.3.2.3. Receipt of Informal Bids. Immediately upon receipt of hard copy informal bids by the Procurement Officer, bids will be time and date stamped. Informal bids received via email will be considered received based on the time and date that appears in the Authority's email system. No bids will be accepted after the date and time specified in the solicitation documents.

3.3.2.4. Informal Bid Opening. The Procurement Officer will review the bids. Bids will be tabulated and bid documents will be submitted to the department initiating the procurement for evaluation, along with a completed requisition recommending award. The Procurement Officer will also be advised of the bid results.

3.3.2.5. Informal Bid Evaluation and Award.

3.3.2.5.1. The Authority will award contracts based upon informal bids to the lowest responsible and responsive bidder, unless it is determined in writing that it is in the Authority's best interest to apply a "best value" approach, in which event, qualitative factors in addition to price may be considered in making the contract award. Otherwise, bids will be evaluated on the basis of the following criteria:

3.3.2.5.1.1. Lowest monetary bid;

3.3.2.5.1.2. Responsiveness to the specification requirements; and

3.3.2.5.1.3. Responsibility of the bidder.

3.3.2.5.2. After review and approval of the selected bidder by the department initiating the purchase, the Procurement Officer will notify the successful bidder of award of contract with price and all other significant items, including purchase order number.

3.3.2.5.3. The Procurement Officer will issue the purchase order or contract, as appropriate, to the successful bidder.

3.3.2.5.4. If only one bid is received or if potential bidders decline to bid, the Procurement Officer will contact the potential bidders that declined to bid to determine why they declined to bid. This is to eliminate the possibility of a restrictive specification or restrictive bidding procedures.

SECTION 3.4. Informal Proposals.

3.4.1. Summary. Informal proposals consist generally of the issuance of a Request for Informal Proposals describing the scope of services required, time frame, and deliverables, without formal advertising. Selection is made based upon the proposer's qualifications and experience, timeliness, approach and, for non-architectural or engineering services, cost. (For A&E services, see Section 5.19). The Authority may negotiate the terms and conditions of the engagement with the highest ranked proposer, or may award the contract without negotiations. This process may be used to retain services when the cost does not exceed \$100,000.

3.4.2. Process. The department initiating the purchase initiates the informal proposal process. The department will then submit to the Procurement Officer a statement of work, an independent cost estimate, time for completion, and other pertinent information required.

3.4.2.1. Coordination. The Procurement Officer will coordinate with the initiating department to establish the minimum qualifications and selection criteria in relative order of importance. To the extent practicable, the Procurement Officer should obtain a minimum of three oral quotations or informal proposals, utilizing names obtained from the Requisition, locator files, trade journals, trade sources, and the DBE vendor lists. The Authority will strive to obtain at least one of the three quotations from a small business. The department will consult with the DBELO for names of potential DBE proposers. If three quotations/informal proposals are unable to be obtained, the Procurement Officer will include a justification in the procurement file.

3.4.2.2. Written Proposals. Written proposals must be received within the timeframe specified in the Request for Informal Proposals and describe the proposer's qualifications and experience, approach to the work, and cost proposal (for non-A&E contracts).

3.4.3. Evaluation and Award. Contract award will be made on a "best value" basis. Proposals will be evaluated by the designated evaluation panel appointed by the Procurement Officer. The proposer that best meets the Authority's needs in accordance with the selection criteria identified in the Request for Informal Proposals will be selected

for award or for further negotiations as to the final scope of work and price, if necessary. Awards will be made only to responsible offerors who possess the necessary skills, integrity, and have available resources necessary to perform the contract terms and conditions successfully. Upon successful completion of negotiations, the Procurement Officer will notify the Executive Director or designee. The purchase order or contract will be executed by the Executive Director or designee. Required insurance coverage will be verified by the Procurement Officer before the Authority issues the Notice to Proceed.

SECTION 3.5. Issuance of Purchase Orders.

3.5.1. Use. The Authority utilizes a purchase order number for all of its procurements which may correspond with a contract or standalone purchase order, in order to track all expenditures on a uniform basis.

3.5.2. Numbered Orders. The Procurement Officer issues purchase order numbers to the Project Manager. The purchase order numbers are available in the accounting software. At the request of the vendor, a signed purchase order will be provided. The Executive Director or designee may sign purchase orders.

3.5.3. Completed Requisition. Upon completion of the procurement approval process, the Procurement Officer will generate and process a purchase order.

3.5.4. Internal Controls. Copies of the purchase order will be processed to ensure internal controls for materials, equipment, supplies and services received as follows:

3.5.4.1. To Vendor. At the request of the vendor, a copy of the signed purchase order or contract will be provided.

3.5.4.2. Finance Department. The Finance Department will have access to purchase orders using the accounting software.

3.5.4.3. Verification of Items. The applicable department will verify receipt of items. Invoices will be processed only after confirmation that the items or service has been completed.

3.5.4.4. Person Requesting. The Requisitioner will be given the purchase order number for his/her records. A copy of the purchase order will be provided upon request.

3.5.4.5. File Copy. A file copy for all purchase orders will be kept by the Procurement Officer.

SECTION 3.6. File Documentation. The procurement file will include all pertinent determinations made by the Authority, all contractor correspondence that may have any bearing on the Authority's contractual rights or administration, and records of payments and credits. See Chapter 10, Section 10.3, Maintenance of Procurement Records, for additional requirements.

CHAPTER 4

FORMAL COMPETITIVE BIDDING (INVITATIONS FOR BIDS)

SECTION 4.1. Summary. The formal competitive bidding process is commenced upon the public advertisement of a Notice Inviting Bids (Notice) and the issuance of solicitation documents. The solicitation documents set forth a clear description of the products or services sought and all other relevant terms and conditions of the procurement. On the date set forth in the Notice, the bids are opened and read publicly. The contract is awarded to the lowest responsible and responsive bidder within the time specified in the solicitation documents.

SECTION 4.2. When Formal Bids Are Required.

4.2.1. Construction Contracts in Excess of \$100,000. The Authority will publicly advertise for bids for all construction, repair, maintenance, alterations, and similar work whenever the estimated expenditure for such work exceeds \$100,000.

4.2.2. Procurements of Equipment, Supplies, and Materials in Excess of \$100,000. The Authority will ordinarily engage in formal competitive bidding for procurements of equipment, supplies, and materials when the total estimated cost of the procurement exceeds \$100,000. However, a "best value" approach may be used in circumstances where it is determined to be in the best interest of the Authority. In such circumstances, the Authority will follow the procurement process described in Chapter 5.

4.2.3. Services Exceeding \$100,000. The Authority may use formal competitive bidding to procure services when the estimated cost exceeds \$100,000. Alternatively, competitive negotiations pursuant to Chapter 5 may be used when it is in the best interest of the Authority to use qualifications-based criteria in addition to cost.

4.2.4. Federally Funded Construction Contracts. The Authority may use formal competitive bidding for construction contracts in excess of \$3,500 if some or all of the funding is provided by U.S. DOT or FTA.

SECTION 4.3. Initiation of the Competitive Bidding Process.

4.3.1. Budget. If the proposed procurement is not within the approved budget, the Executive Director must first obtain the Board approval for a budget amendment.

4.3.2. Initiation. To initiate the competitive bidding process, the Project Manager must submit draft documentation, including an ICE, technical specifications, and scope of work that adequately describes the products or work required, and bid forms as applicable. The Procurement Officer will review and confirm that the procurement is appropriate for a formal competitive bidding process. Upon such confirmation, the Executive Assistant will issue a solicitation number. The Procurement Officer will review, and work with the Project Manager to clarify the scope of work. The Procurement Officer will prepare a procurement schedule and submits a copy to the initiating department.

SECTION 4.4. Preparation of the Solicitation Documents. The Procurement Officer prepares the solicitation documents. Technical specifications will be developed jointly by the Procurement Officer and the department initiating the purchase. solicitation documents will contain the following items:

4.4.1. Notice Inviting Bids. The Notice Inviting Bids is a publicly advertised document that notifies potential bidders of the nature of the particular contract and the date, time, and place for receiving and opening of bids. The bid due date must be at least 10 days from the date of initial publication of the Notice. Generally, the Authority should provide at least 14 days for typical procurements and 30 days when procuring non-typical items. The Notice Inviting Bids should be substantially in the form approved by the Executive Director, or designee. The required contents of the Notice may vary depending on the nature of the contract, as outlined below:

4.4.1.1. All Formally Bid Contracts. For all formally-bid contracts, the following information will be provided in the Notice Inviting Bids:

4.4.1.1.1. The nature of the contract and the date, time and place of receipt and opening of bids;

4.4.1.1.2. The applicable Disadvantaged Business Enterprise requirements and other significant requirements under applicable federal or state laws;

4.4.1.1.3. The required bidder's security, if applicable; and

4.4.1.1.4. The date, time and location of a pre-bid conference, if applicable.

4.4.1.2. Public Works/Construction Contracts. If the contract involves construction or Public Works, the following information will also be provided in the Notice Inviting Bids:

4.4.1.2.1. If a mandatory pre-bid conference, site visit, or meeting is planned, the Notice will advise of the date, time, and location. Such pre-bid conference, site visit, or meeting may not occur within the first 5 calendar days after publication of the Notice. (P.C.C. Section 6610.)

4.4.1.2.2. A statement describing if the contract is subject to prevailing wages, federal or state, and the general rate of per diem wage for each craft, classification, or type of worker needed to execute the contract. (Lab. Code, § 1773.2.)

4.4.1.2.3. The Notice will designate the method, time, and place for obtaining copies of the solicitation documents, including any final plans and specifications. (P.C.C. Section 6610.)

4.4.1.2.4. If the nature of the work requires the contractor to be licensed under California law, the Notice will so state and will include the classification of

the contractor's license requirements, which a contractor must possess at the time a contract is awarded. (P.C.C. Section 3300.)

4.4.1.2.5. The Notice will specify that contractors can submit certain securities in lieu of retention. (P.C.C. 22300.)

4.4.1.2.6. Escrow of bid document provisions, if applicable.

4.4.1.2.7. Insurance, and payment and performance bond requirements.

4.4.1.2.8. California Department of Industrial Relations (DIR) registration requirements.

4.4.1.3. Federally-funded Contracts. If the contract to be let is financed in whole or in part by the United States Department of Transportation, the Notice will so state, and will further state that bidders will be required to comply with Davis Bacon and Related Acts and all other terms and conditions prescribed for third-party contracts in the grant contract between the Authority and the Department of Transportation. The Notice will include the nondiscrimination assurance and also state that all bidders will be required to certify that they have not been suspended or debarred from participation in federally-funded contracts. (See Chapter 9.)

4.4.2. General Conditions and Instructions to Bidders. The General Conditions and Instructions to bidders set forth standard terms and conditions applicable to all Authority contracts, except as modified by the Special Provisions or Technical Specifications.

4.4.3. Technical Specifications. The Technical Specifications are a part of the solicitation documents and will clearly define the items or services to be procured so that bidders may formulate responsive bids. The Technical Specifications may include a statement as to the qualitative nature of the material, product, or service to be procured and must set forth those minimum essential characteristics and standards to which the material, product, or service must conform in order to satisfy the Authority's intended use. When it is impractical or uneconomical to specify a clear and adequate description of the technical requirements for a particular product, a brand name may be used in the Technical Specifications, provided that bidders are afforded the opportunity to propose to the Authority a substitute for approval as an equal to the brand name specified in the solicitation documents. Technical Specifications should not be drafted in a manner which unduly restricts competition.

4.4.4. Special Provisions. The Special Provisions prescribe the legal terms and conditions governing a particular procurement. The Special Provisions may set forth particular requirements for the bidding process, such as the minimum qualifications of bidders, instructions on completion of bid forms, method for evaluation of bids, approved equals procedures, and requirements for bidder's security. The Special Provisions also describe specific contract requirements, such as delivery requirements, time for performance, place of performance, inspection, acceptance, warranty, insurance

requirements, liquidated damages, and contract bond requirements. Clauses as may be required for federally assisted contracts (e.g., Title VI, Cargo Preference, Buy America, and other Federal requirements; see Chapter 9 for more Federal requirements) also will be described. Discussion of significant provisions to be included are as follows:

4.4.4.1. Indemnification. Subject to state law requirements, all of the Authority's competitively bid contracts will include an indemnification provision.

4.4.4.2. Insurance. For contracts subject to formal competitive bidding, the Authority generally requires insurance for protection in the event of default, excusable failures to perform, accident, injury, or other liability or loss. Insurance requirements vary according to the type and estimated cost of the contract, the source of funding, market conditions, and other considerations. All contracts for services and construction will require the contractor to carry, at a minimum, workers' compensation, employer's liability, automobile liability, and commercial general liability insurance. All contracts for architectural and engineering services or other professional services will also require the contractor to carry professional liability insurance. In addition, any contracts for the procurement of supplies, equipment, or materials, where on-site installation, inspection, or delivery activities are incident to the procurement, will include the foregoing insurance coverages. The specific amounts and types of coverage will be determined by the Procurement Officer, based on the advice of the Authority's insurance broker and Legal Counsel, if needed. The Authority must approve a contractor's insurance policies and coverages and receive all required certificates and (if applicable) policies prior to entering into the Agreement.

4.4.4.3. Bonding. Bonds are the Authority's principal protection in the case of a contractor's default or other failure to perform. All of the bonds described below must be executed by an admitted surety insurer authorized to transact business in the State of California. Except as specified in Chapter 9, for federally-funded procurements, bonding requirements on formal competitively bid procurements are as follows:

4.4.4.3.1. Bidder's Security. Bidder's security is required for construction contracts that are formally bid. For other contracts, the Authority may require a bidder's security to be submitted with each bid in order to protect the Authority's interests in the event that a bidder fails or refuses to honor its bid or to enter into a contract awarded to it. The Executive Director, or designee, may, in their discretion, waive this requirement on a case by case basis, taking into account the nature and magnitude of the procurement, market conditions, and the potential for enhancing DBE participation. For example, in the case of procurements of "off-the-shelf" items or services, i.e., procurements not specifically tailored to the Authority's needs which can be readily obtained on the open market at a competitive price, the Authority may determine to waive the bidder's security requirement. If bidder's security is required, it should take the form of a bid bond, an unconditional certified or cashier's check, or an irrevocable letter of credit issued to the Authority. As a general rule, the bidder's security is in the amount of 10% of the total bid, but this amount may be increased according to the assessed risk in the event of a bidder's failure to honor its bid and the resulting damage to the Authority.

4.4.4.3.2. Performance Bonds. A performance bond is required for construction contracts. As a general rule, performance bonds are not required for non-construction contracts. However, the Executive Director, or designee, at their discretion, and with the advice of Legal Counsel, may require performance bonds for contracts when necessary to secure fulfillment of all the contractor's obligations under the contract in any amount up to 100% of the contract price. In setting the amount of the performance bond, the Authority will consider the capability of such bond to cover the likely differential in price between the contractor and the next lowest responsible bidder or a firm that could be retained from the open market should the Authority determine not to rebid the contract. The life of the performance bond may be required to extend beyond the completion of the main work under the contract in order to cover any warranty period or post-acceptance obligations.

4.4.4.3.3. Payment Bonds. A Payment bond is required for all construction or maintenance contracts in excess of \$25,000. Payment bonds may be required in contracts for the procurement of services or products which involve subcontracting.

4.4.4.3.4. Fidelity Bonds. In all cases where the contractor's employees will be performing sensitive services on the Authority's facilities or in the Authority's vehicles, the Authority may require the contractor to furnish an employee fidelity bond. Such bond will provide coverage in protection of the Authority in cases of negligence, misconduct, or theft by contractor's employees. The coverage type and amount will be established following consultation with the Authority's insurance broker and Legal Counsel, if needed.

4.4.4.4. Liquidated Damages Clause. The Special Provisions may include a clause setting the time in which the whole, or any specified portion of the work, called for under the contract should be completed, and providing that each day completion is delayed beyond the specified time for performance, the contractor will pay to the Authority a specified sum of money, to be deducted from any payments due or to become due to the contractor.

4.4.4.4.1. Reasons for Use of Liquidated Damages. Liquidated damages should be included in contracts when it would be inconvenient, difficult, or impracticable to otherwise obtain an adequate remedy for the delay, or to prove the losses or to assess the actual quantity of damages. Liquidated damages are (i) generally included in all construction contracts where performance will take more than 30 days, (ii) sometimes included in contracts for equipment or goods, and (iii) typically not included in services contracts.

4.4.4.4.2. Determining Liquidated Damages. Liquidated damages must be calculated on a case-by-case basis and be comprised of a fact-based prediction of the actual damages the Authority will suffer in the event of delayed performance by the contractor. The department initiating the purchase will evaluate these factors and set a sum as liquidated damages. The Procurement Officer will include the liquidated damages amount and describe in the contract documents how liquidated damages are incurred.

The department initiating the purchase will prepare and provide to the Procurement Officer for the internal files a justification setting forth the need for liquidated damages, and the basis for the determination of the specified amount as being a reasonable estimate of the damages the Authority might reasonably be expected to suffer in the event of a contractor delay. Liquidated damages will not be assessed against a contractor that is terminated for default, and may not be used as a penalty.

4.4.4.5. Use of Options. An option is a contract right in favor of the Authority in which the Authority may, for a specified time, elect to purchase additional supplies, equipment, or services called for by the contract, or it may elect to extend the term of the contract. In some cases, an option can increase substantially the Authority's flexibility in its procurements. There are, however, many circumstances when an option is not in the Authority's interest. For example, the Authority should not use options when the procurement is for sufficient quantities needed far enough into the future to permit competitive acquisition, the market prices for the supplies or services are likely to change substantially, or when the contractor will incur undue risks. The Authority must follow specific guidelines when using options in federally funded contracts. (See Chapter 9.)

4.4.4.6. Pre-Bid Conference. If a Pre-bid conference is scheduled, the Special Provisions should include the date, time, and location of the conference, and whether attendance is mandatory, if not already addressed in the Notice Inviting Bids.

4.4.4.7. Qualifications of Bidders. In contracts where the nature of the work is such that the bidders' qualifications are an essential criterion for evaluating the bidders' responsibility, the Special Provisions may include a clause setting forth the required qualifications of bidders. Construction contracts and services contracts may contain such clauses. In addition, contracts for supplies, equipment, and materials, where a specially manufactured product and/or technical guidance and advice are called for may also contain a provision regarding qualifications of bidders.

4.4.4.7.1. Qualifications of Bidders Requirements. Qualifications provisions should clearly state that the Authority may reject any bid that does not meet the stated qualifications requirements. The provision should also include requirements that bidders demonstrate they are regularly engaged in the manufacture, construction, or provision of the work or product called for in the contract and that they have the necessary resources, facilities, and personnel to perform the contract. Additionally, bidders must attest that they have previously and satisfactorily performed work with characteristics comparable to those specified in the contract. Finally, bidders may be required to furnish adequate references and a statement of qualifications.

4.4.5. Bid Documents.

4.4.5.1. Bid Form. The bid form calls for the bidder to submit price information regarding the products or services solicited. In developing the bid form, separate cost quotations will be included for all relevant aspects of the procurement, including, where applicable, unit price, extended price, cost of delivery, and sales or use taxes. In all cases, the bid form will be structured so as to ensure the ability of the

Authority to make an objective comparison of the bids. Whenever possible, this will be accomplished by structuring the bid form to request a Grand Total Bid Price.

4.4.5.2. Sample Agreement. A Sample Agreement will be included in solicitation documents for all formally advertised procurements. The Procurement Officer will collaborate with Legal Counsel to ensure all required clauses have been included in the solicitation documents.

4.4.5.3. Sample Contract Bonds. When required by the Special Provisions, the solicitation documents will include a sample bidder's bond, sample performance bond, and sample payment bond. The precise terms of the performance bond will vary depending upon whether the performance bond will remain in effect through a warranty period and, if so, upon the length of such period. The sample bond forms will be provided by the Authority's Legal Counsel, if needed.

4.4.6. Other Bid Documents. Additional bid documents will vary depending upon the nature of the particular procurement and whether federal funding is involved. Such forms may include, but are not limited to, a Non-Collusion Declaration, Subcontractor Listing Form, Buy America Certificate, Bidder's Certification Regarding Debarment and Suspension, Lobbying Form, DBE forms, and other legally required certification forms. (See Chapter 9 for additional certifications requirements for Federally Funded Contracts.)

SECTION 4.5. Review of Solicitation Documents Prior to Advertising.

4.5.1. Distribution of Solicitation Documents. When the final draft of the solicitation documents is completed, copies will be sent to the following individuals for in-house review: Project Manager, DBELO, Legal Counsel, and Executive Director or designee.

4.5.2. Date for Submission of Comments. The Procurement Officer will prepare a procurement schedule pursuant to Section 4.3, above. The schedule will permit a sufficient time period, depending on the nature and complexity of the project, for review of the solicitation documents by the individuals listed above.

4.5.3. Required Approvals. The approval of the solicitation documents by the Executive Director, or designee, is required prior to advertising. Legal Counsel's approval will be obtained as determined by the Executive Director.

SECTION 4.6. Advertisement of Invitation for Bids.

4.6.1. Notice to Executive Director. Prior to advertising the IFB, the Procurement Officer will submit the Notice Inviting Bids to the Executive Director, or designee, accompanied by a schedule setting forth the recommended publication dates. The Executive Director, or designee, will approve the schedule and the Procurement Officer will be responsible for the actual publication of the Notice. The Procurement Officer will make arrangements for publication of the Notice at least 5 working days before advertising is required to commence.

4.6.2. Publishing Procedures.

4.6.2.1. Contracts for the Procurements of Supplies, Materials, Equipment, and Services. When appropriate, the Notice Inviting Bids may be published at least once in a newspaper of general circulation at least 10 days before the date of receiving bids.

4.6.2.2. Construction Contracts. An abbreviated version of the Notice Inviting Bids will be published in at least one newspaper and one trade paper of general circulation that are published in any one county or portion of a county within the Authority's jurisdiction at least once a week for two consecutive weeks.

4.6.2.3. Direct Notice to Potential Bidders. To facilitate maximum participation, the Procurement Officer will send the Notice Inviting Bids directly to potential bidders identified by bidder's lists. Alternatively, a letter of interest may be sent to potential bidders informing them of the project and requesting a response if interested.

4.6.2.4. Notice to Potential DBE Bidders. In addition to the advertisements set forth above, the Authority should cause the Notice Inviting Bids to be published in appropriate publications, newspapers, and newsletters which have wide dissemination among minority groups and women. The department initiating the purchase should coordinate with the DBELO to distribute copies of the Notice to DBEs and DBE resource firms. When appropriate, the department initiating the purchase should send solicitation documents to DBE contractor associations, technical assistance agencies, economic development groups and DBEs with capabilities relevant to the procurement. The names of such DBEs may be obtained from the DBE directory and resource lists as developed and maintained by the Authority's DBELO.

4.6.2.5. Notice on the Authority's Procurement Website. Notice of contracts that are competitively bid may be included in the solicitation documents that will be posted on the Authority's procurement website. The Notice will identify the nature of the contract and advise how interested parties may obtain further information.

SECTION 4.7. Changes and Revisions: Preparation of Addenda. Once the Notice Inviting Bids has been published, all changes necessary to correct errors in the solicitation documents, to revise requirements contained in such documents, or to extend time requirements for the benefit of the Authority or the bidders will be accomplished through the issuance of an addendum. The addendum will contain the following information: (1) contract number and title; (2) date of issuance of addendum; (3) addendum number; (4) specific reference to the provision of the solicitation documents that is being amended, deleted, or supplemented by the addendum; (5) substance of the change or addition; and (6) appropriate replacement language of the solicitation documents clearly detailing the change or addition. The Executive Director, or designee, will sign the addendum. The Procurement Officer will issue the addendum to all firms or persons who have received a copy of the solicitation documents.

4.7.1. Using Addenda. When the purpose of the addendum is to make non-substantive changes, for instance to extend the bid date or the deadline for receipt of

questions/requests for clarifications, the above procedures can be simplified so long as the purpose of the addendum is clear to prospective bidders. When the addendum will substantially revise any legal terms or requirements contained in the solicitation documents, or if the addendum is to be issued less than one week prior to the date scheduled for bid opening, the Authority's Legal Counsel will approve the addendum prior to issuance.

SECTION 4.8. Receipt & Bid Opening.

4.8.1. The Procurement Officer will preside at all bid openings and adhere to the following procedures when the date and time for opening bids has arrived as described in the IFB:

4.8.1.1. Sealed Envelope. The sealed envelope or electronic file containing the bid will be date marked with the date and time received.

4.8.1.2. Open and Read. The Procurement Officer will open and read all bids aloud. Bids which are received after the time specified in the Notice Inviting Bids will not be accepted and will be returned unopened to the respective bidders.

4.8.1.3. No Changes or Copies. No bidder will be permitted to change its bid after the bids are opened or make copies of any other bids. Bidders are allowed to look at the other bids.

5.10.2 Two Authority representatives will attend each formal bid opening. The results of the bid will be documented in a bid abstract on a form approved by the Executive Director, or designee.

SECTION 4.9. Relief of Bidders.

4.9.1. Pursuant to Public Contract Code Section 5101, unless by consent of the Authority, a bidder will not be relieved of its bid nor will any change be made to a bid because of a claimed mistake in the bid. If a bidder claims a mistake in its bid, the Authority will apply the standards below when considering whether or not to exercise its discretion to grant relief to the bidder. Relief will only be granted when in the best interest of the Authority.

4.9.2. The bidder must establish that: (1) a mistake was made; (2) the bidder gave the Authority written notice within 5 days after the opening of the bids of the mistake, specifying in the notice in detail how the mistake occurred; (3) the mistake made the bid materially different than the bidder intended it to be; and (4) the mistake was made in filling out the bid and not due to error in judgment or to carelessness in inspecting the site of the work, or in reading the solicitation documents. (P.C.C. Section 5103.)

SECTION 4.10. Evaluation of Bids. The Authority will award all formally bid contracts pursuant to this Chapter to the lowest responsive responsible bidder whose bid conforms to the requirements of the solicitation documents. Procurement staff will be principally responsible for the evaluation of bids to determine which bidder is the lowest responsible

and responsive bidder. The department initiating the purchase will be responsible for evaluating the technical responsiveness of the bids. If only one bid is received or potential bidders decline to bid, the Procurement Officer will contact the potential bidders that declined to bid to determine why they declined to bid. This is to eliminate the possibility of a restrictive specification or restrictive bidding procedures.

4.10.1. Lowest Bid. The bids will first be examined to determine which bid is the lowest. The following rules apply:

4.10.1.1. Formula. The formula for determining the basis for evaluating bids, as described in the solicitation documents, will be utilized. Except for construction contracts subject to Public Contract Code Section 20103.8, normally the comparison will include any pricing given for options;

4.10.1.2. Unit Price. The correct calculation of the specified unit price times the stated estimated quantity governs whenever both unit price and extended price(s) or total(s) are given;

4.10.1.3. Extensions and Totals. All bids showing item extensions and/or totals will be reviewed for accuracy. Any errors will be noted and called to the attention of the Procurement Officer and, if necessary, the Authority's Legal Counsel;

4.10.1.4. Same FOB Point. The Procurement Officer must ensure that all bids show the same Freight On Board (FOB) point;

4.10.1.5. Terms of Payment. The Procurement Officer will carefully review the terms of payment for the effect of those terms upon the bid price.

4.10.2. Responsiveness. The bids will be examined by the Procurement Officer to determine if they are responsive to the contractual and technical requirements. The DBELO will review the bid documents for compliance with any DBE participation requirements, if applicable. The Procurement Officer will review the bid documents to ensure that the bidder has made no unauthorized deletions, amendments, or changes to the solicitation documents, verify that required bid forms and certificates have been completed, and confirm that all signatures are in place and appear in order. If for any reason, the bid appears non-responsive, the Procurement Officer and DBELO will consult Legal Counsel. A determination will be made as to whether the deficiency is a minor irregularity that the Authority may waive, or whether the deficiency is more substantive in nature. If the deficiency is substantive in nature and may not be waived, the Procurement Officer will determine which bidder is the lowest monetary bidder and will follow the procedures above to determine the responsiveness of that bidder.

4.10.3. Responsible Bidder. The Authority will then determine if the bidder is "responsible," i.e., whether the bidder has sufficient experience, qualifications, and financial stability to satisfactorily perform the contract. (See P.C.C. Section 1103.) The determination is made on the basis of the bidder's past experience and history of service to the Authority, if any; the bidder's listing of experience, qualifications, and references, if required, in the bid documents; and the expertise, dependability, and financial stability of

the bidder as revealed to the Authority from any other legal source. In evaluating the bidder's questionnaire and references, the department initiating the purchase will determine whether the bidder meets the minimum standards set forth in the solicitation documents.

4.10.4. Tied Bids. If two bids are identical and are also the lowest responsible bids, any one of the following methods may be used in determining the bidder to whom the contract will be awarded:

4.10.4.1. Better Cash Terms. In a case where terms proposed by the tied bidders differ, the bidder offering better cash terms may be selected.

4.10.4.2. More Favorable Delivery. In a case where tied bidders propose different delivery schedules, the bidder proposing the more favorable delivery terms, i.e., shorter delivery period, may be selected.

4.10.4.3. Specified Item. Where there is any doubt as to the quality or equality of materials or equipment proposed by tied bidders, the bidder proposing the item specified in the solicitation documents, as opposed to a bidder specifying an alternative brand, may be considered the lowest responsible bidder.

4.10.4.4. History. Where a tied bidder has a history of dependable service to the Authority, such bidder may be declared the lowest responsible bidder.

4.10.4.5. DBE. If a bidder is a registered DBE, said bidder will be considered over a non-DBE.

4.10.4.6. Coin Toss. If none of the foregoing methods is appropriate to the particular procurement or results in breaking the tie, tied bidders will toss a coin to determine the successful bidder.

4.10.5. Cost or Price Analysis. In the event that only one bid is received, a cost or price analysis will be performed to verify that the price is fair and reasonable. See Sections 5.11 and 5.12 of this Procurement Manual.

4.10.6. Recommendation for Contract Award. On the basis of the foregoing evaluation method, the Procurement Officer will make a recommendation to the Executive Director or designee as to which bidder has been deemed the lowest responsible bidder within the time period specified in the solicitation documents for reporting the bid results. The report containing the recommendation to the Board or Executive Director or designee should set forth the bases for the recommendation.

4.10.6.1. Contracts valued up to and including the Executive Director's Threshold. If the contract is valued up to and including the Executive Director's threshold, excluding options, upon conclusion of the bid evaluation by the Procurement Officer will send written recommendation for award to the Executive Director, or designee, for their review and concurrence. If the Executive Director, or designee, approves the recommendation, the Procurement Officer will send a notice to all bidders advising of the

recommendation for contract award. To permit timely application under the Authority's Bid Protest Procedures, the Procurement Officer will wait a minimum of 5 days from the date notice is sent to all bidders advising of recommendation for contract award before forwarding the contract documents to the successful bidder for execution.

4.10.6.2. Contracts valued over the Executive Director's Threshold. If the contract award is to be recommended to the Board, upon conclusion of the bid evaluation by the Authority's representatives, the Procurement Officer will send a notice to all bidders advising of the Procurement recommendation for contract award and of the date and time of the Board meeting at which the recommendation will be considered. Such notice will be sent at least 10 days prior to such meeting.

4.10.6.3. Rejection of Bids. Any determination to reject a lowest bid on the basis that the bidder is not responsible or that the bid is not responsive, must be recommended by the Procurement Officer and approved by Legal Counsel. The Procurement Officer will be responsible for drafting a report specifying the reasons for rejection of the bid to the Executive Director, or designee.

SECTION 4.11. Award of Contract.

4.11.1. Lowest Responsive and Responsible Bidder. The Board or Executive Director will award the contract to the bidder determined to be the lowest responsive and responsible bidder within the time period specified in the solicitation documents.

4.11.2. Review of Contract and Insurance. The contract and other pertinent documents will be sent to the Authority's Legal Counsel for review. Completed Certificates of Insurance will be sent the Authority's Insurance Broker for determination as to whether all applicable insurance requirements have been satisfied.

4.11.3. Award and Notice. Upon award, the Procurement Officer will notify the successful bidder in writing of the contract award and will forward the contract and any and all requisite bond forms to the bidder for execution. The successful bidder must execute the documents within the time specified in the solicitation documents.

4.11.4. Executed Documents. Upon return of the executed documents, the Procurement Officer will forward copies to the Authority's Legal Counsel for review, if needed. Completed Certificates of Insurance will be sent to the Authority's Insurance Broker, if needed, for determination as to whether all applicable insurance requirements have been satisfied. All competitively bid contracts may be approved as to form by the Authority's Legal Counsel. Competitively bid contracts valued up to and including the Executive Director's threshold will be signed by the Executive Director. Competitively bid contracts valued over the Executive Director's threshold will be awarded by resolution of the Board and signed by the Executive Director.

4.11.5. Notice to Proceed. The Procurement Officer, in consultation with the Project Manager, may then issue the Notice to Proceed to the contractor.

SECTION 4.12. Rejection of All Bids. The Authority's Executive Director and/or Board has the discretionary right to reject all bids for any contracts for which competitive bids have been received, as further described below. The department initiating the purchase may decide to recommend this course of action to the Board in instances where:

4.12.1. Bids Too High. The bids received were too high and the funds available in the budget are insufficient to cover the amount of the contract if it were awarded to the lowest responsible bidder;

4.12.2. Not Responsive. None of the bids were deemed responsive to the requirements of the solicitation documents;

4.12.3. Not Responsible. None of the bidders were deemed sufficiently responsible to perform the contract in a satisfactory manner; or

4.12.4. Best Interests. The Procurement Officer or initiating department otherwise determines that it is within the Authority's best interest to reject all bids.

4.12.5. Executive Director. The Executive Director/ is authorized to reject bids for contracts that do not exceed the Executive Director threshold in accordance with these criteria.

4.12.6. Board Approval. The Board is authorized to reject bids for contracts over the Executive Director threshold in accordance with these criteria.

CHAPTER 5

COMPETITIVE NEGOTIATIONS (REQUEST FOR PROPOSALS)

SECTION 5.1. Summary. The Authority may procure professional and non-professional services or specialized equipment over \$100,000 without formal competitive bidding. Instead, a competitive negotiation process may be used, in which a Request for Proposals (RFP) is issued, proposals are evaluated based upon qualitative factors in addition to price, and the Authority may negotiate the terms of the contract with the selected firm.

SECTION 5.2. When a Request for Proposals May Be Used.

5.2.1. Services. An RFP may be used to retain professional and non-professional services, such as specially trained persons or firms engaged in financial, economic, accounting, engineering, administrative, or other services involving specialized expertise or unique skills. The Authority's RFP procedure consists of acquisition planning, solicitation of proposals, evaluation of proposals, negotiation with prospective bidders, award of contract, and contract administration.

5.2.2. Architectural and Engineering Services. Specialized state and federal laws apply to the procurement of A&E services. Qualification-based competitive proposals will be used for these services, as further discussed in Section 5.19 below.

SECTION 5.3. Initiation of the Process.

5.3.1. Requisition. The department initiating the purchase will proceed in accordance with procurement approval process. The Procurement Officer will prepare an RFP procurement schedule and work with the Executive Assistant to obtain a solicitation number. The solicitation number will be included on the title page of all RFP documents, whether in draft stage or in final form.

5.3.2. Must Be Within Budget. If the proposed procurement is not within the approved budget, the Executive Director must first obtain Board approval for a budget amendment.

5.3.3. Availability of Funds. The department initiating the purchase must confirm that the funding source is allocated and available prior to issuing the solicitation. For example, the funding source may provide an award letter or similar documentation for the funding amount or project and instructions for the remittance process.

SECTION 5.4. Request for Statement of Qualifications (SOQ).

5.4.1. Not Required to Issue Requests for Statement of Qualifications. The Authority is not required to issue a Request for Statement of Qualifications before issuing an RFP if it finds it unnecessary to pre-screen proposers. For example, when the services sought can be performed by general practitioners in the profession without specialized training.

5.4.2. Request. The Procurement Officer, in coordination with the Project Manager, may prepare and send a Request for Statement of Qualifications to potential persons or firms who appear to possess qualifications in the general area of expertise required for the particular contract. The names of such persons or firms may be obtained from sources including vendor registrations, internet, telephone directory, DBE directories, and trade journals. The Procurement Officer may consult with the DBE program for names of potentially qualified consultants, and effort will be made to obtain Statements of Qualifications (SOQ) from DBE firms. The Request for Statement of Qualifications will be posted on the Authority's website.

5.4.3. Scope. The Request for Statement of Qualifications will contain a generalized scope of work required of the consultant and request that the person or firm submit, if interested, a SOQ evidencing specific expertise in the area delineated in the scope of work. The Request will provide a due date for the SOQs.

5.4.4. Evaluation of SOQ. The Procurement Officer, in coordination with the Project Manager, will appoint an Evaluation Committee composed of the Authority's staff members and, as may be appropriate, outside personnel, for the purpose of reviewing and evaluating the SOQs and subsequent written proposals. Whenever possible, the Evaluation Committee will be composed of individuals with technical expertise in the area of performance contemplated by the contract.

The Evaluation Committee will determine which persons or firms appear most qualified in the specific area of expertise called for under the contract. To permit reasonable competition consistent with the nature and requirements of the procurement, an adequate number of such qualified sources will be selected for inclusion on the RFP distribution list. The distribution list may be made available to certified DBEs by contacting the Authority's DBE program. Reasonable requests by other persons or firms to compete will be honored to the maximum extent practicable.

SECTION 5.5. Request for Proposals.

5.5.1. Preparation of RFP Documents. The department initiating the purchase will prepare the RFP documents in coordination with the Project Manager and Procurement Officer. RFP documents will include the following:

- Statement of purpose;
- Scope of work/services;
- Experience and qualifications required of the consultant or firm;
- Applicable terms and conditions;
- Schedule of events;
- Project or services duration (agreement term);
- Project deliverables;
- Evaluation criteria;

- Required documents and submittal process; and
- Contract type (i.e. firm fixed price, cost reimbursement).

5.5.2. Evaluation Criteria. Evaluation criteria may include, but are not limited to:

- Key personnel;
- Proven qualifications, experience and competence relating to the scope of work;
- Past contract performance;
- Bondability;
- Understanding of the scope of work;
- Financial ability and resources to perform the work;
- Proposed method for management of the work;
- Schedule for delivery of work;
- Willingness to cooperate with the Authority's procurement and technical staff;
- Any proposed exceptions to RFP requirements; and
- Cost.

In the event that the Authority determines to assign weighted values to the evaluation criteria, such values will be specified in the RFP. The RFP will identify all significant evaluation criteria, including price or cost where required, and their relative importance. The evaluation criteria should not weigh price as more important than the proposer's qualifications, experience, and technical merits if it may result in substandard service to the Authority. Cost and price must not be an evaluation criteria in RFPs for A&E services as described in Section 5.19 below.

If, upon the Project Manager's request and with concurrence of the Procurement Officer and Executive Director, the budget is provided in the RFP, cost effectiveness must be an evaluation criteria. RFPs should state that the Authority has the right to negotiate with the top ranked proposer.

5.5.3. Insurance Requirements. The Procurement Officer may consult with the Authority's insurance broker regarding insurance requirements based on the scope of work. Insurance requirements vary according to the type and estimated cost of the agreement, the source of funding, market conditions and other considerations. The sample agreement included in the RFP will be updated if the recommended insurance requirements differ than the Authority's standard insurance requirements.

All agreements for services and construction will require, at a minimum, workers' compensation, employer's liability, automobile liability and comprehensive general liability insurance. In addition, any contracts for the procurement of supplies, equipment, or materials, where on-site installation, inspection, or delivery activities are incident to the

procurement, will include these insurance coverages. The specific amounts and types of coverage will be determined by the department initiating the purchase, with the advice of the Authority's insurance broker and Legal Counsel. The Authority's approval of a consultant's insurance policies and coverages is a condition precedent to entering into the agreement.

5.5.4. Agreement. The Procurement Officer will coordinate with the Project Manager and Legal Counsel to develop a sample agreement containing all material terms and conditions of the engagement. The Procurement Officer will submit the sample agreement to Legal Counsel for approval as to form as required by the Authority's Procurement Policy.

5.5.5. Pre-Proposal Conference. The pre-proposal conference will offer an opportunity for interested consultants to inquire about or suggest changes in the RFP's terms. Where feasible, a pre-proposal conference and site walk, if applicable, may be held according to the schedule contained in the RFP. The pre-proposal conference will be facilitated by procurement staff and/or the Project Manager procuring the services or their designee, who will cover basic requirements for the RFP, including funding type, contract type, evaluation criteria, specific points to be addressed in the proposals, the time and submission process, and the requested content and length of the proposals. The DBELO will be invited to discuss the participation requirements for DBE firms. Pre-proposal conferences will not be mandatory.

5.5.6. Publicized. RFPs should be advertised/publicized in whatever form(s) the Authority determines will maximize competition.

SECTION 5.6. Consideration of Disadvantaged Business Enterprise Participation.

The measures for encouraging DBE participation through race-neutral and gender-neutral means are described in Section 1.11 above, and will be used for contracts let through competitive negotiations. The DBELO will evaluate the proposer's response to the DBE/SBE information requested in the RFP to determine compliance with DBE program requirements for award of contract to the highest ranked responsible consultant.

In the event that the highest ranked proposer is found not to have complied with the DBE/SBE requirements, the proposer will be notified in writing. The notification will include the reasons for the determination and that the proposer has the right to submit further written documentation or appear before a review committee for reconsideration prior to the time that a recommendation for award of contract is presented to the Executive Director or Board of Directors. The review committee will provide the proposer with a written decision.

SECTION 5.7. Changes to RFP: Preparation of Addenda. The Procurement Officer will prepare and issue any addenda to the RFP to document changes and revisions to the RFP, as described in Section 4.7 above.

SECTION 5.8. Responses to Proposer's Questions. After the RFP is issued, non-material questions will be answered through the Authority's website. However, all

changes necessary to correct errors in the RFP documents, to revise requirements contained in such documents, to the extent practicable, answer written material questions, or to extend time requirements for the benefit of the Authority or proposers, will be accomplished through the issuance of an addendum.

SECTION 5.9. Review of Proposals.

5.9.1. Responsiveness. The Procurement Officer, together with the Project Manager, will review proposals to ensure that they are responsive to the contractual and technical requirements of the RFP as outlined in Sections 4.10.2 above.

5.9.2. Responsibility. The Procurement Officer, together with the Project Manager, will determine whether a proposer is responsible by evaluating whether such firm or person has demonstrated sufficient experience, qualifications, trustworthiness, quality, fitness, capacity, and financial stability to perform the contract. Other criteria may include the proposer's past experience and history of service to the Authority, if any; the proposer's references; and any other relevant information as revealed to the Authority from any other legal source.

5.9.3. Evaluation Committee. Proposals will be submitted to the Procurement Officer for distribution to the Authority's Evaluation Committee. The Evaluation Committee will be comprised of the Authority's representatives and representatives from partner agencies, at the discretion of the Executive Director, who are appropriate to evaluate the proposals. Individuals with the appropriate technical expertise will be included in the review process, as necessary. No member of the Evaluation Committee will have a conflict of interest with any firms under consideration. Procurement staff will not be a voting member of the Evaluation Committee for the purpose of scoring and/or ranking of proposals, but will provide guidance and oversight to the scoring and ranking procedure to ensure that equal and fair treatment of all proposers is maintained throughout the proposal review process.

5.9.4. Conformity to Specifications. The review process will begin with verification that the proposals received conform to the RFP requirements. The review will adhere strictly to the evaluation criteria set out in the RFP.

5.9.5. Interview List. Those firms or persons judged by the Evaluation Committee to be the most qualified to perform the work required under the contract may be placed on an interview list and asked to participate in an oral interview. Those invited to participate in an oral interview will present a detailed scope of work and make a formal presentation of their proposals to the Evaluation Committee. Proposers will be rated, in order of importance, by the evaluation factors identified in the RFP.

5.9.6. Review. The Evaluation Committee will make a final ranking of the proposers. Where appropriate, a presentation will be made to the Board as to the status of the review process. Awards will be made only to responsible offerors who possess the necessary skills, integrity, and available resources necessary to perform the contract terms and conditions successfully. The qualifications of the consultant to perform the

necessary work are of utmost importance to the Authority in professional services contracts; however, where two or more persons or firms appear equally qualified to perform the desired services, the one proposing the lowest total price will receive the higher point value allowable for cost. Only the aggregate final consensus ranking forms will be retained in the file as a permanent record. For projects that indicate entire or component budget funding provided by FHWA or the State of California, Department of Transportation (Caltrans), the original final consensus ranking forms, in addition to individual score sheets and notes, will be retained in the file as a permanent record.

SECTION 5.10. Competitive Range Determination.

5.10.1. Evaluation. Based on the ratings of each proposal against all evaluation criteria, the Procurement Officer will establish a competitive range comprised of all the most highly rated proposals, unless the range is further reduced for purposes of efficiency.

5.10.2. Determination. After evaluating all proposals in accordance with this section, the Procurement Officer may determine that the number of most highly rated proposals that might otherwise be included in the competitive range exceeds the number at which an efficient competition can be conducted. Provided the solicitation notified offerors that the competitive range can be limited for purposes of efficiency, the Procurement Officer may limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals.

SECTION 5.11. Price Analysis.

5.11.1. Price Analysis. When competitive price quotations are sought, the Procurement Officer will conduct a price analysis to determine whether the compensation terms of the proposals offered by the proposers under consideration are fair and reasonable for the anticipated work or services. A price analysis may be conducted on the basis of any of the following methods:

5.11.1.1. Competitive Price Quotations. A comparison of competitive price quotations submitted to the Authority.

5.11.1.2. Comparison. A comparison of prior quotations and contract prices with current quotations for the same or similar services and/or products purchased by the Authority. Comparison with recent and comparable purchases from other agencies can be used.

5.11.1.3. Rough Estimate. A rough estimate, such as hourly rates for similar services and market unit costs for specified materials, as a basis of comparison to point up apparent gross inconsistencies.

5.11.1.4. Published Prices. A comparison of prices or published price lists issued on a competitive basis, and published market prices of commodities or services, together with discount or rebate schedules.

5.11.1.5. Independent Cost Estimate. A comparison of proposed prices with Independent Cost Estimate developed by the Project Manager.

5.11.1.6. Regulated Rate. Utilities, City/County/State regulated fees and permits.

5.11.2. Analysis. In the event that the Authority receives only one proposal in response to the RFP, the responses reveal a lack of adequate competition, or the RFP required the proposer to outline the elements of the estimated costs for the work, the Procurement Officer will conduct a cost analysis to determine whether the compensation proposals are fair and reasonable. (See Section 5.12, below regarding cost analysis discussion.)

SECTION 5.12. Cost Analysis

5.12.1. A cost analysis is a detailed evaluation of the cost elements that comprise the proposed price to determine whether the consultant is applying sound management and appropriate resources to the procurement and whether the costs are proper, allowable and allocable.

5.12.1.1. Method of Analysis. A cost analysis involves the following steps:

- Verification of cost data;
- Evaluation of specific cost elements, including labor hours, quantities, tooling, testing, etc.; and
- Projection of the cost data to determine its effect on prices.

5.12.1.2. Factors to Consider. In order to form a judgment as to whether the price offered is reasonable, the following factors are to be considered:

- Necessity of certain costs;
- Reasonableness of amounts estimated for necessary costs;
- Bases for allocating overhead costs;
- Allowances for contingencies; and
- Appropriateness of allocations of particular overhead costs to the contract.

SECTION 5.13. Negotiations. The Procurement Officer may accept the proposal from the person or firm ranked first without negotiation, or may negotiate with the first ranked firm or representative in order to establish a precise scope of work, the time and schedule for completion of the work, the cost of services, and the method and manner of payment. In the event negotiations with the first ranked proposer are unsuccessful, the Procurement

Officer may terminate negotiations with that proposer and commence negotiations with the next ranked proposer and so on, until a successful negotiation is achieved.

SECTION 5.14. Recommendation for Contract Award. The Procurement Officer will make a recommendation of contract award to the Executive Director using the following evaluation method:

5.14.1. Contracts valued up to and including the Executive Director's Threshold. If the Executive Director approves recommendation, the Procurement Officer will send a notice to all proposers advising of the Evaluation Committee's recommendation for contract award. To permit timely application under the Authority's Protest Procedures, the Procurement Officer will wait a minimum of five days from the date notice is sent to all proposers advising of recommendation for contract award before forwarding the agreement to the successful proposer for execution.

5.14.2. Contracts valued over the Executive Director's threshold. The Procurement Officer will send a notice to all proposers advising of the recommendation for contract award and of the date and time of the Board meeting at which the recommendation will be considered. Such notice will be sent at least five days prior to such meeting.

SECTION 5.15. Rejection of All Proposals. Proposals may be rejected if they are non-responsive, outside the competitive range, or for the convenience of the Authority, particularly if funding is terminated or there is a substantive change in the Authority's requirements. All such proposals may be rejected by the Executive Director.

SECTION 5.16. Award of Contract.

5.16.1. Authorization. The Executive Director is authorized to award professional service contracts up to and including the Executive Director's purchasing authority as set forth in the Authority's Procurement Policy. The Board must authorize the award of contracts in excess of the Executive Director's purchasing authority.

5.16.2. Execution. Following award of the contract, the Procurement Officer, in conjunction with the department initiating the purchase, will prepare the agreement to be executed by the Authority and the successful proposer. The Procurement Officer will notify the successful proposer of award of contract. The proposer will be given a reasonable time period, normally not to exceed two weeks, for submission of the required bonds, guarantees, and certification of insurance coverage. The Authority's Legal Counsel will approve as to form professional and non-professional services contracts as required by the Authority's Procurement Policy. Contracts valued up to and including the Executive Director's purchasing authority, excluding options, will be signed by the Executive Director. Contracts valued at over the Executive Director's purchasing authority will be approved and authorized by the Board and then signed by the Executive Director.

SECTION 5.17. Notice to Proceed. Insurance certificates will be reproduced and forwarded to the Authority's insurance broker for review and approval, if needed as

determined by the Executive Director. Upon satisfactory receipt of the proposer's evidence of insurance and an executed agreement, the Procurement Officer will issue a notice to proceed to the proposer.

SECTION 5.18. Geographical Preferences. Local or state geographic location preferences are not permitted in any Authority procurement, with the exception of FTA-funded A&E contracts. See also Chapter 9, Section 9.2.4.1.

SECTION 5.19. Qualifications Based Competitive Proposals for Architectural and Engineering Services.

5.19.1. Architectural and Engineering Services. A&E services are defined as services of an architectural or engineering nature associated with research, development, design, construction, alteration or repair of real property that are required to be performed by a registered or licensed architect or engineer, and such other professional services which uniquely or to a substantial extent require performance by architectural, landscape architectural, engineering, environmental, land surveying, or construction project management firms. Examples of such services include program or project management, construction management, feasibility studies, environmental studies, preliminary engineering, design, survey and mapping. The Authority will define all requirements for A&E services and negotiate contracts for these services based on the demonstrated competence and professional qualifications of prospective consultants to perform the services required at fair and reasonable prices. (See Gov. Code, § 4526, et seq.)

Under this method, technical proposals will not contain a cost proposal and will be evaluated based upon qualifications and demonstrated competence. The Procurement Officer will open negotiations with the proposer deemed most qualified and open the cost proposal of the highest ranked proposer. If the parties are unable to negotiate fair and reasonable contract terms, including compensation, then the negotiations will be closed and the Procurement Officer will open the cost proposal of the second most qualified proposer and commence negotiations. This process will be followed until an agreement is reached or the determination is made to recommend rejection of all proposals. The procedure outlined in this chapter regarding RFPs will otherwise be followed for these procurements except to the extent inconsistent with these statutory requirements.

5.19.2. Redesign. Where practical, A&E and other consulting contracts involving design of facilities will contain provisions for redesign, at no cost to the Authority, where final estimates or bids are 10% more than the initial agreed-upon construction cost.

SECTION 5.20. Design-Build Contracts. Design-build means a procurement process in which both the design and construction of a project are procured from a single entity. Certain public entities, including the Authority, are permitted to use a design-build solicitation process for public works contracts under certain circumstances. Public Contract Code Sections 22160 et seq. sets forth the per-project dollar limitations and other specific requirements for its use. Except for certain technology applications or surveillance equipment projects, projects must exceed one million dollars in value to use

the design-build process (Pub. Contract Code, § 22162). Other requirements include, but are not limited to:

- Preparation of an RFP, defining the scope of the project and other specified components, including the methodology for evaluation of proposals.
- Establishment of a procedure to prequalify design-build entities, including the use of a questionnaire requiring specific information from offerors.
- Establishment of procedures for final selection of the design-build entity based on either a competitive bidding process resulting in lump sum bids, or based upon best value criteria that has been identified in the contract. Staff must contact the Procurement Officer for further details and mandated statutory requirements if a design-build selection process is selected for an eligible project.
- Establishment of procedures to use a qualifications-based process based on the requirements of the Brooks Act when the preponderance of work to be performed is considered to be for A&E services as defined in FTA C. 4220.1F, as amended/superseded.

To ensure compliance with the design-build statutes and select the best project delivery method for the project, contact Legal Counsel prior to undertaking a design-build solicitation.

SECTION 5.21. General Provisions for all Competitive Purchases.

5.21.1. Multiple Awardees. The Authority reserves the right to award competitive purchases to multiple proposers, if needed to fully execute the scope of work.

5.21.2. Disclosure to the Public. Price proposals will be made available to the public in compliance with the California Public Records Act (Gov. Code § 6250, et seq.). Other than proprietary information, the full contents of the proposals and of communications between the Authority and proposers must be made public no later than the date that recommendation for award is made to the Board. The contract must not be awarded until 15 days after recommendation for award has been made available to the public. Upon making an award of the contract, the Authority must make an analysis setting forth the basis for selection of the successful proposer available to other proposers and the public. Information which is not actually accessed by the Authority or which, by the terms of the applicable procurement, is not allowed to be accessed by the Authority (such as qualifications information in unopened bid envelopes from unsuccessful bidders) need not be disclosed and may be returned to the original provider.

5.21.3. Protest Procedures. The Authority's protest procedures are set forth in Chapter 8 of "Bid and Proposal Protest Procedures."

5.21.4. Records of the Procurement. The Procurement Officer will maintain a complete written description of the process and the policies and procedures used in the

competitive negotiation, including a complete record of the Authority's actions on the procurement, and all of the standards, criteria, public protest procedures, and method of contract award used.

5.21.5. File Documentation. The procurement file will include all pertinent determinations made by the Authority, all consultant correspondence that may have any bearing on the Authority's contractual rights or administration, and records of payments and credits. See Chapter 10, Section 10.3, Maintenance of Procurement Records, for additional requirements.

5.21.6. For any applicable procedure not described in Chapter 5, the procedures in Chapter 4 five must be followed.

CHAPTER 6

NON-COMPETITIVE PURCHASES

SECTION 6.1. Single or Sole Source Procurements.

6.1.1. Summary. On occasion, the Authority may waive competitive solicitation requirements for a procurement in which no competitive advantage can be gained. Examples of a noncompetitive advantage are when there is only one technically approved source of supply, there are compatibility requirements with existing products or equipment, warranty conditions may be voided, the procurement is for testing purposes only, changing firms during the course of the work would create a risk of failure, or an emergency procurement is necessary. Such procurements often arise where the specifications and requirements for the items or services to be procured are so unusual or distinct as to dictate one source. This may be the case, for example, with replacement parts for brand name machinery, equipment, or vehicles.

6.1.2. Single or Sole Source. A sole source procurement is an exception to the competitive solicitation process available where there exists only one source of supply. The sole source must be the only known source of supply with the capability of meeting the specification requirements or satisfy one of the other verification criteria in Section 6.1.3.2, below. A sole source decision is not permitted merely upon the grounds that such approach is the most convenient or that the subject product: a) demonstrates technical or administrative superiority; b) is preferred by staff; or c) shows superior performance potential at lowest cost. A single source procurement is an exception to a competitive procurement process where more than one source of supply exists, but for other reasons, an exception to the competitive solicitation process is sought.

6.1.3. Procedure for Single or Sole Source.

6.1.3.1. Initiating Purchase. The department desiring to procure equipment, supplies or services for which there is only one available source of supply or more than one source of supply exists, but for other reasons, an exception to the competitive solicitation process is sought, will initiate such purchase by completing a "Request for Exception to Competitive Procurement" form, which must be approved by the Executive Director or designee prior to the purchase.

6.1.3.2. Verification Criteria for Justification. Legal Counsel must be consulted for all single and sole source procurements in excess of \$100,000. In all cases, the Procurement Officer, Project Manager, and the Executive Director or designee must verify that the particular procurement meets the definition of a single or sole source set forth above. In addition, sole source procurements must meet at least one of the verification criteria below:

6.1.3.2.1. The item is available from only one source; or

6.1.3.2.2. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation; or

6.1.3.2.3. The federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from an agency; or

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

However, if the item or service must be procured on an emergency basis or through an open market purchase, please refer to Section 6.3.

6.1.3.3. Price or Cost Analysis. The Procurement Officer will obtain a price for the proposed procurement from the single or sole source. Unless the reasonableness of the price can be established on the basis of a catalog or market price for a similar commercial product sold in substantial quantities to the general public or on the basis of prices set by law or regulation, the Procurement Officer will conduct a cost analysis. See Sections 5.11 and 5.12 for a full discussion on price and cost analysis.

6.1.3.4. Issuance of Purchase Order or Contract.

6.1.3.4.1. All single and sole source procurements require a purchase order or contract, which will be negotiated and issued by the Procurement Officer.

6.1.3.4.2. The Board must approve single and sole source procurements in excess of the Executive Director's purchasing authority.

SECTION 6.2. Unsolicited Proposals

6.2.1. The Authority, in its normal course of business, may receive unsolicited proposals from offerors. An unsolicited proposal is typically a proposal that presents an innovative and unique process or approach, is independently originated and developed by the offeror, and is prepared without Authority supervision, endorsement, direction, or direct Authority involvement. Unsolicited proposals should include sufficient detail to permit the Authority to determine that its support could be worthwhile and the proposed work could benefit the Authority and/or its missions or goals. A proposal for a known Authority requirement that can be acquired by competitive methods or for an item or service that is commonly available in the marketplace is not considered an unsolicited proposal.

6.2.2. A Project Manager seeking to enter into a contract in response to an unsolicited proposal must first verify that the unsolicited proposal meets the requirements set forth in the paragraph above. If the unsolicited proposal meets the requirements and the Project Manager finds it worthy of further consideration, evaluation results and a justification including a request for funding for a contract may be submitted to the Executive Director or designee for approval to proceed with negotiations. Upon approval,

the Project Manager will notify the Executive Director or designee for a determination as to whether proposal negotiations will be conducted by the Procurement Officer in conjunction with the Project Manager or managed by another department.

6.2.3. The Authority reserves the right, at its sole discretion, to return any unsolicited proposal to the offeror without further consideration.

6.2.4. If a separate Authority policy or procedure is adopted to address the treatment of unsolicited proposals subsequent to issuance of this Procurement Manual, it will supersede this Section 6.2.

SECTION 6.3. Emergency Procurements.

6.3.1. Summary.

6.3.1.1. The Authority is not required to engage in competitive bidding in an emergency. The Board of Directors has delegated to the Executive Director or designee, the authority to waive any procedures in the Procurement Manual in accordance with state law when making emergency purchases of supplies, equipment, materials or services to safeguard life, health, property, or the loss of essential public services as in the case of any great public calamity, such as extraordinary fire, flood, storm, epidemic, earthquake, acts of terrorism or other natural or civil disaster. The Executive Director may repair or replace a public facility, take any directly related and immediate action required by the emergency, and procure necessary equipment, services and supplies for those purposes, without giving notice for bids to let contracts upon the following conditions:

6.3.1.1.1. The Executive Director will make a finding based on substantial evidence that the emergency will not permit delay resulting from a competitive bid and the action is necessary to respond to the emergency.

6.3.1.1.2. The Executive Director will contact the Chair of the Board of Directors, if possible, for concurrence with the proposed emergency action.

6.3.1.1.3. The Executive Director will report the emergency action and the findings supporting the action for review and ratification by the Board of Directors at a regular meeting of the Board of Directors held within 14 days of the action, or if no regular meeting is scheduled, within 7 days of the action at a special meeting of the Board of Directors. The Board will review the action at every regularly scheduled meeting thereafter until the action is terminated.

6.3.1.1.4. The Executive Director will terminate any emergency contracting action that did not follow the Procurement Policy as soon as possible, and to the extent practicable, complete any remaining actions to respond to the emergency in accordance with the Procurement Policy.

SECTION 6.4. Discretion to Waive the Competitive Process. The Board, or the Executive Director, for procurements within their procurement authority, may waive the

requirements for formal competitive bidding or other procedures set forth in this Procurement Manual (1) when permissible under applicable law, (2) when a determination is made that the best interests of the Authority are served thereby, and provided there is adequate documentation of the need for the procurement, and (3) when a determination is made that following competitive procedures would be unavailing and not in furtherance of the purposes of the competitive bidding statutes and the Authority's Procurement Policy. These circumstances will be evaluated on a case-by-case basis, in consultation with Legal Counsel, keeping in mind the fundamental principles of ethical procurement set forth in the Procurement Policy. The findings justifying the waiver must be documented in the record.

SECTION 6.5. Open Market Transactions. The Authority may purchase items on the open market under the following conditions:

6.5.1. If the Authority rejects bids received in connection with a procurement requiring formal competitive bidding, the Authority may proceed with an open market purchase after it determines that the supplies, equipment and materials may be purchased at a lower price in the open market.

6.5.2. In addition, if no bids are received in connection with a procurement requiring formal competitive bidding, the Authority may proceed with an open market purchase in certain circumstances if it is determined that the best interests of the Authority will be served by such an approach. These circumstances will be evaluated on a case-by-case basis, in consultation with Legal Counsel, and will include such factors as the reasons why no bids were received, the availability of the supplies, equipment, or materials on the open market, and a price or cost analysis.

SECTION 6.6. Federally Funded Non-Competitive Procurements. See Chapter 9 for guidance.

CHAPTER 7

INTERGOVERNMENTAL AGREEMENTS

SECTION 7.1. Agreements.

7.1.1. Agreements with Various Agencies. The Authority may enter into joint procurements, state cooperative purchasing programs and assignments of existing contract rights ("piggyback" procurements) with other public agencies so long as those other agencies follow procurement procedures consistent with this Procurement Manual and applicable state and federal requirements. This allows the Authority to procure common products or services.

7.1.2. State and Intergovernmental Agreements. To foster greater economy and efficiency, the Authority may avail itself of state and local intergovernmental agreements for procurement or use of common goods and services. In addition to the California Department of General Services (DGS) and federal General Services Administration (GSA), other cooperative organizations that enter into agreements for use by public agencies may be utilized. These programs consolidate the purchasing needs of participating agencies to obtain products at prices generally available only to large volume buyers. Competitive bidding procedures and nonrestrictive specifications are used. These programs should be utilized to the extent prices are lower than what the Authority could obtain through its normal purchasing procedures. The DGS, Procurement Division, should be consulted to obtain information on current procedures and lists of products.

7.1.3. FTA Funding. If federal funding is used, the requirements for FTA-funded projects will apply and must be included in the specifications. See Section 9.1, "General Requirements for Procurements Funded by the Federal Transit Administration."

7.1.4. Rolling Stock and Related Equipment. Under Section 3019 of the FAST Act, FTA grantees may purchase rolling stock and related equipment from a State cooperative procurement contract. A "cooperative procurement contract" means a contract entered into between a State government or eligible nonprofit entities and one) or more vendors under which the vendors agree to provide an option to purchase rolling stock and related equipment to multiple participants. The contract term for a cooperative procurement contract may be for an initial term of not more than two years and may include three optional extensions of one year each. A lead procurement agency or lead nonprofit entity in such a procurement may charge participants in the contract no more than one percent of the total value of the contract. State cooperative purchasing contracts or state schedules are subject to federal requirements, including, but not limited to, full and open competition, no geographic preferences, Buy America, and bus testing, and must include all FTA required clauses and certifications with its purchase orders issued under the State contract.

SECTION 7.2. State of California Cooperative Purchasing Program.

7.2.1. Participation. Public Contract Code Section 10298 allows the Authority to participate in State procurements including agreements for goods, information technology, and services. The Authority may contract with suppliers awarded these contracts without further competitive bidding. However, not all of the State contracts are competitively bid in accordance with the Authority's statutory requirements and Procurement Policy and Manual, and the Procurement Officer should ensure that the prices offered are the lowest available prices. The State continues to invite participation and assist in local procurements. The State is continually renewing and updating existing contracts, and has increased its efforts to offer new master agreements and schedules for local agencies. Participating in State contracts is usually accomplished by the local agency through use of its own purchase order forms and direct contact with the contractor.

7.2.2. Cooperative Purchasing Program. The DGS, Procurement Division, is responsible for the competitive bidding process, pre-qualification of bidders, maintenance of a state bid list, the use of non-restrictive product specifications, and resolving supplier protests for the state cooperative purchasing program. Although participating in a State contract, the Procurement Officer will have direct contact with the supplier and initiate the purchase by issuing an Authority purchase order or contract.

7.2.3. Direct Order. The State provides a variety of contract purchasing options where agencies order directly from the supplier, including:

- 7.2.3.1. California Multiple Award Schedules (CMAS);
- 7.2.3.2. Cooperative Agreements;
- 7.2.3.3. Leveraged Procurement Agreements;
- 7.2.3.4. Master Agreements;
- 7.2.3.5. Software Licensing Program;
- 7.2.3.6. Statewide Contracts.

SECTION 7.3. California Multiple Award Schedules (CMAS).

7.3.1. Agreements. The CMAS Unit is a division of the DGS, which establishes agreements with those manufacturers/suppliers that offer products or services which are currently on an existing multiple award schedule with the Federal GSA or other approved multiple award contracts. CMAS has done the preliminary analysis to determine a technically compliant product, basic contractual terms, and lowest available price. The Procurement Officer must ensure that the CMAS contract is competitively bid in accordance with the Authority's statutory requirements and Procurement Policy and Manual, and should ensure that the prices offered on the CMAS are the lowest available prices. Additionally, the Procurement Officer may negotiate any special features to the

product or additional legal or contractual terms that may be applicable or desirable to the Authority.

7.3.2. Price Evaluation. The Authority's Procurement Department may complete a due diligence evaluation to confirm that the price offered on the CMAS is not higher than the price the Authority can receive if it competitively bid the item or service. Board approval is required for any CMAS contract that exceeds the Executive Director's purchasing authority.

SECTION 7.4. Piggybacking Guidelines & Procedures

7.4.1. Summary. Piggybacking allows a third-party agency that was not contemplated in an original procurement to purchase the same supplies, equipment, and services through the original contract. The original contract's procurement process must satisfy this Procurement Manual and the Authority's Procurement Policy, and statutory requirements, and, for FTA-assisted procurements, satisfy the FTA's guidelines.

7.4.2. Permissible Use of Piggybacking. Piggybacking is only permissible when:

7.4.2.1. the solicitation documents meet the Authority's own bidding requirements.

7.4.2.2. the original 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 (i.e., the quantities being procured by the piggybacking procedure were in the original bid and were evaluated as part of the original contract award decision).

7.4.2.3. the bid and award of the original contract must have followed proper procurement procedures and include the clauses required by the funding source.

7.4.2.4. the contractor has submitted the certifications required by the funding source with its original bid or proposal, if any.

7.4.2.5. the procurement in other respects meets the funding source's requirements.

7.4.2.6. the original solicitation and resultant contract must remain fairly priced and contain both a minimum and maximum quantity representing the reasonably foreseeable needs of the Authority. The FTA does not require prior approval to execute a piggyback agreement.

7.4.3. Issuing Agency Approval. After the above conditions have been satisfied, in most cases, the original procuring agency must approve all requests for piggybacking on its contract. The Procurement Officer will contact the original procuring agency that issued the solicitation documents and request a letter of approval for piggybacking, if applicable.

7.4.4. Contractor Notification. Once the approval is received from the original procuring agency, the Procurement Officer will send a letter of interest that describes the supplies or equipment, the quantity, and requests pricing verification, estimated time for delivery, and any other factors deemed necessary, and enclose a copy of the approval letter from the original procuring agency to the contractor. The contractor will be required to acknowledge such an interest and supply any details pertinent to the procurement.

7.4.5. Award of Contract. Award of a contract will be approved based on the Agency's authorization thresholds.

SECTION 7.5. Joint Procurements. A joint procurement by several public agencies is a permissible method of procurement, provided the procurement is consistent with this Procurement Manual, Procurement Policy, and statutory requirements applicable to the Authority. Joint procurements are formed in an effort to save transit agencies time, effort, and money by jointly procuring equipment, parts, materials, supplies, and services that can be utilized among agencies, and maximizes the benefits of large quantity procurements.

CHAPTER 8

BID AND PROPOSAL PROTEST PROCEDURES

SECTION 8.1. Policy. It is the policy of the Authority to consider fully and adjudicate promptly protests relating to the Authority's solicitation procedures, solicitation documents, or recommendations for award of a contract. Protests will be processed in accordance with the provisions of this Procurement Manual. Bidders or proposers will be advised of all procedures required to initiate protests in the contract specifications. Failure by the bidder or proposer to follow these protest procedures may result in a rejection of the protest by the Authority. These procedures will apply to actions resulting from formal competition, such as Invitations for Bids and Requests for Proposals.

SECTION 8.2. Content of Protest and Time Requirements. All protests will first be filed with the Procurement Officer identified in the solicitation documents within the specified time limits set forth in this section and must clearly state in writing the name of the protestor, the solicitation number and description, and the grounds and evidence on which the protest is based. In circumstances where a protestor, in addressing the full Board, raises new grounds or presents new evidence that could reasonably have been included in the original written submission to the Procurement Officer, the Authority will not consider such new grounds or evidence in the determination on the protest.

8.2.1. Protests Based Upon Restrictive Specifications or Alleged Improprieties. Bidders or proposers will first be required to utilize any procedures in the specifications for Approved Equals or requests for clarifications prior to submitting a protest. The Authority will deny or approve such requests and if the requestor disagrees, they may avail themselves of the protest procedures outlined in this subsection.

Alleged improprieties in the bidding procedure or contract specifications, which are apparent or reasonably should have been discovered by the bidder or proposer prior to the advertised bid or proposal submission date, will be filed in writing with the Procurement Officer identified in the solicitation documents not later than 5 calendar days prior to the bid or proposal submission date. The Procurement Officer will respond to the protest with a written determination prior to the submission date of bids or proposals. This determination and original protest will be sent to the bidders or proposers who received a solicitation.

If the protest is denied, the Executive Director, or designee, is authorized to review and rule upon protests concerning contracts within the Executive Director's procurement authority. Appeals must be submitted to the Executive Director and include a written statement of the reasons for the protest, with supporting evidence, and document that it has exhausted all administrative remedies at the staff level. The Executive Director will issue a decision prior to the solicitation due date, which will be final.

Protests for contracts not within the Executive Director's procurement authority will first be reviewed and ruled upon by the Executive Director, or designee. Appeals of such

determinations will be reviewed and acted upon by the Board of Directors upon recommendation by the Executive Director and the Authority's Legal Counsel.

The protestor must notify the Procurement Officer of its intent to resubmit the protest within 5 calendar days after submission date for bids or proposals. Protests based upon alleged improprieties that are apparent or which reasonably should have been discovered prior to bid/proposal opening will not be considered unless the protestor has submitted its protest to staff in accordance with this subsection.

8.2.2. Protests Based Upon Contract Award Recommendation. Protests based upon alleged improprieties that are not apparent or which could not have reasonably been discovered prior to submission date of the bid or proposal, including instances where the low monetary bid is being rejected or other disputes over the staff recommendation for contract award, will be submitted in writing to the Procurement Officer within 5 calendar days of postmark, e-mail time stamp, or other form of notification of the Authority's Notice of Intent to Award a Contract.

No protests will be considered after contract award except for compelling reasons whereby the lateness is due to the Authority's untimely handling of the protest submission. In no event will the Authority consider protests filed after contract award due to negligence or inaction on the part of the protestor. Failure to comply with the time periods for filing protests as set forth herein will be a basis for rejection of the protest.

Other than the time limit considerations, all other actions of the Authority in response to a protest will be as specified in subsections 8.3 and 8.4, below.

SECTION 8.3. Notice of When a Protest Will be Considered. Protests based upon Section 8.2, above, will not be considered by the Authority unless the protestor has submitted its protest in accordance with said section. Once the protestor's written notification is received and the Authority has reached an opinion on the matter, the Procurement Officer will respond to the protest.

For protests for contracts within the Executive Director's procurement authority, should the bidder or proposer decide to pursue its protest, it must submit its appeal no later than 48 hours following receipt of the Procurement Officer's response denying the protest. Appeals must be submitted to the Executive Director and include a written statement of the reasons for the protest, with supporting evidence, and document that it has exhausted all administrative remedies at the staff level. The Executive Director will issue a decision, which will be final.

For protests for contracts not within the Executive Director's procurement authority, the Procurement Officer will also advise the protestor and all other bidders or proposers for the subject solicitation of both the protest and the Authority's response, in writing, at least 3 calendar days prior to the meeting at which the award of contract will be considered. The response will include the time and place of the meeting at which staff's recommendation to the Authority's Board of Directors will be considered. Should the bidder or proposer decide to pursue its protest at the Board meeting, it will notify the

Procurement Officer of its intention at least 2 calendar days prior to the scheduled meeting of the Board of Directors. The protestor may attend for the purpose of presenting its previously submitted grounds and evidence in support of its protest.

SECTION 8.4. Proceedings Before the Board. After full consideration of the protestor's evidence, staff recommendation, and any other relevant information, the Executive Director and Legal Counsel will make a recommendation to the Board of Directors to reject or allow the protest. The Board of Directors will consider the recommendation regarding the protest and render its decision. The decision of the Board of Directors on the protest, bid rejection, or award of a contract, if such decision is made, is final. Upon Board action, a written statement of the reasons for the determination will be included in the record and written notice will be sent to all bidders or proposers advising of the Board's determination on the protest.

SECTION 8.5. Protest Procedures - FTA Funded Contracts. In cases where contracts are substantially funded by the FTA, as a best practice, the Authority will notify its FTA regional office when it receives a third party contract protest and keep the FTA informed about the status of the protest.

CHAPTER 9

SPECIAL RULES FOR FEDERALLY FUNDED CONTRACTS

SECTION 9.1. General Requirements for Procurements Funded By the Federal Transit Administration.

9.1.1. Introduction. The Authority intends to receive capital grants and operating assistance grants from the FTA. The FTA requires the inclusion of certain contractual provisions in all FTA-funded contracts in accordance with the FTA Master Agreement, 2 CFR Part 200, 2 CFR Part 1201, FTA Circular 4220.1F, and the FTA's Best Practices Procurement and Lessons Learned Manual (BPPM). The BPPM provides FTA grantees with suggestions on conducting third party procurements to assist them in meeting the standards of FTA Circular 4220.1F.

When procuring supplies, equipment or services pursuant to federal grants, the Authority shall conform to the applicable FTA procurement requirements, including the addition of all applicable contract provisions (e.g. Buy America certification; Lobbying certification). The department initiating the purchase should consult with the Procurement Officer for current information on requirements for federally funded contracts. The Procurement Officer is responsible for maintaining current information on all federally funded contracts and all federal requirements. The Authority will take all reasonable steps necessary to identify applicable changes in laws, regulations, and provisions of contracts and grants, in consultation with Legal Counsel. Steps taken in this regard include, but are not limited to, reviewing and consulting with Legal Counsel regarding subsequent grant and contract renewals, and reviewing annual revisions to the FTA Master Agreement, 2 CFR Part 200, 2 CFR Part 1201, and the FTA Certifications and Assurances.

9.1.2. Maintenance of Procurement Records. In connection with all FTA-funded contracts entered into by the Authority, the Authority will maintain records sufficient to document the history of the procurement in accordance with 2 CFR Part 200. Such records will include, but are not limited to:

9.1.2.1. A determination of why the particular procurement method was selected;

9.1.2.2. A determination of why the particular contract type was selected;

9.1.2.3. A determination of why the particular contractor(s) was selected or rejected for award;

9.1.2.4. A copy of the Excluded Parties List on SAM.gov demonstrating that the contractor is not an excluded party;

9.1.2.5. A determination that the price being paid by the Authority is fair and reasonable (i.e., cost/price analysis); and

9.1.2.6. Signed required certifications from bidders/proposals (i.e., Lobbying Certification, Buy America Certification, Transit Vehicle Manufacturer Certification).

9.1.3. Types of Contracts. FTA-funded contracts will conform to all applicable federal requirements based on the contract type. For example, 2 CFR Section 200.318(j) provides special requirements for time-and-materials contracts.

9.1.4. General Procurement Standards. The Authority must avoid acquisition of unnecessary or duplicative items, and should consider consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach (2 CFR §200.318(d)).

9.1.5. Competition. All federally-assisted procurement transactions for the acquisition of property or services must be conducted in a manner providing full and open competition. (2 CFR §200.319.) See Chapter 6 for single and sole source procurements. The Authority must ensure that all prequalified lists of persons, firms, or products used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition.

9.1.5.1. The following practices are considered to be unduly restrictive of competition and are prohibited:

9.1.5.1.1. Placing unreasonable requirements on firms to qualify to do business;

9.1.5.1.2. Requiring unnecessary experience or excessive bonding;

9.1.5.1.3. Noncompetitive pricing practices between firms or between affiliated companies;

9.1.5.1.4. Noncompetitive contracts to consultants that are on retainer contracts;

9.1.5.1.5. Organizational conflicts of interest;

9.1.5.1.6. Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement;

9.1.5.1.7. Having overly burdensome requirements for approval of an equal product; and

9.1.5.1.8. Any arbitrary action in the procurement process.

9.1.6. Contract Cost and Price. The Authority will perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition

Threshold, including contract modifications. (2 CFR §200.324.) The method and degree of analysis is dependent on the facts surrounding the particular procurement situation. Before receiving bids or proposals, the Authority must make an Independent Cost Estimate (ICE). After bids or proposals are received and prior to contract award, the Authority must develop a cost or price analysis.

9.1.6.1. ICE. The ICE is the Authority's estimate of what the item or service "should cost." The ICE may be based on published price lists, historical pricing information from contracts awarded by the Authority, comparable purchases by other agencies, engineering estimates, and independent third party estimates.

9.1.6.2. Cost Analysis. A cost analysis is the process of reviewing and evaluating the separate cost elements and the proposed profit of an offeror's cost or pricing data and the judgmental factors applied in estimating the costs. A cost analysis must be used in all of the following circumstances:

9.1.6.2.1. The bidder/proposer is required to submit the elements of the estimated cost, such as in A&E services contracts; and

9.1.6.2.2. Adequate price competition is lacking (i.e. single or sole source procurement); and

9.1.6.2.3. The reasonableness of the price cannot be established.

9.1.6.3. Price Analysis. A price analysis is the process of reviewing and evaluating a proposed price without evaluating its separate cost and profit elements. A price analysis is based on data that are verifiable independently from the offeror's data. A price analysis may be used to determine the reasonableness of the proposed contract price, except in the instances described in Section 9.1.6.2 above.

9.1.7. Profit. In all contracts where there is no price competition and in all cases where a cost analysis is performed, the Authority is required to negotiate profit as a separate element of the price. In establishing a fair and reasonable profit, the Authority will consider the complexity of the work, the contractor's risk and investment, the amount of subcontracting, the contractor's references, and industry profit rates for similar work. (2 CFR §200.324.)

9.1.8. Cost Principles. Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with federal cost principles (2 CFR Part 200, Subpart E—Cost Principles).

9.1.9. Term. The term of a federally funded contract is not restricted except as follows:

9.1.9.1. Contracts for Railcars or Replacement Parts. Contracts for railcars or replacement parts are limited to seven year terms, including options and provided that

such option does not allow for significant changes or alterations to the rolling stock (49 U.S.C. § 5325(e)(1)(B)).

9.1.9.2. **FHWA-Funded Contracts.** If an on-call A&E contract is funded by the Federal Highway Administration, the term of the contract may not exceed five years and the contract cannot be extended beyond the five year term. (Local Assistance Procedures Manual, Chapter 10.)

9.1.10. **Options.** Options are only allowed in FTA-funded contracts when the option price is evaluated as part of the bid or proposal evaluation process and the options reflect the Authority's reasonably foreseeable need. For rolling stock procurements, an option to buy additional rolling stock or replacement parts must be exercised within five or seven years of the date of the original contract, as noted in Section 9.1.9. This does not mean the Authority must obtain delivery, acceptance, or even fabrication in five or seven years. For cooperative procurement contracts, the contract duration can be for no more than a two-year initial term, with no more than three optional extensions of not more than one year each.

9.1.11. **Piggybacking Contracts.** The Authority may use federal funds for piggybacking as long as the original contract was procured in compliance with Federal requirements, contained required Federal provisions, does not contain excessive options, the optioned vehicles do not include cardinal changes to the original vehicles, and the contract price is fair and reasonable. The underlying contract must include an assignability clause clearly describing the right to assign contract rights or that the vendor be made a party to the assignment.

9.1.12. **Advance Payments.** The Authority may not use FTA assistance to make payments to a third party contractor before the contractor has incurred the costs for which the payments would be attributable, unless prior written concurrence is obtained from the FTA. The Authority may in some cases use its local share funds for advance payments, if permitted by FTA Circular 4220.1F, Chapter IV(2)(b)(5)(b).

9.1.13. **Progress Payments.** Progress payments are payments for contract work that has not been completed. The Authority may use FTA assistance to support progress payments provided the following conditions are met:

9.1.13.1. The Authority has obtained adequate security for the payments. Adequate security may include obtaining title to property (materials, work in progress, and finished goods) for which progress payments are made. Alternative security for progress payments by irrevocable letter of credit or equivalent means may be used in lieu of obtaining title to protect the Authority's interest in the progress payments.

9.1.13.2. The contractor has provided the Authority with sufficient written documentation to substantiate the work for which payment is requested.

The Authority may use the percentage of completion method to compensate contractors performing federally-funded construction contracts. (FTA Circular 4220.1F, Chapter IV(2)(b)(5)(c).)

9.1.14. Requests for Proposals (RFP) Procedure.

9.1.14.1. General Requirements. The FTA requires that all RFPs issued for FTA-funded contracts exceeding the Simplified Acquisition Threshold be publicized in such a way to maximize competition. The RFP must identify all evaluation factors and their relative importance. The Authority must also solicit proposals from an adequate number of qualified sources and provide sufficient time for proposers to respond to the RFP, usually not less than 30 calendar days. If so stated in the RFP, the Authority may make a selection based on the original proposals, without negotiation with any proposer. If the Authority decides to conduct negotiations, the FTA requires discussion with all proposers in the competitive range—that is, all proposers that the Authority determines to have a reasonable chance of being selected for award based on cost or price and other factors that were stated in the RFP. (2 CFR §200.320; FTA Circular 4220.1F.)

9.1.14.2. Architectural and Engineering Services Contracts. The FTA requires that the Authority use a qualifications-based competitive proposal process for the procurement of architectural, engineering, and related services, such as construction management, feasibility studies, surveying, design, mapping or similar services. Under this method, the Authority is required to evaluate the proposer's qualifications and select the most qualified proposer subject to negotiation of fair and reasonable compensation terms. The Authority is not allowed to consider price as an evaluation factor at the qualification review stage, and it may initially negotiate only with the most qualified proposer. (49 USC §5325(b).)

9.1.14.3. Prevailing Wage and Davis-Bacon Act Requirements. Under State law, prevailing wage requirements apply to all public works contracts in excess of \$1,000 (Lab. Code, § 1771), including contracts let for maintenance work. Davis-Bacon General Decisions apply to all federally-funded public works projects in excess of \$2,000. Applicable minimum wages determined by the Secretary of Labor must be included in any solicitation documents and in any contract. (40 USC §§3141-3148, 49 USC §5333(a), and 29 CFR Part 5.)

9.1.15. Revenue Contract. A revenue contract is a contract in which the Authority provides access to public transportation assets for the primary purpose of either producing revenues in connection with an activity related to public transportation, or creating business opportunities with the use of FTA-assisted property. The Authority has broad latitude in determining the extent and type of competition appropriate for a particular revenue contract. Nevertheless, to ensure fair and equal access to FTA-assisted property and to maximize revenue derived from such property, the Authority will conduct its revenue contracting as follows:

9.1.15.1. Limited Contract Opportunities. If there are several potential competitors for a limited opportunity (such as advertising space on the side of rolling stock), then the Authority will use a competitive process to provide interested parties with an equal chance to obtain that limited opportunity.

9.1.15.2. Open Contract Opportunities. If, however, one party seeks access to a public transportation asset and the Authority is willing and able to provide contracts or licenses to other parties similarly situated, then competition is not necessary because the opportunity to obtain contracts or licenses is open to all similar parties.

9.1.16. Contractual Provisions. All applicable federally-required third party contract clauses and certifications, including without limitation those specified in 2 CFR Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, will be included in federally-funded contracts. In consultation with the Authority's Legal Counsel, the Procurement Officer will maintain a list of the most recent required clauses and certifications and ensure all applicable third party contracting clauses are appropriately included in federally-funded contracts.

9.1.17. Rejection of Bids. The FTA authorizes the Authority to reject any and all bids or proposals if the Authority determines there is a sound business reason(s) for such rejection. The reasons for rejection will be adequately documented in the Authority's files.

9.1.18. Adequate Competition. After soliciting several sources, in the event of receipt of only a single bid or proposal, the Authority will review its specifications and conduct and document outreach as appropriate to determine if the specifications were unduly restrictive or if changes could be made to encourage submission of more bids or proposals.

9.1.19. Contract Award to Responsible Contractors. The Authority will award contracts to responsible contractors in compliance with the requirements of 49 U.S.C §5325(j) and 2 CFR 200.318(k). Before awarding a contract, the Authority will consider the potential contractor's integrity, compliance with public policy, past performance, and financial and technical resources. The Authority will ensure that the potential contractor and its principals are not suspended, debarred, ineligible, or voluntarily excluded from participation in federally-assisted transactions or procurements. For contracts expected to equal or exceed \$25,000, the Authority will verify that the bidder is not excluded or disqualified by:

9.1.19.1. Checking System for Award Management (SAM) Exclusions (at SAM.gov); or

9.1.19.2. Collecting a certification; or

9.1.19.3. Adding a clause or condition to the covered transaction.

9.1.20. Noncompetitive Procurements. Prior to any Authority procurement action on a single or sole source procurement, the Authority will verify that the procurement meets the sole source definition set forth in Chapter 7, and whether the procurement is subject to either of the following criteria:

9.1.20.1. The FTA authorized non-competitive negotiations.

9.1.20.2. The item is an associated capital maintenance item, as defined in 49 USC Section 5302(3)(L), procured directly from the original manufacturer or supplier of the item to be replaced. The grantee must first certify in writing to the FTA: (a) that such manufacturer or supplier is the only source for such item; and (b) that the price of such item is no higher than the price paid for such item by like customers.

The Procurement Officer will perform a price or cost analysis in connection with a single or sole source procurement action. For price or cost analysis details, see Chapter 5, Section 5.11 and 5.12.

9.1.21. Buy America. In procurements for iron, steel, manufactured products and rolling stock valued at \$150,000 or more, the Authority will ensure that its solicitations comply with the requirements of 49 U.S.C. 5323(j) and 49 CFR Parts 661 and 663, as applicable. Such compliance will include the appropriate notice of the Buy America requirements and certification requirement.

9.1.22. Pre-Award and Post-Delivery Audits of Rolling Stock. When purchasing revenue service rolling stock with FTA funds, the Authority must ensure that a pre-award audit is completed in accordance with 49 CFR part 663, subpart B—Pre Award Audits and that a post-delivery audit is completed before title to the rolling stock is transferred to the Authority in accordance with 49 CFR part 663, subpart C—Post Delivery Audits.

9.1.23. Leasing. Lease transactions supported by federal funds are considered third-party contracts. The Procurement Officer will follow guidelines in accordance with FTA Circular 4220.1F, as amended/superseded, and the FTA Master Agreement.

9.1.24. Bonding Requirements. For federally funded construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Authority will comply with the following minimum bonding requirements:

9.1.24.1. A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.

9.1.24.2. A performance bond on the part of the contractor for one hundred percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's requirements under such contract.

9.1.24.3. A payment bond on the part of the contractor for one hundred percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract. (2 CFR §200.326.)

9.1.25. Liquidated Damages. FTA-funded contracts may contain a liquidated damages clause if all of the following conditions are met:

9.1.25.1. The time of delivery is of such importance that the Authority can reasonably expect to suffer damage if the delivery is delinquent;

9.1.25.2. The Authority determines that the delivery schedule is reasonable at the time of award; and

9.1.25.3. Damages would be difficult or impossible to establish.

If the Authority determines that a liquidated damages clause is necessary, the rate and measurement of liquidated damages must be calculated to reasonably reflect the Authority's costs should the standards not be met, and must be specified in the solicitation and contract documents. The procurement file must contain a record of the calculation and rationale for the amount of liquidated damages established. Any liquidated damages recovered must be credited to the project account involved unless the FTA permits otherwise (FTA Cir. 4220.1F).

9.1.26. Protest Procedures. As a best practice, the Executive Director, or designee, will notify the FTA regional office when it receives a third party protest in connection with a contract substantially funded by the FTA, and keep the FTA informed about the status of the protest.

9.1.27. Breach of Contract. Federally funded contracts exceeding the Simplified Acquisition Threshold must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. (2 CFR Part 200, Appendix II—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards.)

9.1.28. Termination. Federally funded contracts in excess of \$10,000 must contain provisions addressing termination for cause and for convenience by the Authority, including the manner by which it will be effected and the basis for settlement. (2 CFR Part 200, Appendix II—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards.)

9.1.29. Retention of and Access to FTA-Funded Procurement Records. The Authority and its contractors and subcontractors are subject to the retention and access requirements in FTA Circular 5010.1E. The Authority must include these retention and access requirements in federally funded procurements and contracts. Third party contract records must be retained for three years from the date the Authority makes final payment(s) and all other pending contract matters are closed. FTA-funded equipment records must be retained for three years from the date of the equipment's disposition, replacement, or transfer at FTA's direction. The FTA, the U.S. DOT Office of Inspector General, and the Comptroller General of the United States, or any of their authorized representatives, have the right to access any of the Authority's or the Authority's contractors' or subcontractors' records pertaining to the federally funded third party contract, in order to perform audits, or make examinations, excerpts, or transcripts.

SECTION 9.2. Prohibitions. The following practices are prohibited:

9.2.1. The cost plus a percentage of cost and percentage of construction cost methods of contracting (2 CFR §200.324).

9.2.2. Using FTA assistance to support a procurement that uses an exclusionary or discriminatory specification (49 USC § 5352(h)).

9.2.3. Using federal assistance to finance a change order or contract amendment that constitutes a "cardinal change" or a "tag-on." A cardinal change or tag-on means additional work or tasks that are clearly beyond the actual or intended scope of the original contract. Adding quantities to the quantities (base and option) originally advertised, competed, and awarded is a form of a prohibited tag-on. A new procurement must be initiated if such work, tasks, or quantities are required.

9.2.4. Specifying state or local geographical preferences in the evaluation of bids or proposals, with the exception of A&E contracts as follows:

9.2.4.1. Local or state geographic location preferences are not permitted in any Authority procurement, with the exception of FTA-funded A&E contracts. The FTA prohibits the use of any local or state geographical preferences in the evaluation of bids or proposals, with the exception of A&E contracts (2 CFR §200.319(c)). In the event the Authority utilizes a prequalification list, it will ensure the list is current prior to its use and includes enough sources to ensure maximum free and open competition. In no event will the Authority preclude a potential bidder from qualifying during the solicitation period (2 CFR §200.319(d)). Geographic location may be a selection criterion for A&E services if an appropriate number of qualified firms are eligible to compete for the contract given the nature and size of the project. (2 CFR §200.319.) No geographic preference may be extended or included in specifications or an RFP without review by Authority's Legal Counsel.

9.2.5. Precluding potential bidders from qualifying during the solicitation period (2 CFR §200.319).

9.2.6. Using a contractor on the Excluded Parties List on SAM.gov.

SECTION 9.3. Local Assistance Procedures Manual (LAPM). A&E contracts will be initiated and awarded using the guidance of the LAPM, in the absence of specific funding guidelines.

9.3.1. Requirements. The Authority will announce all requirements for A&E services and negotiate contracts for these services based on the demonstrated competence and qualifications of prospective proposers to perform the services required at fair and reasonable prices. (See Gov. Code, §4526, et seq.) Selections for A&E services will not use price as a factor in determining the best qualified proposer in conformance with California statutes, federal regulations, and FTA procurement guidelines. These guidelines state, in general, that relative to conducting a procurement for A&E type services:

9.3.1.1. Qualifications. The proposer's qualifications will be evaluated;

9.3.1.2. Price Not Considered. Price will be excluded as an evaluation factor;

9.3.1.3. Price Negotiations. Negotiations on price will be conducted with only the most qualified proposers. If price is negotiated, profit may need to be negotiated.

9.3.1.4. Failure to Agree on Price. If the Authority and the highest ranked proposer fail to reach an agreement on price, negotiations with the next most qualified proposer will be conducted until a contract award can be made to the most qualified proposer whose price is fair and reasonable.

CHAPTER 10

CONTRACT ADMINISTRATION

SECTION 10.1. General. The Project Manager assigned to the contract is responsible for monitoring and reviewing the project to determine whether contract terms and conditions are being met and, with the consultation of the Procurement Officer and the Authority's Legal Counsel, if needed, will endeavor to resolve any problems concerning adherence to terms and conditions of the contract. The Project Manager will coordinate all financial matters with the Director of Finance or designee.

SECTION 10.2. Notice To Proceed. The Procurement Officer and Project Manager will determine the effective date of the Notice to Proceed. Before issuing the Notice to Proceed for federally funded contracts, the Procurement Officer will check www.sam.gov to ensure the contractor does not have an active exclusion record during the pre-award phase. (See Chapter 9, Special Rules for Federally Funded Contracts). The Procurement Officer will issue the Notice to Proceed after submission of any required securities, documents, and insurance, and execution of the Agreement. The Project Manager will assume primary responsibility for communicating with all contractors and consultants as to the commencement and progress of the contract.

SECTION 10.3. Maintenance of Procurement Records. The Procurement Officer will maintain all original executed contracts and a procurement/contract file for each contract. The contract file will contain all records sufficient to document the significant history of the contract, including all formal and informal communication between the Authority and the vendor, supplier, or contractor. At minimum, the file will include:

- 10.3.1. Documents evidencing the rationale for the method of procurement;
- 10.3.2. Documents relating to the selection of the vendor, supplier, or contractor, ***including, for federally funded contracts, the Excluded Parties List at SAM.gov;***
- 10.3.3. Change orders and contract amendments;
- 10.3.4. Board approval documents;
- 10.3.5. Hourly labor increase requests and approvals for on-call contracts, if applicable;
- 10.3.6. Work directives or task orders, if any;
- 10.3.7. Up-to-date summary of contract expenditures; and
- 10.3.8. Formal and significant correspondence.

SECTION 10.4. Contract Modifications.

10.4.1. Summary. When, in the course of the performance of a contract, the Project Manager deems it necessary that extra work be performed, or that certain authorized work be omitted, or that modifications be made regarding the contract requirements, a written change order or amendment must be issued to the contractor. Modifications may include changes in scope of work, extension of term, exercise of an option term or service, price adjustments, novation(s), administrative amendments, or other contract changes. The use of “tag-ons” or “cardinal” changes to a contract are prohibited. A tag-on or cardinal change is defined as additional work or tasks that are clearly beyond the actual or intended scope of the original contract. A new procurement will be initiated if such work is required.

The parties may disagree as to the price of any contract modification; these contract modification procedures assume that any such price dispute has been resolved. Resolution of disputes concerning change orders will be made in accordance with the procedures outlined in Section 10.5, “Resolution of Contract Claims or Disputes.”

10.4.2. Contract Modification Requirements. The Project Manager will monitor compliance with the technical requirements of the contract, but is not authorized to unilaterally implement changes in the scope of work. When such changes are initiated by the Authority, the Procurement Officer will request a proposal from the contractor covering the areas of cost impact, schedule change, and increase or decrease in scope. All formally bid contracts and contracts awarded through competitive negotiations will require that the contractor advise the Authority in writing immediately upon notice of any unanticipated condition or contingency that may cause a change in the scope of work or an adjustment in the specified compensation. The written notice will explain the circumstances giving rise to the unforeseen condition or contingency and set forth the proposed adjustment in compensation or time. Such notice will be given to the Authority prior to the time that contractor performs work or services giving rise to the proposed adjustment in compensation or time. For contracts up to \$100,000, the Executive Director may approve contract modifications that cumulatively do not to exceed \$25,000. For contracts over \$100,000, the Executive Director may approve contract modifications that cumulatively do not exceed 10% of the original contract amount and do not to exceed \$50,000 for any single contract modification. The Board must authorize all other change orders and amendments.

10.4.3. Contract Modification Procedures. The Project Manager will notify the Procurement Officer that a change order or contract amendment is needed, and provide supplemental information as necessary to adequately describe the contract, the contract modification required, and the reasons for the contract modification. The Procurement Officer will verify that the modification complies with the terms of the Board resolution authorizing the original contract (if any) and with the terms of the original contract, prepare documentation adequately describing the contract, the contract modification required, a justification, the record of negotiations, an independent cost estimate, and the contractor’s cost proposal, if applicable. The contract modification will identify the cost of the change in both dollar amount and percentage increase over the original contract price.

Upon the completion of this review process, the Procurement Officer will obtain necessary approval. If the modification requires Board approval, the Procurement Officer will submit a staff report and resolution for approval at the next available Board meeting. Following Board approval, if necessary, the Procurement Officer will review and verify that the modification package is accurate and complete. Upon completion of this approval process, the Procurement Officer will issue the contract modification to the contractor.

10.4.4. Contract Modifications for FTA-Funded Projects. With respect to FTA-funded projects, a contract modification that is not within the scope of the original contract must meet the FTA's criteria for noncompetitive procurement.

SECTION 10.5. Resolution of Contract Claims or Disputes.

10.5.1. Presentation of Claims and Disputes. In the event that a dispute arises as to the payment of any additional compensation arising out of any change order or amendment issued by the Authority or for any cause, including any alleged act or failure to act by the Authority or the happening of any event, thing or occurrence, the dispute resolution provisions in the contract should be followed. If an agreement can be reached that resolves the claim, the parties will execute a contract modification to document the resolution of the claim. However, when a claim rises to the level of a dispute, the Procurement Officer will consult with the Authority's Legal Counsel.

SECTION 10.6. Exercise of Options.

10.6.1. Summary. Options are contract provisions that allow the Authority to purchase additional equipment, supplies, or services called for by the contract, or to extend the term of the contract. Options are exercisable in accordance with the terms set forth in the contract. Use of contract contingency is not considered an exercise of an option.

10.6.2. Use of Options. The option quantities or time periods contained in the contractor's offer should be evaluated as part of the contract award process. In rare cases when options have not been evaluated as part of the award, the exercise of such options should be justified as a sole source procurement. Unless exigent circumstances exist, if the base contract amount is exhausted before the end of the base term, for contracts awarded by the Board, Board approval must be sought to increase the contract to an amount that will sufficiently cover the remainder of the base term before option terms can be exercised.

10.6.3. Determination to Exercise Options. In deciding whether to exercise an option, the Authority will make its determination based on the following considerations:

10.6.3.1. A new solicitation fails to produce a better price or a more advantageous offer than that offered by the option; or

10.6.3.2. An 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 more advantageous offer; or

10.6.3.3. The time between the award of the contract containing the option and the exercise of the option is so short that it indicates the option price is still competitive or the more advantageous offer.

10.6.4. Additional Findings. The Procurement Officer will make the following additional findings regarding the exercise of such options: (a) the Project Manager evaluated the performance of the contractor and determined that said performance has been satisfactory; and (b) the Project Manager, with the advice of the Director of Finance, determined that there are sufficient funds in the adopted budget for the project to extend or renew the term pursuant to the option.

10.6.5. Action by Executive Director. Based upon the foregoing analysis, the Procurement Officer will forward to the Executive Director a recommendation regarding the exercise of the contract option. The Executive Director has the discretion to authorize exercising the option when the cost of exercising the option does not exceed the option price included in the original purchase price and is within the approved budget. Renewal or extension of the contract term will be in accordance with the terms and conditions specified in the original solicitation and contract documents.

SECTION 10.7. Returns.

10.7.1. Failure to Comply. Upon receipt of any procured supplies, equipment, or materials, the Project Manager or designee will verify that the items procured comply with the description and technical requirements in the contract or purchase order. In all cases where the items procured do not comply, whether because of shortage, excess, defect, or other discrepancy, the Project Manager or designee will communicate in writing with the vendor or supplier concerning the discrepancy. Copies of such correspondence will be maintained by the Project Manager and forwarded to the Procurement Officer and the Director of Finance. The Project Manager will continue to forward correspondence until the discrepancy is resolved.

10.7.2. Notice of Failure and Settlement. The Project Manager will give notice of any failure by the vendor or supplier to cure such discrepancy in a timely manner to the Procurement Officer and Legal Counsel, if needed. No settlement or agreement will be made with the contractor or supplier without first obtaining the approval of the Executive Director and Legal Counsel, as needed.

SECTION 10.8. Warranty Repairs.

10.8.1. Warranty Claim. A written warranty claim will be filed promptly with the contractor upon discovery of any breakdown, patent or latent defect, or other failure in any item procured that is under warranty, following consultation with Legal Counsel, if needed, and confirmation that the failure is covered by the warranty.

10.8.2. Failure to Satisfy Warranty. Legal Counsel should be informed of any failure by the contractor to timely meet its obligations under the warranty. In contracts where the term of the performance bond is extended to cover the warranty period, the

Procurement Officer, with a copy to Legal Counsel, will notify the surety in writing on such bond of any such failure on the part of the contractor.

SECTION 10.9. Contract Expiration. The Procurement Officer will provide notice to the Project Manager whenever a contract is due to expire. If needed, the Procurement Officer will develop a new solicitation document and forward it to the Project Manager for review and approval. The Project Manager will review and recommend changes to the solicitation documents and return the revised copy of the documents to the Procurement Officer. The Procurement Officer will make the necessary changes to the new document and forward it to Legal Counsel for review and approval, if needed. Notwithstanding that the contract is a renewal, all applicable procedures set forth in this Procurement Manual will be followed.

SECTION 10.10. Contract Closure.

10.10.1. Close-Out Form. The Procurement Officer will issue a close-out form or letter for completed contracts when notified by the Project Manager that the final product is received and all contractual obligations have been met.

10.10.2. Performance Comments. At the time of contract closure, the Procurement Officer, Project Manager, and Legal Counsel, if needed, will have the opportunity to submit comments to the file on the contractor's performance. Such comments will be relevant for future contracting purposes.

SECTION 10.11. Construction Administration.

10.11.1. Project Manager. Construction contracts are administered by the Project Manager or designee. Progress payment vouchers within the contract budget will be reviewed and approved by the Project Manager, as to work completed and payments due, whereupon the Authority will issue payment to the contractor.

10.11.2. Claims. The Authority will follow the applicable provisions of the particular contract specifications and applicable statutes, including without limitation Public Contract Code Sections 9204 and 20104, for resolving claims or disputes arising out of construction contracts.

10.11.3. Stop Notices. Upon receipt of a properly submitted stop notice, one hundred twenty-five percent (125%) of the claimed amount will be withheld from payment to the contractor. (Civ. Code, §§ 8530 et seq.) In cases of doubt due to any legal technicality, the Project Manager or Procurement Officer will consult with Legal Counsel, as needed, for assurance that all formalities have been completed in accordance with applicable stop notice requirements and other laws.

10.11.4. Notice of Completion. The Executive Director may execute a notice of completion and the Procurement Officer will cause its recordation within 15 days after the date of completion of a work of improvement, where such notice is necessary, and will report that action to the Board, together with the report of all sums paid or to be paid on the contract, for all contracts originally awarded by the Board. (Civ. Code, § 9200 et seq.)

10.11.5. Payment for Public Works Projects. In addition, the Authority will adhere to the following rules and procedures for payment on any public works contract:

10.11.5.1. Progress Payments. If progress payments are used, in no event will the Authority release progress payments in excess of 95% of the actual work completed, plus a like percentage of the value of unused materials delivered by the contractor on one ground or stored subject to, or under the control of, the Authority. The Authority will withhold not less than 5% of the total contract price until final completion and acceptance of the project. However, at any time after 50% of the work has been completed, if the Authority's Board determines that satisfactory progress has been made, the Authority may make remaining progress payments in full for actual work completed. (P.C.C. §9203.)

10.11.5.2. Prompt Payment of Progress Payments. The Authority will pay any progress payment within 30 days of receipt of an undisputed and properly submitted invoice from the contractor. Any invoice received by the Authority and determined not to be a proper invoice will be returned to the contractor no later than 7 days after receipt, accompanied by a written explanation of why the invoice was not proper. (P.C.C. §20104.50.)

10.11.5.3. Securities in Lieu of Retention. If the Authority withholds funds, it will allow the contractor to deposit securities equivalent to the monies withheld to the Authority or to a bank, who will then pay the withheld funds to the contractor. In the alternative, the contractor may request the Authority to make payment of the retentions earned directly to an escrow agent, allowing the contractor to direct the investment of the payments into securities and collect interest on the investments. (P.C.C. §22300.)

10.11.5.4. Retention. The Authority will release any retention withheld from the contractor within 60 days of completion of the work. If there is a dispute as to an amount due to the contractor arising out of liens and/or deficiencies in the contractor's performance, the Authority may withhold from the final payment an amount not to exceed one hundred (150%) of the disputed amount. (P.C.C. §7107.)

CHAPTER 11

SALE OF SURPLUS EQUIPMENT AND SCRAP ITEMS

SECTION 11.1. Summary. The Executive Director, or designee, will from time to time poll the Authority staff in order to determine whether any supplies, equipment, or materials might be considered surplus or scrap. For items with an estimated value at the time of disposition that does not exceed the Executive Director's disposition threshold of \$100,000, the Executive Director, or designee, will make the determination as to the manner of disposition of the scrap or surplus items. The Board will approve the disposition of any item having an estimated value at the time of disposition greater than the Executive Director's threshold of \$100,000. In all cases, any disposition or sale of rolling stock will require notification to the Board. In the case of any rolling stock originally funded by the FTA, approval of the Board is necessary prior to disposition as further defined in Section 11.4 below. In addition, separate requirements apply to the disposition of real property under state and federal law, and staff should consult with Legal Counsel to ensure compliance with all applicable laws prior to disposing of real property.

SECTION 11.2. Original Acquisition Cost Determination. The Executive Director, or designee, and the Director of Finance will coordinate with the department that is using or holding the items to be sold in an "as is" condition. The using department will prepare adequate documentation describing the items, method of original procurement, and acquisition costs, if available. Such documentation will be submitted to the Executive Director, or designee, and the Director of Finance. With the approval of the Executive Director, or designee, the Director of Finance will determine the original acquisition cost and current fair market value or net book value. Depending upon the cost, the Executive Director, or designee, or the Director of Finance, will make the determination as to the manner of disposition.

SECTION 11.3. Methods of Disposition. The method of sale or disposition of any surplus or scrap items will depend upon the nature of the items. Such methods may include: (1) transfer or sale to other public agencies, (2) trade-in as part of a new procurement, (3) sale by auction, advertisement for bids, or negotiation, or (4) where appropriate, proper recycling or disposal. The Executive Director, or designee, may provide for disposal of the surplus/scrap items by any of the above reasonable means designed to maximize the property's disposal value to the Authority. The Executive Director, or designee, is responsible for carrying out the disposition procedures for surplus or scrap items. In all cases, steps will be taken to indemnify the Authority against loss or liability that may result from use of the items after disposition, transfer, or sale. All solicitation documents prepared in connection with the disposition, transfer or sale of surplus or scrap items will be submitted to the Authority's Legal Counsel, as needed, for review and approval.

11.3.1. **Bid Procedure.** The surplus/scrap items may be disposed of by a bid procedure, conducted similarly to the formal competitive bid procedure. Upon appropriate determination and approval as described above, the Procurement Officer will advertise the upcoming disposition. Such advertisement will adequately describe the items to be

sold and the date, time, and location for acceptance of bids. The advertisement will state that the sale will be made to the highest responsive bidder, and that the items will be sold in an “as-is,” “where-is” and “with all faults” condition. The advertisement may also specify the amount of a minimum bid, if any. The Procurement Officer may contact known interested dealers and other parties.

11.3.2. Auction. The disposition of items may be undertaken by an auction. The sale may be conducted by the Authority, or by a public auction service. Each item will be sold to the highest bidder.

11.3.3. Trade-In, Negotiation, or Transfer to Other Public Agencies.

11.3.3.1. Disposition may include trading the surplus/scrap property in for new supplies, equipment, or materials. The Procurement Officer will only arrange for a trade-in in connection with an Authority procurement conducted in accordance with the procedures mandated by this Procurement Manual. In no case will a trade-in represent a lower dollar value than could verifiably have been realized by another method of disposition. The Procurement Officer may proceed to dispose of the property by negotiating the sale.

11.3.3.2. In some cases, the Authority may choose to transfer assets (property) to other public agencies. In such cases, the Authority must have confirmed in writing that the other public agency is willing to accept the property. The Procurement Officer will generate the appropriate release of liability agreement, including price to be paid by the agency, if any. This agreement indemnifies the Authority from any and all claims that may arise from the transfer of such property. This agreement will be signed by the Authority and the other public agency prior to such transfer. The FTA has specific rules related to transfer of FTA funded property to other public agencies as described in Section 11.5, below.

11.3.5. Discard, Donation or Recycling. In some instances, obsolete, broken, or valueless items may be disposed of by discarding as refuse. The Procurement Officer may initiate disposal by first acquiring an appraisal of the goods or other such fair market value assessment of the items in question. Items that have no auctionable or trade-in value may be disposed of as garbage, donated to a non-profit entity, recycled, or other similar means at the least possible cost to the Authority.

SECTION 11.4. Revenue Generating Rolling Stock. In the case of any disposition of surplus/scrap revenue generating rolling stock, the Authority upon the request of any interested party will make available the maintenance records for the equipment. The Executive Director, or designee, will also be responsible for ensuring that no property that is not owned by the Authority (e.g., leased property) is sold along with the vehicles. In addition, the disposal of any rolling stock that was purchased with federal funds must follow the special procedures outlined in Section 11.5, below.

SECTION 11.5. Disposition of FTA-Funded Property.

11.5.1. Summary. The Authority's disposition of property acquired in whole or in part with federal funds will be in accordance with 2 CFR Part 200 and FTA Circular 5010.1E, both as may be amended from time to time. Staff should consult with Legal Counsel to determine the minimum useful life of capital rolling stock in accordance with FTA Circular 5010.1E, the federal interest, permissible alternative disposition options, or disposition of any property fully-owned by the federal government or in cases when the FTA has reserved the right to transfer title.

11.5.2. Definitions.

11.5.2.1. "Equipment": Equipment is tangible, non-expendable, personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit. Equipment includes rolling stock, computing devices, information technology systems, and all other such property used in the provision of public transit service.

11.5.2.2. "Fair Market Value": Fair market value may be determined through competitive sale, auction procedures, the price of comparable goods, or professional appraisal.

11.5.2.3. "Property": Property is limited to personal property, which is all property except land.

11.5.2.4. "Supplies": Supplies are tangible personal property other than "equipment" as defined above, with a unit value of less than \$5,000.

11.5.2.5. "Useful Life": Useful life means the minimum acceptable period a capital asset purchased with FTA funds should be used in service. Capital assets purchased with FTA funds may frequently be used beyond their minimum useful lives, without being considered part of a grantee's state of good repair backlog. The minimum useful life for rolling stock is calculated based on the date the vehicle is placed in revenue service and continues until it is removed from service. Note: Land does not depreciate and does not have a useful life. However, constructions, buildings, and improvements occupying the land do have useful lives.

11.5.3. Procedures.

11.5.3.1. Property Valued at Less Than \$5,000. After the useful life of the property is reached, or the property is no longer needed for the original federal award, equipment with a current per unit fair market value of less than \$5,000 may be retained, sold, or otherwise disposed of with no further obligation to the FTA.

11.5.3.2. Equipment Valued at More Than \$5,000. After the useful life of the property is reached, or the property is no longer needed for the original federal award, equipment with a current per unit fair market value of \$5,000 or more may be retained or sold. However, the FTA will have the right to an amount calculated by multiplying the total

aggregate fair market value at the time of disposition by the percentage of FTA funding for the purchase. Rolling stock and equipment that is sold may have the amount due to the FTA reduced by an amount of \$500 or 10 percent of the proceeds, whichever is less, for its selling and handling expenses.

11.5.3.3. Supplies Valued at More Than \$5,000. After the useful life of the property is reached, or the property is no longer needed for the original federal award, unused supplies with a total aggregate fair market value of \$5,000 or more may be retained or sold. If there is a residual inventory of unused supplies exceeding \$5,000 in total aggregate fair market value for which there is no transit use, the Authority will compensate the FTA according to the total aggregate fair market value multiplied by the percentage of FTA funding for the original purchase, or transfer the sales proceeds to another federal award to reduce the gross project cost of other future capital projects in accordance with federal regulations.

11.5.3.4. Disposition of Property Before the End of the Asset's Useful Life. Any disposition of federally assisted property before the end of its useful life requires prior FTA approval. The FTA is entitled to a share of the remaining federal interest in the property. Special requirements set forth in FTA Circular 5010.1E apply to transfers of rolling stock that has not yet served its useful life.

SECTION 11.6. Prohibited Sales. Except for instances in which surplus property is sold at public auction conducted by an entity other than the Authority, sale of items will not be permitted to any of the following:

11.6.1.1. Members of the Board of Directors;

11.6.1.2. Authority employees and officers, their families, partners or agents.

CHAPTER 12

CONTRACT TYPES

SECTION 12.1. Approved Contract Types. The Authority will use the following approved contract types when contracting for goods and services (excluding construction) on behalf of the Authority. Legal Counsel will, as needed, approve all contract types as to form either individually or as a class.

12.1.1. Firm Fixed Price. This contract type puts the maximum risk of performance on the contractor and reduces the risk of cost performance on the Authority. The total contract price and any unit prices contained in the contract are firm and fixed. Typically, this type of pricing is used in sealed bid procurements for public works projects or products. It is best suited for acquiring commercial items or other supplies or services where reasonably definite, clear, functional or detailed specifications exist and the Procurement Officer can establish fair and reasonable prices at the outset, such as when: (a) adequate price competition exists, (b) reasonable price comparisons with previous purchases can be made; or (c) available data permits realistic cost estimates of the probable cost of performance.

12.1.1.1. Adjustments to pricing can only be made through the operation of the "changes clause" in the contract. There are fixed price contracts that contain economic or price re-determination clauses but these clauses should only be added, as needed, with the approval of Legal Counsel and the Executive Director prior to the issuance of a solicitation. Generally, adjustments are of three types:

12.1.1.1.1. Adjustments based on established prices. The price adjustment is based on increases or decreases from an agreed-upon level published or otherwise established price of specific items or the contract end products.

12.1.1.1.2. Adjustments based on actual costs of labor or material. The price adjustment is based on increases or decreases in specified costs of labor or material that the contractor actually experiences or uses during the contract performance.

12.1.1.1.3. Adjustments based on cost indices of labor or material. The price adjustment is based on increases or decreases in labor or material cost indices, such as a Consumer Price Index, that are specifically identified in the contract.

12.1.2. Cost Plus Fixed Fee. This type of contract is used when the total price of the goods or services being purchased cannot be estimated with any certainty. It provides that a contractor will be compensated its actual costs plus a fixed fee that is negotiated at the inception of the contract. The fixed fee does not vary with actual cost, but may be adjusted as a result of changes in the work to be performed under the contract. This contract type provides the contractor with a minimum incentive to control costs. A cost plus fixed fee contract involves extensive contract administration in order to track costs and the fixed fee. The contractor must have an acceptable cost accounting system and will only be reimbursed those costs that are consistent with Federal Cost Principles or a

cost standards promulgated by the Authority. There must be appropriate Authority oversight during contract performance to ensure efficient methods and effective cost controls are used. Variations of this contract type include award fee and cost reimbursement contracts. Any use of this contract type or any variation must be approved by the Executive Director or designee prior to issuance of a solicitation. Legal Counsel should be consulted as needed.

12.1.3. Time and Materials. This contract type is used only after the Executive Director, or designee, determines that no other contract type is suitable. The contract must specify a ceiling price that the contractor will not exceed except at its own risk.

12.1.4. Requirements Based, Not-to-Exceed Amount. A requirements based contract with fixed unit prices of either labor hours or products can be used when the Authority is uncertain of how frequently the goods or services will be needed. Examples of services contracts include towing, professional services, and auto-body painting; and goods contracts include office supplies, cleaning products, and tires. Contractors may request cost increases subject to annual limitations, a percentage increase cap, and as evidenced by a relevant price index specified in the contract. The Authority may approve or decline the request for a cost increase. In no case will the Authority pay more than any not-to-exceed ceiling specified in the contract. This type of contract is typically used in negotiated procurements. The contract not-to-exceed amount should be based on anticipated requirements rather than the lowest bid amount.

12.1.5. Unpriced Purchase Orders. Unpriced purchase orders may be used on small purchases less than the threshold for formal purchase procedures. These contracts provide an agreed to amount of compensation for the contractor to teardown, test, and evaluate items of repair. The contractor then negotiates a price with the Authority or classifies the repair action within pre-established pricing categories that are subject to concurrence of the Authority. The contractor is then compensated on the agreed upon rates.

12.1.6. Revenue-Generating Contracts. A revenue contract is a contract in which the Authority provides access to public transportation assets for the primary purpose of either producing revenues in connection with an activity related to public transportation, or creating business opportunities. For revenue-generating contracts not associated with FTA-funded assets, the Authority will follow the procurement methods detailed in Chapter 5. The Board of Directors will approve award of revenue generating/concessions contracts estimated to generate more than \$100,000 in sales during the Agreement term. All revenue contracts that utilize federal funds must follow the competitive selection procedures and flow-down requirements of FTA Circular 4220.1F, as amended/superseded. The Procurement Officer must document the procurement files to show how competition requirements were met.

12.1.7. Design-Build. "Design-build" means a procurement process in which both the design and construction of a project are procured from a single entity. See Section 1.8.4 for additional information. Staff must contact the Procurement Officer and Legal

Counsel for further details and assistance complying with mandated statutory requirements if a design-build selection process is selected for an eligible project.

Appendix A
Procurement Policy

**[Include most recent Procurement Policy
in final Procurement Manual]**

Appendix B

FORMS FOR FTA PROCUREMENTS

Third Party Contracting Checklist for Federally Funded Contracts

Project Contract Summary	
Contract Title	
Solicitation / Document #	
Project Manager	
Funding Source(s)	
Overall Budget Amount	
Contracting Steps and Milestones	
Step 1 - Solicitation Development (<i>Prior to Release</i>)	Completion Date
Procurement method (insert date next to selected procurement method)	
Invitation for Bid (IFB) Request for Proposal (RFP) Request for Qualification (RFQ) Sole/Single Source Piggyback	
Procurement History. Type a short statement of why you chose the Procurement Method. Example: Sole Source selected (only one supplier)	
<ul style="list-style-type: none"> • 	
Obtain Independent Cost Estimate (ICE) Complete and Date prior to release date	
Liquidated damages determination	
Review insurance requirements by Authority Broker	
Review form of contract with Legal Counsel (if applicable)	
Prepare solicitation documents	
Specifications and plan development	
Appropriate supporting documentation	
Attachment of required FTA clauses and certifications	
Non-collusion documentation	
Acknowledgement of insurance requirements	

Levine Act Disclosure	
Authority Board approval to release	
Step 2 - Solicitation Process and Bid Opening (Post Release and Prior to Submittal)	
Advertisement of solicitation (no geographic preference)	
Post on Authority website: Yes / No	
Advertise in newspaper(s): Yes / No	
Other (please list):	
Save copies of all postings and notices	
Hold pre-submittal conference	
Pre-submittal conference minutes and sign-in sheet posted on Authority's website	
Approved equals/request for clarifications or modifications due	
Authority's response to approved equals/clarification or modifications due	
Proposal due date / Bid opening date	
Step 3 – Bid/Proposal Review (After Submittal and Prior to Award)	
Review bids/proposals for responsiveness – including:	
Technical Submittal Requirements	
Insurance review by Broker	
DBE/SBE review and verification (Federal only)	
Suspension and debarment (Federal only)	
All required forms submitted and complete	
Tabulation/Scoring of bid/proposal documents according to selection criteria	
Interviews with some or all offerors (if applicable)	
Pre-Award Audit / Cost and Price Analysis:	
Document the comparison of ICE with Cost/Price Analysis and save it in procurement file. This narrative must justify the reasonableness of cost/price.	
Responsibility Determination Form	
Award selection (selected vendor), state why you selected this vendor.	
Excluded Parties List System (SAMs Search)	
Notice to unsuccessful bidder	

Debriefing of unsuccessful bidders and records of debriefs	
Record of protest (if any)	
Step 4 – Contract Award (<i>Post award and prior to Notice to Proceed</i>)	
Contract draft	
Send “Notice of Intent to Award” to all bidders	
Return bid guarantee bonds to unsuccessful offerors (construction contracts only)	
Contract award recommendation to Board of Directors	
Finalize contract with appropriate clauses and certifications	
Send contract agreement for execution to Contractor	
Contract signed by Executive Director	
Notice of the project to DIR using the electronic PWC-100 form	
Buy America Compliance (Make sure you have a signed Buy America Form or exemption as applicable)	
Performance, Payment, or other bond documents	
Insurance Certificates	
Step 5 – Project Implementation (<i>Notice to Proceed to Project Completion</i>)	
Notice to Proceed	
Change Order Documentation	
Justification	
Cost/price analysis	
DBE/SBE reports	
Certified Payroll reports	
Notice of Completion	
Step 6 – Guarantee Period and Closeout	
Final inspection	
Return Retention or Bonds	

Independent Cost Estimate Form

Contract Type: New Procurement
 Contract Modification
 Exercise of Option

Date of Estimate: _____

Description of Goods/Services: _____

Method of Obtaining the Estimate:

- I have obtained the following estimate from: _____
- Published Price List/Past Pricing (date): _____
- Engineering or Technical Estimate: _____
- Independent Third Party Estimate: _____
- Other (specify): _____

Cost Estimate Details:

Through the method stated above it has been determined that the total cost of the goods/services is expected to be: \$ _____. Details are shown below.

A. Cost of Standard Items

Product	Cost (\$/ea)		Notes / Data Source
	Delivered	No Freight	

B. Cost of Services, Repairs or Non-Standard Items

Item / Task:							
Materials	Other Direct Costs	Labor (Rate, Hours)	Labor Class	Allocated Overhead	SG&A*	Profit	Total

*Selling, General and Administrative Expenses

Signature of Preparer: _____

Date: _____

Name and Title: _____

(Note: For more complex items or tasks, attach detailed spreadsheet(s) explaining rationale.)

Price Analysis Form—Informal Bids and Proposals

Date of Analysis: _____ Solicitation Number: _____

Description of Product/Service: _____

Bid/Proposal Due Date: _____ Number of Responsive Bids/Proposals: _____

Quantity: _____ Independent Cost Estimate: \$ _____

	Supplier's Name	Supplier's Name	Supplier's Name	Supplier's Name
Quoted Price	(\$)	(\$)	(\$)	(\$)

The pricing quoted on the attached sheet(s) is deemed to be fair and reasonable based on the following type of analysis:

- Comparison with competing suppliers' prices or catalog pricing for the same item. (Complete comparison and attach supporting quotes or catalog pages.)
- Comparison of proposed pricing with in-house estimate for the same item. (Attach signed in-house estimate and explain factors influencing any differences found.)
- Comparison of proposed pricing with historical pricing from previous purchases of the same item, coupled with market data such as Producer Price Index or Inflation Rate over the corresponding period. (Attach data and historical price record.)
- Analysis of price components against current published standards such as labor rates, dollars per pound, etc. to justify the price reasonableness of the whole. (Attach analysis to support conclusions drawn.)

Comments: _____

Procurement Officer: _____

Signature: _____

Price Analysis Form—Formal IFBs and RFPs

Date of Analysis: _____ Solicitation Number: _____

Description of Product/Service: _____

Bid/Proposal Due Date: _____ Number of Responsive Bids/Proposals: _____

Quantity: _____ Independent Cost Estimate: \$ _____

	Supplier's Name	Supplier's Name	Supplier's Name	Supplier's Name
Quoted Price	(\$)	(\$)	(\$)	(\$)
Price of Options	(\$)	(\$)	(\$)	(\$)
Warranty	(\$)	(\$)	(\$)	(\$)
Spare Parts	(\$)	(\$)	(\$)	(\$)
Training	(\$)	(\$)	(\$)	(\$)
Total Price	(\$)	(\$)	(\$)	(\$)
<i>Total Price Delta to ICE</i>	(%)	(%)	(%)	(%)
Note: If Delta to ICE is more than 10% for the lowest bid, provide rationale (such as inflation or market power)				
Total Price Delta to Other Bids	(%)	(%)	(%)	(%)
Note: If difference between low bid and next lowest bid is greater than 25%, provide rationale (such as aggressive supplier pricing or effort to establish supplier relationship)				

Other Notes:

- Calculate inflation on percentage increases for any option years, using the same price analyses
- Be sure to show the total value of procurement through all option years if applicable

The pricing quoted on the attached sheet(s) is deemed to be fair and reasonable based on the following type of analysis:

- Comparison with competing suppliers' prices or catalog pricing for the same item. (Complete comparison and attach supporting quotes or catalog pages.)
- Comparison of proposed pricing with in-house estimate for the same item. (Attach signed in-house estimate and explain factors influencing any differences found.)
- Comparison of proposed pricing with historical pricing from previous purchases of the same item, coupled with market data such as Producer Price Index or Inflation Rate over the corresponding period. (Attach data and historical price record.)
- Analysis of price components against current published standards such as labor rates, dollars per pound, etc. to justify the price reasonableness of the whole. (Attach analysis to support conclusions drawn.)

Comments: _____

Procurement Officer: _____

Signature: _____

Cost Analysis Form

Date of Analysis: _____ Contract Number: _____

Description of Product/Service: _____

Bid/Proposal Due Date (if applicable): _____

Independent Cost Estimate: \$ _____ Vendor's Name: _____

DETAIL DESCRIPTION OF COST ELEMENTS					
			Vendor's Proposal	Independent Estimate	Variance
1. DIRECT MATERIAL					
A. PURCHASED PARTS					
B. SUBCONTRACTED ITEMS					
C. OTHER – (1) RAW MATERIAL					
(2) STANDARD COMMERCIAL ITEMS					
TOTAL DIRECT MATERIAL					
2. MATERIAL OVERHEAD (Rate % x \$ Base *)					
3. DIRECT LABOR					
	Estimated Hours	Rate/Hour	Vendor (\$)	Independent Estimate	Variance
TOTAL DIRECT LABOR					
4. LABOR OVERHEAD					
OH RATE					
X BASE (Labor Total Above)					
TOTAL LABOR OVERHEAD					
5. OTHER DIRECT COSTS					
A. SPECIAL TOOLING/EQUIPMENT					
TOTAL SPECIAL TOOLING/EQUIPMENT					
B. TRAVEL					
(1) TRANSPORTATION					
(2) PER DIEM OR SUBSISTENCE					
TOTAL TRAVEL					
C. INDIVIDUAL CONSULTATION SERVICES					
TOTAL INDIVIDUAL CONSULTANT SERVICES					

DETAIL DESCRIPTION OF COST ELEMENTS (CONTINUED)	Vendor (\$)	Independent Estimate	Variance
D. OTHER COSTS			
TOTAL OTHER			
E. SUBTOTAL OTHER DIRECT COSTS			
6. GENERAL AND ADMINISTRATIVE EXPENSE (G&A) RATE %			
X \$ BASE (Use 5.E Above)			
7. ROYALTIES (IF ANY)			
8. SUBTOTAL ESTIMATED COST			
9. CONTRACT FACILITIES CAPITAL AND COST OF MONEY			
10. SUBTOTAL ESTIMATED COST			
11. FEE OR PROFIT			
12. TOTAL ESTIMATED COST AND FEE OR PROFIT			
13. DISCOUNTS			
14. OPTION COSTS (SPECIFY)			
15. ADJUSTED COST			

Analysis Guidelines

1. Direct Material

- A. Analyze Purchased Parts: Provide a consolidated price analysis of material quantities included in the various tasks, orders, or contract line items being proposed and the basis for pricing (vendor quotes, invoice prices, etc.).
- B. Subcontracted Items: Analyze the total cost of subcontract effort and supporting written quotations from the prospective subcontractors.
- C. Other:
 - (1) Raw Material: Review any materials in a form or state that requires further processing. Analyze priced quantities of items required for the proposal. Consider alternatives and total cost impact.
 - (2) Standard Commercial Items: Analyze proposed items that the offeror will provide, in whole or in part, and review the basis for pricing. Consider whether these could be provided at lower cost from another source.

2. Material Overhead: Verify that this cost is not computed as part of labor overhead (item 4) or General and Administrative (G&A) (Item 6).

3. Direct Labor: Analyze the hourly rate and the total hours for each individual (if known) and discipline of direct labor proposed. Determine whether actual rates or escalated rates are used. If escalation is included, analyze the degree (percent) and rationale used. Compare percentage of total that labor represents for each bid.

4. Labor Overhead: Analyze comparative rates and ensure these costs are not computed as part of G&A. Determine if Government Audited rates are available.

5. Other Direct Costs

- A. Special Tooling/Equipment. Analyze price and necessity of specific equipment and unit prices.
- B. Travel. Analyze each trip proposed and the persons (or disciplines) designated to make each trip. Compare and check costs.
- C. Individual Consultant Services. Analyze the proposed contemplated consulting. Compare to independent estimate of the amount of services estimated to be required and match the consultants' quoted daily or hourly rate to known benchmarks.
- D. Other Costs. Review all other direct charge costs not otherwise included in the categories described above (e.g., services of specialized trades, computer services, preservation, packaging and packing, leasing of equipment and provide bases for pricing. Scan for duplication or omissions.

6. General and Administrative Expense: See notes on labor overhead above and check whether the base has been approved by a Government audit agency for use in proposals.

7. Royalties: If more than \$250, analyze the following information for each separate royalty or license fee; name and address of licensor; date of license agreement; patent numbers, patent application serial numbers, or other basis on which the royalty is payable; brief description (including any part of model numbers or each contract item or component on which the royalty is payable); percentage or dollar rate of royalty per unit; unit price of contract item; number of units; and total dollar amount of royalties.

8. Subtotal Estimated Cost: Compare the total of all direct and indirect costs excluding Cost of Money and Fee or Profit. Note reasons for differences.

9. Contract Facilities Capital and Cost of Money: Analyze the offerors' supporting calculations and compare to known standards.

10. Subtotal Estimated Cost: This is the total of all proposed costs excluding Fee or Profit. Determine the competitive range. Question outliers.

11. Fee or Profit: Review the total of all proposed Fees or Profit.

12. Total Estimated Cost and Fee or Profit: Analyze the range of total estimated costs including Fee or Profit, and explain variance to independent estimate. Identify areas for negotiation or areas to be challenged. Explain your conclusions regarding fair and reasonable pricing.

13. Discounts: Review basis for Discounts and range between offers.

ATTACH NARRATIVE COST ANALYSIS MEMO ADDRESSING ITEMS AS INSTRUCTED ABOVE.

Procurement Officer: _____

Signature: _____

Responsibility Determination Form

Date: _____

Bid/RFP No.: _____

Vendor: _____

Instructions: For each of the items below, indicate whether the vendor meets the area of responsibility and explain how this determination was made.

Acceptable?

1. Appropriate financial, equipment, facility, and personnel Yes No

Comments: _____

2. Ability to meet the delivery schedule Yes No

Comments: _____

3. Satisfactory period of performance Yes No

Comments: _____

4. Satisfactory record of integrity, not on debarred or suspended listings Yes No

Comments: _____

5. Receipt of all necessary data from supplier Yes No

Comments: _____

This vendor has been deemed responsible and does not appear on the declined or suspended list as shown in the attached. (SAM.gov).

Procurement Officer: _____

Signature: _____

Request for Exception to Competitive Procurement Process

Overview: The Tri-Valley-San Joaquin Valley Regional Rail Authority (Authority) follows state and federal law and Authority policies which guide the fair and equitable competition required for contracting with the Authority and help ensure the efficient use of the Authority's resources. However, sometimes competition is not legally required or cannot be obtained. In these instances, staff must complete this form to explain and document why competition was not obtained.

DATE	REQUESTER'S NAME	DEPARTMENT
PURCHASE REQUEST or PO NUMBER		NAME OF THE VENDOR or CONTRACTOR
TYPE OF PROCUREMENT		
<input type="checkbox"/> Materials, Supplies, or Equipment (MSE) <input type="checkbox"/> Services		
DESCRIPTION		
<i>Details and specifications of MSE or Services to be procured.</i>		

Instructions: Please: 1) select either Sole Source or Single Source, 2) check the specific justification(s), and 3) provide a brief explanation describing why the justification(s) applies to the procurement and attach any relevant supporting documentation.

<input type="checkbox"/> SOLE SOURCE
<p>A Sole Source procurement is an exception to the competitive solicitation process which is appropriate when there exists <u>only one source</u> of the MSE or Services.</p> <p>Note: A sole source procurement may not be based only on the grounds that it would be most convenient for the Authority or that the product demonstrates technical or administrative superiority, is preferred by staff, or shows superior performance potential at the lowest cost.</p>

Sole source procurements must meet at least one of the verification criteria below:

-
- Only one source.** The item is available from only one source; or
 - Emergency/unusual and compelling urgency.** The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation; or
 - Funding agency expressly authorized noncompetitive proposals.** The federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from an agency; or
 - Inadequate competition available.** After solicitation of a number of sources, competition is determined inadequate.

SINGLE SOURCE

A **Single Source** procurement is an exception to the competitive procurement process where more than one source of the MSE or Services exists, but for other reasons an exception to the competitive solicitation process is sought. Compatibility is often a consideration when single sourcing an item.

- Unique capability or innovative concept.** The contractor offers unique or innovative MSE or Services that are not available from another source. For example:
 - The MSE or Services are highly specialized and only available from the original equipment manufacturer, authorized distributor, or service provider.
 - The MSE or Services are highly specialized or unique and research indicates there are limited firms with the expertise.
 - The MSE has unique design/performance specifications or quality requirements that are not available in comparable products.
- Authorized by the FTA.** The FTA has authorized non-competitive negotiations for the MSE or Services (e.g., pursuant to a grant agreement).
- Patents or restricted data rights.** Patent or data rights restrictions preclude competition.
- Compatibility requirements.** The MSE is only available from one vendor due to compatibility issues with the Authority's existing equipment. For example:
 - The product is an integral part or accessory compatible only with existing equipment.
 - Upgrade to, or enhancement of, existing software is proprietary and available only from the proposed vendor.
- Substantial duplication costs.** For example:
 - In the case of a follow on contract or amendment, award to another contractor would result in substantial duplication of costs that the Authority cannot recover through a competitive procurement, or changing firms during the course of the work would create a risk of failure.
 - Authority staff possess specialized training and/or extensive expertise in the requested MSE or Services. Purchase of any other product would require re-training resulting in a significant increase in Authority resources (time and funds).

- Warranty conditions for existing MSE or Services may be voided if the requested items are procured from a different source.
- Unacceptable delay.** For example, in the case of a follow on contract, the award to another contractor would result in unacceptable delays in fulfilling the Authority's needs. Note: This justification may be related to the substantial duplication of costs justification.
- Pilot/Demonstration Program.** The purchase is for a pilot/demonstration program that will help the Authority determine the feasibility of a new system, product or service.
- Emergency/unusual and compelling urgency.** To use this exception, the Authority must be able to demonstrate the following:
 - a. Authorized staff's project is unusual, compelling, and a delay in an award of the contract would cause serious injury, financial or otherwise; or
 - b. There is a public exigency or emergency that will not permit a delay resulting from a competitive solicitation.
- Public interest.** The Authority has determined that full and open competition in connection with a particular acquisition is not in the public's interest as further described in the Explanation below.

EXPLANATION
<i>Provide a detailed explanation and justification for the non-competitive procurement and attach any relevant supporting documentation.</i>

By signing below, I certify that the information provided is complete and accurate to the best of my knowledge. Any errors or omissions are the sole responsibility of the requester and approver. I certify that I have no real or apparent conflict of interest regarding this purchase. I agree not to accept, for myself or my family, any gifts, benefits, gratuities, or anything of value from the vendor/contractor.

REQUESTED BY:

[NAME]

[Title]

APPROVAL:

Kevin Sheridan
Executive Director

Approved

Denied

EXHIBIT A

PROCUREMENT POLICY TRI-VALLEY-SAN JOAQUIN VALLEY REGIONAL RAIL AUTHORITY Adopted: January 17, 2018

The Tri-Valley-San Joaquin Valley Regional Rail Authority (Authority) is a political subdivision of the State of California organized pursuant to California Public Utility Code Section 132651 *et seq.* The Authority's primary purpose is to plan, develop and deliver cost-effective and responsive transit connectivity between the Bay Area Rapid Transit District's rapid transit system and the Altamont Corridor Express commuter rail service.

A. Introduction

This document sets forth policies and procedures ("Procurement Policy" or "Policy") governing Authority procurements which derive from state and federal law and regulations. By accepting state and federal funding, the Authority is 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 and Federal Transit Administration (FTA) apply to the Authority in connection with contracts financed in whole or in part with federal funds, including FTA Circular 4220.1F, "Third Party Contracting Requirements." In the event of a conflict between the Authority's Procurement Policy and local, state or federal law, the applicable provisions of such local, state or federal law shall supersede this Procurement Policy.

This Procurement Policy provides a broad overview of the standards and methods which will guide the Authority in obtaining goods and services.

B. Goals

The Authority Procurement Policy is guided by six basic goals:

1. Foster maximum open and free competition in the expenditure of public funds.
2. Promote the greatest economy and efficiency for the Authority;
3. Ensure adherence to proper standards of conduct by Authority board members, officers and employees;
4. Maintain procurement policies and procedures that guarantee compliance with applicable state and federal laws and regulations;
5. To instill public confidence in the procurement process of the Authority;
6. To ensure fair and equitable treatment for all vendors who seek to deal with the Authority, including Disadvantaged Business Enterprises (DBEs); and

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

C. Code of Conduct/Conflicts of Interest

1. No director, officer, employee or agent of the Authority shall participate in any procedure, task, or decision relative to the initiation, evaluation, award, or administration of a contract if a conflict of interest, real or apparent, exists. No employee, officer, or agent of the Authority shall participate in the selection or in the award of administration of a contract if a real or apparent conflict of interest would be involved. Such a conflict would arise when:
 - The director, employee, officer, or agent,
 - Any member of his immediate family
 - His or her partner or business associate, or
 - An organization that employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award.

2. Authority officers, employees, or agents will neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, potential vendors/contractors, or parties to sub-agreements.

This prohibition shall not be applicable to:

- An occasional non-pecuniary gift of insignificant value such as accepting food or refreshment of nominal value on infrequent occasions in the ordinary course of a luncheon or dinner business meeting or other meeting; or
- Unsolicited advertising or promotional material such as pens, pencils, note pads, calendars, or other business related items of nominal intrinsic value; or
- A gift, gratuity, favor, entertainment, loan, or other thing of value when the circumstances make it clear that an obvious long-standing social or family relationship rather than the business of the persons concerned is the motivating factor.

In addition to the above, the following special constraints will be used to guide employees directly involved in procurement through sensitive situations:

- Invitations received from vendors/contractors involved in a pending procurement for business lunches or dinners or parties should be politely refused. It is the Authority's policy to avoid any situation that might give the appearance of improper influence.
- Any offer of gratuities should be tactfully refused.

Employees should ask themselves the following questions if confronted with an ethical dilemma:

- Is my action legal? Ethical?
- Does my action comply with Authority Policy?
- Does my action appear inappropriate?
- Would I be embarrassed or compromised if my action became known publicly?

Specific standards governing conflicts of interest under state law are set forth in Sections 1090, 1091, and 1091.5 of the California Government Code and the California Political Reform Act (Cal. Gov't. Code §§81000 *et seq.*).

D. Methods of Procurement

1. All purchases and contracts, shall be made on a competitive basis to the greatest extent practicable, whether by informal bidding, formal bidding or competitive proposals.
2. The method of procurement, such as micro-purchases, informal bids or proposals, formal competitive bidding, requests for proposals, etc., shall be appropriate for the type of project or procurement shall conform to applicable state or federal law and regulations and shall be in the best interest of the Authority.
3. Formal competitive bidding must be used for “public projects” that involve contracts of \$100,000 or more. A “public project” is: a project for the erection, improvement, painting, or repair of public buildings and works; work in or about streams, bays, waterfronts, embankments, or other work for protection against overflow; street or sewer work except maintenance or repair; or furnishing supplies or materials for any such project, including maintenance or repair of streets and sewers.
4. Formal competitive bidding ordinarily will be used for materials, supplies and equipment purchases over \$100,000, but a "best value" approach may be used in unusual circumstances if it is in the best interest of the Authority. “Best value” means a process in which the overall combination of quality, price, and other elements such as reliability, standardization, vendor qualifications, warranty, life cycle costs, and sustainability issues are considered together to determine which proposal provides the greatest overall benefit to the Authority. On a case by case basis, and in particular when a procurement involves a combination of goods and services, the Executive Director, in consultation with the department issuing the solicitation, shall make the determination of whether a “best value” approach is in the best interest of the Authority. In such circumstances, the determination will be documented in writing and a formal competitive proposal process will be utilized.
5. An informal procurement method may be utilized for the purchase of materials, equipment or supplies when the estimated expenditure is less than \$100,000. To the extent practicable, such a method shall involve obtaining a minimum of three quotations, either written or oral, that permit prices and other terms to be compared. the Authority will undertake adequate outreach to ensure open and free competition, and that small businesses, including Disadvantaged Business Enterprises are afforded opportunities to submit quotations. To the extent practicable, the Authority will strive to obtain at least one of the minimum of three quotations from a small business. The Authority will utilize interested vendors based upon a review of trade sources, lists of certified DBEs and small businesses that have registered with the State, and vendors that have registered with the Authority to receive notice of contract opportunities. When appropriate to ensure satisfaction of the Fundamental Principles set forth in this Policy, such solicitations shall be advertised by the Authority. The Authority's informal bidding procedures using a lowest responsible bidder standard for bid comparison will serve as the typical standard on which to base the purchase of materials, equipment, or supplies, unless it is determined in writing that it is in the Authority's best interest to apply a “best value” approach, in which event,

qualitative factors such as those set forth in paragraph D.4. above, in addition to price may be considered in making an award.

6. Formal competitive proposals, which consider and evaluate factors in addition to price, will be used to retain professional and non-professional services or specialized equipment over \$100,000.
7. Specialized State and federal laws apply to the procurement of architectural and engineering services as defined by applicable laws and regulations, regardless of the estimated expenditure. Qualification-based competitive proposals will be used for architectural and engineering services. Pursuant to California Government Code §4525 et seq., the Authority shall use qualifications-based competitive proposal procedures for the procurement of architectural, landscape architectural, engineering, environmental, land surveying or construction project management services. Under this method, the technical proposals shall not contain a cost proposal and shall be evaluated based upon qualifications and demonstrated competence. After the consultants are ranked in accordance with the selection criteria set forth in the solicitation documents, the Executive Director, or his designee, shall open the cost proposal of the highest-ranked most qualified proposer and commence negotiations. If the parties are unable to negotiate fair and reasonable contract terms, including compensation, then the negotiations will be closed and the Executive Director, or his designee, will commence negotiations with the second most qualified Proposer. This process will be followed until an Agreement is reached or the determination is made to recommend rejection of all Proposals.
8. The use of appropriate intergovernmental and cooperative agreements is encouraged in order to reduce duplicative effort and to achieve cost economies.

E. Procurement Documentation and Consideration of Bids and Proposals

1. 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 advertisement in accordance with legal requirements. An award, if made, will be to the lowest responsive and responsible bidder.
2. The solicitation of formal competitive proposals requires 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 consensus ranking, subject to successful negotiations with the Authority. Where required by law, the initial selection of certain professionals will be based on factors other than cost.
3. Any and all bids or proposals may be rejected by the Authority if it is in the Authority's best interest to do so.
4. The Authority seeks to 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.

F. Approval and Execution of Contract Documents

1. All Authority contracts and amendments will be in writing and executed prior to the initiation of performance under the contract.
2. The Executive Director may execute all contracts on behalf of the Authority that are duly approved within the Executive Director's authority. The Chair of the Board of Directors will sign contracts and leases that require approval by the Board, unless authority is otherwise delegated to the Executive Director.
3. Legal Counsel must approve as to form all contracts over \$50,000 and all contracts that are formally bid, regardless of estimated value.

G. Disadvantaged Business Enterprise Program

It is the policy of the Authority to ensure nondiscrimination on the basis of race, color, sex or national origin in the award and administration of U.S. Department of Transportation-assisted 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.

H. Executive Director's Procurement Authority

1. The Executive Director is authorized to purchase supplies, equipment, materials and services or to arrange for work in a manner consistent with this Procurement Policy and written procedures as may be developed from time to time. Provided sufficient funds are available within the Authority's approved annual budget for such expenditures, the Executive Director is authorized to execute agreements and expend funds for procurements and activities as follows: (a) up to \$100,000 for supplies, equipment, materials, services and construction or public works agreements, (b) up to \$100,000 for revenue-generation agreements, and (c) up to \$100,000 annual rent for leases and licenses of real or personal property in which the Authority is a lessee or licensee, in which the term does not exceed three years. The Board of Directors will approve all contracts over \$100,000 or that otherwise exceed these limits.
2. The Executive Director is authorized to administer all contracts on behalf of the Authority. Provided sufficient funds are available in the Authority's approved annual budget, the Executive Director is authorized to approve the following: (a) for contracts up to \$100,000, contract change orders or amendments, cumulatively not to exceed \$25,000 and (b) contracts over \$100,000, contract change orders or amendments, cumulatively not to exceed ten percent (10%) of the original contract, and not to exceed \$50,000 for any single change order. The Board of Directors will approve all other change orders.
3. The Executive Director is authorized to delegate the responsibility and authority to approve purchases within the Executive Director's procurement authority, which delegation must be in writing, include defined monetary limits; be consistent with this Procurement Policy; and be subject to the rules and procedures in the Procurement Manual.

4. The Executive Director will provide informational reports to the Board of Directors summarizing any contracts between \$50,000 and \$100,000 awarded within the Executive Director's procurement authority.
5. The Executive Director is authorized to issue and maintain a Procurement Manual that sets forth implementing guidelines and procedures consistent with this Procurement Policy, current law, and best procurement practices. All Authority staff with responsibility for procurement activities shall be trained in, and adhere to, this Procurement Policy and the Procurement Manual.

I. Price and Cost Analysis

A price or cost analysis is required for every procurement. The applicability and extent of analysis is dictated by the circumstances of the individual procurement. The goal is for the project manager to conclude that the contract dollar award amount, or cost components of it, is fair and reasonable.

1. Price Analysis

A price analysis includes the examination and evaluation of readily available prices or rate information. The information needs to be adequate to make a determination of price reasonableness.

The project manager need not obtain additional information from a bidder or supplier for price evaluation purposes if:

- a. Adequate price competition exists, as when multiple quotes or bids (two or more responsible, responsive offers) are received;
- b. Prices are for commercial products or services sold at catalog or market prices in substantial quantities to the general public;
- c. Prices are for commercial products or services whose prices are set by law or regulation; or
- d. A waiver is granted by the Executive Director in exceptional cases.

2. Cost Analysis

A cost analysis is a detailed compilation, review and evaluation of the separate cost elements that comprise the proposed price and is required in cases where reasonableness of price cannot be ascertained through a price analysis as described above. A cost analysis is also required when a bidder or proposer is required to submit the elements of its estimated cost, such as may be the case in architectural, engineering, or other professional services contracts. A cost analysis involves the following steps:

- a. Verification of the accuracy of cost data;
- b. Evaluation of specific cost elements; including direct, indirect, general and administrative, and fee or profit.
- c. Comparison of historical cost data to proposed costs.

Additionally, a determination shall be made that the contractor's accounting structure and level of resources can support accurate cost data that is being furnished for analysis. After analysis

and settlement of costs with the contractor, the procurement record shall indicate a finding that based on the analysis, the proposed or settled price is fair and reasonable.

J. Protest Procedures

Bidders may protest contracts that are let through formal competitive bidding or competitive negotiations. The Executive Director is authorized to review and determine protests concerning contracts awarded within the Executive Director's procurement authority. Bid protests for all other contracts not within the Executive Director's procurement authority will be reviewed and determined by the Board of Directors upon recommendation by the Executive Director and Legal Counsel. All protests will be handled in accordance with procedures adopted by the Authority.

K. Contract Administration

The Authority shall administer all contracts to ensure that contractors conform with the terms, conditions, and specifications of all contracts and to ensure all purchases are received in a timely manner. Each contract file shall contain documentation concerning the contract administration, including, but not limited to, monitoring of the contract budget, change orders and final disposition. Undocumented actions on all contracts must be committed to written memoranda and promptly included in the contract file.

L. Emergency Contracts

In the case of an emergency that requires the immediate expenditure of public money to safeguard life, health, property, or the loss of essential public services as in the case of any great public calamity, such as extraordinary fire, flood, storm, epidemic, earthquake, acts of terrorism or other natural or civil disaster, the Executive Director is authorized to take all necessary and proper measures, including the authority to enter into emergency contracts consistent with the provisions of Public Contract Code Section 22050. The Executive Director may repair or replace a public facility, take any directly related and immediate action required by the emergency, and procure necessary equipment, services and supplies for those purposes, without giving notice for bids to let contracts upon the following conditions:

1. The Executive Director will make a finding based on substantial evidence that the emergency will not permit delay resulting from a competitive bid and the action is necessary to respond to the emergency.
2. The Executive Director will contact the Chair of the Board of Directors, if possible, for concurrence with the proposed emergency action.
3. The Executive Director will report the emergency action and the findings supporting the action for review and ratification by the Board of Directors at a regular meeting of the Board of Directors held within fourteen (14) days of the action, or if no regular meeting is scheduled, within seven (7) days of the action at a special meeting of the Board of Directors. The Board will review the action at every regularly scheduled meeting thereafter until the action is terminated.
4. The Executive Director will terminate any emergency contracting action that did not follow the Procurement Policy as soon as possible, and to the extent practicable, complete any remaining actions to respond to the emergency in accordance with the Procurement Policy.

M. Sole and Single Source (Non-Competitive) Procurements

On occasion, the Authority may waive competitive bidding requirements for a procurement in which no competitive advantage can be gained through competitive bidding. Examples of a non-competitive advantage are when there is only one technically approved source of supply, there are compatibility requirements with existing products or equipment, warranty conditions may be voided, the procurement is for testing purposes only, or an emergency procurement is necessary. Such procurements often arise where the specifications and requirements for the items or services to be procured are so unusual or distinct as to dictate one source. This may be the case, for example, with replacement parts for brand name machinery, equipment, or vehicles.

A sole source procurement is an exception to the competitive bidding process available where there exists only one source of supply. The sole source must be the only known source of supply with the capability of meeting the specification requirements or satisfy one of the other verification criteria in subsection 2, below. A sole source decision is not permitted merely upon the grounds that such approach is the most convenient or that the subject product: a) demonstrates technical or administrative superiority; b) is preferred by staff; or c) shows superior performance potential at lowest cost.

A single source procurement is different from a sole source procurement in that, while other sources of supply are available, other factors, including financial, schedule, or performance requirements, make the use of competitive procurements procedures unavailing. In such cases, an award to a different contractor may result in a waste of resources, resulting from a substantial increase in related costs, a substantial schedule delay not due to poor planning on the part of the Authority, or other factors that would make the use of competitive process not be beneficial for the Authority. Single source procurements will be processed in the same way as sole source procurements, using the procedures stated below.

1. Procedures

The department desiring to procure supplies, equipment, materials, or services through a non-competitive procurement shall first submit a completed "Request for Exception to Competitive Procurement" form to the Executive Director, which shall be signed by that department's supervisor.

2. Verification Criteria for Justification

Prior to any action on the procurement, the Executive Director, or authorized designee, shall verify in writing that the procurement meets the single or sole source definition set forth above and meets at least one of the verification criteria below:

- a. The item is available from only one source; or
- b. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation; or
- c. After solicitation of a number of sources, competition is determined inadequate; or
- d. No competitive advantage can be gained through competitive bidding.

However, if the item or service must be procured on an emergency basis or through an open market purchase, please refer to Sections K and N.I, respectively.

In cases of contracts in excess of \$100,000 or for federally funded non-competitive procurements, the Authority's Attorney should be consulted as to the applicability of the non-competitive procurement procedures. In such cases, the solicitation procedures shall not commence until the Attorney has confirmed that the procurement qualifies as a sole or single source and, if applicable, that any supplemental rules for federally funded contracts have been satisfied.

3. Price or Cost Analysis

The department requesting the procurement shall obtain a price for the proposed procurement from the contractor. Unless the reasonableness of the price can be established by some verifiable means, including but not limited to a catalog or market price for a similar commercial product sold in substantial quantities to the general public, or on the basis of prices set by law or regulation, a cost analysis shall be conducted. See Section I for a full discussion on cost and price analyses.

4. Issuance of Purchase Order or Contract, Procurements Under \$100,000

Upon approval of the Request for Exception to Competitive Procurement by the Executive Director and the Authority Attorney, a purchase order or contract shall be negotiated and issued by the Authority, and shall be signed by the Executive Director.

5. Procurements Exceeding \$100,000

In any case where the non-competitive procurement exceeds \$100,000, the approval of the Board of Directors shall be requested. Following Board approval, a contract containing all applicable terms and conditions of the procurement shall be negotiated and prepared for execution by the Executive Director.

N. Intergovernmental Agreements

Joint procurements, state cooperative purchasing programs, and assignment of existing contract rights ("piggyback" procurements) with other public agencies may be used when consistent with applicable state and federal statutory or grant requirements. The use of intergovernmental agreements is permitted by the Federal Transit Administration and the California Public Contract Code to achieve cost economies and to reduce duplicative effort.

O. Discretion to Waive the Competitive Process

The Board of Directors, or the Executive Director for procurements within the Executive Director's procurement authority, may waive the requirements for formal competitive bidding or other procedures set forth in this Procurement Policy when permissible under applicable law and when a determination is made that the best interests of the Authority will be served, as follows:

1. Open Market Transactions. If the Authority rejects bids received in connection with a procurement requiring formal competitive bidding, the Authority may proceed with an open market purchase after it determines that the supplies, equipment and materials may be purchased at a lower price in the open market.

In addition, if no bids are received in connection with a procurement requiring formal competitive bidding, the Authority may proceed with an open market purchase in certain circumstances if it is determined that the best interests of the

Authority will be served by such an approach. These circumstances shall be evaluated on a case-by-case basis and shall include such factors as the reasons why no bids were received, the availability of the supplies, equipment, or materials on the open market, and a price or cost analysis.

2. Waiver of Competitive Negotiations. When services are needed on an expedited basis and circumstances do not permit an RFP process, the Authority may waive such procedures, provided there is adequate documentation of the need for such services. These circumstances shall be evaluated on a case-by-case basis, keeping in mind the fundamental principles of procurement set forth in this Procurement Policy.

P. Disposal of Surplus Property

1. The Executive Director shall determine the manner of disposition of surplus supplies, equipment and materials whose estimated value at the time of disposition does not exceed \$100,000. The Board of Directors shall approve the disposition of any item whose estimated value at the time of disposition is greater than \$100,000.
2. The method of sale or disposition of any surplus or scrap items shall depend upon the nature of the items. Such methods may include: (1) transfer or sale to other public agencies, (2) trade-in as part of a new procurement, (3) sale by auction, advertisement for sealed bids, or negotiation, or (4) where appropriate, proper recycling or disposal.

AGENDA

ITEM 7





STAFF REPORT

SUBJECT: Resolution R07-2023 Authorizing The Executive Director To Execute an Employment Agreement with Candice Kendall as the Authority's Executive Management Assistant

FROM: Kevin Sheridan, Executive Director/CEO

DATE: April 12, 2023

Action Requested

Staff requests that the Board of Directors (Board) authorize the Executive Director to execute an Employment Agreement with Candice Kendall as the Authority's Executive Management Assistant, in a form approved by legal counsel.

Background/Discussion

Office management, administration, and accounting assistance services. are essential to support the Rail Authority and Valley Link project.

To date, Ms. Kendall has worked for the Authority as a seconded employee of the Livermore Amador Valley Transportation Authority (LAVTA), a position with LAVTA that has been reimbursed by the Rail Authority. For the past three years working for the Authority, Ms. Kendall has demonstrated expertise and knowledge in multiple areas including office management, accounting principles, invoice preparation of consultant contracts, employee payroll, executive assistance, and board of directors coordination support.

At the February 2023 Board meeting, the Board authorized the executive director to negotiate and enter into an Administrative Services contract with LAVTA. The amount authorized was not to exceed \$180,000 and included the cost to cover Ms. Kendall's services for the Rail Authority. LAVTA and the Rail Authority's Executive Directors met to discuss and negotiate the Administrative Services contract, and concluded that it was the appropriate time to recommend the transition of the position at LAVTA to the Rail Authority. As a result of the recommendation, the \$180,000 approved by the Board in February for the LAVTA Administrative Services contract would be reduced by approximately \$130,000. The remaining \$50,000 of the \$180,000 would remain in place for the LAVTA Administrative Services Agreement. At the March 2023 LAVTA Board meeting, the LAVTA Board approved a revised Administrative Services Agreement amount of \$50,000.

Staff is recommending to transition the full time position at LAVTA to the Rail Authority, and for Ms. Kendall to become a full time employee at the Rail Authority. Ms. Kendall is a valuable part of the Valley Link team, her presence and professionalism help to maintain team continuity for the Board, Staff, and the Valley Link project. For retention purposes salaries were compared to similar positions at various Rail and Transit agencies in the State. Staff is requesting the Board's authorization to allow the Executive Director to execute an Employment Agreement with Ms. Kendall, in a form approved by legal counsel, and to establish benefit accounts and programs to fulfill the requirements of the Employment Agreement and applicable law.

Ms. Kendall's contract will be for a two-year term contract term. She will be paid a salary of \$90,000 per year. In addition, the agency will create a "cafeteria plan" for her benefits, to which it will deposit \$22,000 per year. The contract provides that the agency will establish a 401(a) plan or other tax-qualified deferred compensation plan and deposit 15% of her annual salary. No other benefits are included. She will also be entitled to four weeks of Paid Time Off and accrue eight hours per month of sick leave.

Fiscal Impact

The cost of this Employment Agreement is within the Authority's existing budget.

Recommended Action

Authorize the Executive Director to execute an Employment Agreement with Candice Kendall as the Authority's Executive Management Assistant, in a form approved by legal counsel.

Attachments

1. Resolution R07-2023
2. Job Description, Executive Management Assistant

ATTACHMENT 1





RESOLUTION NO. R07-2023

* * *

RESOLUTION OF THE BOARD OF DIRECTORS OF THE TRI-VALLEY-SAN JOAQUIN VALLEY REGIONAL RAIL AUTHORITY AUTHORIZING THE ESTABLISHMENT OF THE STAFF POSITION OF EXECUTIVE MANAGEMENT ASSISTANT AND AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE AN EMPLOYMENT CONTRACT WITH CANDICE KENDALL AS EXECUTIVE MANAGEMENT ASSISTANT

WHEREAS, the Legislature adopted AB 758, establishing the Tri-Valley-San Joaquin Valley Regional Rail Authority (Authority) under California Public Utilities Code Section 132651 *et seq.*, to plan, develop and deliver cost-effective and responsive transit connectivity between the Bay Area Rapid Transit District's rapid transit system in the Tri-Valley and the Altamont Corridor Express commuter rail service;

WHEREAS, the Authority has been engaged in the design and environmental activities to advance the Valley Link Rail Project (Project) towards construction and eventual operation;

WHEREAS, at its inception, the Authority was provided administrative support from the Livermore Amador Valley Transit Authority (LAVTA), pursuant to Section 132657 of the Authority's enabling legislation;

WHEREAS, over time, the Authority has filled certain staff positions with its own employees, while continuing to rely on LAVTA for administrative support; and

WHEREAS, staff recommends that the Board authorize the establishment of the position of Executive Management Assistant to conduct day-to-day management activities under the direction of the Executive Director/CEO and execute an employment agreement with Candice Kendall to serve in that position.

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the Tri-Valley-San Joaquin Valley Regional Rail Authority hereby authorizes the establishment of the position of Executive Management Assistant to conduct day-to-day management activities under the direction of the Executive Director/CEO and authorizes the Executive Director/CEO to execute an employment contract with Candice Kendall to fill that position.

BE IT FURTHER RESOLVED that the Executive Director is authorized to take such additional actions necessary to establish benefit programs and comply with applicable law to fill this position.

APPROVED AND PASSED, this 12th day of April 2022.

Melissa Hernandez, Chair

ATTEST:

Kevin Sheridan, Executive Director/CEO

ATTACHMENT 2



TRI-VALLEY-SAN JOAQUIN VALLEY REGIONAL RAIL AUTHORITY

POSITION DESCRIPTION

POSITION Executive Management Assistant

CLASSIFICATION Non-Exempt

POSITION DESCRIPTION

The Executive Management Assistant reports to the Executive Director/CEO and is responsible for processing and maintaining the accounts payable, receivable, payroll, ticket inventory, grant billing and reporting, assisting with audit preparation, and other accounting tasks for the agency. This position is responsible for: staffing the Authority's front desk and providing the initial contact with the public either in person or on the telephone, preparing all information relevant to meetings of the Board of Directors, purchasing office supplies, processing incoming and outgoing mail, typing, filing and other clerical duties as assigned.

SPECIFIC DUTIES AND RESPONSIBILITIES

40% *Perform all routine and specialized accounting activities*

Under general supervision:

- Responsible for all aspects of accounts payable including reviewing and reconciling invoices, entering invoices into the accounts payable system, processing checks and direct deposits (at least twice per month), working with vendors to resolve discrepancies, preparing 1099 forms, maintaining W-9 records and state quarterly reports, and reconciling accounts;
- Responsible for all aspects of agency payroll including processing bi-weekly paychecks and preparing quarterly and annual reports and providing W-2 forms to employees;
- Perform accounting tasks in preparation for year-end financial reconciliations;
- Assist in administration of benefits programs, including addition and deletion of active employees;
- Maintain accounting files;
- Prepare vendor purchase orders;
- Effects transfer of funds between bank accounts;
- Responsible for accounts receivable activities including monthly and quarterly billing of a variety of revenue sources, including grants;
- Maintains Accounts Payable records including the tracking of various payables;
- Processes monthly and quarterly reports pertaining to a variety of agency activities;
- Quarterly financial grant reporting.

Updated: 04/2023

- 20% Provide support to the Executive Director/CEO and the Board of Directors**
- Prepare all documentation for Board of Directors meetings including agendas, meeting materials, and postings in conformance with the Brown Act;
 - Take and transcribe minutes of the Board of Directors and committee meetings, as assigned;
 - Register Board members for conference, workshops/seminars and coordinates travel and hotel arrangements.

- 10% Receptionist Responsibilities**
- Greet the public politely over the telephone and/or in person and direct inquiries to proper sources or takes messages;
 - Open, date and sort incoming mail and responds to routine information requests;
 - Prepare outgoing mail and packages.

- 20% General Office Duties**
- Monitor, purchase and replenish office supplies as needed;
 - Monitor, purchase and replenish kitchen supplies and refreshments as needed;
 - Oversee maintenance and usage of general office equipment (i.e., copy machine, laser printer, fax machine and postage meter);
 - Copy various files, forms, documents, memos, and distribute to appropriate individuals;
 - Organize and maintain administrative filing systems for Authority correspondence, minutes and vendor invoices;
 - Organize and maintain archived files in accordance with Authority Record Retention Policy;
 - Supervise, when assigned, work of temporary clerical and part-time help;

- 10% Other duties as assigned**

Behavior

The employee shall work well under pressure meeting multiple and sometimes competing deadlines. The employee shall at all times demonstrate cooperative behavior with colleagues, supervisors, contract service provider, and the public.

KNOWLEDGE/SKILLS REQUIRED BY POSITION

Skills & Abilities:

Ability to work with numbers

Ability to work with employees at all levels of the organization

Ability to explain accounting concepts to non-accounting personnel

Ability to perform complex account analyses

Ability to meet frequent and multiple deadlines

Knowledge of:

General accounting concepts
Accounts payable
Accounts receivable
Payroll including state and federal tax requirements
Computerized accounting systems
General office equipment
Microsoft Word and Excel

LICENSE REQUIREMENTS:

Must possess and maintain a current, valid California Driver's License and satisfactory driving record.

ORGANIZATIONAL RELATIONSHIPS

Position reports directly to:

Executive Director/CEO

Position coordinates with:

All Valley Link staff
LAVTA staff assisting Valley Link

QUALIFICATIONS

Requires four years of relevant experience.

AGENDA

ITEM 8





Tri-Valley San Joaquin Valley
REGIONAL RAIL AUTHORITY

STAFF REPORT

SUBJECT: Executive Director's Report
FROM: Kevin Sheridan, Executive Director/CEO
DATE: April 12, 2023

Action Requested

This is an information item. No action is requested.

Background/Discussion

An oral report will be provided at the board meeting.