



Meeting: **Reservoir Committee & Authority Board  
Agenda Item 3.2**

**October 18, 2024**

Subject: **Construction Manager At Risk (CMAR) Procurement Checklist  
Update**

---

**Requested Action:**

Receive a report on the progress being made on preparing for procuring the first Construction Manager at Risk for the Sites Project and provide input on the draft Construction Workforce Policy for the purpose of including a draft for feedback in the Reservoir CMAR Request for Qualifications (RFQ). The first CMAR is planned to cover the reservoir and roads elements of the Project.

**Detailed Description/Background:**

In August, Staff walked through a preparation checklist of items to be finalized prior to the release of an RFQ for procuring the Reservoir CMAR, included in Attachment A. Staff is working through the checklist with policy guidance from the Contract Strategy Ad Hoc and O&E workgroup. Attachment A provides a status update on the progress being made. Board members wishing to provide specific input on checklist items should raise these during the board meeting or can attend the Ad Hoc meetings (up top quorum limits), or can reach out to Staff directly.. Staff will return to the Board with the preparation checklist completed to the satisfaction of the Operations & Engineering (O&E) Workgroup, including responses to the policy questions, before releasing the RFQ. This is anticipated to occur next month.

**Construction Workforce Policy Development**

One component of the checklist includes developing a Project Labor Agreement (PLA) (checklist item 4). Generally the approach being taken to get to a PLA is to start with the Authority describing to prospective CMARs its expectations for the PLA in the form of a Construction Workforce Policy . Staff is preparing a Construction Workforce Policy (Policy) that focuses on:

- Acknowledging the history, working relationship and shared interests between the Sites Authority, the community, the contractor and labor. The unique and shared interests are generally included in Attachment B, which was reviewed with the O&E Workgroup and the Local Community Working Group.
- Providing clear direction on the “must-haves” related to the construction workforce and including these requirements in the PLA and contract documents as appropriate.
- Requiring PLAs for construction contracts utilizing alternative delivery as stipulated in the legislation (AB2551 - authorized alternative delivery on the Sites Reservoir Project).

- Delegating the negotiation of a PLA achieving the Authority’s Construction Workforce Policy to the selected CMAR.
- Balancing the need for flexibility with future work, some of which don’t use alternative delivery, and for early certainty on workforce development.
- Establishing goals and incentivizing behaviors, including establishing metrics and mitigation measures, consistent with the Board-adopted Local Community Working Group policy recommendations.
- Leaving some flexibility to change the Policy as the construction procurement process proceeds to enable input from others that may enhance outcomes.

An initial draft of the Policy is included for review and comment as Attachment C. Staff reviewed the Policy considerations with the O&E workgroup and the draft Policy is consistent with the O&E workgroup’s input. Staff also conducted outreach to eight contractors who identified themselves as interested in serving as the prime contractor and covered several topics including the conceptual workforce policy of the Sites Authority. While the responses varied, generally this approach was seen as commercially viable and, in many cases, favorable as it allows contractors to tailor agreements to conform to the extent possible with their existing labor agreements.

Staff proposes the following steps to achieving a final Policy:

1. Concurrent with completing the preparation checklist, provide an updated version of the draft Policy in the November agenda package.
2. Include the draft Policy in the RFQ and request input from proposers.
3. Use the time ahead of the Reservoir CMAR RFP to finalize the Policy based on discussions with the Local Community Working Group, input from proposers, and coordination with the trades.
4. Board and Reservoir Committee adopt the Policy prior to release of the CMAR RFP.
5. As part of the RFP, request proposers to describe their approach for meeting expectations described in the adopted Policy and score approach as part of the RFP evaluation criteria.
6. Conformance to the Final Policy will be a requirement of the CMAR Contract and the associated PLA.

**Prior Action:**

August 2024: Received a report on the progress being made on preparing for procuring the first Construction Manager at Risk for the Sites Project and direct Staff to work through the O&E Workgroup to address the items in the preparations checklist and come back to the full Board prior to issuing the RFQ.

**Fiscal Impact/Funding Source:**

The Amendment 3 Work Plan includes sufficient budget to cover required resources and activities to implement these next steps for the adopted Contracting Strategy.

**Staff Contact:**

JP Robinette/Jeff Kivett/Pat Tangora/Cheyenne Harris

**Primary Service Provider:**

Brown and Caldwell

**Attachments:**

Attachment A – CMAR Procurement Checklist Status

Attachment B – Shared Interests for Construction Workforce Venn Diagram

Attachment C – Draft Construction Workforce Policy.

Issue	Policy Statement	Status
<p>1. Procurement Process and RFQ Criteria</p>	<p>Which technical and managerial considerations (including community involvement and environmental) should be considered most important to the Authority when establishing evaluation criteria and weights?</p>	<p>Complete. The selection process for the Reservoir Package CMAR should materially conform to the two-step process in Exhibit A. Evaluation criteria should include both non-scored (i.e., pass-fail) criteria to assure the selected CMAR meets minimum requirements needed to assure the Authority’s business interests can be met and scored criteria covering topics to evaluate alignment of the CMAR’s values with the Authority’s values.</p>
<p>2. Role of Board / Reservoir Committee and O&amp;E Workgroup in selection and negotiation</p>	<p>Should evaluations and negotiations be staff led with oversight and advice from the RC and/or O&amp;E, or should RC and/or O&amp;E actively participate in evaluation and negotiations?</p>	<p>Complete. The Executive Director should appoint an Evaluation Committee (EC) to evaluate submitted SOQs and Proposals. EC members should be committed to participate for the duration of the procurement process and should include Authority’s Agents (staff) and staff from up to two Participants. Consultants may serve as advisors to the EC.</p>

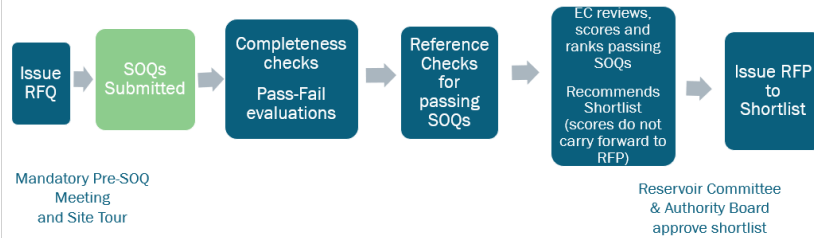
Issue	Policy Statement	Status
3. CMAR Contract including general and supplemental conditions	Are there items in addition to those adopted from the Local Community Working Group that should be considered in the procurement and written into the CMAR contract?	In Progress. Forthcoming discussion in November with Contract Strategy Ad Hoc and Operations & Engineering Workgroup.
4. Project Labor Agreement and Workforce Training Program in alignment with Local Community Working Group recommendations	Should the Authority set general goals but have the PLA (or PLA-like) agreement be negotiated by the selected CMAR contractor, or should the Authority require the selected CMAR contractor to comply with a PLA negotiated by the Authority? What are the interests of the Authority in a labor agreement?	In Progress – refer to Agenda Item 3.2, Attachment C.
5. Scope Revisions including CMAR responsibilities for environmental compliance	How will the Authority manage the interface risk between the mitigation contractor and the Reservoir and Roads CMAR? ; If changes to the Reservoir and Roads CMAR scope are proposed, does it fundamentally change the risk management approach in the adopted contract strategy?	Complete. While the Board finds no need to modify the scope of facilities included in the Reservoir/Roads Package at this time, the CMAR Contract should include provisions authorizing the Executive Director to make adjustments in scope between the construction packages if the Executive Director determines it is in the best interest of the Authority to do so.

Issue	Policy Statement	Status
6. Self-Performance and Subcontracting	What is the appropriate balance and specific considerations when considering qualifications and experience versus securing a competitive bid for the work?	In Progress. Forthcoming discussion in November with Contract Strategy Ad Hoc and Operations & Engineering Workgroup.
7. Insurance and contract security	What level of job site and project delivery risk should the Authority take on versus that which is delegated to the contractor? For example, should the Authority consider adopting an OCIP (Owner controlled insurance program) or CCIP (contractor controlled) approach to managing insurable risks?	In Progress. Forthcoming discussion in November with Contract Strategy Ad Hoc and Operations & Engineering Workgroup.
8. Procurement Policy Revisions	No policy issues currently identified	Forthcoming discussion in November with Contract Strategy Ad Hoc and Operations & Engineering Workgroup.

Exhibit A. Procurement Process Overview

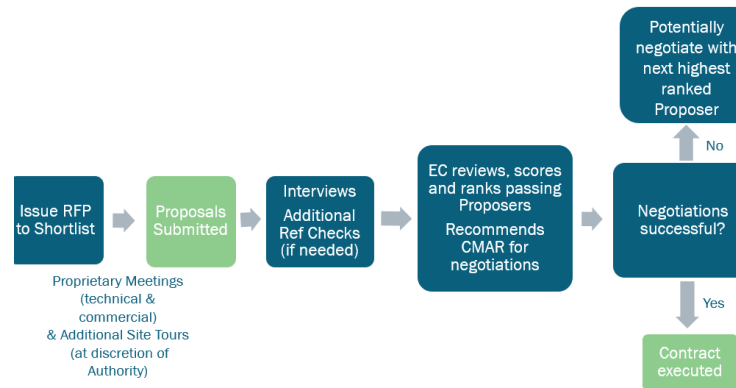
### Procurement Process Overview

EC = evaluation committee  
Slide 1 of 2




### Procurement Process Overview

EC = evaluation committee  
Slide 2 of 2







	DOCUMENT TYPE	Policy
	DOCUMENT NO.	TBD
	ADOPTED	TBD
	LAST UPDATED	n/a

**DRAFT SITES PROJECT AUTHORITY  
CONSTRUCTION WORKFORCE POLICY**

**1. Purpose:**

Sites Project Authority (“Sites Authority”) establishes this Construction Workforce Policy (“Policy”) as a means to communicate its intention to implement project labor agreements (“PLAs”) on certain construction projects using alternative project delivery methods (“Alternative Projects”) to construct the Project, as defined below. Sites Authority acknowledges the history, working relationships, and shared interests of Sites Authority, the local community, the contracting community, and labor, and seeks in this Policy to bring together overlapping workforce interests to facilitate the implementation and completion of a successful Project.

The Sites Authority expects to receive feedback on this Policy through the procurement of construction services and recognizes that such feedback may lead to future revisions which must be adopted by Sites Authority to be in effect.

Assembly Bill (“AB”) 2551, codified in Public Contract Code section 20928 *et seq.*, allows Sites Authority to engage in Alternative Projects to construct individual projects and requires that either the selected contracting entity, including its subcontractors, utilize a skilled and trained workforce to perform work on the project or implements a PLA. Sites Authority desires to implement a PLA on Alternative Projects and has developed this Policy to provide guidelines to the selected contracting entities on the parameters and values to be included in each PLA.

**2. Definitions:**

**Alternative Projects:** Alternative project delivery methods listed in Public Contract Code section 20928.1 including: construction manager at-risk; design-Build, including conventional, progressive, and target price; and design-build operate.

**Local Area:** Project Area plus Butte, Placer, Sacramento, Shasta, Sutter, and Tehama counties

**Project Area:** Colusa, Glenn, and Yolo counties.

**Project Labor Agreement (or “PLA”):** A pre-hire collective bargaining agreement that establishes terms and conditions of employment for a specific construction project or projects and is an agreement described in Section 158(f) of Title 29 of the United States Code. (See Public Contract Code, § 2500(b)(1).)

**Sites Project Authority (or “Sites Authority”):** The Sites Project Authority, an independent joint powers authority established pursuant to the Joint Exercise of Powers Agreement to exercise powers common to the Sites Authority members to, among other things, effectively study, promote, develop, design, finance, acquire, construct, manage, and operate Sites Reservoir and related facilities such as recreation and power generation.

**Sites Reservoir Project (or “Project”):** The entire physical infrastructure and capital improvements to be designed, constructed, commissioned, and completed by the Sites Authority. The Project will be procured through numerous separate contracting vehicles, potentially including traditional design/bid/build and Alternative Projects.

**3. Policy:**

**a. Alternative Project-Specific Project Labor Agreements.**

California Public Contract Code section 2500 et seq., governs Sites Authority’s use of a PLA. In compliance with statutory authority, Sites Authority finds that the selected contracting entity for each Alternative Project will be in the best position to manage the risk of staffing labor on specific projects and complying with all labor requirements. Alternative Project-specific PLAs permit the focus of each PLA to include trades applicable to the scope of work and the means and methods of the selected contracting entity. This will help engage involved construction trades, control costs and avoid schedule delays, resulting in successful projects.

Accordingly, Sites Authority shall contractually require each selected contracting entity to negotiate and execute a PLA on each Alternative Project which must meet the minimum requirements specified in this Policy.

**b. Key Terms to be Addressed in Every Project Labor Agreement.**

The Sites Authority has determined that the following are key terms and items that shall be incorporated by the selected contracting entity into each PLA as a minimum.

(i) Public Contract Code Section 2500.

Pursuant to Public Contract Code section 2500, the PLA must include, at a minimum, all of the following taxpayer protections:

- Prohibition on discrimination based on race, national origin, religion, sex, sexual orientation, political affiliation, or membership in a labor organization in hiring and dispatching workers for the project.
- Permission for all qualified contractors and subcontractors to bid for and be awarded work on the project without regard to whether they are otherwise parties to collective bargaining agreements (i.e., whether they are union or non-union).

- Agreed-upon protocol concerning drug testing for workers who will be employed on the project.
- Guarantees against work stoppages, strikes, lockouts, and similar disruptions of the project.
- Requirement that disputes arising from the PLA shall be resolved by a neutral arbitrator.

(ii) Project Area and Local Area Workers.

(1) Training.

A provision encouraging and ensuring employment opportunities for Local Area residents and enable effective construction career pathways. This could include developing, implementing, and administering a construction careers pipeline program to maximize construction career opportunities and provide a path to employment for Local residents. This could also require, among other things, priority for union hall referral of Local residents, identifying and training Local residents interested in entering the construction industry, holding community job fairs, establishing work force development programs, and employing of Local residents as apprentices.

(2) Hiring.

A provision establishing goals for the hiring, training, and retention of Local Area workers and requiring that these Local workers are dispatched from union halls before any other workers. The PLA shall include the following two goals: (1) At least 20% of the total work hours on the project covered by the PLA shall be performed by workers residing in the Project Area; and (2) At least 50% of the total work hours on the project covered by the PLA shall be performed by workers residing in the Local Area.

(3) Apprenticeships.

A provision requiring the use apprentices on the projects as allowed and required by the Labor Code, with measured goals to facilitate, encourage, and assist Local Area workers and transitional workers in enrolling in and progressing through apprenticeship programs in the construction industry.

(4) Other.

Any other provisions that Sites Authority identifies on a project by project basis that when included in a PLA would promote Local Area workforce development.

(iii) Sufficient Workforce.

A provision requiring construction trades signatory to the PLA to use their best efforts to maintain sufficient numbers of skilled craft workers to fulfil the labor requirements of the selected contracting entity on the project.

(iv) Wages.

A provision incorporating union master agreements into the PLA and applying any applicable terms to the covered work, including, among other things, wages scales and fringe benefit rates for the covered work in compliance with current prevailing wage laws and determinations.

(v) Veterans.

A provision to facilitate the inclusion of veterans and service members who are interested in careers in the building and construction industry into the construction trades by participating in "Helmets to Hardhats".

(vi) Management Rights.

A definition of the general working conditions of the employees (safety, working hours, etc.) along with management rights to exercise full and exclusive authority and responsibility for the management and operation of its operations and work forces including, but not limited to, requiring all workers to observe and abide by local laws and regulations.

(vii) Area Contractors.

A provision that excludes specific work or work packages from a PLA that can be provided by Local Area contractors. This would include both work that generally is covered by a PLA, but could be provided by Local contractors, such as trucking, and work outside the jurisdiction of covered work in the PLA, such as porta potty rental, delivery, and maintenance, ranch fencing and gates, and other similar work.

(viii) Disputes.

- Dispute resolution procedures for the settlement of grievances and disputes by parties on the projects. This includes liquidated damages for works stoppages or other disruptions.
- A mechanism to settle jurisdictional disputes between construction trades without work stoppages.

(ix) Subcontractors.

A provision requiring subcontractors on the projects to accept and be bound by the PLA.

(x) Enforcement Provision.

A provision providing Sites Authority the rights of a third-party beneficiary to each project specific PLA, including, but not limited to, the right to terminate the PLA.

(xi) Federal and State Funding.

Depending on final funding contract terms and conditions, if State or Federal funds are used for a specific project, the PLA shall comply with applicable federal and state funding requirements, including, but not limited to, 2 CFR §200.321 and contracting with small businesses, minority businesses, women's business enterprises, and veteran-owned businesses.

**4. Implementing this Policy.:**

Sites Authority authorizes the Executive Director, or designee, to take all necessary steps to implement this Policy. This includes, but is not limited to, the following:

- Requiring all potential contracting entities to provide their strategy for implementation of this Policy during the procurement process that will be considered as part of the Sites Authority's evaluation process as further described in specific Requests for Qualifications and Requests for Proposals.
- Contractually requiring the selected contracting entity to include the applicable Key Terms and its proposed strategy into each PLA.
- Implementing a tracking and reporting system to evaluate contractor performance meeting the requirements of this Policy.

Nothing herein shall be intended to supersede the terms of the contract between Sites Authority and the selected contracting entity to construct Alternative Projects.