



Meeting: **Authority Board Agenda Item 2.2**

November 15, 2024

Subject: **Updated Procurement and Contract Policy**

Requested Action:

Reservoir Committee and Authority Board consider approval of an updated Procurement and Contract Policy.

Detailed Description/Background:

With the upcoming issuance of the Construction Manager At Risk (CMAR) Request for Qualifications (RFQ), staff reviewed the latest federal procurement requirements to ensure the Sites Authority continues to remain in compliance with federal procurement requirements. The attached Updated Procurement and Contract Policy (Policy) has been revised to recognize the latest changes to federal procurement requirements, add elements related to procuring construction services, and to make administrative updates to specific sections of the Policy.

Staff will revise the administrative procurement procedure with all federal procurement requirements to use for the upcoming CMAR and future Sites Authority procurements.

The Budget and Finance Committee was provided with the Updated Policy during their November 8, 2024, meeting. Staff will report on any input received from Committee members during the Board meeting.

Prior Action:

February 2024 – Approved minor revisions to the Procurement and Contract Policy

Fiscal Impact/Funding Source:


The preparation of the Updated Policy was completed within the budgeted funds for CMAR procurement activities.

Staff Contact: Joe Trapasso

Primary Service Provider: Best, Best & Krieger, LLP, Young Wooldridge

Attachments:

Attachment A –Updated Procurement and Contract Policy

	DOCUMENT TYPE	Policy
	DOCUMENT NO.	A02
	ADOPTED	10/27/2021
	LAST UPDATED	2/16/2024

SITES PROJECT AUTHORITY

PROCUREMENT AND CONTRACT POLICY

1. Purpose:

This Procurement and Contract Policy ("Policy") establishes the Sites Project ~~Authority~~Authority's ("Authority") ~~s-service~~ procurement and contract standards for any Procurement by the Authority. These standards align with the values of transparency, accountability, trust, integrity, diversity, and inclusivity and promote ~~the effective procurement of services~~Procurement transactions in a manner that complies with applicable law.

This Policy also defines the policies governing Procurement transactions when using Federal grant funds subject to Title 2 of the Code of Federal Regulations Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards ("Uniform Guidance").

2. Federal Grant Procurement Requirements:

Federal grant compliance requires the Authority to conduct certain Procurements in accordance with written procurement policies and procedures that comply with the requirements set forth in 2 C.F.R. §200.318 to §200.327 of the Uniform Guidance (the, "Federal Procurement Standards"). To the extent applicable, the Federal Procurement Standards are hereby incorporated into and made part of this Policy and shall be complied with in connection with utilization of Federal grant funding by the Authority, in addition to any other specific Federal grant requirements.

The Federal Procurement Standards were updated for a Federal award issued to the Authority on or after October 1, 2024. This Policy incorporates applicable requirements for a Procurement subject to a Federal award issued to the Authority on or after October 1, 2024.

Administrative Procedures to implement this Policy and the Federal Procurement Standards, will be established. This includes, but is not limited to, the following sections:

- Administrative oversight of contractors.
- Economical approach to Procurement.
- Detailed and documented records.
- Settlement of Procurement issues.
- Full and open competition.
- Procurement preferences.
- Description of technical requirements in Procurements.
- Prequalification lists.
- Cost and price analysis.
- Method of contracting.
- Federal agency or pass-through entity review of procurement and contract documents.
- Domestic preferences for procurement.
- Procurement of recovered materials.
- Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment.
- Required contract provisions.

For a Procurement not funded by a Federal grant, the Executive Director may make a determination that following the Federal Procurement Standards is not in the best interest of the Authority and waive any such requirements so long as the Procurement is consistent with the rest of this Policy.

3. ~~2.~~ Definitions:

Adequate Number: At least two ~~service procurement/proposal submissions~~ bidders or proposers.

Administrative Procedures: A separate detailed documentation of processes that is developed, implemented, and revised by staff.

~~Professional Services: Services performed by a firm or vendor that is selected based on qualifications applicable to the services sought.~~

Alternative Project Delivery Method: An alternative project delivery method for the procurement of Construction Services including Construction Manager At-Risk, Design-Build, Design-Build Operate, or any other alternate method of project delivery that the Authority is authorized by law to utilize, as further detailed in this Policy.

Competitive ~~Proposal~~ Proposals: Procurement method by which more than one ~~service~~ Services provider is solicited to submit a proposal, qualifications, or offer to perform services, as further detailed in this Policy.

Competitive Sealed Bids: Formal Procurement method that allows selection of a Services or Materials provider based principally on cost, as further detailed in this Policy.

Construction Manager At-Risk: An Alternative Project Delivery Method in which a construction manager is procured to provide preconstruction services during the design phase of the project and construction services during the construction phase of the project. The structure of the contract for such services is within the discretion of the Authority, subject to applicable law.

Construction Services: The erection, construction, alteration, repair, or improvement of any water storage facility, pipeline, public structure, building, road, or other improvement of any kind.

Contract: A legally binding agreement to exchange something of value between two or more parties, one of which is the Authority. Contracts can include but are not limited to, any agreement intended to have a binding effect, such as consulting services agreements, purchase orders or task orders.

Contract Negotiation: The process of coming to an agreement on a set of legally binding terms, conditions, rights, obligations, and legal considerations.

Delegation of Authority Matrix: A separate document providing delegations of authority as approved by the Reservoir Committee and Authority Board.

Design-Build: An Alternative Project Delivery Method pursuant to which design and construction are procured from a single entity. The selection of the entity occurs before the development of complete plans and specifications. Design-Build includes conventional Design-Build, progressive Design-Build, and target price Design-Build.

Design-Build-Operate: An Alternate Project Delivery Method pursuant to which design, construction and operation are procured from a single entity.

General Services: All services, other than Professional Services or Construction Services, as the Authority may, from time to time, find necessary and proper for the functioning of the Authority. Examples include, but are not limited to, maintenance, janitorial, software, and other services which do not require any unique skill, special background or training.

Materials: Any supplies, materials, articles, equipment, apparatus, vehicles, things, or property, other than real property, furnished to be used by the Authority.

Micro-Purchase: A Procurement that may be used with a value under a dollar threshold, which permits a non-competitive acquisition of Services and Materials, as further detailed in this Policy.

Non-competitive Procurement: Procurement method that results from ~~only one Professional Services provider responding to a Request for Proposals (RFP)~~an Authority finding that a non-competitive procurement is warranted, as further detailed in this Policy.

Procurement: The process for requisitioning ~~goods or services~~Materials or Services for the Authority with an agreed-upon scope, schedule, and deliverables.

Professional Services: Services performed by any specially trained and experienced firm or vendor providing services and advice in financial, economic, accounting, engineering, information services, technical, architectural or other similar professional matter. Award for Professional Services contracts shall be on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required, at a fair and reasonable price.

Project: The Sites Reservoir Project.

Public Notice: a posting made by the Authority within the procurement section of its website.

Services: Either Professional Services, General Services, or Construction Services.

Simplified Acquisition Procedures: A simple and informal competitive Procurement that may be used for securing Services and Materials that are valued under a federally mandated dollar threshold, as further detailed in this Policy.

Stakeholder(s): Agents, and employees, ~~and~~ of the Authority, along with Reservoir Committee and Authority Board members, including under certain circumstances, an existing ~~Professional Service provider~~firm providing Services and contracted by the Authority.

4. ~~3.~~ **Policy:**

Procurements will be conducted to acquire Professional Services ~~or materials~~, General Services, Construction Services, or Materials that are deemed necessary by the Authority to implement the Project. The Executive Director is authorized to initiate ~~procurement of Professional~~Procurement of Services or ~~materials~~Materials on behalf of the Authority. Contracts may be awarded by the Authority after evaluating ~~quality, expected life,~~

~~and other~~ factors deemed necessary to ensure the best outcome for the Project, as required by this Policy and applicable law. Funds to support Contract payments will be authorized within the approved Authority budget and not to exceed the Contract authority provided by the Authority Board at the time of Contract award.

5. Conduct During Procurements:

In addition to the Authority's Conflict of Interest Code and conduct standards applicable to Stakeholders through their ~~designating~~designated agencies, Stakeholders shall abide by the standards listed below, consistent with 2 C.F.R. §200.318(c), to promote fair and open competition ~~while a procurement is being conducted~~during a Procurement:

- No Stakeholder ~~shall participate in the selection, award, or administration of a bid or Contract if the individual has~~with a real or apparent conflict of interest shall participate in selection of a proposal or bid, or award or administration of a Contract, as determined by the Authority Board. A conflict of interest could include a circumstance in which a Stakeholder, any member of the Stakeholder's family, the Stakeholder's business partner, or an organization that employs or is about to employ any of the parties indicated herein has a financial interest or other personal benefit ~~in Contract with the Professional Service provider or other contracting party~~or interest in an entity considered for a Contract. The Authority shall not enter into any Contract in which a financial interest described above renders a Contract impermissible as a matter of law.
- During the pendency of the ~~procurement process~~Procurement provided for in this Policy, Stakeholders shall neither solicit nor accept Fair Political Practices Commission (FPPC) reportable gratuities, gifts, consulting fees, trips, or favors from a potential ~~Professional Services~~or Materials provider, ~~or~~ from the immediate family or employees of a ~~Professional Services~~or Materials provider, ~~potential Professional Services provider,~~a proposer or bidder, or from any party to a sub-agreement or ancillary ~~Contract~~contract entered into pursuant to a Contract. If a Stakeholder has received any such FPPC reportable gratuity, gift, consulting fee, trip or favor during the twelve-month period preceding the commencement of a ~~procurement~~Procurement process, that Stakeholder shall not participate in any stage of the ~~procurement process~~Procurement.
- The violation of these standards of conduct will subject the violator to any disciplinary proceedings or action deemed appropriate by the Executive Director or Authority Board, as applicable, and allowed by the Authority's internal regulations.

6. Procurement Methods ~~and Resulting Contract Types~~:

- a. **Micro-Purchase:** ~~Micro-purchase~~Micro-Purchase enables non-competitive acquisition of ~~Professional Services~~ or ~~materials~~Materials in which the aggregate dollar amount of a single contract does not exceed \$10,000 as may be periodically adjusted. To the extent practicable, the Authority should distribute Micro-Purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive price or rate quotations if the Authority considers the price reasonable based on research, experience, purchase history,

or other information; and maintains documents to support its conclusion. The Executive Director may approve and ~~complete micro purchases~~ award Micro-Purchases.

~~b. Small Purchase~~ Simplified Acquisition Procedures: ~~Small purchase procedures~~ Simplified Acquisition Procedures provide a simple and informal competitive ~~procurement~~ Procurement method for securing ~~Professional Services, materials~~ or Materials, or other property that do not cost more than the simplified acquisition threshold ~~of~~ , currently established as \$250,000, as may be periodically adjusted by the federal government. Price or rate quotations must be obtained from an Adequate Number of providers. ~~\$250,000. The Executive Director may approve and complete the procurement of necessary Professional Services, materials, or combination thereof in any amount of no more \$100,000 per occurrence, or in aggregate. Purchases of materials, supplies, Professional Services, or equipment over \$100,000 must be approved by the Reservoir~~

~~Committee and Authority Board~~. A formal written Contract will be awarded to the ~~highest value~~ Services or Material provider providing the best value to the Authority, as determined by the ~~Executive Director~~. ~~The Executive Director will determine the type of Contract to be awarded~~ Delegation of Authority Matrix.

c. **Competitive Sealed Bids:** ~~Publicly~~ Competitive Sealed Bids is a Procurement method in which bids are publicly solicited ~~and~~ through a formally advertised ~~procurement method~~ invitation that allows selection based principally on cost, and if ~~applicable, will result in an award of a Contract to the lowest responsive~~ and awarded, is awarded to the responsible bidder whose bid conforms with all the material terms and conditions of the invitation and is lowest in price. These are bids that are publicly solicited primarily for ~~Construction~~ non-Alternative Project Delivery Method-Construction Services, and Materials ~~Purchase, or Technical Services~~, and is used for Procurements over the current Simplified Acquisition Threshold. The following are required in a Competitive Sealed ~~Bid procurement~~ Bids Procurement:

- Bids must be solicited from an ~~adequate number~~ Adequate Number of known ~~suppliers and must provide~~ bidders, providing them with sufficient response time prior to the established bid opening date.
- The invitation for bids ~~will include any specifications and pertinent attachments and~~ must adequately define the supplies or services with specific information, including any required specifications for the bidder to properly respond.
- If bid security is determined necessary for a solicitation, the requirement shall be included in the bid documents, and bidders shall provide such security in the form required by the bid documents.
- All ~~responsive~~ bids will be opened publicly at the time and place described in the invitation for bids.
- A firm fixed-price Contract ~~award will be made~~ is awarded in writing to the lowest ~~bid, responsive,~~ and responsible bidder. ~~Where~~ When specified in ~~bidding documents~~ the invitation for bids, factors such as discounts, transportation cost, and life-cycle costs will be considered in determining which bid is the lowest.
- A low bidder may be rejected due to non-responsiveness.
- A low bidder may be rejected due to ~~non-responsiveness or~~ non-responsibility after a notification of and evidence for rejection and an opportunity to present evidence as a rebuttal are provided.
- ~~Any or all bids may be rejected if the above standards are not satisfied by any bidder.~~
- The Authority may reject any or all bids provided there is there is a sound documented reason, to the extent permitted by applicable law, and may readvertise in its sole discretion.

- If tie bids are received, award shall be made by a drawing of names or flipping of a coin between those bidders submitting bids that are equal in all respects. If time permits, the bidders involved shall be given an opportunity to attend the drawing. The drawing shall be witnessed by at least three persons.

• ~~Sealed bids may be provided in addition to a Competitive Proposal.~~

d. **Competitive Proposals:** ~~Competitive Proposal procurements are generally a qualifications-based selection process which~~ Proposals is a Procurement method generally used when conditions are not appropriate for using Competitive Sealed Bids and may be used for Services or Materials, as may be authorized by the Executive Director. Proposals are solicited by a publicized Request for Proposals (RFP) or request for qualifications (RFQ) ~~that identifies~~. They are awarded in accordance with the following requirements:

- RFPs/RFQs require public notice and all evaluation factors and their relative importance. ~~The Executive Director may authorize the release of an RFP or RFQ~~ must be identified. Proposals must be solicited from an Adequate Number of qualified ~~sources~~. ~~Complete responses received from responsible sources by the date and time specified within the RFP or RFQ will be considered to the maximum extent practical. Competitive Proposal procurement may include an interview process.~~ entities. To the maximum extent practicable, any proposals submitted in response to the public notice must be considered;
- The Authority must have written procedures for conducting technical evaluations and making selections;
- Contracts must be awarded to the responsible offeror whose proposal is most advantageous to the Authority considering price and other factors;
- The Authority may use Competitive Proposal procedures for qualifications-based procurement of Services whereby the offeror's qualifications are evaluated, and the most qualified offeror is selected, subject to negotiation of fair and reasonable compensation;
- If Contract Negotiation, including price, cannot result in terms acceptable to the Authority, the Authority reserves the right to negotiate acceptable contract terms with next qualified bidder. ~~The Authority will rank responsive and responsible proposals based on qualifications best meeting the needs of the Authority as determined by the Authority's Executive Director or designee. Competitive Proposals may include cost evaluation in the form of a sealed bid. The method for evaluating proposals is further defined in the Administrative Procedure;~~ and
- When the Procurement is subject to Federal Procurement Standards, a competitive proposal where the price is not considered, can only be used to procure architectural/engineering (A/E) professional services.

e. **Alternative Project Delivery Methods.** The Authority is authorized pursuant to Public Contract Code section 20928 et. seq. to utilize an Alternative Project Delivery Method for the Project.

The Authority may award an Alternative Project Delivery Method Contract on a best value basis or to the lowest responsible bidder, as determined by the Authority and set forth in the applicable solicitation documents.

Subject to the requirements of Public Contract Code section 20928 et. seq. and other applicable law, the Executive Director is authorized to establish procurement procedures that he or she determines are in the best interest of the Authority for each Alternative Project Delivery Method.

f. **Noncompetitive Procurement:** There are specific circumstances in which the Authority may use Noncompetitive Procurements.

~~e. **Sole Source Proposal:** The Authority uses~~When the Procurement is subject to Federal grant compliance and must comply with the Federal Procurement Standards, this procurement method that solicits a proposal from only one Professional provides for procurement of Services provider and Materials under any one of the following conditions:

- ~~• Unique Professional Services, expertise, specialized knowledge, or proprietary materials are required for which there are no other known providers.~~
- The aggregate amount of the Procurement transaction does not exceed the Micro-Purchase threshold.
- The Procurement transaction can only be fulfilled by a single source;
- The public urgency or emergency for the requirement will not permit a delay resulting from providing public notice of a competitive solicitation;
- Written approval from the Federal funding source to use a Noncompetitive Procurement; or
- ~~• Authority declared public emergency exists~~After soliciting several sources, competition is determined inadequate.
 - ~~• Express authorization by funding or permitting and oversight agencies.~~

In addition to the above Noncompetitive Procurements, the Authority may use the following Noncompetitive Procurements when the Procurement is not subject to Federal grant compliance:

- ~~• Or otherwise, when~~When public policy goals underlying the Competitive Sealed Bid Bids or Competitive Proposal process will not be achieved.;
- When Authority determines that a competitive market does not exist or that the Authority will not gain a competitive advantage by using the any of the Procurement methods in this Policy;

- When the Authority determines that: (1) a competitive procurement procedure has been conducted by another public agency, including, but not limited to, another local agency, the State through the California Multiple Award Schedule (CMAS), the federal government through the General Services Administration (GSA), or a joint powers agency, authority or alliance that procures competitive contracts; and (2) the price to the Authority is equal to or better than the price to that public agency;
- When expenditures are mandated by law or regulation, such as utilities, postage, waste disposal fees or other non-negotiable permit, use or application fees; or
- When, except where otherwise prohibited by law, the Authority authorizes the award and execution of contracts for Services or Materials without following the required Procurement methods, provided that the Authority finds that such award is in the best interest of the Authority, or of the public health, safety, and welfare.

~~Non-competitive Proposal procurement results in either a fixed price or cost-reimbursement type contract.~~

g. Procurement Procedures. To the extent permitted by law, the Executive Director is authorized to establish additional procurement procedures consistent with this Policy that he or she determines are in the best interest of the Authority.

7. Contracts:

a. **Contracting Authority:** On behalf of the Authority, the Executive Director may:

- ~~Authorize service, award, and amend~~ Contracts for Services and Materials up to the amount specified in the approved Delegation of Authority Matrix for any ~~Professional~~ Services except legal services.

~~• Authorize purchase Contracts up to the amount specified in the approved Delegation of Authority Matrix.~~

~~• Amend Contracts within the approved Contract budget.~~

- Conduct Contract ~~negotiations~~ Negotiations.

~~• Delegate any of the authorities herein to the Authority agent responsible for management of the applicable Contract.~~

~~On behalf of the Authority, the agent responsible for Contract management may authorize notices to proceed for existing contracts.~~

~~On behalf of the Authority, the Reservoir Committee and Authority Board, in alignment with each other, may:~~

~~• Authorize Professional Services Contracts for legal services.~~

~~• Authorize Contract amendments that exceed the Executive Director authorized amount as stated in the Delegation of Authority Matrix.~~

b. **Contract Negotiations:** A Contract requires among the parties a common understanding of the Contract's terms, conditions, rights, obligations, and legal considerations. Contract Negotiations will be conducted in good faith to reach agreement on Contract terms and conditions. The Executive Director or designee will conduct Contract Negotiations on behalf of the Authority.

c. **Payment and Performance Bonds; Insurance:**

- Payment Bonds are required by law on all Construction Services in excess of \$25,000. The bond requirement shall be included in applicable bid documents and Contracts.
- Insurance shall be required for all Contracts, unless otherwise determined by the Authority. -The type and levels of insurance shall be determined based on project specific risk factors and Authority's liability exposure.

d. **Prohibited Methods of Contracting.** The Authority shall not use the cost plus a percentage of cost or percentage of construction cost methods of contracting for any work for which Federal grant reimbursement will be sought.

8. Diversity and Inclusion:

~~The~~When the Procurement is subject to Federal grant compliance and must comply with the Federal Procurement Standards, the Authority will take the following affirmative steps to ensure ~~local businesses,~~ small businesses, minority businesses, women's business enterprises, ~~disadvantaged veteran business enterprises,~~ and labor surplus area firms¹ are used when possible:

- ~~Placing qualified local businesses, small and minority businesses, women's business enterprises, and disadvantaged veteran business enterprises on solicitation lists whenever they are potential providers.~~
 - These business types are included on solicitation lists;
 - These business types are solicited whenever they are deemed eligible as potential sources;
 - When economically feasible, ~~segmenting~~dividing total requirements into smaller tasks or quantities to permit maximum participation by ~~local businesses, small and minority businesses, women's~~these business enterprises, ~~and disadvantaged veteran business enterprises.~~types;²

¹ If the Procurement is under a Federal award issued to the Authority on or after October 1, 2024, these business types shall also include veteran-owned businesses.

² If the Procurement is under a Federal award issued to the Authority on or after October 1, 2024, the sentence shall be replaced with the following: "Dividing procurement transactions into separate procurements to permit maximum participation by these business types."

- Establishing delivery schedules, where the requirement permits, that encourage participation by ~~local businesses, small and minority businesses, women's~~ these business ~~enterprises, and disadvantaged veteran business enterprises.~~ types;
- Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- ~~If subcontracts are allowed, requiring~~ Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed above.

When the Procurement is not subject to Federal grant compliance and to the extent permitted by law, the businesses types above shall also include local businesses and disadvantaged veteran business enterprises.

9. ~~4-~~ **Process:**

Procurements will be conducted in accordance with this Policy and the Administrative Procedures.

10. ~~5-~~ **Reporting:**

All Competitive Sealed ~~Bid~~ Bids and Competitive ~~Proposal procurements~~ Proposals Procurements will be publicized by posting to the Authority website, an email notification to firms on solicitation lists, and any other public platforms deemed necessary or appropriate by the Authority.

All ~~procurements~~ Procurements authorized and Contracts executed by the Executive Director will be reported in alignment with the approved Delegation of Authority Matrix. The authorization of any Contract, Contract amendment, or justification for ~~Non-competitive~~ Noncompetitive Proposal ~~procurement~~ Procurement will be documented in the approved minutes of the appropriate Reservoir Committee and Authority Board meeting(s). In the instance of an emergency Procurement, the Executive Director will provide immediate notification to the Authority Board and Reservoir Committee and provide a justification at the next Reservoir Committee and Authority Board meeting(s) for any Contract entered into in response to an emergency, or, where feasible, will attempt to acquire authorization from the Reservoir Committee and Authority Board to enter into a ~~contract~~ Contract in response to an emergency. Any protest of an award and potential recourse of a respondent to a Procurement may be presented in the method specified in the ~~RFP/RFQ or at an Authority Board meeting~~ Procurement.