



**Item #13-6-3
Action**

Government Relations & Public Affairs Committee

June 3, 2013

Updated SACOG Purchasing Policies and Procedures

Issue: Whether to recommend that the Board of Directors approve the proposed updates to SACOG's Purchasing Policies and Procedures.

Recommendation: That the Committee recommend that the SACOG Board approve the attached, updated Purchasing Policies and Procedures.

Discussion: SACOG's Purchasing Policies and Procedures ("Purchasing Policies") set forth the procedures used to ensure an efficient, fiscally responsible purchasing system for the acquisition of goods and services. The Purchasing Policies also delineate the contracting authority of SACOG staff and the SACOG Board.

SACOG's current Purchasing Policies were adopted approximately eight years ago, in June 2005. Staff has prepared a comprehensive update to the current Purchasing Policies to consolidate various related policies in one document, to provide additional detail regarding the various contracting procedures used to establish third party consulting contracts, and to incorporate new state and federal guidance and regulations.

Based on comments from the Committee in the recent past about the low level of contracting authority, staff examined the contracting authority delegated to the executives at a number of SACOG member agencies, as well as state and federal guidance available on third party contracting compliance. Based on that review, staff is recommending an increase in delegated authority to staff.

A summary of the key differences between the current Purchasing Policies and the proposed update is provided in **Attachment A**. A complete copy of the updated Purchasing Policies is provided in **Attachment B**.

Approved by:

Mike McKeever
Chief Executive Officer

KT:le
Attachments

Key staff: Kirk E. Trost, Chief Operating Officer/General Counsel, (916) 340-6210

Attachment A

Summary of Key Differences

The proposed update to the Purchasing Policies and Procedures (“Purchasing Policies”) includes the following key additions and modifications:

- Environmental and Energy Efficiency Preference: This is a statement that, to the extent practicable and economically feasible, federally funded procurements will reflect a preference for products and services that conserve natural resources, protect the environment, and are energy efficient. This statement is required under recently enacted federal regulations.
- Code of Conduct: This is a policy prohibiting SACOG employees and Board members from participating in the selection, award, or administration of a contract in which that person has a conflict of interest. It also sets forth the potential disciplinary action that will be applied to SACOG employees who violate the policy. The proposed Code of Conduct is generally consistent with the Code of Conduct SACOG included in its application for its HUD Sustainable Communities regional planning grant.
- Increased Contracting Authority: The current Purchasing Policies include a contract approval threshold of \$20,000 for SACOG’s Chief Executive Officer. Outside counsel undertook a survey of executive approval thresholds for several of SACOG’s member agencies, including the Cities of Sacramento, Folsom, Rancho Cordova, and Elk Grove, and the County of Sacramento. Based on that survey, counsel recommended an increase in the delegated contract authority to \$50,000, which is in the lower range of the member thresholds reviewed.
- Local Contracting Preference: Staff has incorporated the approved Local Contracting Preferences and Business Engagement Strategy, as discussed and approved by the SACOG Board in April 2013.
- Revised Procurement Thresholds: The current Purchasing Policies require formal bidding for contracts in excess of \$20,000, and require the SACOG Board to approve RFP’s in excess of this amount, unless the scope of work is included in the Overall Work Program (“OWP”) or SACOG budget. The revised policy increases the threshold for formal bidding and RFP approval to \$50,000, consistent with the recommended increase in contracting authority for the CEO. The update does not modify the requirement that RFPs be brought to the SACOG Board for approval if they are not included in the OWP or budget. Again, the new threshold is in the lower range of similar member thresholds reviewed.
- Procedures for Sealed Bids: This is a procedure for utilizing sealed bids that must be awarded to the lowest price, responsive, responsible bidder, when required by state or federal law, such as construction contracts, or when a firm, fixed price contract is appropriate and no discussion with bidders is needed.

- Procedures for Architectural and Engineering Services Contracts: This section documents the qualifications-based bidding procedure currently utilized by SACOG for Architectural and Engineering services, as defined by state and federal law. These procedures require that bidders be ranked based on qualifications, without consideration for price. Once the most qualified bidder is identified, the cost proposal for that bidder can be opened and the price can be negotiated. Failing an agreement on price, SACOG can negotiate with the next most qualified bidder until an agreement can be reached at a fair price.
- Sole Source Contracting Procedures: This section provides additional detail regarding when sole source contracting is appropriate based on the type of funds to be utilized (i.e., federal vs. local funding).
- Additional Advertising Requirements: This section has been revised to reflect SACOG's current practice of publishing notice of a procurement on its website and in a newspaper of general circulation, as required by state and federal contracting regulations.
- Protest Procedures: The update incorporates a bid protest procedure, consistent with SACOG's current practices and federal law.
- Performance and Payment Bond Requirements: The update incorporates standard federal requirements related to performance and payment bonds for construction contracts.
- Cost or Price Analysis (Attachment A to Purchasing Policies): The update includes a template cost or price analysis to be completed before every federal procurement over \$2,500 to independently ensure that SACOG is receiving goods and services at a reasonable price. The use of a template will standardize the required cost and price analysis process performed by SACOG Project Managers.
- History of the Procurement (Attachment B to Purchasing Policies): The update includes a template form to standardize documentation of each Project Manager's rationale for selecting a method of procurement (e.g., sole source vs. request for proposals) and rationale for the type of contract awarded (e.g., time and materials vs. fixed price).
- Documentation of Quotes Acquired by Telephone (Attachment C to Purchasing Policies): The update includes a template form to standardize documentation when telephone quotations are used for contracts under \$50,000, pursuant to the Purchasing Policies.
- Guidelines for Evaluating RFPs (Attachment D to Purchasing Policies): This form provides suggested criteria for evaluating proposals submitted in response to RFPs, to standardize SACOG's evaluation process.



SACRAMENTO AREA COUNCIL OF GOVERNMENTS
PURCHASING POLICIES AND PROCEDURES

Adopted _____, 2013

TABLE OF CONTENTS

I.	GENERAL PROVISIONS	1
II.	AWARDING OF CONTRACTS	6
III.	METHODS OF PROCUREMENT	10
IV.	ADDITIONAL BIDDING PROCEDURES	16
V.	MODIFICATION OR AMENDMENT OF CONTRACTS	21
VI.	CONTRACT FORMS AND APPROVALS	23
VII.	PERFORMANCE AND PAYMENT BONDS	24
ATTACHMENTS		
A.	COST OR PRICE ANALYSIS	25
B.	HISTORY OF THE PROCUREMENT	30
C.	DOCUMENTATION OF QUOTATIONS ACQUIRED BY TELEPHONE	31
D.	GUIDELINES FOR CRITERIA AND CONSIDERATIONS IN EVALUATING RFP'S	32

I. GENERAL PROVISIONS

A. Introduction and Purpose

These Purchasing Policies and Procedures (“Procedures”) are established for use by the Sacramento Area Council of Governments, a Joint Powers Authority (“SACOG”), for the award of SACOG Contracts.

SACOG is responsible for its own product and services acquisitions. This process includes ensuring the necessity of procuring the product or service, ensuring appropriate funding is available, complying with laws, and writing contracts in a manner that safeguards the program’s and the organization’s interest. These Procedures are designed to ensure the best and most cost effective use of program funds through an open and fair procurement process.

SACOG management must maintain a written record of all persons authorized to sign contracts, including copies of all resolutions or letters delegating such authority to SACOG personnel.

These Procedures are for the use of SACOG’s Board of Directors and staff and shall not be construed to create or recognize any procedural or other right in any person or entity, including, but not limited to, any bidder, prospective bidder, or party to a Contract with SACOG. The Board of Directors may adopt standard specifications setting forth procedures and controls for Contracts and the bidding and award thereof, to modify or supplement these Procedures. The Board of Directors may amend these Procedures from time to time.

B. Policy

It is the policy of SACOG that goods and services be acquired through a procurement process that provides full and open competition to the maximum extent feasible, consistent with federal and state statutes and regulations and that such procurements shall be consolidated, whenever possible, to ensure efficient use of SACOG staff resources. SACOG will only contract with responsible contractors possessing the ability to perform successfully.

No Board member, officer, employee or agent of SACOG shall, on the grounds of race, color, creed, national origin, sex, age, or sexual orientation, discriminate or permit discrimination against any person or group of persons in connection with the procurement of goods and services.

It is the policy of SACOG that SACOG and its contractors shall take all reasonable steps to ensure that disadvantaged business enterprises (DBEs) have the maximum opportunity to compete for SACOG contracting opportunities.

C. Responsibilities

The SACOG Finance Manager or equivalent position (“Finance Manager”) is responsible for

administration of this policy, and for ensuring funds are available. The Finance Manager may delegate responsibility for implementation to staff members of the Finance Department.

Under the authority of the Finance Manager, the Finance Department shall develop and maintain standard purchasing forms, purchase orders, and other forms as necessary to implement this policy and the procedures identified.

SACOG Directors and Team Managers are responsible for becoming familiar with this policy and for adhering to and carrying out this policy in their departments, for ensuring that these procedures are followed, for approving or recommending approval of the procurement of goods and services necessary to accomplish the goals of SACOG, and for reviewing the proposed procurements to avoid the purchase of unnecessary or duplicative items. SACOG Directors may delegate these responsibilities to the Project Manager or Team Manager initiating the procurement.

D. Definitions

1. “A&E Contract” means a contract for architectural or engineering services, which includes program management, construction management, feasibility studies, preliminary engineering, design, architectural, landscape architecture, environmental services (including environmental documentation), engineering, surveying, mapping, and related services. Such services must be directly in support of, directly connected to, directly related to, or lead to construction, alteration, or repair of real property.
2. “Board” means SACOG’s Board of Directors.
3. “Construction Contract” means a contract for a specified individual project of construction, alteration, renovation, improvement, demolition, or repair work involving a public facility, but not including Maintenance.
4. “Contract” means a Construction Contract, Special Services Contract, Supply Contract and any other agreement, whether written, oral or otherwise, that evidences a legal obligation, including, but not limited to, any contract, lease, purchase order, change order, or similar thing, and any amendment thereto.
5. “Director” means the responsible SACOG employee at the Director level of management.
6. “Emergency” means a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss and impairment of life, health, property, or essential public services.
7. “Chief Executive Officer” or “CEO” means the Chief Executive Officer of SACOG or another individual given written authorization by the Board of Directors or the CEO, to enter into a transaction on behalf of SACOG.

8. “Invitation for Bid” or “IFB” means a solicitation for sealed bids which will be awarded to the responsible, responsive bidder whose bid is lowest in price and conforms to all the material terms and conditions in the IFB.
9. “Non-Federal Contracts” means a Contract that will be funded with State and/or local funds only. No federal funds will be utilized to pay the selected vendor or contractor.
10. “Maintenance” means ongoing maintenance and other services, including, but not limited to, real property maintenance, janitorial services, elevator maintenance and repair, equipment maintenance and repair, landscaping and other such services.
11. “Project Manager” means the SACOG staff member assigned administrative responsibility for a Contract or procurement.
12. “Purchase” means the purchase, rental, or leasing of supplies, goods, equipment, materials, and other personal property.
13. “Request for Proposal” or “RFP” means a solicitation for competitive proposals, used to acquire services, supplies, or property. “Request for Proposal” (“RFP”), as used in these Procedures, also includes a “Request for Qualifications” (“RFQ”).
14. “Special Services Contract” means a contract for special services which cannot readily be provided by SACOG's employees. "Special Services" include, but are not limited to, financial, economic, accounting (including the preparation and issuance of payroll checks and warrants), legal, medical, administrative, security, maintenance, operational, advertising, and related services and any other services of a similar nature.
15. “Supplies” means supplies, goods, equipment, materials, and other personal property, excluding such items used in or incorporated into a specified individual project of construction, alteration, renovation, improvement, demolition, or repair work involving a public facility.
16. “Supply Contract” means any Contract for the Purchase of Supplies.

E. Basic Contracting Process

The contracting process starts with the recognition of a need for a product or service. From that point the process varies depending on the type of product or services needed. Key considerations include:

- *Time* – When the product or service is needed is a critical factor.
- *Cost and Funding* – Funding and payment for services rendered is important. The program should have funding available within its budget for the fiscal year in which the required services will be performed. If a multi-year contract, the necessary contingencies should be incorporated into the terms of the contract.

Prior to commencing any procurement or amending an existing contract that is over \$2,500 and utilizes federal funds, the Project Manager must complete a Cost or Price Analysis Form, attached hereto as Attachment A.

- *Competitive Bidding* – Selection of a contractor must be the result of an open and fair process in which all qualified providers of the product or service desired have the opportunity, and the information necessary, to submit a bid or proposal.
- *Management of the Contract* – The final step of managing the contract should be anticipated and planned during the contracting process. Deliverables should be clearly described so that they can be evaluated and payments can be approved.

For each contract utilizing federal funds and in excess of \$2,500, the contract file must contain a completed “History of the Procurement,” in the form attached hereto as Attachment B. This form must be completed by the Project Manager as applicable for each project.

F. Environmental and Energy Efficiency Preference

To the extent practicable and economically feasible, federally funded procurements will reflect SACOG’s preference for products and services that conserve natural resources, protect the environment, and are energy efficient.

G. Record Keeping

SACOG shall prepare and maintain purchasing and financial records, covering procurement transactions as well as other aspects of project implementation for three years after final payment has been made and all other pending matters are closed. No purchase shall be made without an authorized Purchase Order, pursuant to SACOG’s approved Purchase Order Policy.

H. Federal Contract Requirements

Federally funded contracts shall require compliance with Federal law and shall include the following contract clauses and requirements: “Responsibility” Requirements; Debarment and Suspension; Conflict of Interest; Lobbying Certification and Disclosure; Federal Civil Rights Laws and Regulations; Labor and Prevailing Wage Laws and Regulations; and Disadvantaged Business Enterprise Requirements.

I. Code of Conduct

1. Award and Administration of Contracts: No Board Director, officer, employee or agent of SACOG shall participate in the selection, award or administration of a contract (including purchase orders) if a conflict of interest, real or apparent, would be involved. Such a conflict would arise if any prospective vendor or contractor (or any subcontractor) considered for an award is:

- a. The Board Director, employee, officer or agent;
- b. Any member of his/her immediate family;
- c. His/her domestic or business partner;
- d. An organization that employs any of the above, or with which any of them has an arrangement concerning prospective employment.

No Board Director, officer, employee or agent of SACOG who participates in the procurement, management, or administration of contracts shall have, directly or indirectly, a financial or other personal interest in any contract made or influenced by him/her in his/her official capacity.

No Board Director, officer, employee or agent of SACOG shall solicit or accept gratuities, favors, or anything of monetary value from consultants, vendors, contractors, or potential consultants, or parties to sub-agreements in excess of the applicable gift limit established by the Fair Political Practices Commission ("FPPC"). Gifts shall be reported consistent with FPPC requirements.

No person or entity performing services on behalf of SACOG shall have, directly or indirectly, any financial or other personal interest, other than employment or retention by SACOG, in any contract or subcontract.

Violations of these standards may result in sanctions, or other forms of discipline up to and including termination.

2. **Disciplinary Action:** The purpose of this policy is to provide guidelines consistent with the SACOG Personnel Rules that will insure uniform application of progressive discipline for SACOG employees subject to disciplinary action "for cause." The capitalized term "Employee" as used in this Subsection I.2. includes any employee, officer or agent of SACOG subject to disciplinary action "for cause."

Disciplinary Action for Cause: Disciplinary action against a SACOG Employee shall be for cause, as it may affect work performance and effectiveness within the organization.

Procedures:

- a. **Oral Reprimand:** The Employee shall be counseled concerning the unsatisfactory areas of conduct and shall be informed about methods of improvement, or the Chief Executive Officer may issue an oral reprimand. The seriousness of the Employee's conduct or offense will dictate whether oral or written reprimands or other corrective action is taken prior to initiating action to suspend or dismiss the Employee.
- b. **Written Reprimand:** In cases where an oral reprimand has not been successful or where the infraction of rules and regulations or conduct has been of a more serious nature as determined by the Chief Executive Officer, the Chief Executive Officer may employ the written reprimand. The purpose of the written reprimand is to call the attention of the

Employee to serious defects in his/her conduct. The written reprimand should include a detailed statement of the problem and a notation to the effect that the problem was discussed with the Employee. Only the Chief Executive Officer may issue a written reprimand.

c. Suspension: An Employee may be suspended for a period of time (not to exceed 30 days) in order to impress upon the Employee that continued failure to improve his/her conduct may result in dismissal. The Chief Executive Officer will issue the suspension. The seriousness of the offense will dictate whether oral or written reprimands or other corrective action is taken prior to initiating action to suspend the Employee. Consequently, oral or written reprimands are not a prerequisite to suspension.

d. Demotion: When reprimands or suspension fail to affect satisfactory conduct, or when the Employee's infraction of rules and regulations or conduct has been of a more serious nature as determined by the Chief Executive Officer, the Chief Executive Officer may demote the Employee. Consequently, oral or written reprimands or suspensions are not a prerequisite to a demotion.

e. Termination: When reprimands, suspensions, or demotions fail to affect satisfactory conduct, or when the Employee's infraction of rules and regulations or conduct has been of a more serious nature as determined by the Chief Executive Officer, the Chief Executive Officer may terminate the Employee. Consequently, oral or written reprimands, suspensions, or demotions are not a prerequisite to a termination.

Finally, SACOG employees, officers, and agents who are not subject to disciplinary action "for cause," are covered by written "at-will" employment agreements or other contracts which allow for termination by SACOG for no reason or for any reason, including, but not limited to, violations of the standards set forth in this Subsection I.2. This policy is in addition to any discipline statutorily available for those participating in the selection, award or administration of a contract if a conflict of interest exists. (Cal. Gov. Code, §§ 81000-91014.)

J. References

All applicable federal and state laws and regulations are incorporated by reference in these Procedures to the extent required by law, including but not limited to: 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 et seq.; Office of Management and Budget Circular A-102, *Grants and Cooperative Agreements with State and Local Governments*; 49 CFR, Part 18, *Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Governments*; Chapter 11 of 40 U.S.C., *Brooks Act*; and FTA Circular 4220.1F, *Third Party Contracting Guidance*, and any amendments thereto.

II. AWARDING OF CONTRACTS

Once a vendor has been identified pursuant to the appropriate method of procurement, as set forth in Section III below, a contract must be negotiated. Sample contracts and sample requests for proposals for projects funded with both Federal and Non-federal funds are available to SACOG staff

in computer drive S:/Admin/Forms/Contracts & RFP's. No work shall commence nor may goods be ordered until a contract has been negotiated and approved, as set forth below. A purchase order must also be approved for every procurement, according to SACOG's approved Purchase Order Policy.

Price Threshold	Method of Procurement	Required Approval Level
Under \$2,500	Purchase Order, No Bidding Required	Project Manager
\$2,500 - \$ 10,000	Small Purchase – for Supplies/Special Services RFP – for A&E IFB – Construction (must be approved by CEO)	Director/Project Oversight Management Team Member
\$10,001 – \$50,000	Small Purchase – for Supplies/Special Services RFP – for A&E IFB – Construction	SACOG Chief Executive Officer
More than \$50,000	RFP – for Supplies/Special Services RFP – for A&E IFB – Construction	SACOG Board

A. Supply, Special Service, and Architectural & Engineering Services Contracts

Contracts which involve both Special Services and Supplies shall be deemed Special Services Contracts; except that such contracts for which Supplies account for more than 80% of the contract price shall be deemed Supply Contracts.

1. Expenditures Under \$2,500

Project Managers are authorized to award all Supply Contracts, Special Service Contracts, and Architectural & Engineering (“A & E”) Contracts when the expenditure is less than Two-Thousand, Five Hundred Dollars (\$2,500), as set forth in SACOG's Purchase Order Policy.

2. Expenditures between \$2,500 and \$10,000

SACOG Directors and members of the Project Oversight Management Team are authorized to award all Supply Contracts, Special Service Contracts, and A & E Contracts when the expenditure is between Two-Thousand, Five Hundred Dollars (\$2,500) and Ten Thousand Dollars (\$10,000).

3. Expenditures between \$10,001 and \$50,000

The Chief Executive Officer and his designee are authorized to award all Supply Contracts, Special Services Contracts, and A&E Contracts when the expenditure is between Ten Thousand, One Dollar and Fifty Thousand Dollars (\$50,000).

4. Expenditures Exceeding \$50,000

All Supply Contracts, Special Service Contracts, and A & E Contracts of more than Fifty Thousand Dollars (\$50,000) shall be awarded by the Board of Directors. Such contracts need not be awarded by the Board where the entire contract amount is to be paid by a state or local entity, or another joint powers agency.

B. Construction Contracts

The Chief Executive Officer and his designee are authorized to award all Construction Contracts when the expenditure is Fifty Thousand Dollars (\$50,000) or less. The SACOG Board of Directors shall award all Construction Contracts exceeding Fifty Thousand Dollars (\$50,000).

C. Real Property Contracts

1. Contracts for the Lease of Real Property

a. The Chief Executive Officer and his designee are authorized to lease real property for use by SACOG for a term not to exceed three years and for a rental not to exceed Five Thousand Dollars (\$5,000) per month. Any lease for a term exceeding three years, or exceeding Five Thousand Dollars per month shall be approved by the Board of Directors.

b. Notice of the intent to execute a lease under this provision shall be posted in a public place for five working days prior to execution of the lease.

2. Contracts for the Acquisition of Real Property

The SACOG Board of Directors shall approve all Contracts for the acquisition of Real Property, in any amount. Real Property purchased with federal funds shall comply with the Uniform Administrative Requirements for Grants and Agreements with State and Local Governments (49 CFR Pt. 18.), and the Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs (49 CFR Pt. 24).

D. Local Contracting Preference

To promote economic development within the SACOG region, the SACOG Board of Directors adopted a local contracting preference and business engagement strategy, as set forth below.

1. General Criteria

a. A local preference shall only apply to eligible contracts bid pursuant to an RFP.

b. “Local Firms” include firms with a physical office in any of SACOG’s 28 jurisdictions for at least six months prior to the issuance of the RFP. (Bidders must self-certify that they meet this definition.)

c. The local preference is applied differently for goods and non-professional services versus professional services, as set forth in Section D.2, below.

2. Application of the Preference

a. Goods and Non-Professional Services: For goods and non-professional services funded with State or local dollars, if the lowest bidder is not a Local Firm, and if the next-lowest bidder is (1) within 5 percent of the low bid price, and (2) a qualified Local Firm, then the Local Firm bidder shall be awarded the contract at the price they bid.

b. Professional Services: For professional services funded with State or local dollars, staff recommends that proposals be scored on a 100-point scale, to be tailored based on the needs of the project, and allow up to 5 points to be awarded to Local Firms. Given the range of qualifications and scope of professional services contracts, the SACOG Board reserves the right to waive this policy for impracticality or when not warranted. The local preference shall be applied to A&E Contracts funded with federal dollars where knowledge of local conditions and building codes is a relevant factor, provided a sufficient number of qualified bidders are eligible to compete.

3. Exceptions to the Local Contracting Preferences Policy

a. Federally funded contracts will not be eligible for a local preference, except for A&E Contracts. The federal Grants Management Common Rule prohibits the provision of a local preference to any contract involving federal funds. Federal funds cannot be awarded on a local preference basis without specific authorization by Congress.

b. “Public Projects” (i.e., construction of public buildings and works, except street maintenance or repair, including materials) will not be eligible for a local preference and will be awarded to the lowest responsible bidder.

c. A&E Contracts funded with state or local dollars will not be eligible for a local preference, but will be awarded on the basis of a qualification-based selection process.

d. No local preference will be applied when state or federal laws or regulations otherwise prohibit their application.

III. METHODS OF PROCUREMENT

All solicitations shall include a clear and accurate description of SACOG's technical requirements for the property or services to be acquired. SACOG shall utilize the following guidelines when procuring services, supplies, and property at the specified dollar amounts:

A. Procurement by Small Purchasing Procedures

1. Small Purchasing Procedures. Small purchasing procedures may be used to acquire services, supplies, or other property totaling \$50,000 or less, except for Construction Contracts. If a potential contract amendment may cause the total contract amount to exceed \$50,000, procurement should be made by competitive proposal, as set forth in Section III.B., below.

a. A list of criteria for the materials or services to be provided must be developed.

b. Verbal or written price or rate quotations must be obtained from at least three possible sources. For the purpose of small purchases, a hard copy of a published or listed price is considered a written quotation. If verbal quotations are received, staff shall complete the "Documentation of Bids Received by Telephone" form, attached hereto as Attachment C. Verbal quotations can be difficult to enforce, so a successful verbal quotation shall be confirmed in writing by the offeror.

When small purchasing procedures are used and an award is made to other than the source with the lowest quotation, a written justification of the award decision will be made a part of the quotation record, unless the purchase is under \$2,500.

B. Procurement by Competitive Proposal/Request for Proposals/Request for Qualifications (RFP/RFQ)

Procurement by competitive proposal/request for proposals/request for qualifications ("RFP") shall be utilized to acquire services, supplies or property totaling more than \$50,000. RFP's for procurements that exceed \$50,000 shall be approved by the Board of Directors prior to publication, unless the scope of work is included in SACOG's Overall Work Program and adopted budget. However, any RFP may be taken to the Board if it is determined by management that there are issues surrounding the project that are of interest to the Board. Sample RFP formats to assist in processing an RFP are available to SACOG staff in computer drive S:/Admin/Forms/Contracts & RFP's.

Either a fixed price or a time and materials contract with a "not to exceed" contract amount will be awarded. The RFP method of procurement will generally be used when conditions are not appropriate for the use of sealed bids. If this procurement method is used, the following requirements will apply:

1. RFPs shall be publicized, as set forth below in Subsection III.H. below.
2. All evaluation factors will be identified, along with their relative importance;
3. Proposals will be solicited from an adequate number of qualified sources;
4. When conducting technical evaluations of the proposals received, staff shall use the “Guidelines for Criteria and Considerations in Evaluating RFPs” attached hereto as Attachment D;
5. SACOG shall interview up to five proposers, based on scoring of the submitted proposals. The Project Manager, in consultation with the proposal review panel, will determine the exact number of proposers to interview, based on scoring of proposals.
6. The contract will be awarded to the responsible firm whose proposal is most advantageous to SACOG's program when price and other factors are considered. SACOG normally will select the lowest bidder meeting the minimum qualifications, unless it can be demonstrated that accepting a higher cost proposal will provide a substantially better product or service that would justify the higher cost; and
7. In determining which proposal is most advantageous, SACOG may award the contract to the proposer whose proposal offers the best value. However, if SACOG uses the best value selection method as the basis for award, the solicitation must contain language establishing that an award will be made on a “best value” basis.

C. Procurement by Sealed Bids/Invitation For Bid (IFB)

If sealed bids/invitation for bids (“IFB”) are utilized, bids must be publicly solicited and a firm fixed-price contract (lump sum or unit price) will be awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for bids, is the lowest in price. IFBs for services or supplies that are anticipated to exceed \$50,000 shall be approved by the Board of Directors prior to solicitation, unless the scope of work is included in SACOG’s approved Overall Work Program and adopted budget.

1. **IFB.** IFB may be utilized when the following conditions are present:
 - a. A complete, adequate, and realistic specification or purchase description is available;
 - b. Two or more responsible bidders are willing and able to compete effectively for the business;
 - c. The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price; and

- d. No discussion with bidders is needed.
2. If the IFB procurement method is used, the following requirements apply:
 - a. The IFB will be publicly advertised, as set forth below in Subsection III.H;
 - b. Bids shall be solicited from an adequate number of known suppliers, providing them sufficient time to prepare bids prior to the date set for opening the bids;
 - c. The IFB, which will include any specifications and pertinent attachments, shall define the items or services sought in order for the bidder to properly respond;
 - d. All bids will be publicly opened at the time and place prescribed in the invitation for bids;
 - e. A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder, as set forth below in Subsection IV.D. When specified in bidding documents, factors such as discounts, transportation costs, and life cycle costs shall be considered in determining which bid is lowest;
 - f. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
 - g. Any or all bids may be rejected if there is a sound, documented business reason.
 3. The IFB procurement method is the preferred method for procuring Construction Contracts that require bidding, if the conditions above apply.

D. Construction Contracts

IFB shall be used for Construction Contracts of more than Ten Thousand Dollars (\$10,000). For Construction Contracts under \$10,000, the Chief Executive Officer shall use Small Purchasing Procedures.

Procurement of Design-Bid-Build and Design-Build contracts may require alternative procedures. Prior to commencing a Design-Build or Design-Bid-Build procurement, SACOG staff shall consult with legal counsel regarding the most up-to-date requirements under local, state, and/or federal law.

E. Architectural and Engineering Services (A&E)

SACOG shall use qualifications-based competitive proposal procedures (i.e., Brooks Act procedures) when contracting for Architectural and Engineering (“A&E”) services. Services subject to this requirement include program management, construction management, feasibility

studies, preliminary engineering, design, architectural, landscape architecture, engineering, land surveying, mapping, environmental services (including environmental documentation), and related services. If services subject to this requirement are not directly in support of, directly connected to, directly related to, or lead to construction, alteration, or repair of real property, then the recipient may not use qualifications-based procurement procedures to select the contractor that will perform those services.

1. Qualifications-Based Competitive Proposal Procedures

Qualifications-based competitive proposal procedures require that:

- a. An offeror's qualifications be evaluated;
- b. Price be excluded as an evaluation factor;
- c. Negotiations be conducted with only the most qualified offeror;

d. SACOG shall request that the top-ranked offeror submit a sealed cost proposal. Or if time is of the essence and it can be justified, sealed cost proposals may be requested from the three highest ranked offerors. The cost proposal for the top-ranked offeror shall be opened and used to begin negotiations. Failing agreement on price, negotiations with the next most qualified offeror be conducted until a contract award can be made to the most qualified offeror whose price is fair and reasonable to the grantee. Each offeror's cost proposal must remain sealed until negotiations commence with that offeror.

2. Limitations

These qualifications-based competitive proposal procedures can only be used for the procurement of the A&E services listed above. This method of procurement cannot be used to obtain other types of services even though a firm that provides A&E services is also a potential source to perform other types of services.

F. Procurement by Noncompetitive Proposals/Sole Source for Federally Funded Contracts

Sole source procurements are accomplished through solicitation of a proposal from only one source, in the event of a public Emergency or compelling urgency, or, if after solicitation of a number of sources, competition is determined inadequate.

Where sole source procurement is used, the Project Manager must furnish to the Chief Executive Officer or his designee a memorandum documenting the factual circumstances and the need for sole source procurement under one or more of the following reasons:

1. Procurement by Sole Source. Sole source procurements may be used when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals and at least one of the following circumstances applies:

a. The item is available only from a single source. The property or services are available only from a single source if one of the conditions described below is present:

(1) Unique Capability or Availability/Unique or Innovative Concept. The offeror demonstrates a unique or innovative concept or capability not available from another source. Unique or innovative concept means a new, novel, or changed concept, approach, or method that is the product of original thinking, the details of which are kept confidential or are patented or copyrighted, and is available to SACOG only from one source and has not in the past been available to SACOG from another source.

(2) Patents or Restricted Data Rights. Patent or data rights restrictions preclude competition.

The following conditions may also justify sole source contracting, except when the contract in question is funded, in part or in total, using federal funds from the Federal Highway Administration (“FHWA”) or State funds (such as State Transportation Improvement Program funds):

(3) Substantial Duplication Costs. In the case of a follow-on contract for the continued development or production of highly specialized equipment or services, when it is likely that award to another contractor would result in substantial duplication of costs that are not expected to be recovered through competition.

(4) Unacceptable Delay. In the case of a follow-on contract for the continued development or production of a highly specialized equipment or services, when it is likely that award to another contractor would result in unacceptable delays in fulfilling SACOG’s needs.

b. A public Emergency exists as determined under Subsection III.G.6., below and will not permit a delay resulting from competitive solicitation;

c. A compelling urgency exists such that SACOG’s work progress would be inhibited or jeopardized if the competitive bidding process were observed;

d. After solicitation of a number of sources, a single bid or proposal is received, despite adequate competition; or

e. The Federal awarding agency authorizes noncompetitive solicitation.

2. Upon receiving a single bid or proposal in response to a solicitation, SACOG will investigate and determine whether competition was adequate. This determination may include: (i) a review of the specifications to verify whether they were unduly restrictive; or (ii) contacting sources that chose not to submit a bid or solicitation.

a. It is only if SACOG determines that competition was inadequate that the procurement should proceed as a sole source procurement. The mere fact that only one bid or proposal was received does not automatically mean competition was inadequate since many unrelated factors could cause potential sources not to submit a bid or proposal.

G. Exceptions to Bidding Requirements for Locally Funded Contracts

Notwithstanding any other provision of these Procedures, locally funded Contracts may be let without bidding, when permitted by law, under the following circumstances:

1. When a patented or proprietary item is being Purchased; or
2. To the extent not included in the definition of Special Services Contracts, when the following types of personal property or services are being acquired or Purchased: (a) advertising; (b) books, recordings, motion picture films, subscriptions; (c) property or services provided by or through other governmental agencies or obtainable from suppliers which have in force a current Contract with another governmental agency for the same item or service; (d) property or services the price of which is fixed by law; or (e) insurance; or
3. When the CEO or his designee, based on advice by legal counsel, determines that entering a Contract without bidding is reasonably necessary for the conduct of SACOG business;
4. When the CEO or his designee determines that it is advantageous to SACOG to purchase supplies from another public agency or in cooperation with another public agency using that other public agency's bidding procedures;
5. When the CEO or his designee determines that it is advantageous to SACOG to purchase surplus supplies from the United States Government, or any agency thereof, or from the State of California, or any agency thereof, or any public body without bidding; or
6. In the event of an Emergency as follows:

The Board finds that, by its resolution approving these Procedures on a four-fifths (4/5) vote, the public interest and necessity in cases of Emergency often demands the immediate expenditure of money to safeguard life, health, or property and, therefore, the Board hereby delegates to the CEO and his designee, in cases of Emergency, SACOG to act in accordance with the procedures set forth in Public Contract Code section 22050. In the case of an Emergency, any sum required by the Emergency may be expended without complying with the Bidding provisions of these Procedures. The CEO and his designee shall report such Emergency expenditure at the next meeting of the Board.

H. Advertising

1. **Supply Contracts, Special Service Contracts, and A&E Contracts.** For Supply Contracts in excess of \$50,000, Special Services Contracts in excess of \$50,000, and A&E Contracts in excess of \$2,500, SACOG shall publish notice of a procurement by IFB or RFP on the SACOG website, in a newspaper of general circulation, and by delivering notice to a list of potential bidders, as determined by the Project Manager. In its discretion, SACOG may also post such notice as follows: (i) in an appropriate trade journal or other publication; and/or (ii) on the website of one of its partner agencies. The notice shall include a description of the supplies or services to be provided, and shall state where bid or proposal forms and specifications may be obtained, the time and place bids or proposals are to be submitted, and the time and place for opening bids, if applicable. SACOG will post notice of a procurement on its website for a period of at least 2 weeks before proposals are due.

2. **Construction Contracts.** For Construction Contracts, SACOG shall publish notice of a procurement by IFB on the SACOG website and in a newspaper of general circulation in the county in which the work is to be performed at least ten (10) calendar days before the date set for bid opening. Such newspaper notice shall be published at least twice, not less than five (5) calendar days apart. The notice shall include a description of the work to be performed, and shall state where bid forms and specifications may be obtained, the time and place bids are to be submitted, and the time and place for opening of bids.

IV. ADDITIONAL BIDDING PROCEDURES

A. Independent Price Determination

No person, company, firm, or corporation submitting any bid or proposal to SACOG shall do any of the following:

1. Propose or bid prices which have not been arrived at independently, and without consultation, communication, or agreement with any other bidder, offeror, or competitor for the purpose of restricting competition as to any matter relating to the prices bid or proposed;
2. Knowingly disclose any price, bid, or proposal to any other bidder, offeror, or to any competitor prior to opening the bids or proposals, unless otherwise required by law;
3. Make any attempt to induce any other person, firm, or other entity or association to submit or not to submit a bid or proposal for the purpose of restricting competition;
4. Make or be interested in more than one bid under any IFB or RFP; provided, however, that nothing herein shall limit the right of any person or entity to deal independently with the same subcontractor or supplier as other persons or entities in the preparation of a bid, or to limit the right of any person or entity dealing in any name brand supplies required by SACOG to bid independently of any other person or entity dealing in the same supplies.

In the case of joint venture bids, the joint venture, and each and every member of the joint venture, shall for purposes of the foregoing be construed to be the person submitting the bid or proposal.

Any bid received, or Contract awarded, in violation hereof shall be a nullity, and the Board or Chief Executive Officer, as applicable, shall in such case dispose of the matter in the same manner as if the person or entity involved had failed to enter into the Contract after award thereof, as provided herein.

B. Bid Security; Disposition of Bid Security

Whenever, upon the call for bids for any Purchase of Supplies or work under a Construction Contract, the CEO or his designee deems it to be advisable, each bidder shall be required to submit bid security, either in cash, by cashier's check, or certified check in favor of, and payable on sight to, SACOG, or by surety bond, insured by a corporate surety admitted to do business in California, in an amount determined by the CEO or his designee to be sufficient, but not to exceed ten percent (10%) of the aggregate amount of the bid. If the bidder to whom the Contract is awarded shall, for twenty (20) calendar days (or such longer period as specified in the IFB or RFP) after receipt of such award, fail or neglect to enter into the Contract and file the required bonds, the bid security may, at the discretion of CEO or his designee, be forfeited and the CEO or his designee may draw the money due on such bid security and pay the same, or any cash deposited, into SACOG's treasury. Upon good cause being shown, the CEO or his designee may, and to the extent SACOG is responsible for any delay, extend the time for the bidder to enter into the Contract.

All bid securities and bid bonds, other than the bid securities and bid bonds of the two lowest bidders, shall be returned to the bidders after award of the Contract to the successful bidder. The remaining bid securities and bid bonds shall be returned after execution of the Contract and deposit of the necessary bonds by the successful bidder. In the event that all bids are rejected pursuant to Subsection IV.G., below, all bid securities and bid bonds shall be returned to the bidders.

Performance and Payment Bond requirements are set forth in Section VII, below.

C. Opening of Bids; Award

All bids shall be sealed, identified as bids or proposals on the envelope as specified in the IFB or RFP, and submitted in the manner and at the time and place specified in the IFB or RFP.

The remaining procedures of this sub-section apply to IFB's only: Bidders may withdraw bids up to the time specified for submission; however, no person who withdraws a bid may submit another bid unless no award is made and a new solicitation is made. Bids received after the specified time shall not be accepted and shall be returned to the bidder unopened. A tabulation of all bids received shall be open for public inspection during regular business hours for a period of not less than thirty (30) calendar days after the bid opening.

D. Determination of Responsible Bidder

If any Contract is awarded pursuant to competitive bidding, it must be awarded to the lowest responsive and responsible bidder in the case of an IFB and to the responsible bidder scoring the highest in evaluation of proposals in the case of an RFP. In determining who is a responsible bidder, the CEO or his designee may consider (i) the quality of the Supplies or work to be provided by the bidder; (ii) the ability, capacity, and skill of the bidder to perform the Contract; (iii) the ability of the bidder to perform the Contract within the time specified, without delay; (iv) the character, integrity, reputation, judgment, experience, and efficiency of the bidder; and (v) the quality of the bidder's performance on previous Contracts with SACOG, or any other entity.

E. Irregularities

The CEO or his designee reserves the right to reject any and all bids or proposals or to waive informalities or minor irregularities. The CEO and his designee reserve the right to make multiple awards and to prohibit "all or none" bids or proposals.

F. Alternative Award Upon Failure of Bidder to Enter Into Contract

If the bidder to whom the Contract is awarded fails to enter into a Contract within the specified time, the CEO or his designee may declare the award to that bidder a nullity, and (i) award the Contract to the next lowest responsible bidder, or (ii) reject all bids and (a) re-advertise for bids or (b) negotiate a Contract in accordance with Subsection IV.G., below.

G. Rejection of All Bids

In the event that the CEO or his designee exercises the right to reject any and all bids or proposals, or the bidder to whom the contract is awarded fails to enter into the Contract as required, the CEO or his designee may (a) re-advertise for new bids; or (b) enter into direct negotiations with the contractors to achieve the best possible price; or (c) abandon the project. In the event the CEO or his designee enters into direct negotiations with contractors to achieve the best possible price, the CEO or his designee shall consult with SACOG's legal counsel prior to entering a negotiated Contract.

H. Protests

In order for a bid protest to be considered by SACOG, it must be submitted by an interested party (a) that is an actual or prospective proposer, bidder, or offeror in the procurement involved; and (b) whose direct economic interest would be affected by the award of the contract or by failure to award a contract (hereinafter "Protestor"). A protest which is submitted by a party which is not an interested party or which is not in accordance with the procedures shall not be considered by SACOG, and will be returned to the submitting party without any further action.

1. **Grounds for Protest.** A Protestor may file a bid protest on the following grounds:

- a. Failure to comply with applicable Federal or State Law;
- b. Alleged misconduct or impropriety by SACOG officials or evaluation team members; or
- c. Failure to follow the requirements of the solicitation in question.

2. **Contents of Protest.**

- a. A bid protest must be filed in writing and must include:
 - (1) The name and address of the Protestor;
 - (2) The name and number (if available) of the procurement solicitation;
 - (3) A detailed statement of the grounds for the protest, including all relevant facts and a citation to the Federal or State law or specific term of the solicitation alleged to have been violated;
 - (4) Any relevant supporting documentation the Protestor desires; and
 - (5) The desired relief, action, or ruling sought by the Protestor.
- b. Protests must be addressed to the Chief Executive Officer of SACOG, and received at SACOG's regular business address.
- c. If any of the information required by this section is omitted or incomplete, SACOG will notify the Protestor, in writing, and the Protestor will be given three (3) business days to provide the omitted or incomplete information in order for the protest to be further considered. Note that this provision only applies in the case of a failure to state any grounds for a protest and does not apply to stating inadequate grounds for a protest or the failure to submit documentation.

3. **Timing Requirements and Categories of Protests.**

SACOG will consider the following categories of bid protests within the time period set forth in each category:

- a. Any bid protest alleging improprieties in a solicitation process or in solicitation documents must be filed no later than five (5) calendar days prior to the deadline for submission of proposals. Any protest based on such grounds not filed within this period will not be considered. This category of protests includes, but is not limited to, allegation of restrictive or exclusionary specifications or conditions.
- b. Any bid protests regarding the evaluation of bids or proposals by SACOG, or improprieties involving the approval or award or proposed approval or award of a contract must be filed with SACOG no later than five (5) business days after SACOG

issues written notice of its decision or intended decision to award a contract. Any protest filed after such date will not be considered.

4. Review of Protest.

a. SACOG will notify the Protestor within five (5) business days of timely receipt of a bid protest that the protest is being considered.

b. In the notification, SACOG will inform the Protestor of any additional information required for evaluation of the protest, and set a time deadline for submittal of such information. If SACOG requests additional information, and it is not submitted by the stated deadline, SACOG may either review the protest based on the information before it, or decline to take further action on the protest.

c. In its sole discretion, SACOG may give notice of any bid protest to other bidders or proposers for the procurement involved in the protest, as appropriate, and permit such bidders or offerors to submit comments to SACOG relative to the merits of the bid protest. SACOG will set a time deadline for the submittal of such comments, which will be no less than five (5) business days after SACOG provides notification of the protest.

d. In its sole discretion, SACOG may schedule the matter for a meeting. All interested parties will be invited to participate in the meeting.

5. Protest Decisions.

a. After review of a bid protest, the CEO or his designee shall recommend a decision to the SACOG Board on the merits of the protest. The recommendation shall be made on the basis of the information provided by the Protestor and other parties, the results of any conferences or meetings, and SACOG's own investigation and analysis. The recommendation and information will be provided to the Board for review and decision.

b. If the protest is upheld, SACOG will take appropriate action to correct the procurement process and protect the rights of the Protestor, including re-solicitation, revised evaluation of bids, proposals, or SACOG's determination, or termination of the Contract.

c. If the protest is denied, SACOG will lift any suspension imposed and proceed with the procurement process or the Contract.

6. Summary Dismissal of Protests.

SACOG reserves the right to summarily dismiss all or any portion of a bid protest that raises legal or factual arguments or allegations that have been considered and adjudicated by SACOG in a previous bid protest by any interested party in the same solicitation or procurement action.

7. Effects of Protest on Procurement Actions.

a. Upon receipt of a timely protest regarding either the solicitation process or the solicitation documents in the case of sealed bids, SACOG will postpone the opening of bids until resolution of the protest. The filing of the protest will not, however, change the date on which bids are due, unless SACOG determines, and so notifies all bidders, that such a date change is necessary and appropriate to carry out the goals of the procurement and assure fair treatment for all bidders.

b. Upon receipt of a timely protest regarding evaluation of bids or proposals, or the approval or award of a Contract, SACOG will suspend Contract approval or other pending action, or issue a stop work order if appropriate, until the resolution of the protest. In this event, the successful bidder or proposer may not recover costs as a change order.

c. Notwithstanding the pendency of a bid protest, SACOG reserves the right to proceed with any appropriate step or action in the procurement process or in the implementation of the Contract in the following cases:

- (1) Where the item to be procured is urgently required;
- (2) Where SACOG determines, in writing, that the protest is vexatious or frivolous;
- (3) Where delivery or performance will be unduly delayed, or other undue harm to SACOG will occur, by failure to make the award promptly; or
- (4) Where SACOG determines that proceeding with the procurement is otherwise in the public interest.

8. Judicial Appeals.

A protest adversely affected by a bid protest decision may appeal such decision to an appropriate court of the State of California, if authorized under Federal or State law.

V. MODIFICATION OR AMENDMENT OF CONTRACTS

A. Amendments Generally

If the terms of a Contract require modification, the Contract must be formally amended, in writing, as follows:

1. An amendment should contain the same degree of specificity for changes that the original Contract contained for the same item.
2. The CEO, his designee, pertinent Director, or member of the Project Oversight Management Team, may amend any Contract when the amount of the Contract, including the amendment, is less than the applicable dollar threshold set forth in Section II, herein.

3. Only work within the original advertised scope of services shall be added by a contract amendment. The addition of work outside the original advertised scope of work will be ineligible for reimbursement.

B. Supply, Special Services, A&E, and Construction Contracts

1. The CEO or his designee may amend any Supply Contract, Special Service Contract, A & E Contract, or Construction Contract when the amount of the Contract, including any amendment, is Fifty Thousand Dollars (\$50,000), or less.

2. The CEO or his designee may amend such a Contract when the amount of the Contract, including any amendment, is more than Fifty Thousand Dollars (\$50,000) if the entire Contract amount is to be paid by any other entity.

3. All modifications or amendments of Supply Contracts that do not meet the requirements of subdivisions 1 or 2 above shall be approved by the Board.

C. Real Property Contracts

1. The CEO or his designee may amend any real property lease for improvements or alterations, or both, so long as the term does not exceed three years, and the rental amount does not exceed Five Thousand Dollars (\$5,000) per month.

VI. CONTRACT FORMS AND APPROVALS

A. Written Contracts

All federally funded Contracts exceeding Two Thousand Dollars (\$2,000) must be written agreements. All State and locally funded Contracts exceeding Five Thousand Dollars (\$5,000) must be written agreements. The Chief Executive Officer may waive the requirement for a written agreement in cases of public emergency or when the Chief Executive Officer determines that it is reasonably necessary for the conduct of SACOG's business, in which case the Board shall be notified as a matter of information at its next meeting.

B. Approval By Legal Counsel

Written Contracts may be approved as to form by legal counsel prior to execution, as determined by the Chief Executive Officer or recommended by the Board.

C. Time of Completion

All Contracts shall specify the time within which the supplies or work shall be furnished to SACOG and may provide for liquidated damages for failure to comply. The Chief Executive Officer

may extend such time for delays caused by SACOG, acts of God, weather, strikes, or other circumstances over which the contractor has no control. The Board may extend such time for any reason it deems appropriate, including those causes for which the Chief Executive Officer may grant an extension of time.

D. Contract Prohibitions

1. Contract Splitting

No officer or employee of SACOG shall split or separate into smaller units any Contract for the purpose of evading the provisions of these Procedures. Splitting or separating a transaction means reducing the amount of any Contract with knowledge that additional supplies or additional work, after such reduction, will be required within the same budgetary term.

2. Collusion With Bidders

No officer or employee of SACOG shall:

- a. Aid or assist a bidder in securing a Contract at a higher price than that proposed by any other bidder;
- b. Favor one bidder over another;
- c. Willfully mislead any bidder regarding the character of the supplies or work called for;
- d. Knowingly accept supplies or work of a quality inferior to that called for by the Contract;
- e. Knowingly represent to SACOG the receipt of a greater amount, or different kind, of supplies or work than has been actually received; or
- f. Draft any invitation to bid, or cause it to be drafted, in such manner as to limit the bidding, directly or indirectly, to any one bidder.

VII. PERFORMANCE AND PAYMENT BONDS

A. Faithful Performance Bond

The successful bidder for any Construction Contract of Twenty Five Thousand Dollars (\$25,000) or more shall be required to supply a performance bond to guarantee the faithful performance of the Contract. The bond shall be in the amount of one hundred percent (100%) of the Contract price, except that a lesser amount may be approved by the Chief Executive Officer, dependent upon applicable legal requirements. Such bond shall be issued by a corporate surety admitted to do business in California and shall be subject to approval by legal counsel for SACOG.

C. Payment Bond

The successful bidder for any Construction Contract of Twenty-Five Thousand Dollars (\$25,000) or more shall provide a payment bond to secure payment of the claims of subcontractors, materialmen and employees of the general contractor and other amounts due pursuant to Civil Code section 3248 in the amount of one hundred percent (100%) of the Contract price, except that a lesser amount may be approved by the Chief Executive Officer, dependent upon applicable legal requirements. Such bond shall be issued by a corporate surety admitted to do business in California and shall be subject to approval by legal counsel for SACOG.

ATTACHMENT A

COST OR PRICE ANALYSIS

(To be Completed for Federally-Funded Contracts Exceeding \$2,500)

A Cost or Price Analysis must be performed in connection with every procurement action involving federal funds, including contract modifications. SACOG staff must make independent estimates before receiving bids or proposals.

A **Cost Analysis** must be performed to determine the reasonableness of the proposed contract price when the Prospective Contractor is required to submit the elements of the estimated cost (i.e., labor hours, overhead, materials, etc.), whenever adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalogue or market price of a commercial product sold in substantial quantities to the general public or on the basis of prices set by law or regulation. The elements of a Cost Analysis are set forth in Section I below.

In all other circumstances, a **Price Analysis** must be completed to determine the reasonableness of the proposed contract price. See Section II below.

Separate Cost or Price Analyses are required for each phase of work, as well as for any milestone or task to be subcontracted.

I. COST ANALYSIS

Complete a Cost Analysis Table (sample provided below).

<u>Cost Element</u>	<u>Prospective Contractor's Proposal</u>	<u>Pre-negotiation Objective</u>
Direct Labor	\$	\$
Labor Overhead	\$	\$
Direct Material	\$	\$
Mat'l Overhead	\$	\$
Other Direct Costs	\$	\$
Subtotal	\$	\$
G&A	\$	\$
Subtotal	\$	\$
Profit/Fee	\$	\$
Total	\$	\$

Additional information regarding each cost element category is provided below:

(1) Direct Labor

In evaluating a Cost Proposal, staff should consider the following questions:

Are the proposed labor rates current actual rates for specific employees or a composite rate for personnel under each labor category?

If the labor rates are developed on a specific base rate, what escalation factor (if any), has the Prospective Contractor applied to the base rate? Is that a reasonable factor?

Are the proposed labor categories and hours based upon the Prospective Contractor's previous experience?

Do the proposed hours correspond to the performance period?

Staff must establish a reasonable cost objective after considering and analyzing all of the available data. Statements to the effect, "THE OFFEROR HAS PROPOSED THE SAME RATES ON OTHER CONTRACTS," are not adequate without discussing how price reasonableness was determined under the other contracts.

(2) Labor Overhead, Material Overhead, and General and Administrative (G&A)

Staff must evaluate the basis for labor rates, overhead and G&A.

Are the estimated rates based upon recommendations or did staff request an audit of the Prospective Contractor's rates?

If not, staff must evaluate the Prospective Contractor's proposed rates in detail (i.e., cost elements included in the indirect pools) for allowability and allocability.

Comparing one Prospective Contractor's rates with those of another is not an acceptable method in any case. Also, comparing this year's proposed rates to last year's rates is not a basis for establishing reasonableness of the currently proposed rate.

(3) Direct Material

Staff must make a determination of price reasonableness for the direct material items.

Provide a detailed breakdown and compare the Prospective Contractor's material quantities and unit prices, such as copies, brochures, computer discs, etc.

Address the basis of the proposed costs for direct materials (based on an engineering estimate? history?, etc.) and costs associated with the material (based on catalog prices? oral quotes? written quotes? historical prices escalated by \$?, competitive?, etc.)

If staff takes exception to any material items and/or quantities, what information was relied upon to reach such conclusions? When challenging a cost, explain the basis for the position. "Appears too high," without rationale, is not sufficient.

(4) Other Direct Costs (ODC)

Compare the proposal and the cost estimate for other direct costs, such as computer support, freight, air travel, per diem, and sub-consultants.

Provide an analysis of the items included under this cost element. For instance, are the number of trips scheduled considered reasonable by audit or staff's technical evaluation? Are the costs per trip reasonable?

Check air travel rates with commercial airlines. How do the proposed costs compare with previous history? Did the contractor apply an escalation factor? Is it reasonable?

(5) Profit/Fee Analysis

Provide a summary which compares the proposal and SACOG's cost estimate.

Compare the Prospective Contractor's proposed profit/fee rate, with SACOG's cost estimate profit/fee rate . Both SACOG and Prospective Contractor should be concerned with profit as a motivator of efficient and effective contract performance. Negotiations aimed merely at reducing prices by reducing profit, without proper recognition of the function of the profit, are not in SACOG's best interest.

II. PRICE ANALYSIS

Where appropriate, staff must utilize the Price Analysis tool to determine whether the contract price is reasonable.

To analyze the price, use one of the available Price Analysis techniques listed below. Note in the file which technique below was utilized and provide a brief explanation for your selection. Additional information on each technique is provided below to assist in your selection:

1. Adequate price competition;
2. Prices set by law or regulation;
3. Established catalog prices and market prices;
4. Comparison to previous purchases;
5. Comparison to a valid independent estimate; and/or
6. Value analysis.

A. Adequate price competition exists where:

- At least two responsible contractors respond to a solicitation.
- Each contractor must be able to satisfy the requirements of the solicitation.
- Each contractor must submit priced offers responsive to the expressed requirements of the solicitation.

If the conditions above are met, price competition is adequate unless:

- The solicitation was made under conditions that unreasonably deny one or more known and qualified contractors an opportunity to compete.
- The low competitor has such an advantage over the competitors that it is practically immune to the stimulus of competition.
- The lowest final price is not reasonable, and this finding can be supported by facts.

B. Prices set by law or regulation are deemed fair and reasonable. SACOG should obtain a copy of the rate schedules set by the applicable law or regulation. Once these schedules are obtained, verify that they apply to SACOG's situation and that SACOG is being charged the correct price. For utility contracts, this policy applies only to prices prescribed by an effective, independent regulatory body.

C. Established catalog prices can be used when the following conditions exist:

- Established catalog prices exist.
- The items are commercial in nature.
- They are sold in substantial quantities.
- They are sold to the general public.

Catalog prices are considered reasonable because commercial demand exists and supplier prices are driven by that demand. Staff must try to ensure that SACOG is getting at least the same price as other buyers in the market for these items. Staff must be sure that catalogs are not simply internal pricing document, and shall retain a copy of the catalog or at least the page on which the price appears.

Established market prices are based on the same principle as catalog prices except there is no catalog. A market price is a current price established in the usual or ordinary course of business between buyers and sellers free to bargain. These prices must be verified by buyers and sellers who are independent of the Prospective Contractor. If this information is not available from other commercial buyers and sellers, it may be obtained from the Prospective Contractor.

D. Comparison to previous purchases:

This determination must be based upon a physical review of the documentation contained in the previous files. Changes in quantity, quality, delivery schedules, the economy, and inclusion of non-recurring costs such as design, capital equipment, etc. can cause price variations. Each differing situation must be analyzed. Staff must also ensure that the previous price was fair and reasonable.

E. Comparison to a valid independent estimate:

Verify the facts, assumptions, and judgments used by SACOG in its estimate. Review the method and data used in developing the estimate. For example, did prices come from current catalogs or industry standards? Staff must be comfortable with the estimate before relying on it as a basis for determining a price to be fair and reasonable.

F. Value analysis requires staff to look at the item and the function it performs to determine its worth. The decision of price reasonableness remains with the Chief Executive Officer or Project Manager.

ATTACHMENT B

HISTORY OF THE PROCUREMENT

(Must be Completed for Federally-Funded Contracts and Contract Amendments Exceeding \$2,500)

1. Date _____
2. Project Name or Title _____
3. RFP/IFB or Contract Number _____
4. Modification Number _____
5. Contract Type [If Time and Materials contract is used, provide explanation of why no other type of contract is suitable]

6. Procurement Description (briefly describe the procurement)

7. <u>Pricing Structure</u>	<u>Cost Estimate</u>
Cost	\$ _____
Fee/Profit _____%	\$ _____
Total Price	\$ _____

RATIONALE FOR METHOD OF PROCUREMENT

1. In this paragraph, describe the acquisition, including a brief history of the requirement, the place of performance, and any other pertinent information. Questions to be answered include: What is it? Why is it needed? What is it for? Quantity? If this is a contract modification, what events or circumstances contributed to the needed change? State SACOG's estimated amount of the proposed acquisition.
2. In this paragraph, address the extent of competition under the acquisition. Is the acquisition being accomplished under full and open competition? If other than full and open, the procurement file must contain a staff memo describing the justification for using a sole source contract. If applicable, include an explanation of why the use of sealed bid procedures is not appropriate for the acquisition. Additionally, was the requirement publicized in accordance with SACOG's procedures? (If not, cite the exception.) How many requests for solicitations were received? How many offers were received?
3. In this paragraph, include an explanation of the reasons for selecting the type of contract to be used.
4. In this paragraph, include the planned negotiation schedule, and identification of SACOG's negotiating team members by name and position.

ATTACHMENT C

DOCUMENTATION OF QUOTATIONS ACQUIRED BY TELEPHONE

Description of Program Need:	
Specific Description of Product or Service Desired:	
Person Requesting Product or Service:	Date Request Received:

QUOTATIONS RECEIVED

Name and Address of Vendor Contacted: Bid #1	
Name of Vendor Representative Providing Quote:	Vendor Representative's Telephone Number:
Quote Provided:	
Program Staff Person Soliciting Quote:	Date Quote Provided:

Name and Address of Vendor Contacted: Bid #2	
Name of Vendor Representative Providing Quote:	Vendor Representative's Telephone Number:
Quote Provided:	
Program Staff Person Soliciting Quote:	Date Quote Provided:

Name and Address of Vendor Contacted: Bid #3	
Name of Vendor Representative Providing Quote:	Vendor Representative's Telephone Number:
Quote Provided:	
Program Staff Person Soliciting Bid:	Date Quote Provided:

ATTACHMENT D

GUIDELINES FOR CRITERIA AND CONSIDERATIONS IN EVALUATING RFPs

The following are suggested criteria that may be used in evaluating proposals:

1. Does the Prospective Contractor understand the program's problems or needs?
2. Can the Prospective Contractor fit this work into its existing obligations?
3. Is the approach to the problem, recommended method, and procedure reasonable and feasible?
4. Do the expected results, outcomes, and deliverables appear to be achievable in a timely manner, given the approaches, methods and procedures proposed?
5. Does the firm have the organization, management capability and competency, fiscal and personnel resources, and experience to perform the services being sought?
6. Has the firm had experience performing work of similar nature, size and scope?
7. Does the Prospective Contractor's past experience complement the services being sought, or is the Prospective Contractor's past experience appropriate to qualify the proposer to perform these services?
8. What are the professional qualifications of the personnel that the firm will commit to the project?
9. Did the Prospective Contractor allocate sufficient staff resources?
10. Has the Prospective Contractor addressed all goals, objectives, service demands, and required deliverables specified in the RFP?
11. Does the Prospective Contractor appear to have the capacity to manage fiscal resources responsibly?
12. Does the Prospective Contractor have sound fiscal, accounting, and cost-monitoring or budget-monitoring procedures in place?