



Exposition Metro Line  
Construction Authority

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**Expo**

**5.d**

**DATE: OCTOBER 5, 2006**

**TO: BOARD OF DIRECTORS**

**FROM: RICHARD D. THORPE**   
**CHIEF EXECUTIVE OFFICER**

**ACTION: ADOPT THE EXPOSITION METRO LINE CONSTRUCTION  
AUTHORITY PROCUREMENT MANUAL**

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### **RECOMMENDATION**

That the Board adopt the Exposition Metro Line Construction Authority (Authority) Procurement Manual set forth in Attachment A.

### **SUMMARY**

Adopting this Procurement Manual establishes the Authority's procurement policies and processes in accordance with applicable Federal and State laws, regulations, standards and the Authority's Administrative Code.

### **DISCUSSION**

The purpose of this Procurement Manual is to set forth general procurement policies and standards that will govern the conduct of Authority acquisition/ procurement activities and of personnel engaged in these activities. This Manual has been developed to ensure conformance with the policies, standards, and requirements established in Federal and State regulations.

The Authority's approved Administrative Code and the Metro Procurement Policy Manual, establishes the framework for this Procurement Manual. The Authority currently adheres to this framework for general procurement policies that guide solicitations, award and administration of all Authority contracts and purchases for supplies, services, equipment and construction.

The policies and standards incorporated into this Procurement Manual are designed to ensure that procurements are conducted in a manner that will provide full and open competition and that procurement activities will proceed in a timely, efficient and economical fashion, adhering to principles of good administrative practices and sound business judgment. The Procurement Manual also identifies and describes the authorized methods of procurement (i.e, sealed bid, competitive negotiation, etc.), sets forth the principles and procedures for cost and price analysis, and establishes procedures and guidelines for contract management and administration.

It is recommended that the Board adopt this Procurement Manual for consistent and uniform policies and practices.

### **FINANCIAL IMPACT**

No direct financial impact will flow from the adoption of the Procurement Manual.

### **ATTACHMENT(S)**

A. Procurement Manual

# ATTACHMENT A

EXPOSITION METRO LINE CONSTRUCTION AUTHORITY (EXPO)

Exposition Light Rail Transit Project

## Procurement Policy Manual



Expo

October 2006

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# CHAPTER 1 - PROCUREMENT PROCESS

## 1.0 PURPOSE AND SCOPE

- A. The Exposition Metro Line Construction Authority (hereinafter “Expo” or “Authority”) procures goods and services using public funds. It has a responsibility to uphold the public trust and maximize the value of public funds by using them as efficiently and cost-effectively as possible.
- B. This Procurement Policy Manual sets forth a general procurement policy and set of standards that will govern the conduct of Authority procurement activities and of Authority personnel engaged in those activities. The policies contained herein are advisory, not mandatory, and any deviation therefrom shall not render any contract of the Authority void or voidable.
- C. For the Authority's capital projects and operating and planning contracts using Federal Transit Administration's (FTA) funds, these policies will apply only to the extent that they do not conflict with FTA requirements including the standards of Federal administration FTA Circular 4220.1E, entitled “Third Party Contracting Requirements”. This circular sets forth the requirements that the Authority must comply with in the solicitation, selection and administration of federally funded contracts. In addition, when appropriate, procurement procedures and practices are hereby adopted from the FTA’s Best Practices Procurement Manual.
- D. The objectives of the Authority’s Procurement Policy Manual are to:
  - 1. Maximize the value received for the Authority’s expenditure of public funds.
  - 2. Protect assets and/or services purchased with public funds and ensure their application in the Authority’s interests.
  - 3. Provide all vendors an equal opportunity to provide needed goods and/or services.
  - 4. Protect the integrity and reputation of the Authority, its officers, and its employees.

## 2.0 PROCUREMENT POLICY STATEMENT

- A. The Expo procurement policies establish the guidelines and policies for procuring the goods and services necessary for the Authority to carry out its responsibilities and duties. The policies maintain the integrity of the Authority’s procurement process, while ensuring that purchases are made in a cost effective, timely manner; with fair and open competition; and in accordance with all applicable laws and regulations.

## 3.0 PROCUREMENT STANDARDS

### A. GENERAL

- 1. Contract Administration System. The Authority will maintain a contract administration system that ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts.

2. Code of Conduct – Board. Members of the Board and Authority employees will adhere to the standards of conduct set forth in Title II of the Authority’s Administrative Code.
3. Code of Conduct – Contractors & Consultants. Contractors and consultants will adhere to the applicable provisions of the Procurement Policy Manual and the Administrative Code, including the Code of Conduct in the Administrative Code.
4. Avoid Duplicative Purchases. Authority staff shall regularly review proposed procurements to avoid purchase of unnecessary or duplicative items.
5. Lease vs. Purchase Analysis. Where appropriate, an analysis will be made of lease versus purchase alternatives and any other appropriate analysis to determine the most economical approach.
6. Value Engineering. The Authority will encourage the use of value engineering by using applicable clauses in contracts for appropriate equipment purchases and construction projects.
7. Award to Responsive and Responsible Contractors. The Authority will make awards only to responsive and responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed contract. Consideration will be given to such matters as contractor integrity, compliance with public policy as implemented by applicable laws and regulations, record of past performance, and financial and technical resources.
8. Authority Rejection of Bids, Quotes, and/or Proposals. The Authority, to the extent permitted by applicable laws, may reject any and all bids, quotes and/or proposals and re-advertise at its sole discretion.
9. Advance Payments. The Authority shall not make advance payments on any contract, except for contracts for the payment of rents, insurance premiums, subscriptions to publications, and extension or connection of public utilities for Authority property, or any other contract where, based on extraordinary circumstances, the Board determines that advance payments are warranted.
10. Procurement Records. Records sufficient to document the significant history of each procurement activity will be maintained and retained by the Authority.
11. Written Selection Procedures. The Authority will have written selection procedures for formal procurements that ensure fair, unbiased evaluation of competing proposals.
12. Conflict of Interest. All Authority Board Members, employees and other agents will conduct the procurement process so as to avoid conflicts of interest, real or apparent. To maintain full and open competition, no Authority Board Member, employee or other agent will give preferential treatment to any contractor or potential contractor or hold a financial interest in any Authority transaction.
13. Audit Provisions. Every Authority contract wherein a government entity is receiving Authority funds shall require that the government entity place in each of its contracts involving an expenditure of Authority funds in excess of \$25,000, a provision which indicates that the contracting parties may be subject to an examination and audit by the Authority’s auditor for a period of three years after final payment under the contract.

14. Termination Clause(s). All contracts in excess of \$50,000, and public works contracts in excess of \$2,000, shall provide for the termination of the contract for the Authority's convenience and for the termination of the contract for default in cases of contractor breach or non-performance.
15. Issues not Included in the Procurement Policy Manual. If a policy, procedure or particular strategy or practice is in the best interest of the Authority and is not specifically addressed, nor prohibited by statute or case law, users of this manual should not assume it is prohibited. Rather, the absence of direction should be interpreted as permitting users to innovate and use sound business judgment that is otherwise consistent with law and within the limits of their authority and the authority of Expo staff.

#### 4.0 TYPES OF CONTRACTS

##### A. General Provisions

1. The Contracting Officer shall use the types of contracts described in this Chapter for most types of procurement, except as otherwise provided for certain small purchases. Innovative contracting arrangements are not prohibited, but require the advance approval of the CEO.
2. The cost-plus-a-percentage-of-cost method of contracting shall not be used, nor shall a percentage of construction costs be used in pricing A/E contracts.
3. The Contracting Officer shall select the type of contract that is most appropriate to the circumstances of each procurement, in accordance with the provisions of this Chapter.
4. In procurements by other than competitive sealed bidding, the Contracting Officer may negotiate a contract type and price (or estimated cost and fee) that will result in reasonable contractor risk and provide the contractor with the greatest incentive for efficient and economical performance.

##### B. Selecting Contract Types

1. When procurement is by competitive sealed bidding, the Contracting Officer shall use a fixed-price contract. The type of contract to be used shall be determined prior to the solicitation, and the solicitation shall inform bidders of the type of contract that will be used.
2. Except when procurement is by competitive sealed bidding, the Contracting Officer should select the most effective contract type and needs to consider contract type together with the issues of price, risk, uncertainty, and responsibility for costs. The type of contract used should reflect the cost risk and responsibility assumed by the supplier.
3. The Contracting Officer shall avoid continued use of a cost reimbursement or time-and-materials contract after experience provides a basis for firmer pricing.
4. The Contracting Officer shall include documentation in each contract file to show why the particular contract type was selected, except for purchases orders under the small purchase threshold.

**C. Fixed-Price Contracts**

1. Fixed-price contracts may provide for a firm price or, in appropriate cases, an adjustable price.
2. Fixed-price contracts providing for an adjustable price may include a ceiling price, a target price (including target cost), or both. Unless otherwise specified in the contract, the ceiling price or target price shall be subject to adjustment only by operation of contract clauses, approved by the CEO, providing for equitable adjustment or other revision of the contract price under stated circumstances.
3. A firm-fixed price contract shall provide for a price that is not subject to any adjustment on the basis of the contractor's cost experience in performing the contract.
4. A firm-fixed-price contract shall be used for acquiring commercial products or commercial-type products, or for acquiring other supplies or services, on the basis of reasonably definite functional or detailed specifications if the Contracting Officer can establish fair and reasonable prices at the outset, including the following circumstances:
  - a. When there is adequate price competition;
  - b. When there are reasonable price comparisons with prior purchases of the same or similar supplies or services made on a competitive basis;
  - c. When available cost or pricing information permits realistic estimates of the probable costs of performance; and
  - d. When performance uncertainties can be identified and reasonable estimates of their cost impact can be made, and the contractor is willing to accept a firm-fixed-price contract.

**D. Time-And-Materials Contracts**

1. A time-and-materials contract may be used only after the Contracting Officer determines, in writing, that no other type of contract is suitable.
2. A time-and-materials contract may be used only when it is not possible at the time of executing the contract to estimate accurately the extent or duration of the work or to anticipate costs with any reasonable degree of confidence.
3. A time-and-materials contract shall include direct labor hours at specified fixed hourly rates that include wages, overhead, general and administrative expenses, profit, and materials required at cost.
4. The contract administrator shall ensure that there is adequate surveillance of contractor performance when a time-and-materials type contract is used.

**E. Labor-Hour Contracts**

1. When materials are not required, the Contracting Officer may use a labor-hour contract, a variation of the time-and-materials contract.
2. The use of a labor-hour contract shall be in accordance with the above-referenced provisions on Time-And-Materials Contracts.

**F. Letter Contracts (Letter Of Intent Contracts)**

1. This is an interim type of contractual agreement that gives the contractor a limited Notice of Award for the manufacture of supplies or performance of services.
2. The estimated cost of the definitive contract shall determine the type and level of review and approval required for approval of a letter contract.
3. A letter contract shall not be entered into without competition except as provided for under Sole Source and Emergency Procurements provisions.
4. A letter contract shall not be amended to satisfy a new requirement unless the new requirement is inseparable from the existing contract. Any amendment shall be subject to the same requirements as a new letter contract.
5. The Contracting Officer may use a letter contract when the Authority's interests demand that the contractor be given a binding commitment so that work can start immediately and executing a definitive contract is not possible in sufficient time to meet the requirement. Each letter contract shall be as complete and definitive as possible under the circumstances and shall include clauses approved and required by the Contracting Officer.
6. A letter contract shall contain a negotiated schedule for execution of the definitive contract, including dates for submission of the contractor's price proposal, cost or pricing data (if required), a date for start of negotiations, and a target for execution of the definitive contract.
7. If the Contracting Officer and the contractor cannot negotiate a definitive contract because of failure to reach agreement regarding price or fee: 1) the Contracting Officer may terminate the letter contract; or 2) if a "contract definitization" clause is included in the letter contract, the Contracting Officer may require the contractor to continue the work and the Contracting Officer may, with the approval of the Chief Executive Officer, determine a reasonable price or fee.

**G. Multiyear Contracts**

1. Multiyear contracting may be used in procurement by competitive sealed bids, competitive proposals, or by sole source procurement. For the purpose of this Section, a multiyear contract is a contract funded for a specific period of time, which is less than the total time required to complete the contract, and which includes a provision that requires the contractor to continue contract performance beyond the initial specified period of time, contingent upon the Authority providing necessary funding.

**H. Indefinite Delivery Contracts and Task Orders Contracts**

1. The Contracting Officer may use an Indefinite Delivery type of contract (either a requirements contract or an indefinite quantity contract/Task order) when the exact quantities of supplies or services are not known at the time of contract award. The contract may also specify maximum or minimum quantities that the Authority may order under each individual order and the maximum that the Authority may order during a specified period of time.
2. There are several types of indefinite delivery contracts:
  - a. Definite-quantity contracts

- b. Requirements contracts, and
  - c. Indefinite quantity (IQ) contracts (commodities)
  - d. Task order contracts (services).
3. Indefinite Delivery type contract are used when the Contracting Officer anticipates recurring requirements but cannot predetermine the precise quantities for supplies or services. The Contracting Officer shall include the following in each contract and solicitation for a requirements contract:
    - a. A realistic estimate of the total quantity or Dollar amount that will be ordered, based on the most current information available; and
    - b. A clause stating that the estimate is not a representation to a bidder, offeror, or contractor that the estimated quantity will actually be required or ordered, or that conditions affecting the requirements will be stable or normal.
  4. If feasible, a requirements type contract shall state the maximum limit of the contractor's obligation to deliver and the Authority's obligation to order.
  5. The Contracting Officer may use an Indefinite Quantity type of contract when the Contracting Officer cannot predetermine, above a specified minimum, the precise quantity of supplies or services that will be required during the contract period, and the Contracting Officer determines that it is inadvisable to commit the Authority for more than a minimum quantity.
  6. An Indefinite Quantity type contract shall require the Authority to order and the contractor to furnish at least the stated minimum quantity of supplies. The contractor shall also be required to furnish if and as ordered, any additional quantities, not to exceed a stated maximum.
  7. The Contracting Officer shall include in the schedule of each requirements and Indefinite Quantity type of contract the names of the Authority employees authorized to issue orders under the contract. When determined appropriate by the Contracting Officer, authorization for placing facsimile orders may be included in the contract; provided, that the Authority shall establish procedures for obligating funds and confirming all such orders.
  8. Each Indefinite Delivery contract issued must include a fixed dollar ceiling that represents the target NTE cost authorizations for the work specified.
  9. In cases where multiple suppliers are awarded contracts, an indefinite delivery file will be completed and included in each task order/delivery order file. The file shall include Task Order/Delivery Order source selection and price justification to document negotiations, price reasonableness, and/or source selection decision.
  10. Each order placed under an Indefinite Delivery/Task Order contract shall contain required minimum information needed for a contract.

## 5.0 OPTIONS

### A. General

1. Except as provided in the following Sections, a Contracting Officer may include an option in a contract when it is in the best interest of the Authority to include in the contract a unilateral right by which the Authority may elect to purchase

additional supplies or services called for by the contract, or may elect to extend the term of the contract.

2. A Contracting Officer may include options in a contract for services if there is an anticipated need for similar services beyond the first contract period. The period within which an option may be exercised may extend beyond the date specified for completion of the services in a contract for services. This is necessary for situations when exercise of the option would result in the obligation of funds that are not available in the fiscal year in which the contract would otherwise be completed.
3. The Contracting Officer shall justify in writing the quantities or the term under option, the notification period for exercising the option, and any limitation on the option price.
4. Any written findings required for a contract entered into by negotiations shall specify both the basic requirements and the increase permitted by an option.
5. In order to meet the requirements of this Manual for full and open competition, and FTA 4220.1E(9i), the option must be evaluated as part of the initial competition and be exercisable at an amount specified from the terms of the basic contract. Per FTA 4220.1E(9i) when options have not been evaluated as part of the award, the exercise of such options will be considered a sole source procurement and shall comply with the Non-Competitive procurement policies in described herein.

#### B. Exercise of Options

1. Before exercising an option, the Contracting Officer shall make written findings that the exercise will be in accordance with the terms of the option and the conditions of the requirements set forth below.
2. A Contracting Officer shall exercise an option only after determining the following:
  - a. That sufficient budget authority is available;
  - b. That the requirement covered by the option fulfills an existing Authority need; and
  - c. That the exercise of the option will be the most advantageous method of fulfilling the Authority's need, when price and other factors are considered.
3. When determining whether to exercise an option, the Authority's Contracting Officer shall take into account the need for continuity of operations and the potential cost of disrupting operations.
4. The contract modification or other written document, which notifies the contractor of the exercise of the option, shall cite the option provision as authority for the action and should be issued within the time period specified in the contract.

## 6.0 DEFINED TERMS

Capitalized terms used but not defined herein shall have the meanings set forth in the Authority's Administrative Code.



## **CHAPTER 2 – PROCUREMENT GENERALLY**

### **1.0 IMPLEMENTATION BY CHIEF EXECUTIVE OFFICER; BOARD CONTROLS AND LIMITATIONS**

- A. Final authority for purchasing actions and decisions rests with the Board, except as delegated to the Chief Executive Officer.
- B. The policies set forth herein shall be implemented by the Chief Executive Officer. The Chief Executive Officer has primary responsibility for ensuring that the Authority’s procurement process is in accordance with Applicable Law and the Administrative Code, as interpreted by the General Counsel, and Authority policy.
- C. The Chief Executive Officer is authorized to approve and enter into contracts and contract modifications (including but not limited to change orders, amendments, and all other contract modifications) on behalf of the Authority, as follows: (i) contracts with a contract price that does not exceed \$250,000; (ii) modifications to contracts approved by the Chief Executive Officer that, cumulatively with the initial contract price and prior contract modifications, do not result in a total contract price in excess of \$250,000; and (iii) modifications to Board approved contracts that, cumulatively, do not increase the Board approved contract price by more than \$250,000, or such lesser amount as the Board may establish. The Chief Executive Officer shall not delegate this authority without express Board authorization. The powers of the Chief Executive Officer pursuant to this Paragraph are subject to: (i) the existence and provisions of a Board approved Authority Budget; (ii) the provisions of the Administrative Code; and (iii) the Applicable Laws.
- D. The Chief Executive Officer shall report to the Board at its next regularly scheduled meeting each new contract awarded on an emergency basis, and shall report monthly to the Board all other new contracts over \$10,000 and contract modifications in excess of \$10,000 entered into by the Chief Executive Officer.

### **2.0 PROCUREMENT OFFICER - DESIGNATION AND DELEGATION**

The Chief Executive Officer is the “Procurement Officer” for the Authority. The Chief Executive Officer may delegate all or part of the Procurement Officer authority delegated to him or her by the Board, under guidelines approved by the Board.

### **3.0 PROCUREMENT OFFICER - DUTIES**

- A. The Procurement Officer shall oversee all procurement activities of the Authority, and implement the policies and standards set forth in this Manual, subject to the limitations of the authority that has been delegated to the Procurement Officer by the Board or the Chief Executive Officer.
- B. The Procurement Officer shall issue instructions for the implementation of Authority procurement policies.
- C. The Procurement Officer shall execute contracts, purchase orders, modifications, and supplemental agreements in accordance with established thresholds and delegated authority.
- D. The Procurement Officer shall ensure that a complete record of each procurement is maintained.

- E. The Procurement Officer shall issue instructions concerning the storage, distribution, and disposal of supplies and materials.

#### 4.0 IMPLEMENTATION OF PROCUREMENT PROCEDURES AND GUIDELINES

The Chief Executive Officer, in his or her discretion, may adopt procurement and materials management procedures and guidelines needed to implement and supplement the policies and standards set forth in this Manual. Any such procedures and guidelines shall provide for timely review and processing of all procurement actions, and shall ensure that procurements proceed timely, efficiently and economically, while adhering to principles of good public policy and practices and sound business judgment.

#### 5.0 AUTHORIZED METHODS OF PROCUREMENT; SELECTION

- A. Selection. As part of the procurement initiation process, the Procurement Officer shall determine which method of procurement is appropriate.
- B. Authorized Methods. The following methods of procurement may be used, as appropriate, in accordance with the policies and procedures included in the Procurement Manual:
  - 1. Sealed Bid, pursuant to Chapter 3 of this Manual;
  - 2. Design-build, pursuant to Chapter 4 of this Manual;
  - 3. Competitively Negotiated Procurement, pursuant to Chapter 5 of this Manual;
  - 4. Small Purchase Procedures, pursuant to Chapter 6 of this Manual; and
  - 5. Non-Competitive and Emergency Procurement, pursuant to Chapter 7 of this Manual.

#### 6.0 INDEPENDENT COST ESTIMATE

- A. Independent Cost Estimate is a determination of price reasonableness prepared prior to and independent of any input from the offeror. The method and means of establishing the independent estimate may vary based on the circumstances and can range from checking historical records or published price guides to a detailed estimate in the same level of detail that is required for contractors submitting proposals.
- B. An independent estimate shall be conducted by Authority staff to determine the adequate level of funding, the transaction processing level and to assist in analyzing the price of the transaction. The term independent means, the Authority's assessment without reliance on a contractor's bid or proposal, therefore, the independent estimate should be completed prior to the receipt of bids or proposals.
- C. The independent estimate provides the Contracting Officer with essential input during the solicitation process. Independent cost estimates will be used to establish a competitive range and to supplement the required evaluation and/or negotiation process. After contract award, independent cost estimates may provide essential input with respect to changes and claims.

## 7.0 COST AND PRICE ANALYSIS

- A. The Authority shall take every step to ensure that all procurements are evaluated to establish that the accepted costs and prices are fair and reasonable. The Authority shall, when applicable, utilize the guidelines provided in the Federal Acquisition Regulations Part 31 to make determinations of the acceptability or unacceptability of proposed costs.
- B. The Authority shall perform a cost or price analysis on every procurement transaction. The level and detail of analysis shall be commensurate with the administrative risk associated with the procurement transaction.

## 8.0 CONTRACTING WITH WOMEN BUSINESS ENTERPRISES AND MINORITY BUSINESS ENTERPRISES AND OTHER BUSINESS ENTERPRISES

- A. The Authority will take reasonable and appropriate steps to ensure that Minority Business Enterprises (“MBEs”), Women Business Enterprises (“WBEs”), and Other Business Enterprises (“OBEs”) have a full and equal opportunity to compete for and participate in all Authority contracts and subcontracts. To the extent permitted by law, the Board will establish guidelines regarding the inclusion of MBEs, WBEs, and OBEs in Authority procurements.
- B. For purposes of this Section 8.0, the terms “Minority Business Enterprises”, “Women Business Enterprises”, and “Other Business Enterprises” shall have the meanings set forth in the Guidelines adopted by this Board pursuant to Section 6 of the Administrative Code.
- C. The Authority will honor certification of MBEs and WBEs from the State of California Department of Transportation, the Los Angeles County Metropolitan Transportation Authority and the City of Los Angeles.
- D. The Authority shall comply with all applicable Federal Requirements as they relate to MBE’s, WBE’s and OBE’s including the Disadvantaged Business Enterprises (DBE) Regulation of the U. S. Department of Transportation, 49 CFR Part 26 and the U. S. Federal Transit Administration utilizing the approved goal and program submitted annually by Metro as the recipient on behalf of the region. The Authority will develop a DBE contract goal for the Project consistent with applicable state and federal law, and the Metro DBE approved program.

## 9.0 NON-DISCRIMINATION IN PROCUREMENT

All contracts entered into by the Authority shall contain appropriate clauses prohibiting discrimination by the contractor against any person or group of persons on account of race, color, religion, creed, national origin, ancestry, physical handicap, medical condition, age, marital status, sex or sexual orientation in the performance of the contract.

## 10.0 ORGANIZATIONAL CONFLICT OF INTEREST

An unfair competitive advantage could result if a contractor were allowed to submit a bid or proposal for work described in a specification or statement of work that the contractor developed. For the purpose of eliminating a potential unfair competitive advantage, and in compliance with FTA 4220.1E (8a5) and appropriate state laws, a contractor that develops or assists to develop specifications, requirements, statements of work, invitation for bids, and/or

request for proposals for an Authority procurement shall be excluded from competing for the resultant procurement, unless an appropriate waiver is issued by the Authority. All waivers will be assessed by Authority staff on a case-by-case basis.

## 11.0 DUTIES OF AUTHORITY STAFF REGARDING PROCUREMENT

Procuring goods, services, and contracts for the Authority must be a cooperative effort, and it shall be the responsibility of all Authority staff involved in procurement to employ sound judgment and appropriate standards of ethics and fairness to procure in a manner most advantageous to the Authority. All employees and departments are instructed to follow the policies and standards set forth in the Administrative Code, and the procedures set forth in the Procurement Policy Manual, as well as any instructions issued by the Contracting Officer, regarding procurements.

## 12.0 INSURANCE

- A. Contractors providing goods and services shall be required to carry sufficient insurance to protect the Authority from third party lawsuits for personal injury (including death) and property damage. Insurance may also be required for damage to Authority property and for errors and omissions in the provision of professional services.
- B. The following types of procurement actions shall be reviewed by the Contracting Officer for appropriate levels, types and limits of coverage on a case-by-case basis:
  - 1. All Operations and Non-Operational Construction Contracts
  - 2. All Professional Services Contracts
  - 3. All contracts where work will be performed within "50 feet" of railroad
  - 4. All Environmental Contracts, to include engineering services
  - 5. All procurement contracts and/or purchase agreements where outside vendors will be conducting work or performing installation services on Authority premises.
  - 6. All procurement contracts and/or purchase agreements where outside vendors will be delivering products to an Authority facility.
- C. Authority contractors shall comply with insurance requirements imposed by state and local governments.
- D. The contractor and subcontractor will be required to carry general liability, workmen's compensation, and automobile insurance on construction contracts for other programs.
- E. In certain limited cases, the Authority will permit the contractor to substitute an approved program of self-insurance. The contractor must demonstrate that he/she can sustain the potential losses being self-insured.
- F. Other than construction contracts, the Contracting Officer shall include insurance and indemnification provisions in equipment, supply, and services contracts in accordance with Authority policies described herein.

## 13.0 APPLICABLE LAWS

Refer to Title III, Chapter 2, Section 9 of the Administrative Code.

## 15.0 PROTEST PROCEDURES

- A. A party that has timely submitted a bid or proposal in response to any procurement of the Authority may file a protest objecting to the award of a contract.
- B. In order for a protest to be considered properly and timely filed, the protest must:
  - 1. Be filed in writing with the Chief Executive Officer of the Authority, within five (5) calendar days after publication of the written recommendation for award.
  - 2. Be filed by an actual bidder or proposer responding to the procurement. No other party has standing to protest.
  - 3. Identify the specific procurement number involved.
  - 4. Identify the specific recommended action or decision being protested.
  - 5. Specify in detail the grounds of the protest, the facts supporting the protest and the status of the protester.
  - 6. Include all relevant supporting documentation with the protest at the time of submittal.

If a protest does not comply with each and all of the above six (6) requirements, the protest will not be considered and will be returned to the protester.

- C. The Chief Executive Officer of the Authority in consultation with General Counsel will attempt to resolve a properly filed protest or perform additional fact-finding. If the Chief Executive Officer is able to resolve the protest at this stage, a letter confirming resolution shall be sent to the protester. If the Chief Executive Officer is unable to resolve the protest within five (5) calendar days from receipt, he/she may establish an independent team to evaluate the merits of the protest. The Chief Executive Officer will review the recommendation of the evaluation team and notify the protester in writing of the decision on whether or not to deny the protest.
- D. If the Chief Executive Officer's decision is to deny the protest, the contract shall be recommended to the Board for award, or executed, if previously awarded by the Board subject to resolution of the protest. If the Chief Executive Officer's decision is to uphold the protest, a recommendation will be made to the Board to reject all proposals or bids, cancel the Request for Proposals or Invitation for Bids and solicit new proposals or bids, or award the contract to another proposer. If the recommendation for award is overturned by the Board, the previously recommended proposer may itself file a protest with the Chief Executive Officer within five (5) calendar days of the Board's decision.

## CHAPTER 3 - SEALED BIDS

### A. Sealed Bids – Generally

When deemed by the Chief Executive Officer that it is in the best interest of the Authority, a sealed bid competitive solicitation which results in a fixed price contract awarded to the lowest responsive and responsible bidder will be utilized. Advertisement and public opening of bids is required. Except as set forth in Chapters 4, 5 and 7 of this Title sealed bids shall be generally used for all procurements that require an expenditure of Fifty Thousand Dollars (\$50,000) or more.

### B. Use of Procedures set forth in the California Public Contract Code

1. Although not otherwise applicable to the Authority, the Authority hereby adopts the procedures set forth in Article 4 of Chapter 1 of Part 3 of Division 2 of the Public Contract Code (“PCC”), commencing with Section 20161 (“Article 4”), except as set forth herein, for use when sealed bids are called for.
2. For purposed of this Chapter 3:
  - a. All references in the Public Contract Code provisions set forth in Paragraph “A” to “city” or “state agency” or “public agency” shall mean the Authority, and all references to “legislative body” shall mean the Board;
  - b. Notwithstanding Public Contract Code Section 20162, the threshold expenditure for a “public project” that triggers the requirement for sealed bidding is Fifty Thousand Dollars (\$50,000); and
  - c. Public Contract Code Section 20169 shall be of no force or effect.

### C. Notice and Advertisement

Notwithstanding Public Contract Code Section 20164, the notice inviting bids shall be posted at the offices of the Authority, or other place(s) designated by resolution of the Board, and advertised in a newspaper designated by resolution of the Board.

## **CHAPTER 4 - DESIGN-BUILD & NEGOTIATED DESIGN-BUILD CONTRACTS**

### **1.0 PURPOSE**

- A. As set forth in Public Utilities Code (PUC) Section 132605 and Section 3 of Chapter 1 of Title I of the PUC, the purpose of the Authority is to award and oversee all design and construction contracts for completion of the Project. In some cases, it may be efficient to have one contract for both the design and construction of one or more components of the Project. Such a contract shall be known as a “Design-Build” or “Negotiated Design-Build” contract.
- B. For the purposes of this Chapter, “Design-Build” or “Negotiated Design-Build” means a method of procuring design and construction from a single source. The selection of the single source occurs before the development of complete plans and specifications.

### **2.0 PROCEDURES FOR DESIGN-BUILD CONTRACTS**

- A. Use of the design-build procedures set forth in this Chapter requires authorization by a majority of the Board. The Procurement Officer shall determine the methods, procedures, and criteria for selection and set them forth in the procurement documents. The Chief Executive Officer may adopt any lawful methods, procedures and criteria that he or she determines are in the best interest of the Authority.
- B. The Procurement Officer shall cause to be prepared estimates, and prepare documents, for the solicitation of proposals on a design-build or negotiated design-build basis.
- C. The procurement documents shall include all of the following:
  - 1. A reasonable description of the services to be provided and work to be performed;
  - 2. A description of the format that proposals must follow and the elements they must contain, including the qualifications and relevant experience of the design professional and the contractor, and the criteria that shall be used in evaluating the submittal, including the proposal price;
  - 3. The date on which the proposals are due, and the timetable that will be used in reviewing and evaluating the proposals.

## **CHAPTER 5 - COMPETITIVELY NEGOTIATED PROCUREMENTS**

### **1.0 USE OF COMPETITIVELY NEGOTIATED PROCUREMENT PROCEDURES**

This Chapter outlines the Authority's procedures for competitively negotiated procurements, also known as a competitive Request for Proposals ("RFP") process. The procedures used in this Chapter may be used in the following circumstances:

- A. Contracts for personnel services, or for other services, which the Board has determined are to be competitively negotiated;
- B. Purchases to be made from or the contract is to be made with the Federal or any State government or any agency or political subdivision thereof or pursuant to any open end bulk purchase contract of any of them;
- C. Purchases of specialized rail equipment, computers, telecommunications equipment, fare collection equipment, microwave equipment and other related electronic equipment and apparatus, if the Board has approved the use of the procedures set forth in this Chapter 5 for a particular procurement.
- D. Design-build contracts described in Chapter 4.

### **2.0 SOLICITATION OF PROPOSALS - GENERAL**

- A. An RFP shall be the solicitation used to communicate the Authority's requirements to prospective contractors when the negotiated method of seeking competitive proposals is used. The Procurement Officer shall furnish identical information concerning a proposed procurement to all prospective contractors receiving the RFP.
- B. Requests for proposals with an anticipated value in excess of CEO approval authority will be publicized. All evaluation factors will be identified along with their relative importance.
- C. Proposals will be solicited from an adequate number of qualified sources. In determining sources to solicit, the Procurement Officer shall use all reasonable means available to ensure that an adequate number of potential qualified proposers receive the solicitation in order to obtain maximum open and competitive competition. Pre-solicitation announcement notices shall be published in a manner reasonably likely to attract prospective proposers or proposers.
- D. In determining which proposals are most advantageous, the Authority may award to the proposer whose proposals offer the greatest business value to the Agency based upon an analysis of a tradeoff of qualitative technical factors and price/cost to derive which proposal represents the "best value" to the Authority. "Best Value" is a selection process in which proposals contain both price and qualitative components, and award is based upon a combination of price and qualitative considerations. Qualitative considerations may include technical design, technical approach, quality of proposed personnel, and/or management plan. The award selection is based upon consideration of a combination of technical and price. If



the Authority elects to use the best value selection method as the basis for award, however, the solicitation must contain language, which establishes that an award will be made on a “best value” basis. A variety of evaluation processes are available for a “best value” selection and no single process is optimal. The Authority can consider weighted criteria, adjusted low bid, equivalent design/low bid, fixed price/best design, or meets criteria/low bid.

### 3.0 PROPOSAL EVALUATION

- A. The evaluation factors that will be considered in evaluating proposals shall be tailored to each procurement and shall include only those factors that will have an impact on the source selection decision. The evaluation factors that apply to a particular procurement and the relative importance of those factors are within the broad discretion of the Chief Executive Officer and the Board.
- B. The Chief Executive Officer may establish a formal evaluation board to evaluate proposals and either recommend a selection to the Chief Executive Officer, or itself select the source for contract award.
- C. Unless the Chief Executive Officer designates another Authority official, or establishes a formal evaluation board to make the selection, the Procurement Officer is responsible for selecting the source for contract award. For purposes of this Chapter, the Officer or board charged with responsibility to select the source for contract award is referred to as the “Selecting Party.”
- D. The Selecting Party shall evaluate each proposal in accordance with the evaluation criteria in the solicitation. The Selecting Party’s selection decision is subject to the approval of the Board.
- E. All proposals and any evaluations and rating sheets regarding such proposal, shall be retained for a period of one year from the date a contract is awarded.

### 4.0 SPECIAL PROVISIONS APPLICABLE TO DESIGN-BUILD CONTRACTS - PROPOSAL EVALUATION

- A. The Evaluation Methodology is designed to eliminate from the contractor selection process any external influence and/or undue bias on the part of any individual for or against any team or team member. This will ensure that the Authority will receive a fair and unbiased evaluation of the proposals.
- B. The basic approach is to:
  - 1. Verify if the proposals are compliant with the RFP requirements
  - 2. Objectively evaluate the Technical (non-price) evaluation criteria described in the RFP
  - 3. Open the sealed price proposal envelopes following completion of the Technical Evaluation
  - 4. Determine which Proposer has presented the Best Value to the Authority based upon the combination of price and technical scores, weighted as described in the RFP.

- C. If the Best Value Proposer's price proposal is determined by the CEO to be consistent with the Authority's budget, does not include prohibited items, is fair and reasonable, and represents the Best Value, then the CEO will make a recommendation of award to the Authority Board of Directors. The determination of the CEO shall be in accordance with Chapter 10 Section 6.

## 5.0 REJECTION OF PROPOSALS

- A. The Selecting Party may reject all proposals received that are determined not to be in the competitive range, including those proposals made by offerors who refuse to execute any required representations and certifications.
- B. The Board, based upon the recommendation of the Selecting Party or the Chief Executive Officer, may reject any or all proposals received. The Selecting Party or Chief Executive Officer may recommend rejection by the Board because:
  - 1. All otherwise acceptable proposals received are at unreasonable prices or, in the case of Joint Development Agreements, offer inadequate compensation;
  - 2. The proposals were not independently arrived at in open competition, were collusive or were submitted in bad faith; or
  - 3. For other reasons, rejection is clearly in the Authority's best interest.

## 6.0 NEGOTIATION; SELECTION

The methods and procedures for selection and negotiation shall be determined by the Contracting Officer and set forth in the request for proposals. The Contracting Officer may adopt any lawful methods and procedures that he or she determines are in the best interest of the Authority.

## 7.0 CONTRACT REVIEW PRIOR TO AWARD

- A. Subject to Board approval, when applicable, the Contracting Officer shall proceed with award to the firm(s) whose proposal(s) will be most advantageous to the Authority. The draft contract may be submitted to the Authority's General Counsel for review and approval as to form.
- B. The Contracting Officer is responsible for making all changes, as may be required based on legal, technical and management review.

## 8.0 SPECIAL PROVISIONS APPLICABLE TO ARCHITECT - ENGINEER AND RELATED SERVICES

- A. This Section prescribes guidelines and requirements for the procurement of Architect-Engineer ("A-E") and related services ("A-E Services"). A-E Services are defined as professional services of an architectural or engineering nature that are required by law to be performed by a California registered or licensed architect or engineer. For the procurement of A-E Services, the Procurement Officer shall follow the procedures set forth in this Section 10, in addition to the procedures set forth elsewhere in this Chapter.

- B. If the procurement is for A-E Services, the selection shall be based on the demonstrated competence and qualifications of prospective contractors, and shall follow the procedures set forth in Government Code 4525, et seq., and, when applicable, the laws and regulations that govern the procurement of design-related services with Federal-aid highways funds (see e.g., Title 23 U.S.C. 112, Letting of Contracts and 23 CFR 172, Administration of Engineering and Design Related Service Contracts).

## CHAPTER 6 - SMALL PURCHASE PROCEDURES

### 1.0 GENERAL

- A. After Authority staff decides to procure materials, supplies, or services, it must adhere to the procedures in this manual to obtain those items. The procedures ensure that the proper approval system is used for the type of procurement made, and that the materials supplies or services requested are necessary, and funds are available.

### 2.0 USE OF SMALL PURCHASE PROCEDURES

- A. This Chapter sets forth the procedures for small purchases and other simplified purchase procedures. These purchases shall be made competitively except where it is clearly in the best interests of the Authority to accomplish such purchases non-competitively.
- B. The Small Purchase Procedures set forth in this Chapter 6 may only be used when the total amount of the procurement does not exceed Fifty Thousand Dollars (\$50,000).
- C. The Procurement Officer shall use the Small Purchase Procedures that are most suitable, efficient, and economical based on the circumstances of each procurement.

### 3.0 PROHIBITED USE OF SMALL PURCHASE PROCEDURES

- A. The Procurement Officer shall not split or fragment a procurement totaling more than the Authority's small purchase limitation into several purchases that are less than the limit in order to use the Small Purchase Procedures.
- B. A procurement requirement shall not be parceled, split, divided, or purchased over a period of time in order to avoid the dollar limitations for use of Small Purchase Procedures.

### 4.0 TYPES OF AND REQUIREMENTS FOR SMALL PURCHASES

- A. Revolving Fund Account. A revolving fund account in an amount not to exceed \$10,000 shall be established and maintained by the Chief Executive Officer for the purpose of paying miscellaneous expenses of the Authority not to exceed \$1,000 individually.

Such miscellaneous expenses shall include, but not be limited to, outside photocopying expenses, expenses for office refreshments and other miscellaneous office supplies that, in the Chief Executive Officer's sole discretion, are necessary and convenient for proper office administration.

- B. Micro-Purchases. Small purchases for Ten Thousand Dollars (\$10,000) or less may be accomplished by securing one proposal or quotation if the Procurement Officer considers the price to be fair and reasonable.

- C. Small Purchases. For purchases that have a total value exceeding Ten Thousand Dollars (\$10,000) but not more than Fifty Thousand Dollars (\$50,000), a minimum of three (3) written quotations, with efforts to include at least one DBE vendor, are to be requested and a decision to purchase will be made on the basis of lowest price.

## 5.0 DETERMINATION OF REASONABLENESS OF PRICE AND AWARD

- A. The Procurement Officer shall determine, in writing, that the price to be paid to the successful offeror is fair and reasonable. When only one (1) response is received to a request for quotations, or the price variance between multiple responses reflects a lack of adequate competition, the Procurement Officer shall include a statement in the contract file giving the basis for the determination that the price is fair and reasonable.

## **CHAPTER 7 - NON-COMPETITIVE AND EMERGENCY PROCUREMENTS**

### **1.0 NON-COMPETITIVE PROCUREMENTS**

- A. Procurement of goods and services without competition is authorized under limited conditions. Procurement of contracts may be made by non-competitive negotiation only under the following circumstances:
1. In the case of emergency where a contract is necessary for the immediate preservation of the public health, welfare, or safety or protection of Authority property;
  2. The Authority has advertised the contract as required by this Manual and has undertaken reasonable efforts to solicit potential contractors but has determined that competition is inadequate;
  3. The goods or services are to be provided by a government or other public entity;
  4. The Authority wishes to renew or extend the term of the contract and compensation provided pursuant to an existing contract under substantially the same terms and conditions, or the amendment of an existing contract that does not materially alter the terms and conditions of the contract (other than term and compensation), provided that such renewal, extension or amendment is authorized or permitted by the contract;
  5. The equipment to be purchased is of a technical nature and the procurement thereof without advertising is necessary in order to assure standardization of equipment and interchangeability of parts;
  6. The item to be purchased is a capital maintenance item that is available only from the original manufacturer or supplier or is required to maintain system operational compatibility and connectivity with the existing Metro transit system;
  7. The contract is for employment services;
  8. The contract is one for which only per diem and travel expenses are paid and there is no payment for services rendered; and
  9. The contract is with a contractor who has entered into a contract with the County of Los Angeles, the Cities of Culver City, Los Angeles, and Santa Monica, or the Metro for the Project, if (a) the proposed Authority contract is for the same material scope of work as the other contract; (b) the proposed Authority contract contains substantially the same terms as the other contract; and (c) other contract was competitively procured in accordance with requirements applicable to such other agency's procurements; or

10. The Contracting Officer determines that there is only a single source of supply available, or only one contractor is qualified to provide the service or product;
  11. The Contracting Officer otherwise determines that award of a contract pursuant to competitive procedures identified in this Manual is either infeasible or would not produce an advantage, which determination shall be supported by written justification; or
  12. The provisions listed in the Procurement Policy Manual under Chapter 10, paragraph 3.0 regarding federally funded Sole Source procurements are applicable.
- B. The Chief Executive Officer shall have authority to determine that non-competitive procurements are permitted under paragraph A, subparagraphs (1) through (11) for contracts for amounts less than or equal to \$250,000. Board approval is required for contracts over \$250,000. Each decision to proceed with a non-competitive procurement shall be supported by a written statement of determinations and findings approved by the Chief Executive Office.

## 2.0 EMERGENCY PROCUREMENTS

- A. The Authority may conduct a procurement on an emergency basis if the procurement is essential to an Authority requirement to deal with an existing emergency condition, as defined in Paragraph "B." The emergency procurement of supplies or services shall be limited to quantities and time periods sufficient to meet the immediate threat and shall not be used to meet long-term requirements.
- B. For purposes of an emergency procurement under this Chapter, an "emergency condition" is a situation (such as a flood, epidemic, riot, equipment failure, or any other reason declared by the Chief Executive Officer) which creates an immediate threat to the public health, welfare, or safety of the Project. The existence of an emergency condition creates an immediate need for supplies, services, or construction which cannot be met through normal procurement methods, and the lack of which would seriously threaten one (1) or more of the following:
1. The health or safety of any person;
  2. The preservation or protection of property;
  3. The continuation of necessary Authority functions;
  4. Contract delays that could result in an increase to the cost of the project.
- C. The Board has authorized the Chief Executive Officer to expend funds, in an amount not to exceed Five Hundred Thousand Dollars (\$500,000), for purposes of this Section 2, without prior Board action. Any funds in excess of that amount require Board approval. The Chief Executive Officer shall, after such expenditure, submit to the Board a full report explaining the necessity for the expenditure.

### 3.0 EMERGENCY AND OTHER NON-COMPETITIVE PROCUREMENTS

- A. In each instance where the non-competitive procurement procedures set forth in this Chapter are used, the Contracting Officer shall do the following:
  - 1. Prepare a written Sole Source Memorandum recording all the facts that provide justification to proceed with the non-competitive or emergency procurement; and
  - 2. Ensure that all of the steps required under this Chapter for the justification, documentation, and approval of the procurement are completed before the contract is awarded.



## **CHAPTER 8 - PAYMENT OF LIVING WAGE**

Refer to Title III, Chapter 8 of the Administrative Code.

## **CHAPTER 9 - DISPOSAL OF SURPLUS PROPERTY**

### **1.0 DEFINITIONS**

- A. “Surplus personal property” shall mean personal property of the Authority which is no longer needed or fit for the purpose intended.
- B. “Surplus real property” shall mean real property of the Authority which is not needed for the Project. Real Property conveyed pursuant to a Joint Development Agreement is not surplus real property.

### **2.0 DISPOSAL OF SURPLUS REAL PROPERTY**

In the event the Authority may have surplus real property, it shall be disposed of in accordance with Metro policies and procedures.

### **3.0 DISPOSAL OF PERSONAL PROPERTY**

- A. The Contracting Officer shall have the authority to dispose of all owned surplus and obsolete personal property by bid, auction, negotiated sale or exchange. If the disposal of such items is conducted by bid, the sale shall be conducted in accordance with Chapter 3 or Chapter 6 (as applicable) of this Title III. The Procurement Officer shall attempt to obtain the best value for the property that can be reasonably be obtained.
- B. The Contracting Officer may donate any owned surplus and obsolete personal property to any nonprofit organization providing services to the residents of those cities or portions of cities in which the Project route is located if the Authority finds that the nonprofit entity will use the donated property to further a statutory purpose of the Authority.

## **CHAPTER 10 - PROCUREMENTS USING FEDERAL FUNDS**

### **1.0 PURPOSE AND SCOPE**

The requirements of Chapter 10 shall be applied to all Authority contracts that use federal funds.

### **2.0 APPLICABLE REQUIREMENTS**

- A. Federal Transit Administration (FTA) Circular 4220.1E sets forth the requirements a grantee must adhere to in the solicitation, award, and administration of its third party contracts. FTA Circular 4220.1E applies to all FTA grantees and subgrantees that contract with third parties under FTA assistance programs. Since this circular may be updated or reissued from time-to-time, the Procurement Officer shall ensure compliance with the latest requirements in effect at the time of each procurement.
- B. In addition to the requirements set forth in this Chapter 10, the FTA standards for competition are set forth generally in Section 3.B of Chapter 1 hereof and the FTA procedures for sealed bid procurements and competitively negotiated procurements are set forth in Chapters 3 and 5 hereof, respectively.
- C. The requirements outlined in this Chapter 10 do not apply to procurements undertaken in support of capital projects completely accomplished without FTA funds.

### **3.0 PROCUREMENT BY NONCOMPETITIVE PROPOSALS (Sole Source)**

- A. Sole Source procurements are accomplished through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate. A contract change that is not within the scope of the original contract is considered a sole source procurement that must comply with this subparagraph.
  - 1. Procurement by noncompetitive proposals may be used only 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;
    - b. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
    - c. FTA authorizes noncompetitive negotiations—e.g., if FTA provides a joint procurement grant or a research project grant with a particular firm or combination of firms, the grant agreement is the sole source approval;
    - d. After solicitation of a number of sources, competition is determined inadequate; or
    - e. The item is an associated capital maintenance item as defined in 49 U.S.C. §5307(a)(1) that is procured directly from the original manufacturer or

supplier of the item to be replaced. The grantee must first certify in writing to FTA:

- 1) that such manufacturer or supplier is the only source for such item; and
  - 2) that the price of such item is no higher than the price paid for such item by like customers.
2. A cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profit, is required.

#### 4.0 STATUTORY AND REGULATORY REQUIREMENTS

The Authority shall comply with applicable federal statutory and regulatory requirements (such as Davis-Bacon Act, Disadvantaged Business Enterprise, Clean Air, Environmental and Conservation Requirements, Buy America and Cargo Preference) in carrying out procurement actions under this Manual.

#### 5.0 DISPUTES, CLAIMS AND CHANGES - DEFINITIONS

- A. Change Orders – the commercial and technical resolution of a contract modification that is within the original scope of the contract. The change order document can be unilateral or bilateral in execution.
- B. Potential Claim – written notice provided to the Authority by the contractor when the:
  1. Parties are unable to reach bilateral agreement on a change and the contractor is provided a unilateral change order (“protest”); or,
  2. Contractor perceives that it is entitled to additional compensation (time or money) for something it believes to constitute extra work performed or to be performed.
- C. Claim – differences that have developed during the contract, under protest or under notice of potential claim, which are not resolved at the time the contractor returns the proposed final pay estimate.
- D. Dispute - a disagreement between the parties as to the merits, amount or remedy arising out of an issue in controversy, including a disagreement regarding a Claim or asserted default.
- E. Amendment – a modification considered outside the original contract scope and formalized with a bilateral contract change document only. Both parties are required to execute the document.

#### 6.0 DISPUTES, CLAIMS AND CHANGES - GENERAL

- A. The Authority shall maintain a log of all disputes and changes which will be used to prepare status reports and aid in timely processing of changes.

- B. The Contracting Officer is responsible for documenting negotiation activities for the record, and should be present at all professional services and construction contract negotiations.
- C. The Contracting Officer prepares the appropriate documentation (Change Order Forms) for review and approval by the Authority's CEO or Board of Directors, prior to issuance to the consultant/contractor for signature. This document includes full definition of work scope, impact on DBE goals, definition of time and schedule impacts, and price. The change order language stipulates that the agreed-upon terms are all inclusive, and no other relief will be available regarding this work. After acceptance by the consultant/contractor, the Authority's CEO will execute the change.

## 8.0 PROGRESS PAYMENTS

- A. The Authority may provide for progress payments under contracts that require long time periods to complete contract performance or if the use of progress payments contributes to the effective and efficient administration of consultant/contractor work. Progress payments will be made on the basis of allowable costs incurred by the consultant/contractor, and the stage of completion of the contract.
  - 1. Criteria – Contract clauses providing for progress payments should be used when the investment in work and progress is expected to be great enough to add substantial costs to the contract or strain the consultant/contractor's cash flow or ability to obtain financing. Under no circumstances should payments exceed the consultant/contractor's physical completion of the Work, nor should they amount to advance payments. Progress payments can be based on a periodic voucher for expenditures, a milestone, or the Authority's estimate of work accomplished as defined in the contract.
  - 2. For Federally funded procurements, the Authority must obtain adequate security (i.e., title to work in progress; letter of credit) for any progress payments made.

## 9.0 TERMINATION

- A. All Authority contracts exceeding \$10,000 must contain provisions enabling the Authority to terminate such contracts for the convenience of the Authority. These provisions shall specify the manner in which such termination will be effected and the basis for settlement. There shall also be included in such contracts appropriate provisions specifying causes for which the contracts may be terminated for default.
- B. Terminations for Convenience of the Authority:
  - 1. Authority contracts will be terminated for convenience only when this is determined to be in the best interests of the Authority. The Contracting Officer's determination shall be in writing and approved by the Authority Official/Board that approved the original award, if applicable. In lieu of

issuing a notice of termination for convenience, the Contracting Officer will effect a no-cost settlement agreement where possible and appropriate.

2. Formal written notice to the contractor is necessary to terminate a contract for convenience. Such notice will state that the contract is being terminated pursuant to the termination for convenience provision of the contract, the effective date, the extent of termination and instructions to the contractor to cease performance under the contract.
3. The Contracting Officer will negotiate a no-cost settlement with the contractor if possible. Otherwise, the Contracting Officer will negotiate an appropriate settlement agreement with the contractor pursuant to the provisions of the termination for convenience clause of the contract.

C. Terminations For Default:

1. If a contractor's right to proceed is terminated for default, the Authority may take over and complete the work or cause it to be completed, and the contractor and his sureties, if any, shall be liable to the Authority for any increased costs caused thereby. The contractor and his sureties shall, in addition to increased costs in completing the work, be liable for liquidated damages, if liquidated damages are provided in the contract, or for actual damages, if liquidated damages are not so provided.
2. If the Contracting Officer determines that the contractor's failure to perform arises from causes which are excusable under the terms of the contract, the Contracting Officer shall not terminate the contractor's right to proceed, nor shall he/she charge the contractor with liquidated damages (or if no liquidated damages, then actual damages) because of any delays occasioned by such causes.
3. Where the surety does not complete performance of the contract, the Contracting Officer normally will complete the performance of work by awarding a new contract based on the same plans and specifications. Such award may be the result of competitive bidding or negotiation; whichever procedure is most appropriate under the circumstances. The Contracting Officer must use reasonable diligence to obtain the lowest price available for completion.
4. If, after due consideration, the Contracting Officer determines that termination is not in the best interest of the Authority although the contractor is in default, the Contracting Officer may permit the contractor to continue the work, and the contractor and his sureties shall be liable to the Authority for liquidated damages, as specified in the contract, or if liquidated damages are not so specified, for any actual damages occasioned by the failure of the contractor to complete the work in accordance with the terms of the contract.

## 10.0 BONDS, OTHER SECURITIES AND INSURANCE

- A. The Authority shall specify bonding, in compliance with applicable FTA and State of California requirements for all public works contracts.

- B. The Contracting Officer may require any of the following types of security for any solicitation or contract subject to this Manual, other than a small purchase, regardless of the estimated amount of the contract:
  - 1. Bid bonds;
  - 2. Other bid or proposal security;
  - 3. Construction performance and payment bonds; and
  - 4. Performance or payment bonds or other security on non-construction contracts.
  
- C. Requirement For Bonds To Be Executed By An Admitted Surety Insurer
  - 1. California Code of Civil Procedure § 995.311 calls for any bond required on a public works contract to be executed by an admitted surety insurer. The Authority has a duty to verify that an admitted surety insurer executes the bond. The Contracts Manager shall print out information from the website of the Department of Insurance (<http://www.insurance.ca.gov/docs/FS-CompanyProfiles.htm>) confirming that the surety is an admitted surety insurer and attach it to the bond.

## 11.0 CONTRACT CLOSEOUT

- A. A completed contract is one which is both physically and administratively complete and in which all aspect of contractual performance have been accomplished, terminated, or otherwise disposed of by contract modification. A contract is physically complete only after all articles and services called for under the contract, including such related items as reports, spare parts, and exhibits, have been delivered to and accepted by the Authority, including those articles and services for which no specific compensation may have been stipulated. A contract is administratively complete when all payments have been made and administrative actions accomplished.
  
- B. The contracting activity is responsible for review of the contract file and obtaining all necessary documentation to ensure that: (1) all deliverables and/or services (including any reports) required under the contract have been received and accepted; (2) the terms and conditions of the contract have been complied with; (3) disposition of accountable property under the contract has been accomplished; all necessary actions including final payment and releases required to close the contract are completed and documented.
  
- C. Small purchase files shall be considered closed when the Procurement Officer receives evidence of receipt of property and final payment.
  
- D. A contract file shall not be closed in any of the following situations:
  - 1. If the contract is the subject of a claim or dispute;
  - 2. If the contract is in litigation or under appeal; or

3. In the case of a termination, if all termination actions have not been completed.
4. If State or Federal approval is required and has not been received.

## **CHAPTER 13 – PAYMENT**

### **1.0 AUTHORITY PAYMENT PROCESS**

- A. The Authority will promptly process all contract payments with necessary controls to assure compliance with all contract terms and conditions in accordance with internal procedures authorized by the Chief Executive Officer.
- B. The Authority Contracting Officer will clearly specify in solicitations and contracts, the form and content of an acceptable invoice, including a requirement that invoices be sequentially numbered, that they contain a date and contract number and the services for which they are invoicing, the period of performance being invoiced, and to whom invoices are to be sent.

### **2.0 PROMPT PAYMENT TO SUBCONTRACTORS**

In accordance with 49 CFR Part 26 § 26.29, the Authority shall include in all contracts above the small purchase threshold a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 10 days from the receipt of each payment the Authority makes to the prime contractor. The clause will also require the prompt return of retainage payments from the prime contractor to the subcontractor within 10 days after the subcontractor's work is satisfactorily completed.

### **3.0 PAYMENT OF RETENTION ON PUBLIC WORKS CONTRACTS**

Pursuant to California Public Contract Code § 7107, within 60 days after the date of completion of the work of improvement, the Authority shall release any retention withheld. In the event of a dispute between the Authority and the original contractor, the Authority may withhold from the final payment an amount not to exceed 150 percent of the disputed amount.

### **4.0 PROGRESS PAYMENTS ON PUBLIC WORKS**

In accordance with California Public Contract Code § 20104.50, the Authority shall make progress payments within 30 days after receipt of an undisputed and properly submitted payment request from a contractor on a construction contract. If the Authority fails to make timely payment, the Authority shall pay interest to the contractor equivalent to the legal rate set forth in subdivision (s) of Section 685.010 of the Code of Civil Procedure.

### **5.0 PROGRESS PAYMENTS AND RETENTIONS ON ARCHITECT, ENGINEER, AND LAND SURVEYOR CONTRACTS**

Pursuant to California Civil Code § 3320, for any contract for public works or improvement, the Authority shall pay to the prime design professional any progress payment within 30 days of receipt of a written demand for payment in accordance with the contract, and the final retention payment within 45 days of receipt of a written

demand for payment in accordance with the contract. If any amount is wrongfully withheld or is not timely paid, the prime design professional shall be entitled to a penalty of 1½ percent for the improperly withheld amount, in lieu of any interest otherwise due, per month for every month that payment is not made.

## 6.0 REQUEST FOR PAYMENT CERTIFICATION

All contracts above the small purchase threshold for services and construction purchases shall contain a clause, which requires the contractor to submit with each request for payment the following certification:

### **REQUEST FOR PAYMENT CERTIFICATION**

I hereby certify under penalty of perjury as follows:

That the claim for payment is in all respects true, correct; that the services mentioned herein were actually rendered and/or supplies delivered to the Authority in accordance with the contract.

I understand that it is a violation of both the federal and California False Claims Acts to knowingly present or cause to be presented to the Authority a false claim for payment or approval. A claim includes a demand or request for money. It is also a violation of the False Claims Acts to knowingly make use of a false record or statement to get a false claim paid. The term "knowingly" includes either actual knowledge of the information, deliberate ignorance of the truth or falsity of the information, or reckless disregard for the truth or falsity of the information. Proof of specific intent to defraud is not necessary under the False Claims Acts.

I understand that the penalties under the Federal False Claims Act and State of California False Claims Act are non-exclusive, and are in addition to any other criminal and/or civil remedies which the Authority may have either under contract or law.

For materials and equipment purchases above the small purchase threshold, the buyer may require the contractor to submit the required certification for requests for payment.

The contract administrator/buyer will disapprove and Accounts Payable will return unpaid any request for payment which does not contain the certification when required.