

POLICY NUMBER: 1.7

NAME OF POLICY: Finance – Purchasing

ADOPTED: January 16, 2025

PREVIOUSLY REVISED: October 19, 2023; December 17, 2020

PURPOSE:

A. The purpose of the Procurement Policy is to provide a set of policies and procedures that comply with applicable federal, state, local, and general laws and regulations to promote cost-effective procurement of goods and services. In the event the provisions of this policy directly conflict with federal, state, or local law, the latter shall govern.

B. The underlying tenant of this Policy is to make good use of public resources by making purchasing decisions that reflect the Authority's commitment to the cost-effective procurement of goods and services, and contracts for construction projects by upholding the fundamental tenets of public procurement, including fairness, honesty, transparency, and accountability.

POLICY:

I. AUTHORITY CONTRACTS WITH OUTSIDE CONTRACTORS, VENDORS, AND CONSULTANTS

A. Procurement of Goods and Services

See also I.F. General Federal Procurement Guidelines if utilizing any Federal Funds.

1. Purchases and Contracts of \$5,000 or Less. If the cost of the goods and services is less than \$5,000, the General Manager will attempt to secure the best value for the Authority, but need not solicit quotes, bids, or proposals.

2. Purchases and Contracts of \$5,001 to \$25,000. If the cost of the goods is between \$5,001 and \$10,000, the General Manager will solicit informal quotes, bids, or proposals from at least two (2) contractors, vendors, or consultants (Sources). If the estimated cost exceeds \$10,000, but is \$25,000 or less, the General Manager will solicit informal quotes, bids, or proposals from at least three (3) Sources. For all purchases or contracts for goods or services which do not exceed \$25,000, the General Manager may award the contract or purchase order, without approval by the Commission.

3. Purchases and Contracts of More than \$25,000. When the estimated cost of goods exceeds \$25,000, the General Manager will solicit formal written

bids/proposals through means and methods which he or she determines to be most cost-effective, and which may include advertisement in a newspaper of general circulation in the Authority's service area or utilization of an online bid solicitation service in common use by California public procurement professionals.

When the estimated cost of services exceeds \$25,000, the General Manager will solicit informal proposals through means and methods which he or she determines to be most cost-effective, including requests for proposals (RFP) or requests for qualifications (RFQ). With the exception of contracts for services procured pursuant to California Government Code Section 4525 et seq., all services contracts shall be awarded to the proposer(s) that offer the best value to the Authority, which is defined as the overall combination of quality, price, and other elements of a proposal that, when considered together, provide the greatest overall benefit to the Authority in response to the requirements described in the solicitation documents.

All contracts in an amount exceeding \$25,000 shall be submitted to the Commission for approval.

4. Qualifications Based Solicitations. Pursuant to California Government Code Section 4525 et seq., the Authority will use qualifications-based competitive proposal procedures for the procurement of services from the following professions: architecture, landscape architecture, engineering, environmental services (but not where the scope of work consists of planning services), land surveying, or construction project management, regardless of the contract value. Under this method, proposals will be evaluated based upon qualifications and demonstrated competence.

B. Procurement of Construction Projects

1. California Uniform Public Construction Cost Accounting Act. The Authority has opted in to the California Uniform Public Construction Cost Accounting Act (California Public Contract Code Section 22000 et seq., the "Act"). Pursuant to the Act, projects for the construction, reconstruction, erection, alteration, renovation, improvement, demolition, repair work, painting, or repainting of Authority-owned, leased, or operated facilities will be procured as follows:

a. Projects of \$75,000 or less may be let by negotiated contract or purchase order or performed by the Authority's own employees by force account.

b. Projects of \$220,000 or less may be let by informal procedures set forth in the Authority's informal bidding resolution and in the Act.

c. Projects of more than \$220,000 will be let by formal bidding procedures set forth in the Act.

d. If the amounts set forth in California Public Contract Code Section 22032(c)) are amended subsequent to the Commission's approval of this Policy, then, in that event, the amounts set forth in California Public Contract Code Section 22032(c)) shall be used by the Authority.

2. Maintenance Work. The Authority may, but is not required to, use the procedures set forth in this section I.B. Procurement of Construction Projects for maintenance work, which includes routine, recurring, and usual work for the preservation or protection of any Authority-owned or operated facility for its intended purposes, minor repainting, resurfacing of streets and highways of less than 1 inch, landscape maintenance, and work to keep, operate, and maintain Authority-owned water, power, or waste disposal systems.

3. Other Statutorily Authorized Methods. Alternative methods of procurement for construction project delivery may be utilized if authorized by state law and in full compliance with all applicable requirements. A common example of an alternative is the design-build method that combines architectural and engineering services with construction into a single contract.

C. Contractor Pre-Qualification and Task Order-Based Contracts

The Authority may solicit qualifications, hourly rates, and expense information from contractors for the purpose of establishing and maintaining a pre-qualified roster of contractors for a range of projects. The General Manager may then recommend to the Commission the approval of a task order-based contract with any contractor appearing on the pre-qualified roster. Each task order-based contract shall have a total not-to-exceed dollar amount. When a particular project arises, if the estimated cost is \$75,000 or less, the General Manager may issue a task order to the contractor most qualified for the work from the pre-qualified roster. If the estimated cost is greater than \$75,000 and less than \$220,000, the General Manager may follow the process outlined in Section I.B.1.b, or he or she may solicit bids from pre-qualified firms. Following selection, the General Manager may issue a task order to the lowest bidder, without further approval by the Commission, as long as the total value of all task orders issued under that contract is less than the Commission-approved not-to-exceed dollar value. Staff shall inform the Commission of all task orders over \$25,000.

D. Consultant Pre-Qualification and Task Order-Based Contracts

The Authority may solicit qualifications, hourly rates, and expense information from consultants for the purpose of establishing a pre-qualified roster of consultants for a range of services and projects. The General Manager may then recommend to the Commission approval of a task order-based contract with any consultant appearing on the pre-qualified roster. Each task order-based contract shall have a total not-to-exceed dollar amount. When a particular consulting need or project arises, if the estimated cost is \$25,000 or less, the General Manager may issue a task order to the consultant most qualified for the work from the pre-qualified roster. If the estimated cost is greater than \$25,000, the General Manager may follow the process outlined in Section I.A.3, or he or she may solicit proposals from pre-qualified firms. Following selection, the General Manager may issue a task order to the most qualified firm without further approval by the Commission, as long as the total value of all task orders issued under that contract is less than the Commission-approved not-to-exceed dollar amount. Staff shall inform the Commission of all task orders over \$25,000.

E. Sole Source

Regardless of the estimated cost of the procurement, the Authority is not required to follow the processes detailed in this Policy when procuring goods or services for which there exists only a sole source of supply.

F. General Federal Procurement Guidelines.

Federal Grant Procurement Standards will be observed by the Authority. When utilizing federal funds, all grant procurement and related expenditures must adhere to the procurement guidelines found in the Code of Federal Regulations (CFR) Title 2-Grants and Agreements, Part 200-Uniform Administrative Requirements, Cost Principles, and Audit Requirements of Federal Awards. Such procurement standards in the Uniform Guidance (UG) are covered in paragraphs 200.317 to 200.327. The regulations require that procurement activities be performed in an equitable and competitive manner to promote equal treatment, efficiency, and economy in federal grant activities. To ensure objective contractor performance and eliminate an unfair competitive advantage, contractors must be excluded from competing for such procurements if they develop or draft grant applications or contract specifications, requirements, statements of work, invitations for bids, and/or requests for proposals.

The Authority shall follow the guidelines carefully to avoid suspension or revocation of federal assistance. The Authority shall follow all procurement guidelines and requirements as directed by the granting agency providing federal funds.

G. Rental or Leasing of Equipment

If the total rental or lease payments due under a rental or lease agreement are \$25,000 or less, the General Manager will follow the procedure in Section I.A.1. If the total rental or lease payments due under a rental or lease agreement are over \$25,000, the General Manager will follow the procedure in Section I.A.2.

H. Reporting

The General Manager will report to the Commission on all written contracts entered into under the General Manager's authority.

I. Contract Extensions

Commission approval is required for extension of contracts or purchase orders beyond one (1) year where the cost of the extension is estimated to be greater than \$25,000.

J. Minority Business Enterprises and Women's Business Enterprises Policy

The Authority recognizes the value of diversity, and it is the intention of the Authority to create a level playing field on which Minority Business Enterprises and Women's Business Enterprises can compete fairly for contracts and subcontracts.

K. Splitting Procurements Prohibited

The Authority will not split purchases into smaller segments or partial orders to remain below the authorized dollar threshold for formal solicitation in an effort to take advantage of informal solicitation procedures or otherwise avoid requirements of this Policy.

II. AUTHORITY CONTRACTS WITH MEMBER AGENCIES FOR WORK BY MEMBER AGENCY EMPLOYEES

A. Contracts with Member Agencies

The Authority has entered into contracts with its member agencies for the operation and routine maintenance of Authority Facilities and additional tasks, as requested by the Authority. Work performed pursuant to contracts between the Authority and its member agencies will conform to the East Bay Dischargers Authority Amended and Restated Joint Exercise of Powers Agreement, this Policy, and the respective contract. In particular, each member agency contract will require the member agency to indemnify the Authority against all losses that may arise out of the performance of the work. Furthermore, the Authority will require the member agency to maintain insurance in such types and amounts as the Authority may from time to time establish, and to name the Authority and the member agencies as additional insureds.

B. Operations and Maintenance Manager Determination

Consistent with the above referenced contracts with the member agencies, the Authority's Operations and Maintenance Manager may authorize one or more member agencies to perform work on Authority Facilities when he or she determines that the member agency or agencies can perform such work more cost effectively than a non-member agency contractor.

III. COOPERATIVE PROCUREMENTS WITH MEMBER AGENCIES

To foster greater economy and efficiency, the Authority may avail itself of joint procurements and assignment of existing contract rights ("piggybacking") with its member agencies.

IV. PURCHASE OR LEASE OF REAL PROPERTY

Any contract for the purchase of real property must be submitted to and approved by the Commission. Any lease or sublease of real property, including any renewal or extension of an existing lease or sublease, for which the rent or lease payments total an amount greater than \$25,000 annually, must be submitted to and approved by the Commission. For any lease or sublease of real property, including any renewal or extension of an existing lease, for which the annual rents total an amount \$25,000 or less, the General

Manager may approve and execute the lease, sublease, renewal, or extension, without further approval by the Commission.

V. GENERAL MANAGER SIGNATURE AUTHORITY

A. Signature Authority Generally

Except as otherwise described in this Policy, the General Manager is authorized to expend funds, issue purchase orders, and sign contracts for procurements and activities for goods and services for amounts that do not exceed \$25,000.

B. Change Orders and Amendments Generally

The General Manager is authorized to issue change orders or amendments where the amount is \$25,000 or less without further Commission approval, so long as such change order or amendment would not result in a total contract amount of greater than \$25,000. The Commission reserves to itself the right to approve all amendments to contracts previously approved by the Commission.

The General Manager is authorized to administer all contracts on behalf of the Authority.

VI. EMERGENCY CONTRACTS

A. Competitively Bid Emergency Contracts

The General Manager has been authorized by the Commission to take all necessary and proper measures in emergency conditions to keep the Authority Facilities in operation. The Authority's practice is to competitively solicit contracts for emergency services in advance of any emergency, consistent with the California Governor's Office of Emergency Services (CalOES) and Federal Emergency Management Agency (FEMA) reimbursement requirements.

B. Non-Competitively Bid Emergency Contracts

In the event the Authority does not have a current contract for emergency services and the emergency conditions do not permit a delay resulting from a formal competitive solicitation process, the General Manager is authorized to make emergency purchases without giving notice for bids or proposals and to enter into such contracts without prior Commission approval. The General Manager will promptly report on the reasons and necessity for proceeding without a competitive solicitation to the Commission as required by Public Contract Code Section 22050 et seq.

C. Ratification

Commission ratification is required for any emergency contract where the cost exceeds \$25,000 and will be obtained as soon as it is practicable to do so.

VII. WAIVER

The Commission may suspend or waive the requirements of this Policy in any instance when the Commission deems it in the best interest of the Authority to do so.