



MEMORANDUM

TO: SLDMWA Finance & Administration Committee Members, Alternates
SLDMWA Board of Directors, Alternates

FROM: Pablo Arroyave, Chief Operating Officer
Rebecca Akroyd, General Counsel

DATE: August 4, 2025

RE: Adoption of Resolution Authorizing Adoption of Amendments to the San Luis & Delta-Mendota Water Authority Consolidated Procurement Policy

BACKGROUND

In 2009, the Authority adopted Resolution No. 2009-317, which memorialized and adopted Revised Regulations Governing Purchases of Supplies, Equipment and Services (Purchasing Policy). Subsequently, in April 2020, the Water Authority adopted Resolution No. 2020-458, which rescinded Resolution No. 2009-317 and adopted a Consolidated Procurement Policy. In May 2020, a minor revision was made to the Policy. No additional revisions have been made to the Policy since May 2020.

Given large projects like the B.F. Sisk Dam Raise & Reservoir Expansion Project and the Delta-Mendota Canal Subsidence Correction Project, and the possibility that the Authority may issue construction contracts for such projects, staff worked with outside consultants and counsel to develop proposed amendments to the Consolidated Procurement Policy to adopt procurement methodologies available to many other public entities for large construction projects provide additional flexibility in construction contracting, and to clarify other components of the policy.

ISSUE FOR DECISION

Whether the Finance & Administration Committee should recommend to the Board of Directors, and the Board of Directors should adopt the proposed resolution adopting amendments to the Consolidated Procurement Policy.

RECOMMENDATION

Staff recommends adoption of the proposed resolution.

ANALYSIS

Notable amendments to the Consolidated Procurement Policy include the following:

- Section 1.8: Clarifies that if informal procurement occurs and the selected bidder's price is $\leq 10\%$ above the informal bidding threshold stated in Section 1.5(a), then the Authority may award a

contract for substantially the same product(s) or service(s), or substantially the same construction project, by negotiating the price to be within the informal bidding threshold.

- Section 1.12: Updates provisions applicable to contracts involving Federal funding, consistent with current regulations. (Corresponding updates made to Section 4.8(b).)
- New Section 4.1: Adds new definitions for terms relevant to construction contracts, including Best value, Procurement Documents, RFI, RFP, and RFQ.
- Section 4.2: Adds detail to provisions governing competitive solicitation of construction contracts, explaining RFP process.
- New Section 4.9: Adds provisions to authorize procurement of design-build contracts under a specified competitive procedure for public works projects in excess of one million dollars.
- New Section 4.10: Adds provisions to authorize procurement of Construction Manager/General Contractor (CMGC) contracts under a specified competitive procedure for public works projects in excess of one million dollars.
- Section 4.11: Removes the reference to Public Contract Code sections 22160 et seq. to allow for greater flexibility in using legally-authorized construction contracting.
- New Article 5: Adds new article governing protest process, consistent with process currently described in Authority procurement documents.

Additional Detail About Design-Build and CMGC Contracts

Historically, contracts for construction often have been awarded on a “design-bid-build” methodology. Under that methodology, the awarding public entity contracts with an architect and/or engineer(s) to prepare plans and specifications. Following completion of the design, the public entity competitively bids the work and awards the contract to the bidder that submitted the low bid. Finally, the selected contractor constructs the project.

While this methodology works well for many contracts, it can result in the awarding public entity taking the risk of errors in the design for which the public entity may be responsible to the contractor but may not be able to recover from the design professional. Also, due to conflict-of-interest laws, this methodology generally prevents an awarding public entity from engaging its construction contractor during the design process to perform “preconstruction services,” such as identifying constructability concerns with the design and making advanced preparations to facilitate construction once the design is completed and approved (if necessary). As a result, this methodology may result in significant numbers of requests for information (“RFI”) to clarify the design and change orders to modify the design.

Different construction methodologies have been developed and adopted for other public entities to allow shifting of design risk and/or engaging a construction contractor earlier in the process to provide input on the design and facilitate timely and efficient construction of the project. These methodologies also allow for public entities to award construction contracts not only based on low price, but also to consider the construction contractor’s and its key personnel’s experience and expertise. Considering such experience and expertise is particularly critical in larger projects, projects with unusual or sensitive requirements, or projects with critical time constraints. The Authority proposes to adopt two such alternative methodologies: design-build and CMGC.

In design-build projects, the Authority would award a contract to a team of a construction contractor and licensed designers who will create the project design. The contract is awarded based on “best value,” which is the highest scored proposal considering price as well as non-price factors. Particularly with “progressive” design-build, where the contract is awarded earlier in the design process and the construction price (a guaranteed maximum price or “GMP”) is developed later through bidding, this allows the Authority to transfer essentially all design risk to the design-build entity. Even in traditional design-build, where the Authority provides more initial design development, most of the design risk is transferred to the design-builder. While design-build somewhat reduces the Authority’s control of design, the Authority still participates in review and ultimate approval of the design. The project benefits from engagement of the construction prime contractor, and sometimes key subcontractors, from the beginning. Design-build contracts also largely eliminate RFIs and change orders, other than changes based on the Authority’s discretion. Design-build projects also offer the flexibility of beginning construction of earlier project phases while the design of later phases of the project is being completed, which may save time.

In CMGC projects, the Authority contracts with the architect and/or engineers for the design. However, the Authority would award a contract to a construction contractor during the design process, allowing the contractor to participate in the design and provide input that may facilitate construction. Like design-build, the contract is awarded based on “best value,” and, like progressive design-build, the GMP is developed by bidding the construction work when the design is completed. While CMGC does not shift design risk, the involvement of the construction contractor earlier in the process allows for efficiencies and resolution of more ambiguities or constructability issues during design, minimizing RFIs, change orders, and delays. CMGC also allows for construction of a project in phases, while the design is being finalized.

Adoption of these additional construction methodologies will permit the Authority to select a process for larger construction projects that protects the cost benefits obtained through competitive bidding while allowing the Authority to gain the benefits of earlier contractor participation in design. These methodologies, which are well-established for other public entities, should allow for a smoother construction process for larger, more complex projects.

BUDGET IMPLICATIONS

The budget is not impacted by amendment of the Consolidated Procurement Policy.

ATTACHMENTS

1. Proposed Resolution Authorizing Adoption of Amendments to the San Luis & Delta-Mendota Water Authority Consolidated Procurement Policy
2. San Luis & Delta-Mendota Water Authority Consolidated Procurement Policy, showing proposed amendments in redline
3. San Luis & Delta-Mendota Water Authority Consolidated Procurement Policy, no redlines

SAN LUIS & DELTA-MENDOTA WATER AUTHORITY

RESOLUTION NO. 2025-

**RESOLUTION AUTHORIZING ADOPTION OF AMENDMENTS TO THE SAN LUIS
& DELTA-MENDOTA WATER AUTHORITY CONSOLIDATED PROCUREMENT
POLICY**

WHEREAS, the Board of Directors of the San Luis & Delta-Mendota Water Authority (the “Board” and the “Water Authority,” respectively), pursuant to the Water Authority’s procedures and the California Government Code, from time to time, may adopt policy for the administration of the Water Authority; and

WHEREAS, paragraph 6(o) of the Second Amended and Restated Joint Exercise of Powers Agreement for the Water Authority (the “Joint Powers Agreement”) provides for the exercise of powers by the Water Authority as follows: “to the extent not herein specifically provided for, to exercise any powers in the manner and according to methods provided in the laws applicable to the San Luis Water District;” and

WHEREAS, on April 9, 2020, the Board adopted Resolution No. 2020-458, which adopted a Consolidated Procurement Policy for the Water Authority; and

WHEREAS, subsequently, on May 14, 2020, minor revisions were made to the Consolidated Procurement Policy, consistent with Resolution No. 2020-458; and

WHEREAS, Water Authority staff has reviewed the Consolidated Procurement Policy, and has proposed amendments to clarify existing policy, increase flexibility in contracting, and provide authority for the Water Authority to procure both design-build and Construction Manager/General Contractor contracts under specified competitive procedures for public works projects in excess of one million dollars and consistent with similar authority adopted for other public entities; and

WHEREAS, the Board has reviewed and considered the proposed amendments to the Consolidated Procurement Policy.

NOW, THEREFORE, BE IT RESOLVED, AS FOLLOWS, THAT:

Section 1. The facts stated in the recitals above are true and correct, and the Board so finds and determines.

Section 2. The Board has reviewed and considered the proposed Consolidated Procurement Policy amendments, and hereby adopts the proposed Consolidated Procurement Policy amendments.

Section 3. The Board finds that the amended Consolidated Procurement Policy included in Exhibit A will enable the Water Authority to more efficiently procure goods and services and will not adversely affect any interest of the Water Authority or the public.

Section 4. With the consent of the Executive Director, Chief Operating Officer, and General Counsel, updates are hereby authorized to be made to the Consolidated Procurement Policy based on changed requirements of California or Federal law or Federal grant requirements for public bidding or contracting without further action by the Board.

Section 5. This resolution shall become effective immediately and shall remain in effect unless superseded by the requirements of statutes adopted following the effective date hereof or by further action of the Board.

PASSED, APPROVED AND ADOPTED this 7th day of August, 2025, by the Board of Directors of the San Luis & Delta-Mendota Water Authority.

Cannon Michael, Chair
San Luis & Delta-Mendota Water Authority

Attest:

Federico Barajas, Secretary

I hereby certify that the foregoing Resolution No. 2025- was duly and regularly adopted by the Board of Directors of the San Luis & Delta-Mendota Water Authority at the meeting thereof held on the 7th day of August, 2025.

Federico Barajas, Secretary

**SAN LUIS & DELTA-MENDOTA WATER AUTHORITY
CONSOLIDATED PROCUREMENT POLICY**

ARTICLE 1. Basic Principles

1.1 Delegation of authority. Subject to the availability of funds within the parameters of the Authority budget for the fiscal year and the procedures set forth in Articles 2-4 of this Policy, the Authority's Executive Director or Chief Operating Officer,¹ or General Counsel for legal matters, is authorized to bind the Authority, without first obtaining specific authorization by the Board, by written contract or purchase order for:

(a) Contracts up to two hundred thousand dollars (\$200,000); or

(b) Contracts immediately required to respond to an Emergency.

Subject to the availability of funds within the parameters of the Authority budget for the fiscal year and the procedures set forth in Section 3.2 of this Policy, the Authority's Executive Director or General Counsel is authorized to bind the Authority, without first obtaining specific authorization by the Board, by written contract for legal services determined to be necessary.

1.2 "Emergency" shall mean a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services. Emergency contracts exceeding the delegated authority in Section 1.1, if not initially awarded by the Board, shall be reviewed by the Board and either approved or terminated as soon as practical following award.

1.3 Notice. Notice of a procurement shall specify, at a minimum, a brief description of the work to be done or goods or supplies to be purchased; how to obtain additional information; and the date, time, and location that bids will be due. If attendance at a pre-bid meeting is required, then the date, time, and location of such meeting shall be included in the notice.

1.4 List of interested bidders. The Authority may establish one or more lists of potential bidders interested in future Authority contracts. Any list may be defined or limited in scope as the Executive Director or Chief Operating Officer deems appropriate. For any such list the Authority maintains, the Authority shall periodically invite potential bidders to register to be notified of future solicitations.

1.5 Informal bidding procedures.

(a) Except in an Emergency, contracts ~~shall~~may be awarded on informal bidding procedures herein ~~or formal bidding procedures under Section 1.6 below~~ where the contract is required to be competitively procured (at the threshold specified for each type of contract below) but is within the following delegation of authority:

¹ Further delegation of authority by the Executive Director or Chief Operating Officer is addressed in Section 1.9 below.

- (1) Goods or supplies up to two hundred thousand dollars (\$200,000);
- (2) ~~Federally-funded P~~professional services up to one hundred fifty thousand dollars (\$150,000);
- (3) Construction services up to two hundred thousand dollars (\$200,000); or
- ~~(4)~~ Other services (not professional or construction services) up to one hundred thousand dollars (\$100,000).

Contracts required to be competitively bid and that exceed the thresholds above shall be procured using formal bidding procedures under Section 1.6 below.

- (b) The Authority shall obtain adequate competition in awarding any contract under informal bidding. Formal advertising is not required. Adequate competition shall be presumed in any of the following circumstances:
 - (1) A notice inviting informal bids is published on the Authority's website and/or the PlanetBids platform with sufficient time to allow potential bidders to prepare a bid by the bid deadline; or
 - (2) The Authority receives at least three (3) bids in response to ~~ait~~ solicitation for informal bids; or
 - (3) If fewer than three (3) bids are received in response to either the notice/advertisement or solicitation circumstances referenced above, the Authority documents that it solicited known vendors or contractors that reasonably might be expected to submit a bid.
- (c) The Authority shall award any contract to the bidder meeting the selection criteria in the solicitation document, or shall reject all bids or quotes. Any contract awarded using informal bidding procedures shall include a termination for convenience clause.
- (d) The Board shall be notified of all contracts awarded under informal bidding procedures promptly following award.

1.6 Formal solicitation procedures.

- (a) Except in an Emergency, contracts above the applicable informal bidding threshold stated in Section 1.5 above shall be awarded following formal solicitation.
- (b) A notice inviting formal bids or proposals shall be advertised within the boundaries of the Authority in either (i) in a newspaper or periodical of general circulation or (ii) a focus or trade publication reasonably anticipated to reach potential bidders, with the notice being published (whether electronically or in print) not less than ten (10) days prior to receipt of bids.

- (c) If the successful bid or proposal must be within a specified budget or cost estimate to receive a contract award, then that budget or cost estimate shall be stated in the solicitation.
 - (d) The Authority shall issue a notice of intent to award the contract, identifying the bidder or proposer entitled to award under the selection criteria in the solicitation document.
 - (e) Contracts above the delegation of authority in Section 1.1 above shall be awarded by the Board. For contracts not awarded by the Board, the Board shall be notified of all contracts awarded under formal solicitation~~bidding~~ procedures promptly following award.
- 1.7 Request for proposals (RFP) ~~contents~~ and request for qualifications (RFQ) contents. An RFP, together with an RFQ if the Authority uses a two-step procurement, A request for proposals shall include all of the following:
- (a) A description of the services to be provided,
 - (b) A description of the format that proposals shall follow and the information they shall contain,
 - (c) A requirement to submit proposals with the price and all cost information separate from other portions of the proposal,
 - (d) The criteria and standards, which must include price, that the Authority will use in evaluating proposals and determining the selected contractor, and
 - (e) The date and time when proposals are due.
- 1.8 Negotiation following competitive solicitation.
- (a) If the Authority conducts a competitive solicitation and receives no responsive bids or proposals, then the Authority may award a contract for substantially the same product(s) or service(s), or substantially the same construction project, by negotiating with available vendors, contractors, or service providers.
 - (~~a~~)(b) If the Authority conducts an informal procurement and the selected bidder's price is no more than ten percent (10%) above the informal bidding threshold stated in Section 1.5(a) above, then the Authority may award a contract for substantially the same product(s) or service(s), or substantially the same construction project, by negotiating the price to be within the informal bidding threshold.
- 1.9 Further delegation. For contracts not required to be competitively solicited, i.e., contracts in an amount below the threshold specified for each type of contract below, the Executive Director or Chief Operating Officer may further delegate authority to approve those contracts, if such delegation is done in writing and identifies the individual(s) to whom authority is delegated.

- 1.10 Change orders. If contract changes are issued without prior Board approval, then the Board shall be notified of the change promptly. All contract changes that are outside delegated change order authority and that cause the contract to exceed the delegation of authority in Section 1.1 above shall be submitted to the Board for approval.
- 1.11 Conflicts of interest. The Authority shall maintain a written conflict of interest code and standards of conduct policy. No Authority employee, officer, or agent may participate in the selection, award, or administration of a contract if he or she has a real or apparent conflict of interest in violation of the Authority's policy or any federal conflict of interest requirement applicable to the Authority. The standards of conduct provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the Authority.
- 1.12 Provisions applicable to contracts involving Federal funding. ~~For contracts over three hundred fifty thousand dollars (\$350,000) that include Federal funding, the Authority shall comply with the Code of Federal Regulations (CFR), including:~~
- ~~(a) For contracts over two hundred fifty thousand dollars (\$250,000) that include Federal funding, profit shall be separately stated, and the Authority shall negotiate the profit if the proposed profit exceeds a reasonable amount, considering factors including complexity of the work, the contractor's risk, the contractor's investment, any subcontracting, the contractor's past performance, and industry profit rates in the area. The Authority must perform a cost or price analysis for every procurement transaction over three hundred fifty thousand dollars (\$350,000) as further described in Section 200.324 of the CFR;~~
 - ~~(b) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that the costs incurred or cost estimates included in negotiated prices would be allowable to the recipient or subrecipient as further described in Section 200.324 of the CFR; and~~
 - ~~(b) Prior to seeking bids for a construction contract over two hundred fifty thousand dollars (\$250,000), the Authority shall prepare estimates of cost based on its approved plans and specifications.~~
 - ~~(c) Under a request for proposals, the Authority shall only consider geographic preference as an evaluation criterion in determining best value when applicable Federal statutes mandate or encourage geographic preference.~~
 - ~~(d)(c) In Federally-funded professional services contracts, the Authority shall not accept pricing based on the "cost plus a percentage of cost" or "percentage of construction costs" methods of contracting a percentage of construction cost.~~
- 1.13 Automatic update. To the extent any provision in this Policy is based on requirements or federal regulations for public bidding and any such requirement is changed, eliminated, or added after the effective date of this Policy, such changes shall be deemed automatically

incorporated into this Policy and shall replace any inconsistent provision herein.

- 1.14 Compliance with Law. This Policy is not intended to, and does not, exempt the Authority from compliance with any applicable statute, regulation, or other legal requirements.

ARTICLE 2. Purchases of goods, supplies, and equipment

- 2.1 Competitive bidding. Except in an Emergency, or where ~~cooperative purchasing is used under Section 2.2, or where a single source purchase is allowed under Section 2.3~~~~only one brand meets the Authority's needs and only one supplier of that brand name product exists,~~ all contracts for the purchase or lease of goods, supplies, or equipment in an amount over sixty thousand dollars (\$60,000) shall be entered into with the lowest responsible bidder meeting specifications.

- 2.2 Cooperative purchasing agreements. The Authority may, by cooperative purchasing agreements or multiple award schedule contracts available to the Authority, purchase goods or supplies through legal contracts of other public agencies without separate advertising or competitive bidding by the Authority. The Authority shall take reasonable steps to confirm that the goods or supplies are offered at a fair price.

- 2.3 Single-Source procedure.

(a) Prior to making a single source purchase, the Authority shall make the following findings:

(1) One of the following:

- (i) a specified product is necessary to match or interface with other products in use by the Authority **or**
- (ii) the Authority needs to purchase a specified product to field test or experiment to determine the product's suitability for future use, **or**
- (iii) only one product will meet the Authority's needs, **and**

(2) The product is available from only one source.

The required findings may be made by the Executive Director or Chief Operating Officer, in writing, if the anticipated contract amount does not exceed the Board's delegation of authority.

(b) Upon making the above findings, the Authority may purchase the product without advertising or conducting competitive bidding.

(c) The Authority shall take reasonable steps to confirm that the goods or supplies are purchased at a fair price.

- (d) The Board shall be notified of all contracts awarded using single-source procedures promptly following award.
- (e) The Board may establish and maintain a list of single-source products meeting the above criteria. Where a product is on such a list, the required findings need not be made for each purchase.

2.4 Quantity variations. If, after award of a purchase order or other contract for goods, supplies, or equipment following required competitive procurement, the Authority determines that additional quantities are required, then the Authority may amend the purchase order or other contract to increase the quantity by up to 10%, unless that amendmentchange would result in a change of more than two hundred thousand dollars (\$200,000), without seeking Board approval if the amendment would cause the contract to exceed the delegation of authority in Section 1.1 above, but (a) the unit price of the goods or supplies will not increase and (b) the amended contract amount is within the parameters of the Authority budget for the fiscal year. For any amendmentchange-order that will not increase the total contract price over the delegation of authority in Section 1.1 above, Board approval for quantity variations is not required.

ARTICLE 3 Services

3.1 Other (Non-Professional) Services.

- (a) Competitive solicitation. Except in the case of Emergency or where single-source services contracting is authorized, all contracts for services, other than professional services or construction services, in an amount in excess of sixty thousand dollars (\$60,000) shall be entered into following a competitive solicitation process. The competitive solicitation process may either use informal bidding procedures (see Section 1.5), a request for qualifications (see Section 1.7), or a request for proposals (see Section 1.7).
- (b) Single-source procedure. Notwithstanding the foregoing requirements for competitive solicitation, the Authority may award a single-source contract for services without first advertising if the Authority makes at least one of the following findings:
 - (1) That only one firm or individual has the specialized expertise or experience necessary to perform the services, and other potential bidders cannot develop that experience or expertise prior to contract award.
 - (2) That continuity of services is required to avoid risk of substantial loss or added expenditure to the Authority.

The required findings may be made by the Executive Director or Chief Operating Officer, in writing, if the anticipated contract amount does not exceed the Board's delegation of authority. Upon making the above findings, the Authority may purchase the services without advertising or conducting a competitive solicitation. The Board

shall be notified of all contracts awarded using single-source procedures promptly following award.

3.2 Professional services.

(a) “Professional services” shall mean any of the following:

- (1) Services encompassed by Government Code sections 4525 *et seq.*;
- (2) Services for which an advanced professional degree, certification, and/or license is required, including without limitation legal services and accounting services; or
- (3) Senior or management-level services requiring advanced experience, expertise, or training.

(b) Notwithstanding any other requirement of this Article, the Authority may award a contract for professional services based on demonstrated competence and the professional qualifications necessary for the satisfactory performance of the services required.

(c) In awarding a contract for professional services that is not federally funded, the Authority may, but is not required to, use the competitive procedures specified in this Article. If the contract includes Federal funding, then the Authority must use the competitive procedures specified in this Article.

(d) Notwithstanding Section 1.7(d) above, in awarding a contract for architectural and/or engineering services under a request for proposals, the Authority may select the most qualified firm without using price as a selection factor if the Authority negotiates fair and reasonable compensation after selection of the firm.

(e) Auditing services. Notwithstanding any other requirements of this Policy, contracts for financial statement auditing services and/or other auditing services where the auditor is required to report to the Board, shall be awarded by the Board of Directors.

3.3 Change order. If, after award of a contract for professional or other services, the Authority determines that additional services of the same or a related type are required to meet the purpose for which the original contract was awarded, then the Authority may amend the contract to increase the contract amount by up to 10%, unless that would result in a change of more than two hundred thousand dollars (\$200,000), without seeking Board approval if the amendment would cause the contract to exceed the delegation of authority in Section 1.1 above, but (a) the rates for the services will not increase and (b) the amended contract amount is within the parameters of the Authority budget for the fiscal year. For any ~~amendment~~change order that will not increase the total contract price over the delegation of authority in Section 1.1 above, Board approval for the ~~amendment~~change order is not required.

ARTICLE 4 Construction contracts

4.1 Definitions.

- (a) “Best value” means a value determined by evaluation of objective criteria, such as those that relate to price, features, functions, life-cycle costs, experience, and past performance. A best value determination may involve (i) the selection of the lowest cost proposal meeting the interests of the Authority and meeting the objectives of the project, (ii) selection of the best proposal for a stipulated sum established by the Authority, (iii) a value determined by evaluation of objective criteria stated in the request for proposals, or (iv) a tradeoff between price and other specified factors.
- (b) “Procurement Documents” means each of the RFI, the RFQ, and/or the RFP, as applicable, issued as part of a competitive procurement in accordance with this Article 4.
- (c) “RFI” means a request for information issued through a formal or informal process to request information and/or ideas from the market. An RFI is an early step in a procurement process and is not for the purpose of awarding a contract.
- (d) “RFP” means the request for proposals by which the Authority solicits proposals for the project from potential proposers (which may or may not be preceded by an RFQ or RFI).
- (e) “RFQ” in this Article means a request for qualifications issued as part of a procurement process in which the Authority obtains services involving evaluation of qualifications and possible consideration of cost.

4.2 Competitive solicitation.

- (a) Except in an Emergency, where only one brand meets the Authority’s needs and only one installer is authorized to install that brand name product at the Authority’s location, or as otherwise provided herein, all contracts for public projects (as defined in Public Contract Code section 22002) in an amount over sixty thousand dollars (\$60,000) shall be entered into with the bidder/~~proposer selected through following~~ a competitive solicitation process. The competitive solicitation process may involve either of the following:
 - (1) ~~A be either an invitation for to bids~~ where the contract is awarded to the lowest responsive, responsible bidder ~~or a request for proposals.~~
 - (2) An RFP under which a contract is awarded to the highest scored or “best value” proposal, which may include a multi-stage process beginning with an RFQ or an RFI or similar process; to submit statements indicating the potential proposer’s interest in proposing or qualifications to propose. The RFP process may include:

(i) Prequalification or shortlisting or a similar process whereby a shortened list of potential proposers is invited to submit proposals;

(ii) Negotiations with proposers prior to award;

(iii) Requests for proposal revisions and/or best and final offers from proposers.

4.14.3 Performance by day labor. Notwithstanding any other requirement of this Article, the Authority may make repairs, alterations, modifications, or additions, or perform routine, recurring, and usual work for the maintenance of facilities under its control, by day labor or by force account.

4.24.4 Solicitation contents. The Authority's invitation for bids or request for proposals for any public project shall include all requirements, submittals, and information required by law.

4.34.5 Failure of the intended awardee to enter the contract; award to another next lowest bidder/proposer. If a successful bidder fails to enter into a contract when awarded by the Authority, then the bidder's security shall be forfeited to the Authority. The Authority may award to the next lowest bidder, ~~next most qualified proposer, or next highest ranked proposer (as applicable),~~ or reject all bids/proposals.

4.44.6 Emergency contracting. In an Emergency, the Authority may take any immediate action required to prevent or mitigate the loss or impairment of life, health, property, or essential public services, and procure the necessary equipment, services, and supplies for those purposes, without adopting prior plans and specifications or giving notice for bids to let contracts.

4.54.7 Single-Source procedure.

- (a) The Authority shall not contract using a single-source procedure in any contract involving federal funds, except with the prior written approval of the funding agency.
- (b) Where competitive procurement otherwise is required, the Authority may conduct a single-source negotiation for construction in either of the following circumstances, upon making findings supporting the circumstance:
 - (1) Where (i) a specified product is required, applying the standards and making the findings set forth in Section 2.3(a)(1) above, (ii) only one contractor is authorized by the manufacturer or supplier to install the specified product, and (iii) the work for which only a single-source contractor is authorized is not work which reasonably would be expected to be subcontracted; or
 - (2) The Authority has conducted a competitive procurement for substantially similar construction services in the past five (5) years and only one actual or potential bidder for the services was identified.

The required findings may be made by the Executive Director or Chief Operating Officer, in writing, if the anticipated contract amount does not exceed the Board's delegation of authority.

- (c) If neither of the ~~above~~ circumstances listed in Section 4.7(b) exist, but the Executive Director or Chief Operating Officer recommends single-source construction contracting, then single-source contracting may be used only following Board findings of circumstances indicating that competition reasonably appears ~~does not~~ to exist and approval of single-source negotiations.
- (d) Upon making the above findings, the Authority may contract for construction without advertising or conducting competitive bidding.
- (e) The Board shall be notified of all contracts awarded using single-source procedures promptly following award.
- (f) The Authority shall take reasonable steps to confirm that the construction project is priced fairly.

4.64.8 Amendments/Change orders.

- (a) The Authority's Executive Director or Chief Operating Officer is authorized to issue an amendment or change order without prior Board approval in either of the following circumstances:
 - (1) The change will not cause the total contract amount to exceed the Executive Director's or Chief Operating Officer's delegated authority for construction contracts; or
 - (2) Total net changes on the project are less than or equal to ten percent (10%) of the original contract amount, or any different amount approved by the Board when awarding the contract.
- (b) In a Federally-funded contract, the Authority must perform a cost or price analysis ~~make an independent estimate~~ of the cost of any contract modification that may exceed ~~threetwo~~ three hundred fifty thousand dollars (\$~~32~~50,000), including contract and shall perform such other evaluation of the contractor's cost proposal as is necessary to validate the pricing of the modifications as further described in Section 200.324 of the CFR. The Authority shall not agree to price a modification to a Federally-funded contract based on the "cost plus a percentage of cost" or "percentage of construction costs" methods of contracting pricing.

4.9 Design-Build contracting

(a) Definitions.

- (1) “Construction subcontract” means each subcontract awarded by the Design-Build entity to a subcontractor that will perform construction services on the project under contract with the Design-Build entity, including a subcontractor licensed by the State of California that specially fabricates and installs a portion of the work or improvement according to detailed drawings contained in the plans and specifications produced by the Design-Build team.
- (2) “Contract Price” means the fixed price or maximum payment amount agreed upon by the Authority and the Design-Build entity, either at the time of contracting or after development of the design and bidding the construction subcontracts, for the design and construction of the project.
- (3) “Design-Build” means either progressive or fixed price design-build.
- (4) “Design-Build entity” means the legal entity that directly contracts with the Authority to design and construct the project.
- (5) “Design-Build team” means the Design-Build entity and the other members of its team, which shall include the general contractor (if different from the Design-Build entity), the architect(s) and engineer(s) that will design the project, and any subcontractors used in the design of the project.
- (6) “Negative performance factors” shall include, but is not limited to, default terminations; the revocation or suspension of any license; any debarment, suspension, or finding of non-responsibility; fines or penalties arising from violation of laws governing design or construction; liability for false claims or crimes involving fraud or dishonesty; California OSHA or Federal OSHA serious or willful violations; and similar events and information.
- (7) “Statement of Qualifications” or “SOQ” means the response to an RFQ in the first phase of a multi-phase process.
- (b) The Authority is authorized to procure Design-Build contracts under the competitive procedure set forth herein for public works projects in excess of one million dollars (\$1,000,000), awarding the contract to the proposer providing the Best Value in accordance with the evaluation criteria stated in the RFP.
- (c) The Design-Build procurement process shall progress as follows:
 - (1) The Authority shall conduct the procurement process through an RFP, which may include a multi-stage process as described in Section 4.2(a)(2) beginning with an RFQ and/or RFI. The Procurement Documents shall include, but are not limited to, the following information and requirements:
 - (i) A description of the size, type, and desired design character of the project and any other information to describe the Authority’s needs, including the

~~ADOPTED: 4/10/2020~~

~~MINOR REVISION: 5/14/2020~~

expected cost range, the methodology that will be used by the Authority to evaluate the Design-Build entity's qualifications, the procedure for final selection of the Design-Build entity, and any other information or documents deemed necessary by the Authority to inform interested parties of the contracting opportunity.

- (ii) A reasonable description of the services to be provided and work to be performed.
- (iii) The qualifications to be submitted in at least one phase of the procurement shall include at least the following information: (a) identification of Design-Build team members and key personnel proposed for the project, including without limitation all partners, members, or owners of any Design-Build team member that will participate; (b) licenses, registrations, and other credentials necessary to complete the project for the Design-Build team members and key personnel; (c) indication that each member of the Design-Build team has the necessary experience, expertise, capability, and capacity to complete the project; (d) information on any revocation or suspension of any license; (e) confirmation that the Design-Build entity can obtain necessary bonding and insurance; (f) documentation that the Design-Build entity has the necessary financial resources to complete the project; (g) identification of the construction contractor's safety record, including its experience modification rate; and (h) any other factors deemed relevant by the Authority. The Procurement Documents shall specify how the factors will be evaluated, including any minimum standards that must be met.
- (iv) Identification of all technical (non-price) factors on which proposals or SOQs will be scored, including the weight of each factor. Such factors shall include, without limitation, in at least one of the phases: (a) design experience and expertise, including identification of previous experience with similar projects; (b) construction experience and expertise, including identification of previous experience with similar projects; (c) prior negative performance factors; and (d) all other non-price-related factors.
- (v) The Authority may conduct the procurement in two phases, including prequalification of qualified proposers or short-listing the highest rated proposers after the first phase to continue to the second phase. If the Authority elects the two-phase process, then price proposals shall not be submitted in the first phase. If the two-phase process is used, the RFP shall identify all technical (non-price) factors on which proposers will be evaluated in the second phase, including the weight of each factor. The Authority may establish entirely new evaluation factors for the second phase or, if provided for in the Procurement Documents, it may carry over technical scores from the first phase and identify any new factors to be evaluated in the second phase.

ADOPTED: 4/10/2020

MINOR REVISION: 5/14/2020

- (vi) Price shall be an evaluation factor in the final selection of a Design-Build entity. Price proposals must be submitted separate from the technical (non-price) proposal. The Procurement Documents shall specify how price is to be evaluated. The Procurement Documents shall also specify whether the Contract Price is to be stated in the proposal (traditional design-build) or developed later through a competitive process for award of construction subcontracts (progressive design-build). If progressive design-build is specified, then the RFP shall identify the price factors to be evaluated, which may include design cost, construction general conditions, and Design-Build entity fee. All technical scoring shall be complete before price proposals are opened.
- (vii) Competitive proposals or SOQs shall be evaluated using only the criteria and selection procedures identified in the Procurement Documents.
- (viii) The RFP may permit the Authority to conduct confidential discussions with potential proposers prior to submittal of final proposals.
- (ix) The RFP may permit the Authority to conduct interviews with proposers and may limit interviews to the highest ranked proposers.
- (2) Award of a Design-Build contract, if any, shall be made by the Authority's Board to the Design-Build entity providing the Best Value to the Authority, applying the evaluation factors stated in the RFP.
- (d) If the Contract Price is not established at the time of award of the Design-Build contract, then the Design-Build entity shall competitively procure first tier construction subcontracts for all scopes of construction work valued at more than one-half of one percent of the construction cost of the project and for which a subcontractor or self-performance by the Design-Builder was not identified as part of the Design-Build team or otherwise agreed with the Authority. Procurement of the construction subcontracts shall proceed as follows.
 - (1) Provide public notice of availability of work to be subcontracted in accordance with the Authority's publication requirements applicable to competitive bidding for construction contracts, including a fixed date and time on which bids or proposals will be due.
 - (2) Establish reasonable criteria and standards for contract award, which may be by low bid, Best Value, or other criteria stated in the solicitation document that will provide the most benefit to the Authority. The process may include prequalification or short-listing.
 - (3) Select construction subcontractors based on the evaluation criteria stated in the solicitation document.

- (4) Propose for Board approval a Contract Price amendment based on the subcontractors listed in the Design-Build proposal and those identified through the competitive solicitation process. No construction work may commence until the Contract Price covering that work is approved by the Board.
- (5) The Design-Build entity may award construction subcontracts and perform construction work in phases, each subject to a separate Contract Price amendment governing the scope of work to be performed.
- (e) The Design-Build entity shall provide payment and performance bonds in the amount of the Contract Price prior to commencing construction of the project, which bond amounts shall be increased at any time that the Contract Price is increased.
- (a)(f) All first tier construction subcontractors with subcontracts valued at one-half of one percent (0.5%) of the GMP shall be entitled to the protection of the Subletting and Subcontracting Fair Practices Act, Public Contract Code sections 4100 *et seq.*

4.10 Construction Manager, General Contractor (CMGC) contracting

(a) Definitions.

- (1) “Construction Manager” or “CM” means the legal entity that that is a licensed contractor and that provides, directly or through subcontracts, appropriately licensed preconstruction and construction services. The CM shall act as the general contractor in the construction of the project.
- (2) “Construction Manager/General Contractor” or “CMGC” means a project delivery method in which a CM contract is awarded to provide preconstruction services during the design phase of the project and construction services during the construction phase of the project.
- (3) “Construction subcontract” means each subcontract awarded by the CM to a subcontractor that will perform construction services on the project under contract with the CM, including a subcontractor licensed by the State of California that specially fabricates and installs a portion of the work or improvement according to detailed drawings contained in the plans and specifications. A construction subcontract also may include preconstruction services.
- (4) “Negative performance factors” shall include, but is not limited to, default terminations; the revocation or suspension of any license; any debarment, suspension, or finding of non-responsibility; fines or penalties arising from violation of laws governing design or construction; liability for false claims or crimes involving fraud or dishonesty; California OSHA or Federal OSHA serious or willful violations; and similar events and information

- (5) “Preconstruction services” means review and advice during the design phase including, but not limited to, scheduling, pricing, phasing, and constructability, and may include engineering design-assist for systems specified in the Procurement Documents, to assist the Authority to design a more constructible project.
- (6) “Statement of Qualifications” or “SOQ” means the response to an RFQ in the first phase of a multi-phase process.
- (b) The Authority is authorized to procure CMGC contracts under the competitive procedure set forth herein for public works projects in excess of one million dollars (\$1,000,000), awarding the contract to the proposer providing the Best Value in accordance with the evaluation criteria stated in the RFP.
- (c) The Authority shall conduct the procurement process through an RFP, which may include a multi-stage process as described in Section 4.2(a)(2) beginning with an RFQ and/or RFI. The Procurement Documents shall include, but are not limited to, the following information and requirements:
- (1) A description of the size, type, and features of the project, including the expected construction cost range.
- (2) The qualifications to be submitted in at least one phase of the procurement shall include at least the following information: (a) identification of subcontractors engaged to participate in preconstruction services; (b) identification of all key personnel, including without limitation all partners, members, or owners of the CM and any subcontractor team member that will provide services; (c) licenses, registrations, and other credentials of the CM and any identified subcontractors; (d) indication that the CM and any identified subcontractor has the necessary experience, expertise, capability, and capacity to complete the project; (e) information on any revocation or suspension of any license; (f) confirmation that the CM can obtain necessary bonding and insurance; (g) documentation that the CM has the necessary financial resources to complete the project; (h) identification of the CM’s safety record, including its experience modification rate; and (i) any other factors deemed relevant by the Authority. The Procurement Documents shall specify how the factors will be evaluated, including any minimum standards that must be met.
- (3) Identification of all technical (non-price) factors on which proposals or SOQs will be scored, including the weight of each factor. Such factors shall include, without limitation, in at least one of the phases (a) experience with preconstruction services on public projects; (b) construction experience and expertise, including identification of previous experience with similar projects; (c) prior negative performance factors; and (d) all other non-price-related factors.

- (d) Price shall be an evaluation factor in the final selection of the CM. Price proposals must be submitted separate from the technical (non-price) proposal. The RFP shall specify how price is to be evaluated, including the price factors to be evaluated. Price factors may include preconstruction services costs, construction general conditions, and CM fee. All technical scoring shall be complete before price proposals are opened.
- (e) Competitive proposals and SOQs shall be evaluated using only the criteria and selection procedures identified in the Procurement Documents.
- (f) The RFP may permit the Authority to conduct interviews with proposers and may limit interviews to the highest ranked proposers.
- (g) Award of a CMGC contract, if any, shall be made by the Authority's Board to the CM providing the Best Value to the Authority, applying the evaluation factors stated in the Procurement Documents.
- (h) Following preconstruction services, the CM shall competitively procure first tier construction subcontracts for all scopes of construction work valued at more than one-half of one percent of the construction cost of the project and for which a subcontractor or self-performance by the CM was not identified in the proposal or otherwise agreed with the Authority. Procurement of the construction subcontracts shall proceed as follows.
 - (1) Provide public notice of availability of work to be subcontracted in accordance with the Authority's publication requirements applicable to competitive bidding for construction contracts, including a fixed date and time on which bids or proposals will be due.
 - (2) Establish reasonable criteria and standards for contract award, which may be by low bid or Best Value criteria stated in the solicitation document. The process may include prequalification or short-listing.
 - (3) Select construction subcontractors based on the evaluation criteria stated in the solicitation document.
 - (4) Propose for Board approval of a Contract Price amendment based on the subcontractors listed in the proposal and those identified through the competitive solicitation process. No construction work may commence until the Contract Price covering that work is approved by the Board.
 - (5) The CM may award construction subcontracts and perform construction work in phases, each subject to a separate Contract Price amendment governing the scope of work to be performed.

- (i) The CM shall provide payment and performance bonds in the amount of the Contract Price prior to commencing construction of the project, which bond amounts shall be increased at any time that the Contract Price is increased.
- (j) All first tier construction subcontractors with subcontracts valued at one-half of one percent (0.5%) of the Contract Price shall be entitled to the protection of the Subletting and Subcontracting Fair Practices Act, Public Contract Code sections 4100 et seq.

4.74.11 Reservation of rights. The Authority reserves the right to utilize any other legally-authorized methodology for construction contracting, ~~including without limitation design-build contracting in accordance with Public Contract Code sections 22160 et seq.~~

ARTICLE 5. Protests

5.1 Right to File Protests. A person that has indicated an interest in proposing or bidding on a contract, or that has timely submitted a bid, SOQ, or proposal in response to any Procurement Documents of the Authority, may file, a dispute and/or protest consistent with the procedure below.

5.2 Requirements for Protests.

- (a) If a prospective proposer or bidder believes that any provisions in the Procurement Documents is vague, ambiguous, conflicting or contrary to law, then the prospective proposer or bidder shall promptly bring its concern to the Authority by written notice specifying the provision(s) in question and the factual and legal bases for concern. Failure to raise any concern relating to a solicitation requirement within at least two (2) business days prior to the proposal or bid due date will be deemed a waiver of the proposer or bidder's right to protest based on alleged vague, ambiguous, conflicting or unlawful requirements in the solicitation.
- (b) Within five (5) calendar days after opening of proposal or bids, the proposer or bidder shall provide a written notice to the Authority of any and all mistakes regarding the proposal or bid for which the proposer or bidder requests relief. The Authority shall not consider any requests for relief due to mistake if notice is not received within the time requirements of Public Contract Code section 5100, et seq., Relief of Bidders.
- (c) No later than five (5) calendar days after proposals or bids are opened, the proposer or bidder must submit in writing to the Authority an explanation of all legal and factual grounds for any protest. These requirements are to be strictly construed. Untimely protests and/or grounds not set forth in the protest will not be considered. Failure to timely protest or otherwise comply with the protest requirements will constitute a waiver of the right to challenge and forever bar the proposer or bidder from challenging, whether before the Authority or any administrative or judicial tribunal, any particular proposal/bid(s), the proposal/bidding process, or the Contract award on any ground not set forth in the protest. Upon receipt of a protest, the Authority will provide a copy to any proposal/bidder whose proposal/bid is challenged in the protest.

~~ADOPTED: 4/10/2020~~

~~MINOR REVISION: 5/14/2020~~

(d) The Authority will decide any timely protest by issuing a written decision on the protest which, except where award of the Contract is urgent and cannot be delayed, will be issued prior to award of the Contract. The written decision shall be provided to the protesting proposer/bidder(s) and to the proposer/bidder(s) whose proposal/bid(s) was/were the subject of the protest.

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**SAN LUIS & DELTA-MENDOTA WATER AUTHORITY
CONSOLIDATED PROCUREMENT POLICY**

ARTICLE 1. Basic Principles

1.1 Delegation of authority. Subject to the availability of funds within the parameters of the Authority budget for the fiscal year and the procedures set forth in Articles 2-4 of this Policy, the Authority's Executive Director or Chief Operating Officer,¹ or General Counsel for legal matters, is authorized to bind the Authority, without first obtaining specific authorization by the Board, by written contract or purchase order for:

(a) Contracts up to two hundred thousand dollars (\$200,000); or

(b) Contracts immediately required to respond to an Emergency.

Subject to the availability of funds within the parameters of the Authority budget for the fiscal year and the procedures set forth in Section 3.2 of this Policy, the Authority's Executive Director or General Counsel is authorized to bind the Authority, without first obtaining specific authorization by the Board, by written contract for legal services determined to be necessary.

1.2 "Emergency" shall mean a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services. Emergency contracts exceeding the delegated authority in Section 1.1, if not initially awarded by the Board, shall be reviewed by the Board and either approved or terminated as soon as practical following award.

1.3 Notice. Notice of a procurement shall specify, at a minimum, a brief description of the work to be done or goods or supplies to be purchased; how to obtain additional information; and the date, time, and location that bids will be due. If attendance at a pre-bid meeting is required, then the date, time, and location of such meeting shall be included in the notice.

1.4 List of interested bidders. The Authority may establish one or more lists of potential bidders interested in future Authority contracts. Any list may be defined or limited in scope as the Executive Director or Chief Operating Officer deems appropriate. For any such list the Authority maintains, the Authority shall periodically invite potential bidders to register to be notified of future solicitations.

1.5 Informal bidding procedures.

(a) Except in an Emergency, contracts may be awarded on informal bidding procedures herein where the contract is required to be competitively procured (at the threshold specified for each type of contract below) but is within the following delegation of authority:

¹ Further delegation of authority by the Executive Director or Chief Operating Officer is addressed in Section 1.9 below.

- (1) Goods or supplies up to two hundred thousand dollars (\$200,000);
- (2) Federally-funded professional services up to one hundred fifty thousand dollars (\$150,000);
- (3) Construction services up to two hundred thousand dollars (\$200,000); or
- (4) Other services (not professional or construction services) up to one hundred thousand dollars (\$100,000).

Contracts required to be competitively bid and that exceed the thresholds above shall be procured using formal bidding procedures under Section 1.6 below.

- (b) The Authority shall obtain adequate competition in awarding any contract under informal bidding. Formal advertising is not required. Adequate competition shall be presumed in any of the following circumstances:
 - (1) A notice inviting informal bids is published on the Authority's website and/or the PlanetBids platform with sufficient time to allow potential bidders to prepare a bid by the bid deadline; or
 - (2) The Authority receives at least three (3) bids in response to a solicitation for informal bids; or
 - (3) If fewer than three (3) bids are received in response to either the notice/advertisement or solicitation circumstances referenced above, the Authority documents that it solicited known vendors or contractors that reasonably might be expected to submit a bid.
- (c) The Authority shall award any contract to the bidder meeting the selection criteria in the solicitation document, or shall reject all bids or quotes. Any contract awarded using informal bidding procedures shall include a termination for convenience clause.
- (d) The Board shall be notified of all contracts awarded under informal bidding procedures promptly following award.

1.6 Formal solicitation procedures.

- (a) Except in an Emergency, contracts above the applicable informal bidding threshold stated in Section 1.5 above shall be awarded following formal solicitation.
- (b) A notice inviting formal bids or proposals shall be advertised within the boundaries of the Authority in either (i) in a newspaper or periodical of general circulation or (ii) a focus or trade publication reasonably anticipated to reach potential bidders, with the notice being published (whether electronically or in print) not less than ten (10) days prior to receipt of bids.

- (c) If the successful bid or proposal must be within a specified budget or cost estimate to receive a contract award, then that budget or cost estimate shall be stated in the solicitation.
 - (d) The Authority shall issue a notice of intent to award the contract, identifying the bidder or proposer entitled to award under the selection criteria in the solicitation document.
 - (e) Contracts above the delegation of authority in Section 1.1 above shall be awarded by the Board. For contracts not awarded by the Board, the Board shall be notified of all contracts awarded under formal solicitation procedures promptly following award.
- 1.7 Request for proposals (RFP) and request for qualifications (RFQ) contents. An RFP, together with an RFQ if the Authority uses a two-step procurement, shall include all of the following:
- (a) A description of the services to be provided,
 - (b) A description of the format that proposals shall follow and the information they shall contain,
 - (c) A requirement to submit proposals with the price and all cost information separate from other portions of the proposal,
 - (d) The criteria and standards, which must include price, that the Authority will use in evaluating proposals and determining the selected contractor, and
 - (e) The date and time when proposals are due.
- 1.8 Negotiation following competitive solicitation.
- (a) If the Authority conducts a competitive solicitation and receives no responsive bids or proposals, then the Authority may award a contract for substantially the same product(s) or service(s), or substantially the same construction project, by negotiating with available vendors, contractors, or service providers.
 - (b) If the Authority conducts an informal procurement and the selected bidder's price is no more than ten percent (10%) above the informal bidding threshold stated in Section 1.5(a) above, then the Authority may award a contract for substantially the same product(s) or service(s), or substantially the same construction project, by negotiating the price to be within the informal bidding threshold.
- 1.9 Further delegation. For contracts not required to be competitively solicited, i.e., contracts in an amount below the threshold specified for each type of contract below, the Executive Director or Chief Operating Officer may further delegate authority to approve those contracts, if such delegation is done in writing and identifies the individual(s) to whom authority is delegated.
- 1.10 Change orders. If contract changes are issued without prior Board approval, then the Board

shall be notified of the change promptly. All contract changes that are outside delegated change order authority and that cause the contract to exceed the delegation of authority in Section 1.1 above shall be submitted to the Board for approval.

- 1.11 Conflicts of interest. The Authority shall maintain a written conflict of interest code and standards of conduct policy. No Authority employee, officer, or agent may participate in the selection, award, or administration of a contract if he or she has a real or apparent conflict of interest in violation of the Authority's policy or any federal conflict of interest requirement applicable to the Authority. The standards of conduct provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the Authority.
- 1.12 Provisions applicable to contracts involving Federal funding. For contracts over three hundred fifty thousand dollars (\$350,000) that include Federal funding, the Authority shall comply with the Code of Federal Regulations (CFR), including:
- (a) The Authority must perform a cost or price analysis for every procurement transaction over three hundred fifty thousand dollars (\$350,000) as further described in Section 200.324 of the CFR;
 - (b) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that the costs incurred or cost estimates included in negotiated prices would be allowable to the recipient or subrecipient as further described in Section 200.324 of the CFR; and
 - (c) The Authority shall not accept pricing based on the "cost plus a percentage of cost" or "percentage of construction costs" methods of contracting.
- 1.13 Automatic update. To the extent any provision in this Policy is based on requirements or federal regulations for public bidding and any such requirement is changed, eliminated, or added after the effective date of this Policy, such changes shall be deemed automatically incorporated into this Policy and shall replace any inconsistent provision herein.
- 1.14 Compliance with Law. This Policy is not intended to, and does not, exempt the Authority from compliance with any applicable statute, regulation, or other legal requirements.

ARTICLE 2. Purchases of goods, supplies, and equipment

- 2.1 Competitive bidding. Except in an Emergency, or where cooperative purchasing is used under Section 2.2, or where a single source purchase is allowed under Section 2.3, all contracts for the purchase or lease of goods, supplies, or equipment in an amount over sixty thousand dollars (\$60,000) shall be entered into with the lowest responsible bidder meeting specifications.
- 2.2 Cooperative purchasing agreements. The Authority may, by cooperative purchasing agreements or multiple award schedule contracts available to the Authority, purchase goods or supplies through legal contracts of other public agencies without separate

advertising or competitive bidding by the Authority. The Authority shall take reasonable steps to confirm that the goods or supplies are offered at a fair price.

2.3 Single-Source procedure.

(a) Prior to making a single source purchase, the Authority shall make the following findings:

(1) One of the following:

- (i) a specified product is necessary to match or interface with other products in use by the Authority **or**
- (ii) the Authority needs to purchase a specified product to field test or experiment to determine the product's suitability for future use, **or**
- (iii) only one product will meet the Authority's needs, **and**

(2) The product is available from only one source.

The required findings may be made by the Executive Director or Chief Operating Officer, in writing, if the anticipated contract amount does not exceed the Board's delegation of authority.

(b) Upon making the above findings, the Authority may purchase the product without advertising or conducting competitive bidding.

(c) The Authority shall take reasonable steps to confirm that the goods or supplies are purchased at a fair price.

(d) The Board shall be notified of all contracts awarded using single-source procedures promptly following award.

(e) The Board may establish and maintain a list of single-source products meeting the above criteria. Where a product is on such a list, the required findings need not be made for each purchase.

2.4 Quantity variations. If, after award of a purchase order or other contract for goods, supplies, or equipment following required competitive procurement, the Authority determines that additional quantities are required, then the Authority may amend the purchase order or other contract to increase the quantity by up to 10%, unless that amendment would result in a change of more than two hundred thousand dollars (\$200,000), without seeking Board approval if the amendment would cause the contract to exceed the delegation of authority in Section 1.1 above, but (a) the unit price of the goods or supplies will not increase and (b) the amended contract amount is within the parameters of the Authority budget for the fiscal year. For any amendment that will not increase the total contract price over the delegation of authority in Section 1.1 above, Board approval for quantity variations is not required.

ARTICLE 3 Services

3.1 Other (Non-Professional) Services.

- (a) Competitive solicitation. Except in the case of Emergency or where single-source services contracting is authorized, all contracts for services, other than professional services or construction services, in an amount in excess of sixty thousand dollars (\$60,000) shall be entered into following a competitive solicitation process. The competitive solicitation process may either use informal bidding procedures (see Section 1.5), a request for qualifications (see Section 1.7), or a request for proposals (see Section 1.7).
- (b) Single-source procedure. Notwithstanding the foregoing requirements for competitive solicitation, the Authority may award a single-source contract for services without first advertising if the Authority makes at least one of the following findings:
 - (1) That only one firm or individual has the specialized expertise or experience necessary to perform the services, and other potential bidders cannot develop that experience or expertise prior to contract award.
 - (2) That continuity of services is required to avoid risk of substantial loss or added expenditure to the Authority.

The required findings may be made by the Executive Director or Chief Operating Officer, in writing, if the anticipated contract amount does not exceed the Board's delegation of authority. Upon making the above findings, the Authority may purchase the services without advertising or conducting a competitive solicitation. The Board shall be notified of all contracts awarded using single-source procedures promptly following award.

3.2 Professional services.

- (a) "Professional services" shall mean any of the following:
 - (1) Services encompassed by Government Code sections 4525 *et seq.*;
 - (2) Services for which an advanced professional degree, certification, and/or license is required, including without limitation legal services and accounting services; or
 - (3) Senior or management-level services requiring advanced experience, expertise, or training.
- (b) Notwithstanding any other requirement of this Article, the Authority may award a contract for professional services based on demonstrated competence and the professional qualifications necessary for the satisfactory performance of the services required.
- (c) In awarding a contract for professional services that is not federally funded, the Authority may, but is not required to, use the competitive procedures specified in this

Article. If the contract includes Federal funding, then the Authority must use the competitive procedures specified in this Article.

(d) Notwithstanding Section 1.7(d) above, in awarding a contract for architectural and/or engineering services under a request for proposals, the Authority may select the most qualified firm without using price as a selection factor if the Authority negotiates fair and reasonable compensation after selection of the firm.

(e) Auditing services. Notwithstanding any other requirements of this Policy, contracts for financial statement auditing services and/or other auditing services where the auditor is required to report to the Board, shall be awarded by the Board of Directors.

3.3 Change order. If, after award of a contract for professional or other services, the Authority determines that additional services of the same or a related type are required to meet the purpose for which the original contract was awarded, then the Authority may amend the contract to increase the contract amount by up to 10%, unless that would result in a change of more than two hundred thousand dollars (\$200,000), without seeking Board approval if the amendment would cause the contract to exceed the delegation of authority in Section 1.1 above, but (a) the rates for the services will not increase and (b) the amended contract amount is within the parameters of the Authority budget for the fiscal year. For any amendment that will not increase the total contract price over the delegation of authority in Section 1.1 above, Board approval for the amendment is not required.

ARTICLE 4 Construction contracts

4.1 Definitions.

(a) “Best value” means a value determined by evaluation of objective criteria, such as those that relate to price, features, functions, life-cycle costs, experience, and past performance. A best value determination may involve (i) the selection of the lowest cost proposal meeting the interests of the Authority and meeting the objectives of the project, (ii) selection of the best proposal for a stipulated sum established by the Authority, (iii) a value determined by evaluation of objective criteria stated in the request for proposals, or (iv) a tradeoff between price and other specified factors.

(b) “Procurement Documents” means each of the RFI, the RFQ, and/or the RFP, as applicable, issued as part of a competitive procurement in accordance with this Article 4.

(c) “RFI” means a request for information issued through a formal or informal process to request information and/or ideas from the market. An RFI is an early step in a procurement process and is not for the purpose of awarding a contract.

(d) “RFP” means the request for proposals by which the Authority solicits proposals for the project from potential proposers (which may or may not be preceded by an RFQ or RFI).

- (e) “RFQ” in this Article means a request for qualifications issued as part of a procurement process in which the Authority obtains services involving evaluation of qualifications and possible consideration of cost.

4.2 Competitive solicitation.

- (a) Except in an Emergency, where only one brand meets the Authority’s needs and only one installer is authorized to install that brand name product at the Authority’s location, or as otherwise provided herein, all contracts for public projects (as defined in Public Contract Code section 22002) in an amount over sixty thousand dollars (\$60,000) shall be entered into with the bidder/proposer selected through a competitive solicitation process. The competitive solicitation process may involve either of the following:
 - (1) An invitation to bid where the contract is awarded to the lowest responsive, responsible bidder.
 - (2) An RFP under which a contract is awarded to the highest scored or “best value” proposal, which may include a multi-stage process beginning with an RFQ or an RFI or similar process to submit statements indicating the potential proposer’s interest in proposing or qualifications to propose. The RFP process may include:
 - (i) Prequalification or shortlisting or a similar process whereby a shortened list of potential proposers is invited to submit proposals;
 - (ii) Negotiations with proposers prior to award;
 - (iii) Requests for proposal revisions and/or best and final offers from proposers.

4.3 Performance by day labor. Notwithstanding any other requirement of this Article, the Authority may make repairs, alterations, modifications, or additions, or perform routine, recurring, and usual work for the maintenance of facilities under its control, by day labor or by force account.

4.4 Solicitation contents. The Authority’s invitation for bids or request for proposals for any public project shall include all requirements, submittals, and information required by law.

4.5 Failure of the intended awardee to enter the contract; award to another bidder/proposer. If a successful bidder fails to enter into a contract when awarded by the Authority, then the bidder’s security shall be forfeited to the Authority. The Authority may award to the next lowest bidder or next highest ranked proposer (as applicable), or reject all bids/proposals.

4.6 Emergency contracting. In an Emergency, the Authority may take any immediate action required to prevent or mitigate the loss or impairment of life, health, property, or essential public services, and procure the necessary equipment, services, and supplies for those purposes, without adopting prior plans and specifications or giving notice for bids to let contracts.

4.7 Single-Source procedure.

- (a) The Authority shall not contract using a single-source procedure in any contract involving federal funds, except with the prior written approval of the funding agency.
- (b) Where competitive procurement otherwise is required, the Authority may conduct a single-source negotiation for construction in either of the following circumstances, upon making findings supporting the circumstance:
 - (1) Where (i) a specified product is required, applying the standards and making the findings set forth in Section 2.3(a)(1) above, (ii) only one contractor is authorized by the manufacturer or supplier to install the specified product, and (iii) the work for which only a single-source contractor is authorized is not work which reasonably would be expected to be subcontracted; or
 - (2) The Authority has conducted a competitive procurement for substantially similar construction services in the past five (5) years and only one actual or potential bidder for the services was identified.

The required findings may be made by the Executive Director or Chief Operating Officer, in writing, if the anticipated contract amount does not exceed the Board's delegation of authority.

- (c) If neither of the circumstances listed in Section 4.7(b) exist, but the Executive Director or Chief Operating Officer recommends single-source construction contracting, then single-source contracting may be used only following Board findings of circumstances indicating that competition reasonably appears not to exist and approval of single-source negotiations.
- (d) Upon making the above findings, the Authority may contract for construction without advertising or conducting competitive bidding.
- (e) The Board shall be notified of all contracts awarded using single-source procedures promptly following award.
- (f) The Authority shall take reasonable steps to confirm that the construction project is priced fairly.

4.8 Amendments/Change orders.

- (a) The Authority's Executive Director or Chief Operating Officer is authorized to issue an amendment or change order without prior Board approval in either of the following circumstances:
 - (1) The change will not cause the total contract amount to exceed the Executive Director's or Chief Operating Officer's delegated authority for construction contracts; or

- (2) Total net changes on the project are less than or equal to ten percent (10%) of the original contract amount, or any different amount approved by the Board when awarding the contract.
- (b) In a Federally-funded contract, the Authority must perform a cost or price analysis of the cost of any contract modification that may exceed three hundred fifty thousand dollars (\$350,000), including contract modifications as further described in Section 200.324 of the CFR. The Authority shall not agree to price a modification to a Federally-funded contract based on the “cost plus a percentage of cost” or “percentage of construction costs” methods of contracting.

4.9 Design-Build contracting

(a) Definitions.

- (1) “Construction subcontract” means each subcontract awarded by the Design-Build entity to a subcontractor that will perform construction services on the project under contract with the Design-Build entity, including a subcontractor licensed by the State of California that specially fabricates and installs a portion of the work or improvement according to detailed drawings contained in the plans and specifications produced by the Design-Build team.
- (2) “Contract Price” means the fixed price or maximum payment amount agreed upon by the Authority and the Design-Build entity, either at the time of contracting or after development of the design and bidding the construction subcontracts, for the design and construction of the project.
- (3) “Design-Build” means either progressive or fixed price design-build.
- (4) “Design-Build entity” means the legal entity that directly contracts with the Authority to design and construct the project.
- (5) “Design-Build team” means the Design-Build entity and the other members of its team, which shall include the general contractor (if different from the Design-Build entity), the architect(s) and engineer(s) that will design the project, and any subcontractors used in the design of the project.
- (6) “Negative performance factors” shall include, but is not limited to, default terminations; the revocation or suspension of any license; any debarment, suspension, or finding of non-responsibility; fines or penalties arising from violation of laws governing design or construction; liability for false claims or crimes involving fraud or dishonesty; California OSHA or Federal OSHA serious or willful violations; and similar events and information.
- (7) “Statement of Qualifications” or “SOQ” means the response to an RFQ in the first phase of a multi-phase process.

- (b) The Authority is authorized to procure Design-Build contracts under the competitive procedure set forth herein for public works projects in excess of one million dollars (\$1,000,000), awarding the contract to the proposer providing the Best Value in accordance with the evaluation criteria stated in the RFP.
- (c) The Design-Build procurement process shall progress as follows:
 - (1) The Authority shall conduct the procurement process through an RFP, which may include a multi-stage process as described in Section 4.2(a)(2) beginning with an RFQ and/or RFI. The Procurement Documents shall include, but are not limited to, the following information and requirements:
 - (i) A description of the size, type, and desired design character of the project and any other information to describe the Authority's needs, including the expected cost range, the methodology that will be used by the Authority to evaluate the Design-Build entity's qualifications, the procedure for final selection of the Design-Build entity, and any other information or documents deemed necessary by the Authority to inform interested parties of the contracting opportunity.
 - (ii) A reasonable description of the services to be provided and work to be performed.
 - (iii) The qualifications to be submitted in at least one phase of the procurement shall include at least the following information: (a) identification of Design-Build team members and key personnel proposed for the project, including without limitation all partners, members, or owners of any Design-Build team member that will participate; (b) licenses, registrations, and other credentials necessary to complete the project for the Design-Build team members and key personnel; (c) indication that each member of the Design-Build team has the necessary experience, expertise, capability, and capacity to complete the project; (d) information on any revocation or suspension of any license; (e) confirmation that the Design-Build entity can obtain necessary bonding and insurance; (f) documentation that the Design-Build entity has the necessary financial resources to complete the project; (g) identification of the construction contractor's safety record, including its experience modification rate; and (h) any other factors deemed relevant by the Authority. The Procurement Documents shall specify how the factors will be evaluated, including any minimum standards that must be met.
 - (iv) Identification of all technical (non-price) factors on which proposals or SOQs will be scored, including the weight of each factor. Such factors shall include, without limitation, in at least one of the phases: (a) design experience and expertise, including identification of previous experience with similar projects; (b) construction experience and expertise, including identification of

previous experience with similar projects; (c) prior negative performance factors; and (d) all other non-price-related factors.

- (v) The Authority may conduct the procurement in two phases, including prequalification of qualified proposers or short-listing the highest rated proposers after the first phase to continue to the second phase. If the Authority elects the two-phase process, then price proposals shall not be submitted in the first phase. If the two-phase process is used, the RFP shall identify all technical (non-price) factors on which proposers will be evaluated in the second phase, including the weight of each factor. The Authority may establish entirely new evaluation factors for the second phase or, if provided for in the Procurement Documents, it may carry over technical scores from the first phase and identify any new factors to be evaluated in the second phase.
 - (vi) Price shall be an evaluation factor in the final selection of a Design-Build entity. Price proposals must be submitted separate from the technical (non-price) proposal. The Procurement Documents shall specify how price is to be evaluated. The Procurement Documents shall also specify whether the Contract Price is to be stated in the proposal (traditional design-build) or developed later through a competitive process for award of construction subcontracts (progressive design-build). If progressive design-build is specified, then the RFP shall identify the price factors to be evaluated, which may include design cost, construction general conditions, and Design-Build entity fee. All technical scoring shall be complete before price proposals are opened.
 - (vii) Competitive proposals or SOQs shall be evaluated using only the criteria and selection procedures identified in the Procurement Documents.
 - (viii) The RFP may permit the Authority to conduct confidential discussions with potential proposers prior to submittal of final proposals.
 - (ix) The RFP may permit the Authority to conduct interviews with proposers and may limit interviews to the highest ranked proposers.
- (2) Award of a Design-Build contract, if any, shall be made by the Authority's Board to the Design-Build entity providing the Best Value to the Authority, applying the evaluation factors stated in the RFP.
- (d) If the Contract Price is not established at the time of award of the Design-Build contract, then the Design-Build entity shall competitively procure first tier construction subcontracts for all scopes of construction work valued at more than one-half of one percent of the construction cost of the project and for which a subcontractor or self-performance by the Design-Builder was not identified as part of the Design-Build team

or otherwise agreed with the Authority. Procurement of the construction subcontracts shall proceed as follows.

- (1) Provide public notice of availability of work to be subcontracted in accordance with the Authority's publication requirements applicable to competitive bidding for construction contracts, including a fixed date and time on which bids or proposals will be due.
- (2) Establish reasonable criteria and standards for contract award, which may be by low bid, Best Value, or other criteria stated in the solicitation document that will provide the most benefit to the Authority. The process may include prequalification or short-listing.
- (3) Select construction subcontractors based on the evaluation criteria stated in the solicitation document.
- (4) Propose for Board approval a Contract Price amendment based on the subcontractors listed in the Design-Build proposal and those identified through the competitive solicitation process. No construction work may commence until the Contract Price covering that work is approved by the Board.
- (5) The Design-Build entity may award construction subcontracts and perform construction work in phases, each subject to a separate Contract Price amendment governing the scope of work to be performed.
- (e) The Design-Build entity shall provide payment and performance bonds in the amount of the Contract Price prior to commencing construction of the project, which bond amounts shall be increased at any time that the Contract Price is increased.
- (f) All first tier construction subcontractors with subcontracts valued at one-half of one percent (0.5%) of the GMP shall be entitled to the protection of the Subletting and Subcontracting Fair Practices Act, Public Contract Code sections 4100 *et seq.*

4.10 Construction Manager, General Contractor (CMGC) contracting

(a) Definitions.

- (1) "Construction Manager" or "CM" means the legal entity that that is a licensed contractor and that provides, directly or through subcontracts, appropriately licensed preconstruction and construction services. The CM shall act as the general contractor in the construction of the project.
- (2) "Construction Manager/General Contractor" or "CMGC" means a project delivery method in which a CM contract is awarded to provide preconstruction services during the design phase of the project and construction services during the construction phase of the project.

- (3) “Construction subcontract” means each subcontract awarded by the CM to a subcontractor that will perform construction services on the project under contract with the CM, including a subcontractor licensed by the State of California that specially fabricates and installs a portion of the work or improvement according to detailed drawings contained in the plans and specifications. A construction subcontract also may include preconstruction services.
 - (4) “Negative performance factors” shall include, but is not limited to, default terminations; the revocation or suspension of any license; any debarment, suspension, or finding of non-responsibility; fines or penalties arising from violation of laws governing design or construction; liability for false claims or crimes involving fraud or dishonesty; California OSHA or Federal OSHA serious or willful violations; and similar events and information
 - (5) “Preconstruction services” means review and advice during the design phase including, but not limited to, scheduling, pricing, phasing, and constructability, and may include engineering design-assist for systems specified in the Procurement Documents, to assist the Authority to design a more constructible project.
 - (6) “Statement of Qualifications” or “SOQ” means the response to an RFQ in the first phase of a multi-phase process.
- (b) The Authority is authorized to procure CMGC contracts under the competitive procedure set forth herein for public works projects in excess of one million dollars (\$1,000,000), awarding the contract to the proposer providing the Best Value in accordance with the evaluation criteria stated in the RFP.
 - (c) The Authority shall conduct the procurement process through an RFP, which may include a multi-stage process as described in Section 4.2(a)(2) beginning with an RFQ and/or RFI. The Procurement Documents shall include, but are not limited to, the following information and requirements:
 - (1) A description of the size, type, and features of the project, including the expected construction cost range.
 - (2) The qualifications to be submitted in at least one phase of the procurement shall include at least the following information: (a) identification of subcontractors engaged to participate in preconstruction services; (b) identification of all key personnel, including without limitation all partners, members, or owners of the CM and any subcontractor team member that will provide services; (c) licenses, registrations, and other credentials of the CM and any identified subcontractors; (d) indication that the CM and any identified subcontractor has the necessary experience, expertise, capability, and capacity to complete the project; (e) information on any revocation or suspension of any license; (f) confirmation that the CM can obtain necessary bonding and insurance; (g) documentation that the CM has the necessary financial resources to complete the project;

(h) identification of the CM's safety record, including its experience modification rate; and (i) any other factors deemed relevant by the Authority. The Procurement Documents shall specify how the factors will be evaluated, including any minimum standards that must be met.

- (3) Identification of all technical (non-price) factors on which proposals or SOQs will be scored, including the weight of each factor. Such factors shall include, without limitation, in at least one of the phases (a) experience with preconstruction services on public projects; (b) construction experience and expertise, including identification of previous experience with similar projects; (c) prior negative performance factors; and (d) all other non-price-related factors.
- (d) Price shall be an evaluation factor in the final selection of the CM. Price proposals must be submitted separate from the technical (non-price) proposal. The RFP shall specify how price is to be evaluated, including the price factors to be evaluated. Price factors may include preconstruction services costs, construction general conditions, and CM fee. All technical scoring shall be complete before price proposals are opened.
- (e) Competitive proposals and SOQs shall be evaluated using only the criteria and selection procedures identified in the Procurement Documents.
- (f) The RFP may permit the Authority to conduct interviews with proposers and may limit interviews to the highest ranked proposers.
- (g) Award of a CMGC contract, if any, shall be made by the Authority's Board to the CM providing the Best Value to the Authority, applying the evaluation factors stated in the Procurement Documents.
- (h) Following preconstruction services, the CM shall competitively procure first tier construction subcontracts for all scopes of construction work valued at more than one-half of one percent of the construction cost of the project and for which a subcontractor or self-performance by the CM was not identified in the proposal or otherwise agreed with the Authority. Procurement of the construction subcontracts shall proceed as follows.
 - (1) Provide public notice of availability of work to be subcontracted in accordance with the Authority's publication requirements applicable to competitive bidding for construction contracts, including a fixed date and time on which bids or proposals will be due.
 - (2) Establish reasonable criteria and standards for contract award, which may be by low bid or Best Value criteria stated in the solicitation document. The process may include prequalification or short-listing.
 - (3) Select construction subcontractors based on the evaluation criteria stated in the solicitation document.

- (4) Propose for Board approval of a Contract Price amendment based on the subcontractors listed in the proposal and those identified through the competitive solicitation process. No construction work may commence until the Contract Price covering that work is approved by the Board.
 - (5) The CM may award construction subcontracts and perform construction work in phases, each subject to a separate Contract Price amendment governing the scope of work to be performed.
 - (i) The CM shall provide payment and performance bonds in the amount of the Contract Price prior to commencing construction of the project, which bond amounts shall be increased at any time that the Contract Price is increased.
 - (j) All first tier construction subcontractors with subcontracts valued at one-half of one percent (0.5%) of the Contract Price shall be entitled to the protection of the Subletting and Subcontracting Fair Practices Act, Public Contract Code sections 4100 *et seq.*
- 4.11 Reservation of rights. The Authority reserves the right to utilize any other legally-authorized methodology for construction contracting.

ARTICLE 5. Protests

- 5.1 Right to File Protests. A person that has indicated an interest in proposing or bidding on a contract, or that has timely submitted a bid, SOQ, or proposal in response to any Procurement Documents of the Authority, may file, a dispute and/or protest consistent with the procedure below.
- 5.2 Requirements for Protests.
- (a) If a prospective proposer or bidder believes that any provisions in the Procurement Documents is vague, ambiguous, conflicting or contrary to law, then the prospective proposer or bidder shall promptly bring its concern to the Authority by written notice specifying the provision(s) in question and the factual and legal bases for concern. Failure to raise any concern relating to a solicitation requirement within at least two (2) business days prior to the proposal or bid due date will be deemed a waiver of the proposer or bidder's right to protest based on alleged vague, ambiguous, conflicting or unlawful requirements in the solicitation.
 - (b) Within five (5) calendar days after opening of proposal or bids, the proposer or bidder shall provide a written notice to the Authority of any and all mistakes regarding the proposal or bid for which the proposer or bidder requests relief. The Authority shall not consider any requests for relief due to mistake if notice is not received within the time requirements of Public Contract Code section 5100, *et seq.*, Relief of Bidders.
 - (c) No later than five (5) calendar days after proposals or bids are opened, the proposer or bidder must submit in writing to the Authority an explanation of all legal and factual grounds for any protest. These requirements are to be strictly construed. Untimely

protests and/or grounds not set forth in the protest will not be considered. Failure to timely protest or otherwise comply with the protest requirements will constitute a waiver of the right to challenge and forever bar the proposer or bidder from challenging, whether before the Authority or any administrative or judicial tribunal, any particular proposal/bid(s), the proposal/bidding process, or the Contract award on any ground not set forth in the protest. Upon receipt of a protest, the Authority will provide a copy to any proposal/bidder whose proposal/bid is challenged in the protest.

- (d) The Authority will decide any timely protest by issuing a written decision on the protest which, except where award of the Contract is urgent and cannot be delayed, will be issued prior to award of the Contract. The written decision shall be provided to the protesting proposer/bidder(s) and to the proposer/bidder(s) whose proposal/bid(s) was/were the subject of the protest.