



MEMORANDUM

**CONFIDENTIAL/PRIVILEGED
ATTORNEY-CLIENT PRIVILEGE AND ATTORNEY WORK PRODUCT**

TO: SLDMWA Finance & Administration Committee, Board of Directors

FROM: Rebecca Akroyd, General Counsel

DATE: February 28, 2020

RE: Adoption of Revised Procurement Policy, Rescission of Resolution No. 2009-317

BACKGROUND

In 2009, the Authority adopted Resolution No. 2009-317, which memorialized and formally adopted Revised Regulations Governing Purchases of Supplies, Equipment and Services (Purchasing Policy). Since that time, the law on public contracts has further developed¹, and ambiguities and limitations in the existing Purchasing Policy have arisen which together necessitate an update to the Purchasing Policy. In response to this need, the 2019 Strategic Plan adopted by the Authority Board includes Objective 4.4, "O&M activities are planned and proactively implemented for the lowest cost and least disruption," and related high priority Implementation Action 4.4.3, "Update purchasing policy." Staff has worked with outside legal counsel to develop an updated, comprehensive Consolidated Procurement Policy for the Authority.

ISSUE FOR DECISION

Whether the Finance & Administration Committee should recommend to the Board of Directors, and the Board of Directors should take action, to rescind Resolution No. 2009-317 and update the Consolidated Procurement Policy as set forth in Exhibit A of the attached resolution.

RECOMMENDATION

Staff recommends adoption of the attached resolution and Consolidated Procurement Policy.

¹ Per the JPA, the Authority may exercise its purchasing powers "in the methods and according to methods provided in the laws applicable to the San Luis Water District." The laws applicable to the San Luis Water District, and other water districts, include Public Contract Code section 20929 and Government Code section 4525 et seq., as well as other requirements that apply generally to construction contracts, and when Federal funds are involved, certain Federal requirements. These laws and requirements were consulted in the development of the Consolidated Procurement Policy.

ANALYSIS

Over the years, staff has identified a number of issues in the current policy, including low dollar thresholds triggering informal bidding procedures and formal bidding procedures and lack of clarity regarding the Request for Proposal process, use of single source procedures, and use of cooperative purchasing agreements. The Consolidated Procurement Policy seeks to cure these issues, as well as document additional policy and procedure governing Authority procurement.

The Consolidated Procurement Policy is divided into four Articles: (1) Basic Principles, (2) Purchases of Goods, Supplies, and Equipment, (3) Services, and (4) Construction Contracts. Key new concepts in the proposed Consolidated Procurement Policy and changes from the Purchasing Policy include the following:

1. Delegation of contracting authority:

Delegation	2009 Resolution	Proposed 2020 Resolution
Authorized Employees	< \$20,000	N/A
Executive Director / Asst. ED / COO	All amounts if contracts are within parameters of Authority budget for fiscal year in which purchase is to be made	(1) < \$250,000 (2) > \$250,000 if (a) purchase approved by Board during budget process & w/in budget, or (b) when contract is required immediately to respond to emergency
Executive Director / General Counsel	N/A	Contracts for legal services determined to be necessary, within approved budget
Board authorization required	Contracts not included in budget for fiscal year in which purchase is to be made	> \$250,000 if (2)(a) or (b) above do not apply

2. Adjusted thresholds for informal and formal bidding process:

Required Bidding Process	2009 Resolution	Proposed 2020 Resolution
Informal Bidding	\$20,000 - \$100,000	\$60,000 - \$200,000
Formal Bidding	> \$100,000	> \$200,000: goods/supplies > \$150,000: prof. services > \$200,000: const. services > \$100,000: other services

3. The Proposed Consolidated Procurement Policy would clarify that all contract changes that are outside delegated change order authority and that cause the contract to exceed the delegation of authority in #1 above shall be submitted to the Board for approval. Delegated change order authority is proposed to allow a 25% increase in contract amount for goods and services (including professional services) if the rates will not increase and the amended contract amount is within the parameters of the Authority budget for the fiscal year. For construction contracts, the Executive Director and Chief Operating Officer are authorized to issue change orders without prior Board approval if the change will not cause the total contract amount to exceed the delegated authority for construction contracts, or if total net changes on the project are less than or equal to 10% of the original contract amount or any different amount approved by the Board when awarding the contract.
4. The Proposed Consolidated Procurement Policy delegates authority to the Executive Director and Chief Operating Officer to make a single source purchase or award a single-source contract for services in certain circumstances, rather than require the Board of Directors to adopt a written justification for executing a single source agreement.
5. The Proposed Consolidated Procurement Policy includes a new requirement that staff provide notice to the Board of all contracts awarded under informal or formal bidding procedures and of certain contract change orders, which provides for increased transparency in contracting.

BUDGET

The budget is not impacted by rescission of the Purchasing Policy or adoption of the Consolidated Procurement Policy.

SAN LUIS & DELTA-MENDOTA WATER AUTHORITY

RESOLUTION NO. 2020-___

**RESOLUTION ADOPTING A CONSOLIDATED PROCUREMENT POLICY AND
RESCINDING RESOLUTION NO. 2009-317**

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.

WHEREAS, paragraph 6(o) of the Amended and Restated Joint Exercise of Powers Agreement for the Water Authority (the “Joint Powers Agreement”) provides for the exercise of powers by the 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.”

WHEREAS, on or about December 10th, 2009, the Board adopted Resolution No. 2009-317, which memorialized and formally adopted revised regulations governing purchases of supplies, equipment and services.

WHEREAS, the Water Authority has reviewed those regulations and updated the policy and procedures governing purchases of supplies, equipment and services (procurement).

WHEREAS, the Board, by adoption of this Resolution, desires to rescind Resolution No. 2009-317 and memorialize a new consolidated procurement policy of the Water Authority concerning the purchases of supplies, equipment, and services.

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. Resolution No. 2009-317 is hereby rescinded, which rescission is not intended to and shall not affect the validity of any contract previously awarded under Resolution No. 2009-317.

Section 3. The Board finds that the 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 5th day of March, 2020, by the Board of Directors of the San Luis & Delta-Mendota Water Authority.

_____, Chairman

SAN LUIS & DELTA-MENDOTA WATER AUTHORITY

Attest:

Federico Barajas, Secretary

I hereby certify that the foregoing Resolution No. 2020-__ 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 5th day of March, 2020.

Federico Barajas, Secretary

EXHIBIT A

**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 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 fifty thousand dollars (\$250,000);
- (b) Contracts in excess of two hundred fifty thousand dollars (\$250,000) if the specific project, service, or purchase has been approved by the Board during the budgeting process and the contract does not exceed a budgeted amount approved by the Board for the project, service, or purchase; or
- (c) When the contract is required immediately 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) Contracts may be awarded on informal bidding procedures where the contract is required to be competitively procured but is within the following delegation of authority:

- (1) Goods or supplies up to two hundred thousand dollars (\$200,000);
 - (2) Professional services up to one hundred fifty thousand dollars (\$150,000);
 - (3) Construction services up to two hundred thousand dollars (\$200,000);
 - (4) Other services (not professional or construction services) up to one hundred thousand dollars (\$100,000); or
- (b) The Authority shall obtain adequate competition in awarding any contract under informal bidding. Adequate competition shall be presumed in any of the following circumstances:
- (1) A notice inviting informal bids is published on the Authority's website with sufficient time to allow potential bidders to prepare a bid by the bid deadline;
 - (2) The Authority receives at least three (3) bids in response to its solicitation for informal bids; or
 - (3) If fewer than three (3) bids are received, the Authority documents that it solicited known vendors or contractors that reasonably might be expected to submit a bid.

Formal advertising is not required.

- (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 informal bidding threshold stated in Section 1.5 above shall be awarded following formal solicitation.
- (b) A notice inviting formal bids 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 first notice being published not less than ten (10) days prior to receipt of bids.
- (c) If the successful bid 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 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 bidding procedures promptly following award.
- 1.7 Request for proposals contents. 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. 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.
- 1.9 Further delegation. For contracts not required to be competitively solicited, 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 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 Provisions applicable to contracts involving Federal funding.
- (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.
 - (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) In Federally-funded professional services contracts, the Authority shall not accept pricing based on a percentage of construction cost.
- 1.12 Automatic update. To the extent any provision in this Policy is based on requirements 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.

Article 2. Purchases of goods, supplies, and equipment

- 2.1 Competitive bidding. Except in an Emergency, or where 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 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 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, 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 25% 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 change 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 be either an invitation for bids where the contract is awarded to the lowest responsive, responsible bidder or a request for proposals.
- (b) Single-source services. 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 Chief Operating Officer 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.

3.2 Professional services.

- (a) 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.
- (b) 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.
 - (c) 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.
 - (d) Legal services. Notwithstanding any other requirement of this Policy, contracts for legal services including but not limited to services of outside legal counsel, expert consultants, expert witnesses, investigators, arbitrators, mediators, and other professionals relating to actual or potential legal matters of interest to the Authority may be awarded by the Authority's General Counsel, up to approved, budgeted amounts for such services.
- 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 25% 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 change order that will not increase the total contract price over the delegation of authority in Section 1.1 above, Board approval for the change order is not required.

Article 4. Construction contracts

- 4.1 Competitive solicitation. Except in an Emergency or as otherwise provided herein, all contracts for public projects in an amount over sixty thousand dollars (\$60,000) shall be entered into with the bidder following a competitive solicitation process. The competitive solicitation process may be either an invitation for bids where the contract is awarded to the lowest responsive, responsible bidder or a request for proposals.
- 4.2 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.
- 4.3 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.

- 4.4 Failure of the intended awardee to enter the contract; award to next lowest bidder. 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 reject all bids.
- 4.5 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.
- 4.6 Change orders.
- (a) The Authority's Executive Director or Chief Operating Officer is authorized to issue a 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 make an independent estimate of the cost of any contract modification that may exceed two hundred fifty thousand dollars (\$250,000), and shall perform such other evaluation of the contractor's cost proposal as is necessary to validate the pricing of the modification. The Authority shall not agree to price a modification to a Federally-funded contract based on cost plus a percentage of cost pricing.
- 4.7 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.*

RESOLUTION NO. 2009-317

RESOLUTION ADOPTING REVISED (DECEMBER 2, 2009) REGULATIONS GOVERNING PURCHASES OF SUPPLIES, EQUIPMENT AND SERVICES

WHEREAS, the San Luis & Delta-Mendota Water Authority, (the "Authority") is a joint powers agency organized under Section 6500, *et seq.*, of the Government Code of the State of California and, as such, is a public entity.

WHEREAS, paragraph 6(o) of the Amended and Restated Joint Exercise of Powers Agreement/San Luis and Delta-Mendota Water Authority, (the "Joint Powers Agreement") provides for the exercise of powers by the 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."

WHEREAS, the Authority now desires to revise its existing policies concerning purchases of supplies, equipment and services set forth in Resolution No. 1992-41, adopted October 5, 1992.

NOW, THEREFORE, BE IT RESOLVED that the Authority adopt the following Regulations Revised (October 8, 2009) Governing Purchases of Supplies, Equipment and Services:

ARTICLE I

REQUIREMENTS FOR BIDDING PROCEDURES

Section 1. Contracting Procedures; Dollar Amount Limitations:

(a) Purchase of supplies, equipment and/or services of twenty thousand dollars (\$20,000.00) or less may be acquired by authorized employees of the Authority, from the vendor who is geographically located to provide the product or service in an efficient and expedient manner, and who, in the employee's judgment, will provide the best product or service on terms most favorable to the Authority.

(b) Purchase of supplies, equipment and services between twenty thousand dollars, (\$20,000.00) and one hundred thousand dollars (\$100,000.00) may be let to contract by informal procedures as set forth in this regulation.

(c) Purchases of supplies, equipment and services of more than one hundred thousand dollars, (\$100,000.00) shall, except as otherwise provided in this Regulation, be let to contract by formal bidding procedures.

Section 2. Informal Bidding Procedures:

(a) A notice inviting informal bids for projects described in section 1(b) above shall be sent to a minimum of three qualified vendors no fewer than 7 days before bids are due.

(b) The notice inviting informal bids shall describe the specifications for supplies, equipment or services in general terms, shall state how to obtain more detailed information and shall state the time and place for the submission of the quotes.

(c) The Board of Directors hereby delegates the authority to award contracts let after informal bids to the Executive Director or the Assistant Executive Director of the Authority, so long as such contracts are within the parameters of the Authority budget for the fiscal year in which the purchase is to be made.

Section 3. Formal Bidding Procedures:

(a) The notice inviting formal bids shall state the time and place for the receiving and opening of sealed bids, information concerning the obtaining of additional information and distinct description of the specifications for the material, supplies or equipment to be purchased.

(b) The notice inviting formal bids may include any such additional matters, including but not limited to contract requirement specified by law, or pursuant to agreements between the Authority and the United States, and any other items selected at the discretion of the Authority.

(c) The notice inviting formal bids shall be sent to all vendors who have notified the Authority in writing that they desire to bid on such supplies, equipment and services, and the notice inviting bids shall also be published in at least one newspaper or periodical of general circulation, which is circulated within the jurisdiction of the Authority at least 14 calendar days before the time set for the opening of the bids.

(d) The Board of Directors hereby delegates the authority to award contracts let after formal bids to the Executive Director or the Assistant Executive Director of the Authority, so long as such contracts are within the parameters of the Authority budget for the fiscal year in which the purchase is to be made; any contracts not included within the budget for such fiscal year may be awarded only by action of the Board of Directors

at a regularly scheduled or special meeting.

Section 4. Rejection of Bids; Award of Contract; No bids:

(a) In its discretion, the Authority may reject any bids presented. If after the first invitation for bids all bids are rejected, the Authority shall state the reasons for the rejection, and after re-evaluating its cost estimates for such purchases, the Authority shall have the option of either abandoning the purchases or re-advertising for bids in the manner described by this article.

(b) If a contract is awarded, it shall be awarded to the lowest responsible bidder whose bid substantially meets the specification: PROVIDED, that in the event the lowest responsible bid exceeds the cost estimate or varies substantially from the specifications, the Authority shall, at its discretion, reject all bids, award the contract to the lowest responsible bidder whose bid substantially meets the specifications, or negotiate a contract with the lowest responsible bidder whose bid substantially meets the specifications. Such negotiated contract shall be approved by the Board of Directors. If two or more bids are the same and the lowest, the Authority may determine by lot which shall be accepted.

(c) If no bids are received, the Authority may proceed by informal bidding procedures set forth in Section 2 of this Article I without further complying with Section 3 of Article I of this regulation.

Section 5. Request for Proposal:

The requirements of Sections 2, 3 and 4 of Article I shall not be applicable if:

- (a) In the judgment of the Authority as to items or services,
 - (1) the item is of a specified brand or trade name which is the only article which is required to be used in the public interest, or
 - (2) the item or service is not readily obtainable on the open market, or
 - (3) the item is one for which comparable quotations or bids cannot be secured, or
 - (4) the service is:
 - (I) of a professional, scientific, artistic, technical or

administrative nature, or

(ii) is to be performed by persons with special education, training or experience, or

(5) the item or service, or the circumstances surrounding its acquisition, is such that it is impracticable to follow the specified procedures or to do so would not be beneficial to the Authority.

(b) Notwithstanding the inapplicability of any criteria set forth under Section 5 (a) of this Resolution, the Executive Director or the Board of Directors may request proposals for any item or service and evaluate them on the basis of any criteria which are in the best interest of the Authority.

ARTICLE II

ALTERNATIVE PROCEDURES

In lieu of any other procedure set forth in this Regulation, the Authority may request the California Department of General Services to make purchases of materials, supplies or equipment on behalf of the Authority as authorized by the California Government Code.

ARTICLE III

SINGLE SOURCE PROCEDURES

When proceeding under Section 5 of this Regulation, the Authority may negotiate a contract to provide goods or services to the Authority without the necessity of competitive bidding or any of the other procedures set forth in Article I of this Regulation. In such a case, the Authority shall prepare a written justification which explains why competition is not practicable for each single-source award. The justification must address one or more of the following criteria as well as discussion of legislative history, unique capabilities of the proposed recipient, and cost-sharing contribution offered by the proposed recipient, as applicable. The written justification must be adopted by a majority vote of the Board of Directors of the Authority. The acceptable grounds for such a contract are as follows:

(a) Unsolicited Proposal - The proposed award is the result of an unsolicited application which represents a unique or innovative idea, method, or approach which is

not the subject of a current or planned contract, but which is deemed advantageous to the Authority's objectives;

(b) Continuation - The activity to be funded is necessary to the satisfactory completion of, or is a continuation of an activity presently being funded, and for which competition would have a significant adverse effect on the continuity or completion of the activity;

(c) Legislative Intent - The activity is authorized by state or federal legislation and the language in the applicable authorizing legislation or legislative history clearly indicates legislative intent to restrict the award to a particular recipient or purpose;

(d) Unique Qualifications - The applicant is uniquely qualified to perform the activity based upon a variety of demonstrable factors such as location, property ownership, voluntary support capacity, cost-sharing ability if applicable, technical expertise, or other such unique qualifications.

ARTICLE IV

EMERGENCIES PROCEDURES

In cases of great emergency, as determined by the Board of Directors, including, but not limited to, states of emergency defined in Section 858 of the Government Code, when supplies, items of equipment or services are necessary to permit the continued conduct of the operation or services of the Authority to avoid danger to life or property, the Board of Directors by majority vote, may proceed at once to authorize acquisition of supplies, equipment, services or construction projects by the Executive Director without reference to Section 2 or 3 of Article I of this Policy. The Board, by majority vote, may delegate to the Executive Director the power to declare a public emergency and to proceed as set forth above, subject to confirmation by the Board by a four-fifths vote, at its next meeting.

ARTICLE V

CONTRACT PROVISIONS

In terms of contracts for purchases of supplies, equipment or services entered into by the Authority shall be subject to applicable provisions of California law, the Joint Powers Agreement, Authority rules and policy resolution or policy procedures and the terms of any relevant agreements between the Authority and the United States of

America.

Passed and adopted this 10th day of December, 2009



Michael Stearns, Chairman
San Luis & Delta-Mendota Water Authority

Attest:



Daniel G. Nelson, Secretary