

STAFF REPORT



MEETING DATE:	February 26, 2019
SUBJECT:	Approve Updated SRTA Procurement and Grant Contract and Management Policies
AGENDA ITEM:	8-7
STAFF CONTACT:	Monika Long, Chief Fiscal Officer

STAFF RECOMMENDATION:

It is recommended that the board of directors approve updates to Chapter 2.35 (of SRTA's policies) (Purchasing and Contracting) and Chapter 2.40 (Grant Contracting) and authorize the executive director to make non-substantive changes to the policies, as needed.

DISCUSSION:

SRTA must adhere to the procurement policies of state and federal funding agencies. Adverse audit findings by Caltrans with respect to procurement are common and even Caltrans' own guidance lacks clarity and consistency when reconciling federal and state requirements. SRTA's Purchasing Policies and Procedures (Chapter 2.35) provides updated standards for purchasing including micro-purchases, competitive bids, and sole-sourcing. Chapter 2.40 provides standards for grant contracting and management.

Key updates to the policies will do following:

- Provide a more comprehensive procurement manual. The new procurement manual was created with the help of a consultant (Regional Planning and Analysis) and will help SRTA to comply with all current applicable Federal, State, and local regulations. The new manual will enable SRTA to correct issues previously noted during audits of our procurements and help avoid any future audit findings.
- Provide more stringent repercussions for late quarterly progress reports submitted by local jurisdictions under our grant contract and management policies at the suggestion of SRTA's Caltrans auditor.

ALTERNATIVES:

The board of directors may decline to update the policies, suggest additional modifications, or require more information and defer the update to a later date.

FINANCING:

There is no direct fiscal impact related to this action, however, without bringing our policies into line with current regulations SRTA may lose grant funds or have to pay back previously reimbursed funding as a result of audit findings.

A blue ink signature of Daniel S. Little, written in a cursive style, positioned above a horizontal line.

Daniel S. Little, AICP, Executive Director

Attachments:

Updated Section 2.35 of SRTA's Purchasing Policies and Procedures and Updated Section 2.40 of SRTA's Grant Contracting Procedures are available online at: <https://www.srta.ca.gov/167/Policies-Procedures>

2.40.030 - ENTERING INTO AND MANAGING AGREEMENTS WITH SUB-RECIPIENTS OF FEDERAL (STATE) GRANT FUNDS

- A. The agency is mandated by the federal and state governments to develop regional plans for transportation, growth management, hazardous waste management, air quality and other issues of regional significance. The agency receives federal funds through the California Department of Transportation (Caltrans). Federal sources of funds primarily include the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA) consolidated planning grant funds (CPG). These funds are administered through the Master Fund Transfer Agreement (MFTA) between Caltrans and the agency.

The following fund sources are governed by the terms and conditions of the MFTA, as included in each annual Overall Work Program Agreement (OWPA) between agency and Caltrans:

1. FHWA - Metropolitan Planning.
2. FHWA - Partnership Planning.
3. FTA Metropolitan Planning - Section 5303.
4. FTA State Planning and Research - Section 5304.
5. Any other federal or state Funds administered by and through Caltrans, Office of Regional and Inter Agency Planning Agency and the sub-recipients have access to the Regional Planning Handbook developed by the Caltrans Headquarters Office of Regional and Inter agency Planning (ORIP) as a resource to describe the interactions between Caltrans District, ORIP staff, Metropolitan Planning Organizations (MPOs), Regional Transportation Planning Agencies (Agency's) on the Overall Work Program (OWP) and the Regional Transportation Plan (RTP).

SRTA may receive Federal and State awards as well as disburse Federal and State funds to sub-recipients and contractors, depending on the terms of agreements with Federal (State) awarding agencies. SRTA staff must make a case-by-case determination whether the agreement entered into for the disbursement of Federal (State) program funds casts the recipient of funds in the role of a sub-recipient or that of a contractor. The Federal/State awarding agency may supply and require recipients to comply with additional guidance to support these determinations.

- B. The purpose of this policy is to ensure that both the agency and sub-recipients are in compliance with 2 CFR Part 225 and 49 CFR, Part 18. It is the intent of this policy to document the agency's procedures to ensure that payments made to sub-recipients are for costs associated with activities and/or products identified in the continuing cooperative agreement

and that such costs are allowable and eligible for reimbursement. This manual also provides procedures that agency will follow to exercise oversight of the sub-recipients and the procedures that the sub-recipients will follow to insure compliance with federal and state laws and regulations.

- C. The procedures in this policy apply to the agency, a "pass-through entity", and its sub-recipients seeking to receive grant funds from agency. All sub-recipients of federal and/or state grant funds through agency are subject to the same federal and state requirements as the agency. The agency's Master Fund Transfer Agreement (MFTA) with Caltrans requires the agency and its consultants, sub-consultants and sub-recipients to comply with federal and state requirements set forth in the MFTA.
- D. Sub-recipients are non-federal entities that expend federal grant awards or state funds received from a pass-through entity to carry out a federal and/or state program. A sub-recipient may also be a recipient of other awards directly from a federal awarding agency. A sub-recipient may also be a recipient of state funds directly from a state agency. The agency's sub-recipients include, but are not limited to, transportation providers, cities, counties and other public, private and/or non-profit agencies. Agreements with these sub-recipients take the form of Memorandum of Understanding (MOU), Funding Agreements, or similar agreements.

1. Determining a Sub-Recipient vs. a Contractor Role:

- a. Sub-Recipients - A sub-award, sometimes referred to as 'pass-through' funding, is for the purpose of carrying out a portion of a Federal (State) award and creates a Federal (State) assistance relationship with the sub-recipient. Characteristics that support the classification of the non-Federal (State) entity as a sub-recipient are when the non-Federal (State) entity:
 - I. Determines who is eligible to receive what Federal (State) assistance;
 - II. Has its performance measured in relation to whether objectives of a Federal (State) program were met;
 - III. Has responsibility for programmatic decision making;
 - IV. Is responsible for adherence to applicable Federal (State) program requirements specified in the Federal (State) award; and
 - V. In accordance with its agreement, uses the Federal (State) funds to carry out a program for a public purpose specified in authorizing statute, as opposed to providing goods or services for the benefit of the pass-through entity.

- b. Contractors - A contract is for the purpose of obtaining goods and services for SRTA's own use and creates a procurement relationship with the contractor. Characteristics that support a procurement relationship between the non-Federal (State) entity and a contractor are when the contractor:
 - I. Provides the goods and services within normal business operations;
 - II. Provides similar goods or services to many different purchasers;
 - III. Normally operates in a competitive environment;
 - IV. Provides goods or services that are ancillary to the operations of SRTA; and
 - V. Is not subject to compliance requirements of the Federal (State) program as a result of the agreement, though similar requirements may apply for other reasons.
 - c. Use of Judgment in Making Determination - In determining whether an agreement between SRTA and a non-Federal (State) entity casts the latter as a sub-recipient or a contractor, the substance of the relationship is more important than the form of the agreement. Whereas all characteristics listed above may not be present in all cases, SRTA must apply best judgment in classifying each agreement as a sub-award or a procurement contract.
- E. Requirements to Pass-through Federal (State) Funds to a Sub-Recipient. All sub-awards of Federal (State) funding to a sub-recipient must be preceded by a sub-recipient agreement. Prior to doing so, SRTA shall:
- 1. Ensure that each sub-award is clearly identified as such in a sub-recipient agreement that includes the following information. Should any of the following information not be available, the best available information shall be used.
 - a. Federal (State) Award Identification;
 - b. Sub-recipient name (which must match the name associated with its unique entity identifier);
 - c. Sub-recipient's unique entity identifier;
 - d. Federal (State) Award Identification Number (FAIN);
 - e. Federal (State) Award Date of award to the recipient by the Federal (State) agency;
 - f. Sub-award Period of Performance Start and End Date;

- g. Amount of Federal (State) Funds Obligated by this action by SRTA to the sub-recipient;
 - h. Total Amount of Federal (State) Funds Obligated to the sub-recipient by SRTA including the current obligation;
 - i. Total Amount of the Federal (State) Award committed to the sub-recipient by SRTA;
 - j. Federal (State) award project description, as required to be responsive to the Federal (State) Funding Accountability and Transparency Act (FFATA);
 - k. Name of Federal (State) awarding agency, SRTA, and contact information;
 - l. Catalog of Federal Domestic Assistance (CFDA) Number and Name, including dollar amount made available under each Federal (State) award and the CFDA number at time of disbursement;
 - m. Identification of whether the award is for Research and Development;
 - n. Indirect cost rate for the Federal (State) award (including if the de minimis rate is charged); and
 - o. Any additional information imposed by SRTA on the sub-recipient to ensure that the Federal (State) award is used in accordance with Federal (State) statutes, regulations, and the terms and conditions of the Federal (State) award.
2. Evaluate each sub-recipient's risk of noncompliance with Federal (State) statutes, regulations, and the terms and conditions of the sub-award, which may include consideration of such factors as:
- a. The sub-recipient's prior experience with the same or similar sub-awards;
 - b. The results of previous audits, including whether or not the sub-recipient receives a Single Audit and the extent to which the same or similar sub-award has been audited as a major program;
 - c. Whether the sub-recipient has new personnel or new or substantially changed systems; and
 - d. The extent and results of Federal (State) awarding agency monitoring (e.g., if the sub-recipient also receives Federal (State) awards directly from a Federal (State) awarding agency).

- e. Ensure that SRTA imposes any additional requirements on the sub-recipient necessary for SRTA to meet its own responsibility to the Federal (State) awarding agency, including identification of any required financial and performance reports.
 - f. Receive an approved Federal (State) recognized indirect cost rate negotiated between the sub-recipient and the Federal (State) Government or, if no such rate exists, either a rate negotiated between SRTA and the sub-recipient, or a de minimis indirect cost rate.
 - g. Require that the sub-recipient permit SRTA and auditors to have access to the sub-recipient's records and financial statements.
 - h. Require appropriate terms and conditions concerning closeout of the sub-award.
 - i. Consider imposing specific sub-award conditions upon a sub-recipient as appropriate.
3. Monitoring Sub-Recipients: Sub-recipient activities must be monitored as necessary to ensure that the sub-award is used for authorized purposes and that the sub-recipient is in compliance with Federal (State) statutes, regulations, and the terms and conditions of the sub-award—and if applicable, that sub-award performance goals are achieved. SRTA's monitoring activities shall include:
- a. Reviewing financial and performance reports required by SRTA.
 - b. Following-up to ensure that the sub-recipient takes timely and appropriate action on all deficiencies pertaining to the Federal (State) award, as detected through audits, on-site reviews, and other means.
 - c. Issuing a management decision for audit findings pertaining to the Federal (State) award.
 - d. Monitoring tools identified by SRTA to ensure proper accountability and compliance with program requirements and performance goals, as identified during SRTA's assessment of compliance risk posed by the sub-recipient. Such tools may include:
 - I. Providing sub-recipients with training and technical assistance on program-related matters;
 - II. Performing on-site reviews of the sub-recipient's program operations; and
 - III. Arranging for agreed-upon-procedures engagements.

- e. Verifying that every sub-recipient is audited when it is expected that the sub-recipient's Federal (State) awards expended during the respective fiscal year equaled or exceeded the single audit threshold.
- f. Considering whether the results of the sub-recipient's audits, on-site reviews, or other monitoring indicate conditions that necessitate a correction to SRTA's accounting records.
- g. Considering taking enforcement action against noncompliant sub-recipients in response to noncompliance with the terms and regulations imposed by SRTA and the Federal (State) funding agency.

F. Applicable federal regulations include, but are not limited to, the following:

- 1. Code of Federal Regulations, Title 48, Federal Acquisition Regulations System, Chapter 1, Part 31, Contract Cost Principles and Procedures -This part defines the various types of costs for consultants, including direct and indirect costs, the principles and procedures and a discussion of selected costs that are allowable or unallowable.
- 2. Code of Federal Regulations, Title 49, Transportation, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State, Local and Indian Tribal Governments - This part establishes uniform administrative rules for Federal grants and sub awards. Some of the items discussed are rules for matching, or third-party, in-kind contributions. This part also sets out the requirement that sub-grantees must conform to the rules imposed upon grantees and that grantees are responsible for managing and monitoring grant and sub-grant supported activities to assure compliance with applicable federal requirements and that performance goals are being achieved. Rules on conflicts of interest are also included in this part.
- 3. Code of Federal Regulations, Title 2, Part 225 (Formerly known as Office of Management and Budget Circular A-87, Cost Principles for State, Local and Indian Tribal Governments) - This regulation establishes principles and standards for determining allowable costs for federal awards carried out through grants, cost reimbursement contracts and other agreements with State and local governments and Indian tribal governments. It defines certain elements of costs and discusses allowable and unallowable costs, similar to the Code of Federal Regulations, Title 48, Part 31, noted above. It also contains a section on Indirect Cost Rate Proposals and the way to submit them for approval.
- 4. Federal Transit Administration, Circular C 4220.1E, Third Party Contracting Requirements; This circular sets forth the requirements a grantee must adhere to in the solicitation, award and administration of its third-party contracts.
- 5. Federal Transit Administration, Circular C 5010.1C, Grant Management Guidelines - The purpose of this circular is to provide guidelines and management procedures for

Metropolitan Planning grants, Capital Program grants and Urbanized Area Formula grants for assistance programs of the Federal Transit Administration (FTA), after award.

6. Federal Transit Administration, Circular C 8100.1B, Program Guidance and Application Instructions for Metropolitan Planning Grants - This circular provides application instructions and program guidance instructions for the preparation of Metropolitan Planning Program (MPP) grant applications for funds authorized by 49 U.S.C. 5303.
7. The Code of Federal Regulations, Titles 48 and 49, may be accessed on the Internet at <http://www.gpoaccess.gov/cfr> The Office of Management and Budget (OMB) Circular A-87 may be accessed at <http://www.whitehouse.gov/omb/circulars/a087>. The Federal Transit Administration circulars may be accessed at <http://www.fta.dot.gov/laws/circulars>.
- G. Sub-recipients must also comply with the Federal Certifications and Assurances, including the Lobbying Certification, published annually in agency's OWP, as required by the MFTA.
- H. Sub-recipients must also comply with the Caltrans Local Assistance Procedures Manual Chapter 5, Accounting/Invoicing (LPP 04-10) when seeking reimbursement of indirect costs. In instances where the agency authorizes a sub-recipient to retain a consultant(s) to perform work, the consultant selection process must comply with competitive selection requirements under 49 CFR 18.36 and State law and procedures, including the Caltrans *Local Assistance Procedures Manual* at www.dot.ca.gov/hq/LocalPrograms/lam/lapm.htm.
- I. Sub-recipients must incorporate all applicable flow-down requirements (from the CCA or other funding agreement between the agency and the sub-recipient), including the federal and state requirements described above, into such consultant(s) contracts.

Sub-recipients should review the above regulations so that they can comply with the requirements.

- J. The agency performs oversight of sub-recipients through various means. The agency utilizes various methods to monitor sub-recipients and insure compliance. The agency will periodically review sub-recipient's procurement practices to ensure compliance. Procurements will be conducted according to the Federal Acquisition Regulations (CFR Title 48, Part 31 and CFR Title 49, Part 18.36).
- K. The following are the descriptions of the various types of oversight management that will be performed by agency:
 1. The agency will develop overall work programs and corresponding continuing cooperative agreements in sufficient detail to provide a clear understanding of activities, tasks, deliverables, cost and schedule for work to be done by sub-recipients.

2. The agency will require sufficient invoice detail to ensure that work performed, and costs billed are compliant with the continuing cooperative agreements and to ensure that costs are for eligible work and are allowable under 49 CFR, Part 18, 2 CFR Part 225 and 48 CFR Ch. 1 Part 31.
 3. The agency will review each invoice received from sub-recipients for compliance with the above. Reviews and approvals will be documented by the project manager's signature. The accountant will also signify concurrence by initialing the invoice.
 4. Payments will be withheld from sub-recipients for the following:
 - a. Insufficient detail to support the costs billed.
 - b. Unallowable costs.
 - c. Ineligible costs.
 - d. Late submittal of quarterly progress reports.
 5. Invoices will be date stamped upon receipt if received in hard copy. A record of the date of receipt will be maintained for those invoices sent electronically.
 6. Periodic training of the agency and sub-recipient staff will be provided to ensure currency and continued compliance with this policy.
- L. Project managers will perform oversight in the following ways:
1. Encourage sub-recipients to submit monthly invoices;
 2. Verify that invoices include progress reports;
 3. Review progress reports to ensure project is progressing accurately and on schedule;
 4. Compare invoice to contract budget to ensure eligibility of costs and costs do not exceed budget;
 5. Review invoice to ensure supporting documentation is included and invoiced costs are within the scope of work for the project(s) being billed;
 6. Obtain report, certification and supporting documentation of local (non-federal) in-kind match work from the sub-recipient;
 7. Review sub-recipient match tasks for eligibility;

8. Notify the accountant that invoice is approved or disapproved.

M. Project managers will maintain a project file to include:

1. Project proposal (cooperative agreement tasks);
2. Project scope;
3. Correspondence, including communications log;
4. Meeting agendas, minutes, and attachments;
5. Progress reports;
6. Interim and final products;
7. Project close out form;
8. Copies of other applicable project documents as required, such as copies of contracts or MOUs.

N. Any changes to OWP funding must be approved by the Federal and State grantors in the form of an amendment.

There are two types of amendments: Administrative and Formal.

1. Administrative: These amendments require concurrence from Caltrans and involve changes to the OWP that do not affect the budget or the delivery of regional transportation planning tasks, activities, steps and products. Examples of an Administrative Amendment would be the correction of errata; project schedule change; changing from a staff task to a consultant task or vice-versa. The agency usually processes one administrative amendment by the end of September of the budget year and may process more on an as needed basis. Sub-recipients must notify the agency project manager of the need for an administrative amendment at the earliest possible time. The agency project manager will notify sub-recipients of the changes after receipt of written approval from Caltrans.
2. Formal: These amendments require Caltrans District approval and concurrence from Caltrans Headquarters before the amendment can be forwarded to FHWA/FTA for their review and final approval. A formal amendment is required if there are substantive changes to work elements funded with CPG, or if the changes (regardless of funding type) impact regional transportation planning activities and if there are changes to the total OWP budget and would require that the agency's OWP Agreement with Caltrans be amended. Some examples of changes that require a formal amendment is deleting or

adding projects; a change in work scope; substitution of fund sources within a work element and/or project; redirection of CPG funds or local match among work elements and/or projects; increasing the work element/project budget. The agency will prepare a formal amendment, usually in October, to encompass both previous year's carryover balances and adjustments to the current year's budget due to circumstances that have occurred since the beginning of the fiscal year. Caltrans must concur with the carryover balances prior to submission of the amendment. The agency/board also must approve of the budget amendment prior to submission. This budget amendment must be submitted to Caltrans timely to allow sufficient time for review by FHWA, FTA and Caltrans. Once the amendment has been approved, costs can be incurred and any new RFP/contract process.