STAFF REPORT

MEETING DATE:	**September 13, 2016**
SUBJECT:	**Approve Updated SRTA Procurement Policies**
AGENDA ITEM:	**5-6**
STAFF CONTACT:	**Kathy Urlie, Senior Transportation Planner**

STAFF RECOMMENDATION:

It is recommended that the board of directors approve updated Section 800 of SRTA's Financial and Accounting Policies and Procedures.

DISCUSSION:

SRTA must adhere to the procurement policies of state and federal funding agencies. Section 800 of SRTA's Financial and Accounting Policies and Procedures provides updated standards for purchasing, service contracts, competitive bids, sole-sourcing, and change orders.

Key updates will do following:

- Increase the maximum micro-purchase threshold from $3,000 to $3,500 (Section 804.8) and the maximum small purchase threshold from $30,000 to $50,000
- Add a Request for Qualifications section and procedures to establish an on-call consultant list for specified work products (Section 804.10)
- Add an Invitation for Bid section (Section 804.11) for equipment or supply purchases
- Add the fiscal committee, in addition to board of directors, as able to approve sole-source contracts exceeding $3,500 (Section 806.5)
- Delete the purchase order process. SRTA does not use purchase orders.

The attached SRTA Procurement Guidelines Flowchart explains procurement types, thresholds and related guidance.

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.

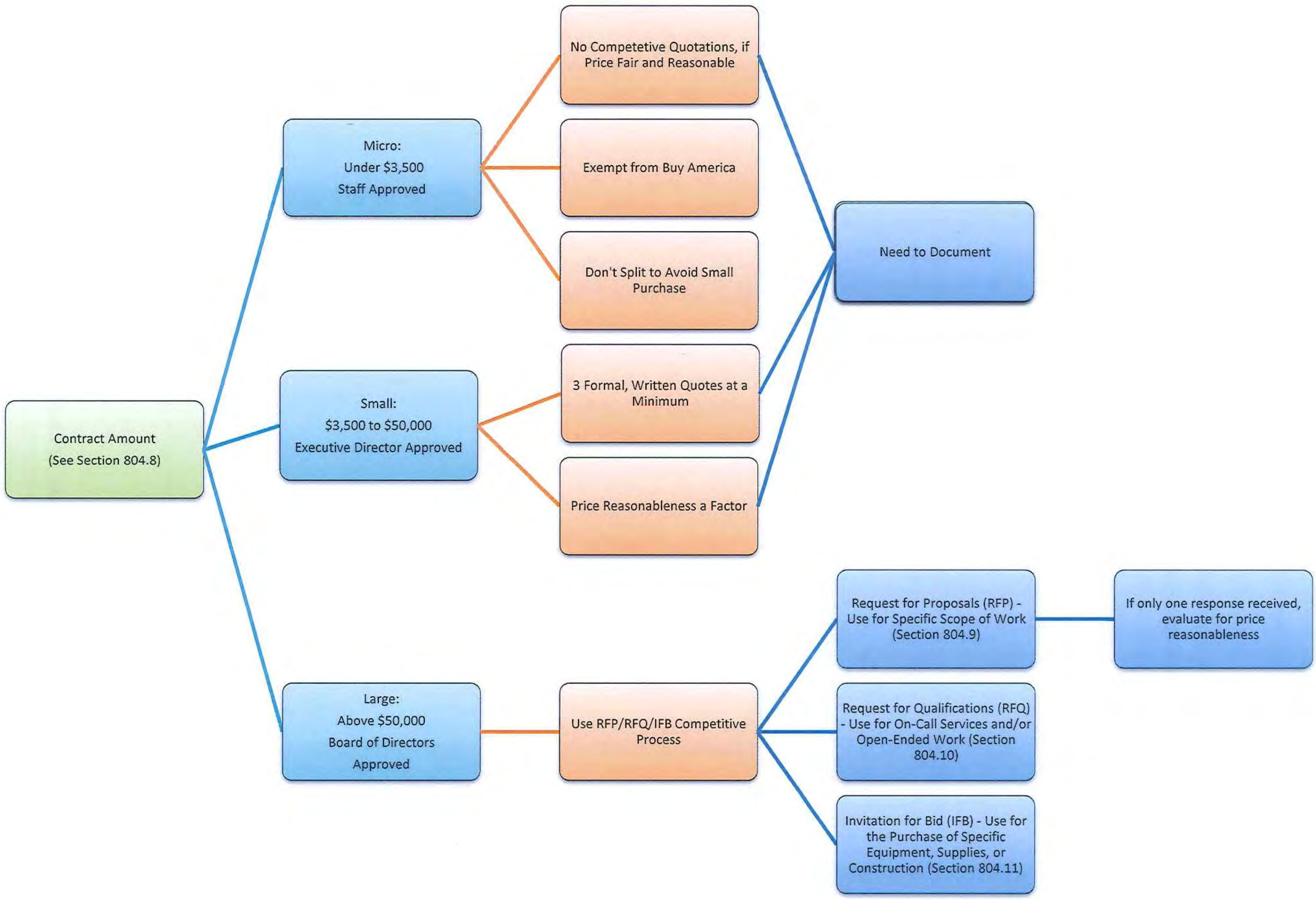
FINANCING:

There is no direct fiscal impact related to this action.

Daniel S. Little, AICP, Executive Director

Attachments: SRTA Procurement Guidelines Flow Chart
Updated Section 800 of SRTA's Financial and Accounting Policies and Procedures

SRTA Procurement Guidelines by Contract Amount and Approval Authority



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800. Purchasing and Contracting

801. Intent

801.1. The intent of the agency is to establish procedures for the purchase of goods and services at the lowest possible cost and of good quality. Under California Public Contract Code Sections 20216-20217, the agency will obtain goods and services using the competitive bid process. It is imperative that the purchasing function be op to all qualified bidders and that the processes not impair or discourage competition. The procurement procedures are designed to:

1) Instill public confidence in the procurement process of the agency;

2) Ensure fair and equitable treatment for all vendors who seek to deal with the agency;

3) Ensure maximum open and free competition in the expenditure of public funds; and

4) Provide safeguards to maintain a procurement system of quality and integrity.

801.2. Open Competition Required- All procurement transactions using all funds will be conducted in a manner providing full and open competition. Some of the situations considered to be restrictive of competition include, but are not limited to:

1) Placing unreasonable requirements on firms in order for them to qualify to do business;
2) Requiring unnecessary experience and excessive bonding requirements;
3) Allowing noncompetitive pricing practices between firms or between affiliated companies;
4) Providing a noncompetitive award to any person or firm on retainer contracts;
5) Permitting organizational conflicts of interest. An organizational conflict of interest means that because of other activities, relationships, or contracts, a consultant is unable or potentially unable, to:

    a) render impartial assistance or advice to agency;

    b) be objective in performing the contract work; or

    c) not perform without an unfair competitive advantage.

6) Specifying only a brand name product without listing its salient characteristics and not allowing an equal product to be offered as a bona fide substitution, unless specifically specified by the grantor;
7) Issuing exclusionary or discriminatory specifications;

8) Advancing contract modifications or change order actions outside the original contract scope; and

9) Taking arbitrary action in the procurement process.

801.3. The procurement and contracting process will emphasize important state and federal requirements relating to the procurement of goods and services including professional services. For procurement activities or contract administration situations, the following apply:

- 49 CFR Part 18 and Part 19 (Common Grant Rules)
- Federal Transit Administration (FTA) Master Agreement in effect
- 49 U.S.C. § 5302: US Code - Section 5302: Definitions
- FTA "Circular 4220.1F (Third Party Contracting Guidelines) and revisions"
- FTA "Circular 5010.1D (Grant Management Requirements) and revisions"
- FTA "Circular 5200.1A (Full Funding Grant Agreement and Master Grant Agreements) and revisions"
- FTA's "Best Practices Procurement Manual"
- Applicable Federal Acquisition Regulations

801.4. The agency will endeavor to conduct all procurement transactions in a manner that provides for full and open competition. When conducting procurements that are funded with FTA grants, the agency will manage the entire procurement and contract administration process in compliance with FTA Circular 4220.1F, unless purchasing thresholds have been updated under the Federal Acquisition Regulations (FAR).

801.5. The following definitions apply:

Fixed Price Contracts – A Fixed Price Contract provides for performance of specified work or supply of goods in consideration of a fixed price, and the consultant bears the risks of uncertainty. Such contracts provide maximum incentive for the consultant to control costs and perform effectively and impose minimum administrative burden upon contracting parties. A fixed price contract type is recommended for materials and equipment.

Cost-Plus-Fixed-Fee – This cost-reimbursement contract provides for payment to the consultant of a negotiated fee that is fixed at the inception of the contract. The fixed fee does not vary with actual cost, but may be adjusted because of changes in the work to be performed under the contract. This contract type permits contracting for efforts that might otherwise present too great a risk to consultants, but it provides the consultant only a minimum incentive to control costs.

Time-and-Material (T&M) – This type of contract is used to procure supplies and services at specified fixed hourly or unit rates (fully burdened) and/or material at cost. The labor hour (LH) contracts are a variation of the T&M which excludes materials supplied by the consultant. The common grant rule for government recipients permits the use of time and material contracts only when it is not possible to estimate the extent or duration of the effort or cost involved and the contract provides a not-to-exceed ceiling price that the consultant may not exceed except at its own risk. Both T&M and LH provide no incentive for consultants' cost control or labor efficiency; therefore, the agency will monitor that the consultant is performing efficiently and using effective cost control measures. The contract will specify a ceiling price that the consultant shall not exceed except at its own risk.

Period of Performance – The time of delivery or performance is an essential contract element and shall be clearly stated in solicitations. The agency shall ensure that delivery or performance schedules arerealistic and meet the requirements of the procurement. Contracts for services that are infrequent and/or unique to a specific grant should allow enough time for sufficient project completion. These contracts generally expire upon project completion. Contracts for services that are reoccurring, such as monthly or annually (audit services or computer maintenance) should be of sufficient duration to ensure the development of vendor proficiency and agency efficiency. Generally, one to three year contracts, with an agency option for an additional one or two more years are used. Periodic re-competition of contracts preserves competition and keeps prices competitive.

801.6. Federal Acquisition Regulations (FAR) Part 16 requires the factors that should be considered in determining appropriate contract types are: price competition, realistic pricing standard, degree of uncertainty and impact on cost evaluation, type and complexity of the work, urgency, period of performance, consultant's technical qualification, consultant's financial responsibility, past performance, concurrent contract work load, extent of subcontracting, availability of procurement history, and contract administration.

801.7. The Federal Common Grant Rules expressly prohibit the use of the cost plus a percentage of cost, and cost plus a percentage of completion, methods of contracting. These methods involve a contractor periodically recovering his costs plus a percentage of his anticipated profit. This percentage of profit allowed to be charged is the costs of the period divided by the total project costs.

801.8. The executive director will provide systematic instructions for acquisition planning, solicitation preparation, source selection, negotiations and contract award including the specific third party contract provisions and requirements to form a sound, complete, and compliant agreement consistent with federal and state laws and regulations. Each activity item in the list covers specific guidelines and procedures in detail.

801.9. Conflict of Interest – In order to promote governmental integrity and to guard against even the appearance of impropriety, all agency employees, board members, and any consultants hired to assist in the procurement process who engage in any procurement related activity shall comply with the following standards of ethical conduct:

1) Agency employees and board members shall discharge their duties impartially so as to assure fair access to governmental procurement by responsible vendors and service providers and to foster public confidence in the integrity of the agency procurement system.

2) Agency employees and board members shall not solicit, demand, accept or agree to accept a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement, specification, standard or contract.

3) The agency has adopted a Conflict of Interest Code under which the following groups shall not participate in or attempt to use their official position to influence any purchasing decisions in which they or persons related to them have a financial interest:

    a) The employee, officer, agent or board member;

    b) Any member of his/her immediate family;

    c) His or her partner; or

    d) An organization that employs, or is about to employ, any of the above.

In cases where there may be a benefit, either direct or indirect, there is a responsibility to report in writing such benefit to the agency. If anyone fails to report such benefit, he or she will be subject to any disciplinary proceeding deemed appropriate by the agency, including possible dismissal. Members of the groups listed in item (3)(a) above will be subject to the conflict of interest laws of the State of California. Anyone who violates the standards of the law will be subject to penalties, sanctions or other disciplinary actions.

801.10. Gratuities, Kickbacks, and Contingent Fees – No member of the groups listed in item (3)(a) above shall solicit, demand or accept from any person, consultant, potential consultant, or potential sub-consultants, anything of a monetary value, including gifts, gratuities, favors, etc. Anyone failing to adhere to the above will be subject to any disciplinary proceeding deemed appropriate by the agency, including possible dismissal.

801.11. Confidential Information – No member of the groups listed in item (3)(a) above shall use confidential information for his or her actual or anticipated personal gain, or the actual or anticipated personal gain of any other person related to them by blood, marriage, or by common commercial or financial interest. Anyone failing to adhere to the above will be subject to any disciplinary proceeding deemed appropriate by the agency, including possible dismissal.

801.12. Organizational Conflict of Interest – Each entity that enters into a contract with the agency is required, prior to entering into such contract, to inform agency of any real or apparent organizational conflict of interest. Such organizational conflict of interest exists when the nature of the work to be performed under a contract may, without some restriction on future activities, results in an unfair competitive advantage to the consultant, or may impact the consultant's objectivity in performing the contract work.

801.13. Federal Government Excluded Parties List System – Staff is required to annually review the Federal Government Excluded Parties List System to ensure that no members of SRTA's elected board, other key decision-makers and contractors are barred from doing business with the federal government.

Staff will consult with appropriate federal agencies should any SRTA board members, key decision-makers or contractors be found to be an excluded party.

802. General Procurement

802.1. Procurement activities commence with development of project plans or annual procurement plans, and end at project closeout. The agency will use the FTA Best Procurement Practices Manual, when applicable, as its guiding procurement document and applicable local, state, and federal procurement laws and regulations.

802.2. The following procurement requirements will apply to all procurement and contracting actions at the agency:

1) Written record of procurement history: A written record of procurement history (procurement summary memo) for all purchases exceeding the micro purchase threshold (currently $3,500) will be included with the documentation for all procurements. The extent of documentation will vary depending on the complexity of the procurement. At a minimum, the following information will be included:

    a) Rationale for the method of procurement;

    b) Selection of contract type;

    c) Reasons for consultant selection or rejection;

    d) Basis for the contract price; and

    e) Rationale for the period of performance (contract term).

802.3. The agency may form a contract for goods and services for a period based on business need and consistent with the intent of the "full and open competition" principle, as indicated in FTA Circular 4220.1.F. The agency will contract only for its current and reasonably expected business needs.

802.4. Geographic Preferences: 49 U.S.C. Section 5325(i) prohibit the use of statutorily or administratively imposed state or local geographical preferences in the evaluation of bids or proposals, except in cases where applicable federal statutes expressly mandate or encourage geographic preference. This prohibition does not preempt state licensing laws. Geographic location may be a selection criterion on procurements for architectural and engineering services if its application leaves an appropriate number of qualified firms to compete for the contract. Regardless of the requirement prohibiting geographic preference, SRTA expects contractor familiarity with the region, as well as the ability to travel as needed for site visits, outreach, and other purposes needed to effectively complete the project.

802.5. Options: The agency may include options in its contracts to ensure future availability of equipment, property, or services, when business purpose exists. An option is a unilateral right in a contract where the agency may, within a specified period of time, elect to purchase additional equipment, supplies or services called for by the contract or may elect to extend the term of the contract. The agency will document the determination of the need to exercise contract option and that the option price is fair and reasonable based on cost and price analysis. Options will be priced, evaluated, negotiated, and documented as part of the original bid document and contract award. The agency will have unilateral right to exercise the option.

FTA requires agencies to exercise "sound business judgment," and "to establish contract terms no longer than necessary to accomplish the purpose of the contract." Good procurement practice dictates that agencies enter into contract terms no longer than minimally necessary to accomplish the purpose of the contract.)

If a contract contains options, the following applies:

1) Review of Options: The agency will review the options in the solicitation documents to ensure that proposers or bidders are required to provide prices for required options or that the contract provisions identify an index and procedures for pricing and exercising the options in future years before authorizing, advertising or issuance of solicitation.

2) Evaluation of Options: The option quantities or periods contained in the offer must be evaluated in order to determine contract award. The agency will ensure that prices for options included in the offers are evaluated before the agency makes a determination on award of a contract.

3) Evaluation Not Required: The agency need not evaluate bids or offers for any option quantities if there is a determination that evaluation would not be in the agency's best interests.

4) Exercise of Options: The agency must ensure that the exercise of an option is in accordance with the terms and conditions of the option stated in the original contract award, and the procurement document. An option may not be exercised unless it has been determined that the option price is fair and reasonable and in the agency's best interest. If a contract has one or more options and those options were not evaluated as part of the original contract award, exercising those options after contract award will result in a sole source award.

5) Negotiating a Lower Option Price: Prior to exercising the option, agency will perform market survey and evaluate the option. The agency may offer a price reduction due to changes in market conditions and execute a bilateral modification to the contract reflecting lower pricing before the options are exercised.

6) Option Piggybacking: It is essential that there be an assignment clause in the contract issued by the originating agency. If the contract contains an assignment clause, then the originating agency must agree to assign the contract options, together with all the terms and conditions of the contract, to the agency. The preferred method would be a contract modification between the original contracting parties (i.e., the vendor and the originating agency) or a new contract may be issued. Thereafter, the agency will issue a contract exercising the option. The agency may include federal third party contract clauses, if required.

802.6. Advance Payments: As a principle, the agency will not make advance payments. The federal government does not authorize and will not participate in funding payments to consultant for federally- funded projects prior to the incurrence of costs by the consultant unless prior written concurrence is obtained from the federal government. However, the federal government recognizes that advance payments are typically required for, but are not limited to, public utility connections and services, rent, tuition, insurance premiums, subscriptions to publications, software licenses, transportation, hotel reservations, and conference and convention registrations. Accordingly, the recipient may use federal assistance to support or reimburse the costs of such acquisitions. Federal concurrence is required only when such advance payment or payments customarily required in the marketplace exceed $100,000.

802.7. Progress Payments: The agency may use progress payments if progress payments are only made to the consultant for costs incurred in the performance of the contract. Sufficient documentation is required to demonstrate completion of the amount of work for which progress payments are made.

802.8. Duplicative or Unnecessary Purchases: The agency will conduct regular reviews of procurement actions to identify duplicative or unnecessary purchases. Micro and small purchases will be reviewed to determine if, and how, purchases can be consolidated to obtain purchases that are more economical for the agency.

802.9. Procurements with Large Scopes of Work: The agency will review the scope to determine if the procurement would be more beneficial to the agency if it were to be broken out into two or more separate contracts. The ability to provide more contracting opportunities to small businesses will be a part of this consideration. However, splitting into two separate contracts to avoid small or large purchase procedures is not acceptable.

802.10. Sound and Complete Agreement: The executive director will ensure that precise language is used in describing the Order of Precedence or Contents of the Contract. All agreements, attachments, forms, and documents will be identified by dates and reference numbers. To the extent that there are different provisions in contract documents that address the same matter or subject and these different provisions conflict, the document listed first that addresses the matter or subject will control. If additional conflicting provisions exist within the same level of contract document, the agency's decision shall be binding.

802.11. Cost/Price Analysis: A cost or price analysis will be performed for every procurement action. The degree of analysis is dependent on the facts of the particular procurement but as a starting point, the initiating project manager must prepare an independent cost estimate before receiving bids or cost proposals. The agency may use the following resources as guidance in performing cost or price analysis:

Potential Resources
FTA's "Best Practices Procurement Manual"
The National Transit Institute Course, "Risk Assessment and Basic Cost or Price Analysis"
Pricing Guide for FTA Grantee, FTA Website:

https://www.transit.dot.gov/funding/procurement/third-party-procurement/pricing-guide-fta-grantees
FAR Part 31, Contract Cost Principles and Procedures
Past cycles and/or comparable projects

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1) Cost Analysis: A cost analysis will be necessary when adequate price competition is lacking and for sole source procurements including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or on the basis of prices set by law or regulation. A cost analysis must be performed when the offeror is required to submit the elements (i.e., labor hours, overhead, materials, etc.) of the estimated cost (i.e., professional consulting and architectural and engineering services contracts). A cost analysis includes verifying the proposed cost data, the projections of the data and the evaluation of specific elements of cost and profit.

    a) Cost Analysis for Competitive Proposal: This method is most often used to contract for professional, consulting, and architect/engineering (A/E) services. (See 24 CFR 85.36(d)(3) for a definition.) To determine the reasonableness of proposed costs, the agency will obtain cost breakdowns from the offerors showing all the elements of their proposed total costs and perform a cost analysis of each proposal.

       When awarding a contract using the competitive proposal method, the type of contract (e.g., firm fixed-price or cost-reimbursement) the agency proposes to award does not affect the requirement for a cost analysis. For example, if a firm fixed-price contract via the competitive proposal method is intended, the agency must analyze all of the proposed costs contained in each offeror's price. The agency is not required to negotiate each individual cost element in arriving at an agreement on total price. The final price the agency negotiates with the chosen consultant on a fixed-price contract normally reflects agreement only on the total price. Therefore, the overall objective should be to negotiate total prices that are fair and reasonable.

    b) Cost Analysis for Sole Source Contracts: This is different from single bids. No competition is present, and usually, there is no market to help set the price or estimated cost. Since there is no price competition to indicate if the price or estimated cost is reasonable, the agency will obtain a breakdown of the proposed costs and perform a cost analysis. The cost analysis will be performed for all change order situations, as each change order likely will be unique (i.e. differing subsurface or site conditions, design errors and omissions, etc). When using federal and state funds, a justification for use of a sole source contract must be completed.

2) Price Analysis: A price analysis may be used in all other instances to determine the reasonableness of the proposed contract price. The agency will annotate a finding of fair and reasonable pricing and state the most common reasons why this was so, such as catalog or market price offered in substantial quantities to the general public, regulated price, or a

comparison with recent prices for similar goods and services.

a) Price Analysis for Sealed Bidding or Competitive Quotes: As the preferred method for contracting for supplies and equipment, the competitive pricing forces of the marketplace determine the reasonableness of the low price obtained through sealed bidding. The agency will compare the independent cost estimate to the low competitive bid received. In the event they are significantly different, the agency will need to verify that either the estimate or the market price is valid. Otherwise, no further price or cost analysis is required under sealed bidding.

b) Price Analysis for Indefinite-Delivery Contracts: In certain cases, the contract may specify separately priced items. This is commonly done in indefinite-delivery (e.g., indefinite-quantity, sometimes called job order, or "open ended") contracts. Under these contracts, the agency orders pre-priced items on an as-needed basis, up to a stated maximum quantity. For these contracts, agreement must be reached on each item's price before award and the prices included in the final contract document.

802.12. Indirect Cost Rates: For contracts other than A&E contracts, if a contractor does not have a current approved audit report or agreement, the agency may use the report prepared by the contractor's public accountant, or indirect cost information if contained in the contractor's annual statement to their stockholders, shareholders, or owners, or examples of acceptance of their rates by other government agencies within the last six months for contracts of $5 million or less.

802.13. Audits and Indirect Costs: As required by 49 U.S.C. Section 5325(b)(3), all federally assisted contracts and subcontracts including program management, architectural engineering, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping or related services must be performed (i.e. a consultant cannot incur and invoice the agency any unallowable, unallocable, or unreasonable costs prohibited by the Federal Acquisition Regulations (FAR) and/or the contract terms and conditions) and audited in accordance with FAR Part 31 cost principles. The recipient and the third party consultant, its sub-consultants, and sub-recipients must accept FAR indirect cost rates for one-year applicable accounting periods established by a cognizant federal or state government agency, if those rates are not currently under dispute, and these established rates will apply for purposes of contract estimation, negotiation, administration, reporting, change order, options, and payments, not limited by administrative or de facto ceilings.

802.14. Buy America: Buy America regulations apply to federally assisted procurements exceeding certain amounts. Buy America regulations require the consultant to provide goods produced or manufactured in the US, unless the federal government has granted a waiver authorized by those regulations.

802.15. Equal Employment Opportunity/Affirmative Action: All procurement documents issued by the agency require all interested vendors to certify:

1) That the vendor does not discriminate against any employee or applicant for employment, because of race, religion, sex, age, creed, color, disability or national origin;

2) That the vendor is in compliance with all executive orders and federal, state and local laws regarding fair employment practices and non-discrimination in employment;

3) That the vendor agrees to demonstrate positively and aggressively the principle of equal opportunity in employment; and

4) That consultants must comply with 49 CFR 18.36(e) (2) (i-iv).

802.16. Disadvantaged Business Enterprise: The agency has determined that disadvantaged business enterprises as defined in 49 CFR Part 26 will have the opportunity to compete fairly for contracts financed in whole or in part with federal funds. Accordingly, all agency procurements funded with federal funds may include, as appropriate, the use of goals for the procurement of all classes of goods and services.

802.17. Public Records Act: All bids and proposals received become the exclusive property of the agency. At such time as a contract award is recommended to the agency, all bids and proposals become a matter of public record and will be regarded as public records, with the exception of those elements in each proposal which are trade secrets as that term is defined in California Government Code 6254.7 and which are so marked as "Trade Secret," "Confidential" or "Proprietary". The agency shall not in any way be liable or responsible for the disclosure of any such records or portions thereof, including, with limitation, those so marked if disclosure is deemed required by law or by an order of a court. Bids or proposals that indiscriminately identify all or most of the bid or proposal as exempt from disclosure without justification may be found technically unacceptable.

802.18. Best Value: This is a selection process in which proposals contain both price and qualitative components, and award is based upon a combination of price and qualitative considerations. Qualitative considerations may include technical design, technical approach, quality of proposed personnel, management plan, relevant experience, depth of firm expertise, and/or previous experience with agency and projects. The award selection is based upon consideration of a combination of technical and price factors to determine (or derive) the offer deemed most advantageous and of the greatest value to the agency.

802.19. Tag-Ons: "Tag-on" is defined as the addition of work (supplies, equipment or services) that is beyond the scope of the original contract that amounts to a cardinal change as generally interpreted in federal practice by the various boards of Contract Appeals. "In scope" changes, such as unseen steps to achieve the same deliverables, are not tag-ons, nor are unanticipated amounts of work to get to the same deliverables, e.g. needing to respond to three hundred comments received on a project versus the scope of work accounting for thirty responses based on past experience. The use of tag-ons is prohibited and applies to the original buyer as well as to others.

802.20. Use of Brand Name: When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient characteristics of procurement. The specific features of the named brand which must be met by offerors will be clearly stated.

802.21. Since the agency receives federal funds, federal procurement requirements apply to all federally funded procurements undertaken in support of agency. Listed below are some of the contract terms and/or regulatory or administrative requirements that apply when federal funds are being utilized for the procurement. The requirements of the Americans with Disabilities Act and the equal opportunity provisions of the Civil Rights Act of 1964, as amended, will apply to all procurements (if applicable) even if federal funds are not utilized.

1) State or local geographic preferences, except those expressly mandated or encouraged by federal statute, are prohibited. (See also Section 802.4)

2) Any procurement involving equipment, materials, or commodities suitable for transport by ocean vessel will contain the clauses required by 49 CFR Part 381: Cargo preference - U.S. Flag Vessels.

3) For any contract of over $30,000, the consultant will abide by lobbying disclosure requirements, per compliance with 31 U.S.C. 1352.

4) Each third party consultant must acknowledge that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification, the federal government reserves the right to impose penalties under the Program Fraud Civil Remedies Act of 1986.

5) Each third party consultant is required to acknowledge the mandatory standards and policies related to every efficiency that are contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6321, et. seq.).

6) Each third party consultant for contracts over $30,000 must certify that they will not enter into contracts for over $30,000 with suspended or debarred consultants (Executive Order 12549; 49 CFR part 29)

7) Each third party consultant must comply with Civil Rights requirements concerning nondiscrimination and equal employment opportunity (29 U.S.C. 623; 42 U.S.C. 2000, 6102, 12112; 12132; 49 U.S.C. 5332; 29 C.F.R. Part 1630; 41 C.F.R. Parts 60 et. Seq.).

8) Each third party consultant must comply with appropriate Patent and Rights in Data requirements (37 C.F.R. Part 401 and 49 C.F.R. Part 18).

9) Each third party consultant must comply with the Department of Transportation Disadvantage Business Enterprise (DBE) regulations (49 C.F.R. Part 26). (See also Section 802.16)

10) Fly America. Each third party consultant must comply with 49 U.S.C. 40118 in accordance with the General Service Administration's regulations at 41 CFR Part 301-10.

802.22. Insurance Requirements – Insurance requirements vary depending on the project type. They may include provisions for personal injury, environmental liability and other areas. The insurance requirements for each project are established by the agency.

1) In assessing risk management, the agency will consider the following project information:

    a) Scope of work;

    b) Contract amount;

    c) Whether the project requires the consultant to operate on agency property;

    d) The ultimate use of the good or service provided by the consultant; and

    e) Previous experience associated with similar or related projects.

2) Once the insurance requirements are defined, they must be included in the procurement document. A copy of the insurance certificate is to be kept in the project file. The executive director shall not allow any contract to continue without proper insurance in effect after notification of the lapse of requisite insurance.

3) All contracts shall provide that the consultant shall indemnify and save harmless the agency, its officers, agents and employees from any injuries or damages received by any person during any operations connected with the contract, by use of any improper materials, or by any act or omission of the consultant or his sub-consultant, agents, servants or employees.

802.23. Liquidated Damages- The agency will determine whether the use of a liquidated damages provision is appropriate for each specific procurement. The amount of liquidated damages must be reasonable, shall be set at a specific rate for each day of overrun in contract time or for delivery of goods, or for each instance of an incident giving rise to imposition of liquidated damages in a service contract, and the rate must be specified in the contract. A liquidated damage clause may be used if it is determined that:

1) The time of delivery of goods or services to the agency is critical, and the agency can expect to suffer damage if the delivery is delinquent.

2) The extent or amount of such damage would be difficult or impossible to determine.

The rate of the liquidated damages must be specified in the contract. If federally funded, any liquidated damages recovered shall be credited to the project account involved unless prior written concurrence is obtained from the federal government. The procurement file shall include documentation as to the methodology used to calculate liquidated damages.

802.24. Termination

1) Termination for Convenience – All contracts shall contain a provision allowing for the termination of the contract for convenience by the agency and prescribe methods in which the consultant may calculate cost of work already performed, and termination settlement costs. All
contracts supported by federal grants are to include provisions that allow the agency to terminate the contract, and that stipulate the manner by which termination will be made and the basis for settlement. The contract provisions may read as follows:

   "Termination for Convenience – This Agreement may be terminated by either party for any reason and at any time by giving no less than fourteen (14) days written notice of such termination to the other party and specifying the effective date thereof; provided, however, that no such termination may be effected by the agency unless an opportunity for consultation is provided prior to the effective date of the termination. Additionally, termination for convenience may be an immediate process, without advance days notification to the consultant, if grant funding for the project is suddenly removed."

2) Termination for Default – Termination for default is generally the exercise of the agency's contractual right to completely or partially terminate a contract because of the contractor's actual or anticipated failure to perform its contractual obligations. All contracts shall contain a provision allowing for the termination of the contract for default by the agency. All contracts supported by federal grants are to include provisions that allow the agency to terminate the contract, and that stipulate the manner by which termination will be made and the basis for settlement. In addition, the agency recommends the use of an immediate stop work order in the instance of a project not progressing to the agency's satisfaction.

3) Termination for Cause – If either party fails to fulfill in a timely and proper manner that party's obligations under this Agreement or otherwise breach this Agreement and fail to cure such failure or breach within fifteen (15) days of receipt of written notice from the other party describing the nature of the breach, the non-defaulting party may, in addition to any other remedies it may have, terminate this Agreement by giving fifteen (15) days written notice to the defaulting party.

4) Disposition of, Title to and Payment for Work upon Expiration or Termination – Upon expiration of this Agreement or termination for cause or termination for the convenience of a party, all finished or unfinished documents and other materials, if any, and all rights therein shall become, at the option of the agency, the property of and shall be promptly returned to the agency, although consultant may retain a copy of such work for its personal records only. Unless otherwise expressly provided in this Agreement, any copyrightable or patentable work created by consultant under this Agreement shall be deemed a "work made for hire" for purposes of copyright or patent law and only the agency shall be entitled to claim or apply for the copyright or patent thereof.

   Consultant shall only be paid for deliverables and documented services completed and provided prior to the notice of termination, less payments of compensation previously made.

802.25. Dispute Resolution – The agency's cognizant agency requires that "grantees alone will be responsible in accordance with good administrative practice and sound business judgment for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relievethe grantee of any contractual responsibility under its contracts. The agency is not required to include a dispute resolution clause in its contracts but every effort should be made to resolve disputes between the consultant and agency.

Any dispute between the consultant and the agency relating to the implementation or administration of the contract shall be attempted to be resolved through the following process:

1) The parties will first attempt to resolve the dispute informally in meetings or communications between the consultant and the agency (for each individual contract). If the dispute remains unresolved fifteen (15) days after it first arises, the consultant may request that the agency issue a recommended decision on the matter in dispute. The project manager will issue the recommended decision in writing and provide a copy to the consultant.

2) The recommended decision of the project manager will become final unless, within fifteen (15) days of receipt of such recommended decision, the consultant submits a written request for review to the executive director. In connection with any such review, the consultant and the agency will be afforded an opportunity to be heard and to offer evidence on the issues presented. If the dispute remains unresolved after review by the executive director then the consultant may file an appeal with the SRTA Fiscal Committee. If remaining unresolved after appeal to the Fiscal Committee, either party may seek judicial resolution of the dispute in an appropriate court based on the venue section of the contract.

Pending final resolution of a dispute under this section, the consultant shall proceed diligently with performance in accordance with the contract and the agency's recommended decision.

803. Executive Director and Project Manager Responsibilities

803.1. The executive director, or his/her designee,:

1) is responsible for updating these procurement policies and procedures on an as-needed basis.

2) is authorized to enter into, administer, and terminate contracts. However, the executive director may bind agency only to the extent of the contracting authority delegated by the board of directors.

3) will ensure that a clear and accurate scope of work is developed for each procurement.

4) will not enter into a contract unless the executive director has ensured that all applicable requirements of federal law, federal regulations and circulars, California law, and all other applicable agency procedures (including approvals) have been met.

5) will ensure that consultants/vendors receive impartial, fair, and equitable treatment in accordance with the policies specified in this manual.

6) will be the primary agency employee to determine that contract prices are fair and reasonable prior to signing the contract or any changes thereto.

7) will not make any purchase or enter into any contract for an amount, which exceeds his or her specifically delegated contracting authority.

803.2. The project manager – The project manager is a duly appointed agency employee who will be directly responsible for the daily technical administration of a contract including monitoring the contract and performing those functions as specified by agency policy. The project manager should be a responsible individual assigned to and familiar with the procedures and requirements of the agency. As such, the project manager is the executive director's technical expert and is at his/her disposal to assist in ensuring consultant/vendor compliance with technical requirements of the contract. Normally, the project manager approves or disapproves the technical acceptability and timeliness of the work completed and the invoices submitted by the consultant for payment.

The project manager:

1) will ensure that sufficient unencumbered funds are available for obligation for each contract.

2) will develop a clear and accurate scope of work for each procurement.

3) is responsible for: soliciting bids, proposals, and qualifications requests; serving as the chairperson of pre-bid and pre-proposal conferences, qualification hearings and proposal evaluation meetings; conducting contract negotiation sessions; managing the non-technical aspects of post award contract administration including negotiation of modifications, claims, and supplemental agreements; and maintaining all official contract files.

4) is responsible for such tasks as writing, preparing and assembling contract documents; obtaining necessary pre-solicitation approvals; advertising RFPs/RFQs/IFBs, issuing amendments, obtaining post-bid opening approvals for award, conducting investigations of proposed vendors' past performance, conducting vendor selection meetings for negotiated contracts and conducting negotiations, monitoring vendor's performance, and managing termination for default or convenience procedures whenever the need arises.

5) is the person to whom reports of warranted equipment malfunctions, failures or any problems with the vendor's performance are submitted, pursuant to the specific authority granted by the executive director. The project manager makes the initial request for vendor remedial action. The executive director becomes involved when, and if, the lapse constitutes a serious, i.e., repetitive, or unresolved, breach of vendor's civil or contractual responsibility.

6) notifies the executive director that an apparent breach of the contract exists, if the vendor fails to respond in a timely or adequate manner to rectify any problem. After investigating the situation, the executive director and the project manager take any steps necessary and available to enforce agency's rights under the contract. This may include withholding payment, imposing liquidated damages, negotiating and recommending a settlement, terminating the vendor for default, or referring the matter for legal action.

7) attends pre-proposal conferences as the technical expert; conducts investigations of proposed vendor's technical past performance; questions prospective vendors during clarifications and discussions as to their technical capability to perform the contract; assists with contract negotiations; ascertains the availability of funds prior to initiating the negotiation and approval process for change orders, contract modifications and supplemental agreements; and issues directions to correct or replace defective items of work.

804 Bid Process Overview

804.1. Staff must determine the following:

1) Project scope;

2) Expected cost of the procurement;

3) Funding source and whether the procurement is budgeted or non-budgeted; and

4) What type of procurement will be exercised (See Section 804.8).

804.2. For procurement type, staff should refer to the policies described herein. Any questions regarding the procurement process should be immediately discussed with the executive director to ensure that the policies are being followed.

804.3 When circumstances warrant, the agency may attempt to fill requirements through a cooperative purchasing agreement with other appropriate public agencies.

804.4. Upon completion of the procurement process, authorization must be issued by the executive director, under Board of Directors approval, as needed, prior to the execution of any contract, notice-to-proceed, or initiation of work.

804.5. If only one bid is received, the sole bidder must cooperate with agency as needed in order for its bid to be considered for award. A new solicitation of bids may be made if the single bid price appears unreasonable.

804.6. Options- the agency may include options in contracts. An option is a unilateral right in a contract by which, for a specified time, a grantee may elect to purchase additional equipment, supplies, or
services called for by the contract, or may elect to extend the term of the contract. If the agency chooses to use options, the requirements below apply:

1) Call for Options – In releasing the bid document, the agency will request bid information on an option(s).

2) Evaluation of Options- The option quantities or periods contained in the consultant's bid or offer must be evaluated in order to determine contract award. When options have not been evaluated as part of the award, the exercise of such options will be considered sole source procurement.

3) Exercise of Options

   a) The agency must ensure that the exercise of an option is in accordance with the terms and conditions of the option stated in the initial contract awarded.

   b) An option may not be exercised unless the agency has determined that the option price is better than prices available in the market or that the option is the more advantageous offer at the time the option is exercised.

804.7. Advance Payments – The agency does not authorize and will not participate in funding payments to a consultant prior to the incurrence of costs by the consultant unless prior written concurrence is obtained from the appropriate cognizant agency. There is no prohibition on agency's use of local match funds for advance payments. However, advance payments made with local funds before a grant has been awarded, or before the issuance of a letter of no prejudice or other pre-award authority, are ineligible for reimbursement.

804.8. Procurement by Amount – The agency will follow procurement procedures based on the size of the procurement, as delineated below and in the subsequent diagram.

1) Micro Purchases – Micro purchases, those defined as purchases under $3,500 (total for the life of the agreement without options), may be used by SRTA staff under the following circumstances:

   a) Micro purchases may be made without obtaining competitive quotations if the agency determines that the price to be paid is fair and reasonable.

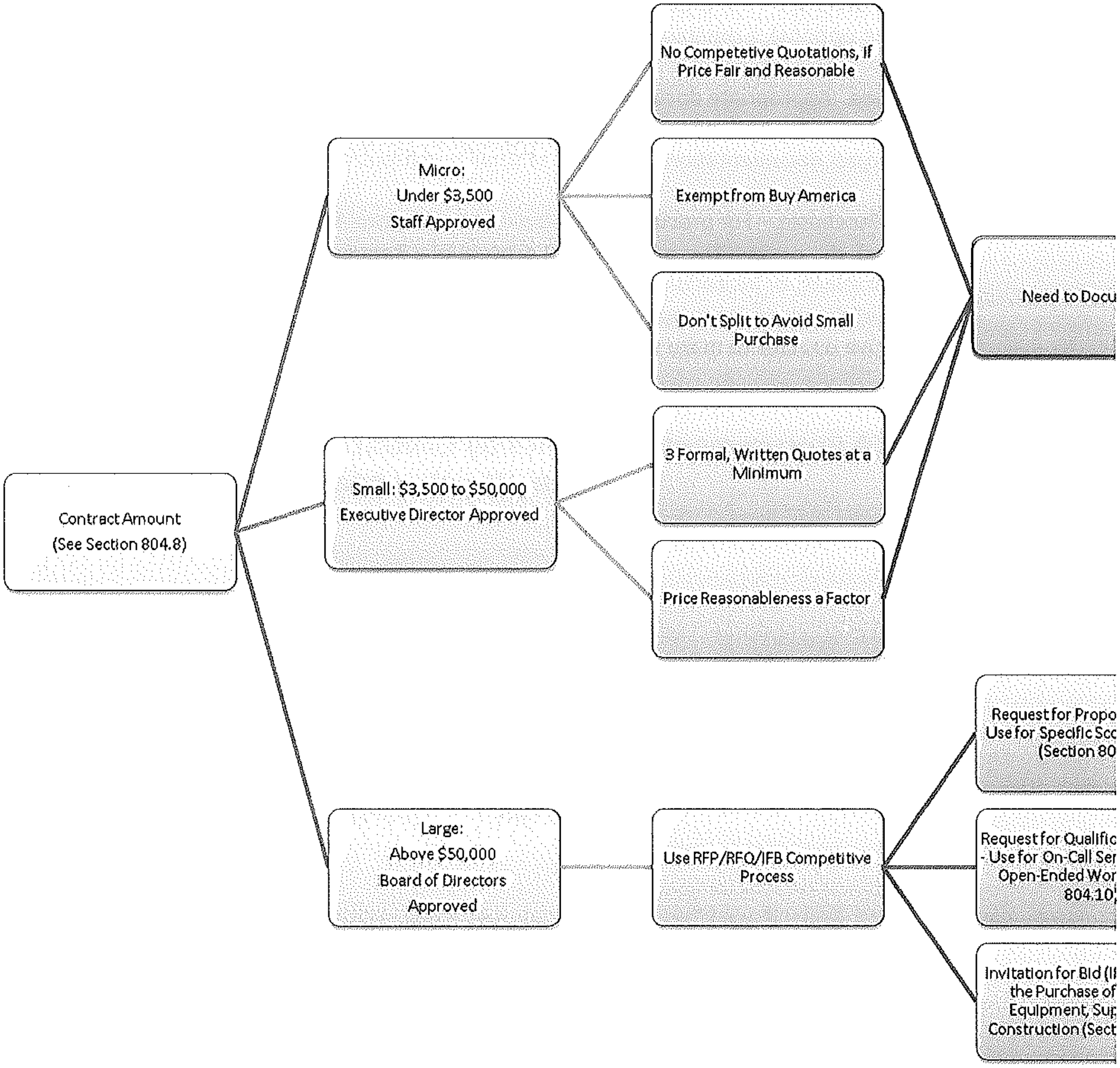
   b) Micro purchases are exempt from the Buy America requirements.

   c) Micro purchases may be equitably distributed among qualified suppliers and purchases should not be split to avoid the requirements for competition above the $3,500 threshold.

2) Small Purchases – For procurements of $3,500 up to $50,000 (total for the life of the agreement without options), a minimum of at least three (3) informal written quotes from vendors is required. The responsibility for soliciting quotations rests with the executive director, or designee. Appropriate documentation, including but not limited to a list of the vendors contacted, a fair and reasonable price determination and the quotes received, will be filed with the project documentation. Approval of small purchases rests with the executive director.

3) Large Purchases – For procurements above $50,000 (total for the life of the agreement without options), the competitive procurement process of a Request for Proposals, or Request for Qualifications, or Invitation for Bid will be used. Approval of large purchases rests with the board of directors. Upon approval, the board of directors may authorize the fiscal committee or executive director to make subsequent contract amendments, as needed.

SRTA Procurement Guidelines by Contract Amount and Approval Authority (Section 804.8)



804.9. Request for Proposals (RFP) The Request for Proposals (RFP) competitive procurement process is used when conditions are not appropriate for the use of a small purchase. The RFP process is coordinated by the project manager.

The RFP process is a competitive negotiated procurement process that requires evaluation of offeror's proposed costs and understanding of the contract performance requirements in accordance with established evaluation criteria. The competitive negotiated procurement process does not require award to the lowest offeror. An RFP *generally* includes, but is not limited to:

- Project and agency background;
- Purpose of the engagement;

- Desired use of deliverables;
- General firm qualifications desired;
- Scope of work;
- Project schedule;
- Proposal requirements;
- Criteria for selection;
- Payment terms;
- Additional services, as requested; and
- Contract extension terms, as desirable.

1) Issuance of RFP

b) A notice of an RFP will be prepared by the project manager, and will be published electronically no less than three weeks prior to the date set for receipt of proposals. SRTA maintains an RFP template for staff use and also uses a bid posting section on SRTA's website. The notice must include the following minimum information:

i) A general description of the services or goods to be purchased;

ii) Where to request an RFP;

iii) The location, day and time of the pre-proposal conference (if one is held);

iv) The location, last day and hour proposals will be accepted (deadline); and

v) Whether federal funds are being used for the procurement.

2) RFP Packet- The project manager will coordinate the release of the RFP packet. The RFP packet will include the following:

a) Instructions To Proposers - General instructions concerning the proposal format, pre-contractual expenses, contract conditions, pre-proposal conferences, federal conditions and requirements (when using federal funds) and other information.

b) Attachments - Required forms to be completed by the proposer and submitted with the proposal including required federal certifications.

c) Exhibits - These can be documents which display key facts, specifications, maps, report formats, and other important information to clearly define the goods or services needed in order for the proposers to properly respond to the RFP. For professional services, a copy of the standard technical service agreement will be included.

d) Scope of Work - Each RFP will contain a statement or scope of work prepared by the project manager which provides a clear and accurate description of the technical requirements for the materials, products, or services being produced. A statement or scope of work should only state the actual minimum needs of the agency, and be developed in a manner designed to promote full and open competition. At a minimum, the statement or scope of work should address the following areas:

i) A detailed description of the work to be performed outlining various tasks or phases to be performed, and defining the limits of the proposed project;

ii) A requirement for periodic reporting or progress on the project if the procurement involves consultant or professional services;

iii) A proposed delivery schedule; and,

iv) A proposed contract period.

e) Evaluation Criteria – Each RFP will identify all evaluation factors and their relative importance. If the selection is to be made by lowest price, that will be stated in the solicitation documentation. If the selection process will be a "best value" determination, the solicitation will state so and the relative significance of each criteria will also be included in the solicitation document.

f) A control record will be maintained by project manager as RFP packets are distributed to prospective bidders. The control record profiles the following information:

   a. Date and time RFP packets are distributed.

   b. Names and addresses (physical or email) of vendors receiving the RFP and attending any pre-proposal conference. The control record's primary purpose is to provides a record for verification in cases of vendor protests and other issues.

g) Advertising. All RFPs should be advertised in a manner that promotes participation in the bidding by all qualified and capable firms. If there is a DBE goal, the goal amount should be advertised. Advertising only in the immediate local news media may not be adequate for large projects needing consultants that are not common locally.

3) Pre-Proposal Conference- A pre-proposal conference may be used as a means of briefing prospective proposers and explaining complicated specifications and requirements to them as early as possible after the RFP has been issued and before the proposals are received. The pre-proposal conference will not be used as a substitute for amending RFP discrepancies. Attendance by prospective proposers is not mandatory. Minutes of the conference and the list of attendees will be issued to all prospective proposers who attended the conference, or be posted in an accessible location, e.g. the Internet, with notice made to all attendees.

The pre-proposal conference will be chaired by the project manager, and will follow the guidelines below:

a) Discuss basic requirements such as instructions to the proposers, funding, contract type, evaluation criteria, and specific points that should be addressed in each proposal;

b) Discuss the participation requirements for disadvantaged business enterprises (DBE);

c) Discuss the scope of work; and,

d) Conclude by announcing when and where the proposals are due and by restating the requested proposal length and maximum pages in scope of work.

4) RFP Amendments- If after issuance of requests for proposals, but before the time set for receipt of proposals, it becomes necessary to make changes in quantities, specifications, delivery schedules, opening dates, etc. or to correct or clarify RFP discrepancies, any such changes shall be accomplished by issuance, in writing, of an addendum, or addenda, to the RFP. Before issuing an addendum to an RFP, the period of time remaining until the time set for proposal submittal and the need for extending this time must be considered.

No award will be made on the request unless such addendum has been issued in sufficient time to permit all prospective proposers to consider such information in submitting or modifying their proposals.

The RFP will indicate that the agency is not bound by any oral representations, clarifications, or changes made in the written specification by the agency's employees, unless such clarification or change is provided to potential proposers in written addendum form from the agency.

Each amendment issued to a request for proposals will:

a) Be serially numbered and dated.

b) Include the title, date and a description of the original RFP concerned.

c) Clearly state the changes made in the RFP, and extend the due date, as appropriate.

d) Be posted to the bid-posting section of SRTA's website, to which prospective vendors have been directed to sign-up for any communications related to the RFP.

5) Cancellation of RFP- the agency has the right to cancel RFPs at any time.

6) Receipt of Proposals- Proposals will be submitted so as to be received at the location designated in the RFP not later than the exact time set for the receipt of proposals. The only acceptable evidence to establish the time of receipt at the agency's offices is the agency date stamp, the written time of receipt, or for electronic submissions, the receipt date on the email transmitting the proposal. The timeliness of proposals is the sole responsibility of the proposer.

7) Withdrawal of Proposals- Any proposer may withdraw its proposal, either personally, through e-mail or by written request, received by agency at any time prior to the time fixed for the receipt of the proposals. Negligence on the part of a proposer in preparing the proposal confers no right of withdrawal of the proposal after such proposal has been opened. No proposal may be withdrawn for a period of 60 days following the proposal deadline.

8) Format of Proposal- The proposal to each RFP must be made in accordance to the requirements set forth in the RFP, both for mandatory content and for sequence. Noncompliance on the inclusion of conditions, limitations or misrepresentations may be cause for rejection of a proposal.

9) Evaluation and Selection Process- Proposals submitted to the RFP will be evaluated by an evaluation committee established by the agency, in accordance with the criteria set forth in the RFP. The evaluation committee will score the proposals and make a recommendation to the executive director. The consultant selection process may use the following criteria and associated point percentages as a guide when applicable and each criterion may be weighted according to its importance to the project's success. If using criteria-point based scoring, as per the below, the agency may establish modified evaluation criteria at the time of release of the RFP.

Criteria	Point Scoring Maximums
Thoroughness of proposal and meeting the RFP project scope of work and the project's overarching objectives	40
Qualifications and similar experience of the consulting firm and project team	25
Local knowledge demonstration	15
Innovative ideas to meet RFP objectives	15
DBE participation level (all points for DBE/WBE Registration; no points for none)	5

Alternatively, if delineated in the RFP, the SRTA project manager may employ consensus scoring as a method of evaluation. After discussing the initial review results among evaluating committee members, the evaluating committee discusses reasoning for differences in scoring to come to consensus on the top-ranked firm, followed by the second, and so on.

10) The Executive Director Makes Final Determination- After review of the evaluating committee's recommendations, whether point based, or consensus scoring based, the executive director, or designee, will make a recommendation of award to the agency board of directors for contracts greater than $50,000, unless the agency has already delegated its authority to the executive director for the procurement. If any RFP-based contract award recommendation differs from the recommendation(s) of the evaluating committee, the executive director, or designee, will include the evaluating committee's recommendation in the report to the board of directors, as well as the executive director's, or designee's, reasons for the alternate recommendation.

After review and consideration of this recommendation, the board of directors will have the discretion to:

a) Award the agreement to the proposer whose proposal is most advantageous to the agency, with price and other evaluation factors specified of the RFP considered. The agency board of directors is not bound by the recommendation of the executive director, but must document the justification for making an alternate selection.; or

b) Reject any and all proposals; or.

c) Direct staff to issue a new RFP.

11) Debriefing of Unsuccessful Proposers- Unsuccessful proposers will be notified of the agency's award of agreement to the successful proposer within five (5) working days of said decision. When a contract is to be awarded on some basis other than price alone, unsuccessful proposers will be debriefed upon their written request submitted to the project manager within a reasonable time.

Debriefings for the unsuccessful proposers will be provided at the earliest time after the executive director makes a final determination recommending the award of the contract. The debriefing will be conducted by the project manager, or designee familiar with the rationale for the selection decision and contract award. Debriefing will:

a) Be limited to discussion of the unsuccessful proposer's proposal and must not include specific discussion of a competing proposer's proposal;
b) Be factual and consistent with the evaluation of the unsuccessful proposer's proposal; and
c) Provide information on areas in which the unsuccessful proposer's technical proposal was deemed weak or deficient.

12) Public Record- All proposals submitted in response to an RFP will become the exclusive property of the agency. At such time as the executive director recommends a proposal to the board and such recommendation appears on the board agenda, all proposals submitted in response to the RFP shall become a matter of public record and shall be regarded as public records. If there are any trade or proprietary secrets included by the consultant, the consultant may provide a different copy of the proposal that would be acceptable to release to the public. Proprietary information can include secret formulas, processes, and methods used in production. It can also include a company's business and marketing plans, salary structure, customer lists, contracts, and details of its computer systems. In some cases, the special knowledge and skills that an employee has learned on the job are considered to be a company's proprietary information.

13) Analysis of Limited RFP Response- If only one proposal has been received, the project manager will examine the reasons for the limited response. A price or cost analysis will be performed to establish the reasonableness of the bid price before an award is made.

14) Notice of Contract Award- Award will be made by mail, e-mail and/or personal delivery to the successful proposer of a notice of award and the proper contract documents. The agency will finalize the execution of the contract and send a copy to the successful proposer. In addition, the agency will notify all unsuccessful proposers of its intent to award a contract to the successful proposer at the same time it notifies the successful proposer if agency approval is not required, and at the same time as the publication of the agency agenda-- if the agency approval is required.

15) Final Contract Draft- The standard contract template will be used for the agreement, unless amendment to the template is required for specific items. Such amendment will be reviewed by legal counsel prior to forwarding the contract to the consultant. The project manager will ensure that the contract is executed at the approval level required in these procedures. The contract does not take effect until signed by both parties; its effective date is the date of last signature to the contract. Two or more original signed copies of each contract will be executed by agency and the consultant. The agency will maintain one original of the contract and will distribute the others to appropriate parties, including at least one original to the consultant.

16) Project Completion- All original documentation related to each procurement, such as the RFP, proposals received, control record, agenda report, background data, evaluation criteria and scores, and meeting reports/notes will be submitted to the project manager for storage when the file becomes inactive. For audit purposes, complete files will be maintained for a minimum of five years after the project is closed out and completed unless a different time period is mandated by a funding entity. Procurement records sufficient to detail the significant history of procurement will be maintained. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, consultant selection or rejection, and the basis for the contract price.

804.10 Request for Qualifications (RFQ) – The RFQ process is used when services of a vendor are needed, yet the agency cannot definitively outline a complete scope of work, such as modeling, geographic information systems, and other types of technical assistance that are typically needed on an on-call basis. SRTA maintains an RFQ template for staff use. The RFQ requests prospective vendors to submit their qualifications, experience, references and, if requested, pricing for different members of their team. The RFQ typically includes:

- Project and agency background;
- Purpose of the engagement;
- Request for a background on the experience the firm has for which the agency is requesting, including references;
- A profile of the firm, including location of business, personnel structure, and rate schedule;
- Firm team members proposed for the work, and their respective qualifications;
- Expected evaluation criteria (sample below) to be used to evaluate the Statements of Qualifications received;
- Expected duration of the contract period;
- Option for extension(s) of the original contract, for a specified period of time, if the vendor is satisfactorily performing, and the rate structure is reasonable at the time of extension. (FTA requires grantees to exercise "sound business judgment," and "to establish contract terms no longer than necessary to accomplish the purpose of the contract." Good procurement practice

dictates that grantees enter into contract terms no longer than minimally necessary to accomplish the purpose of the contract.)

1) RFQ Ranking and Selection for SRTA Project Needs

Sample Evaluation Criteria and Scoring

Criteria	Scoring
Experience and Local Knowledge	55
Qualifications	25
Value	15
DBE	5

If the RFQ was for a generally defined type of work, over a period of time, the selection committee will establish a vendor list and select the vendor, as follows:

a) Based on both the evaluation criteria weighting, and information received from references, the committee will select vendors for further consideration. Alternatively, if delineated in the RFQ, the SRTA project manager may employ consensus scoring as a method of evaluation. After discussing the initial review results among evaluating committee members, the evaluating committee discusses reasoning for differences in scoring to come to consensus on the top-ranked firm, followed by the second, and so on.

b) The committee **may** interview the vendors selected for further consideration.

c) SRTA will select the top-ranked vendor from the list and will negotiate a scope of work.

d) SRTA and the selected vendor will enter into a technical services agreement for an initial term, and if specifically called out in the RFQ, for another specific period of time..

2) RFQ Ranking and List Establishment for SRTA and Planning Partners Future Project Needs

Alternatively, the RFQ may be used as the initial request for vendor services for establishing a list of qualified vendors for a specific type of goods and/or services for which SRTA, or its planning partners, need. For this type of purpose, the selection committee will establish a vendor list and select future vendors by the following process:

a) Based on both the evaluation criteria weighting, and information received from references, the committee will select vendors for further consideration.

b) The committee **may** interview the vendors selected for further consideration.

c) The committee will establish a ranked list of providers pre-approved to provide the requested type of services. The list will be valid for up to five years, at which time SRTA will issue a new RFQ. SRTA reserves the right to establish a new list at any time prior to the expiration of the five-year period.

d) During the period of list eligibility, SRTA may enter into technical services agreements with approved firms on the list for that type of service, based on agency need, and the vendors' areas of expertise. Additionally, the list of approved firms will be made available to SRTA's planning partners for use, if desirable and/or needed.

3) The Executive Director Makes Final Determination- After review of the evaluating committee's recommendations, whether point based, or consensus scoring based, the executive director, or designee, will make a recommendation of award to the agency board of directors for contracts greater than $50,000, unless the agency has already delegated its authority to the executive director for the procurement. If any RFQ-based contract award recommendation differs from the recommendation(s) of the evaluating committee, the executive director, or designee, will include the evaluating committee's recommendation in the report to the board of directors, as well as the executive director's, or designee's, reasons for the alternate recommendation. After review and consideration of this recommendation, the board of directors will have the discretion to:
    a) Award the agreement to the respondent whose qualifications are most advantageous to the agency, with reimbursement rate and other evaluation factors of the RFQ considered. The agency board of directors is not bound by the recommendation of the executive director, but must document the justification for making an alternate selection.; or

    b) Dismiss any and all responses; or.

    c) Direct staff to issue a new RFQ.

4) Public Record- All responses to an RFQ will become the exclusive property of the agency. At such time as the executive director recommends a contract award to the board and such recommendation appears on the board agenda, all proposals submitted in response to the RFQ shall become a matter of public record and shall be regarded as public records. If there are any trade or proprietary secrets included by the consultant, the consultant may provide a different copy of the proposal that would be acceptable to release to the public. Proprietary information can include secret formulas, processes, and methods used in production. It can also include a company's business and marketing plans, salary structure, customer lists, contracts, and details of its computer systems. In some cases, the special knowledge and skills that an employee has learned on the job are considered to be a company's proprietary information.

5) Analysis of Limited RFQ Response- If only one response has been received, the project manager will examine the reasons for the limited response. A price or cost analysis will be performed to establish the reasonableness of the reimbursable rates before an award is made.

6) Notice of Contract Award- Award will be made by mail, e-mail and/or personal delivery to the successful respondent of a notice of award and the proper contract documents. The agency will finalize the execution of the contract and send a copy to the successful firm. In addition, the agency will notify all unsuccessful respondents of its intent to award a contract to the

successful respondent at the same time it notifies the successful respondent—if agency approval is not required, and at the same time as the publication of the agency agenda—if the agency approval is required.

7) Final Contract Draft- The standard agency contract template will be used for the agreement, unless amendment to the template is required for specific items. Such amendment will be reviewed by legal counsel prior to forwarding the contract to the consultant. The project manager will ensure that the contract is executed at the approval level required in these procedures. The contract does not take effect until signed by both parties; its effective date is the date of last signature to the contract. Two or more original signed copies of each contract will be executed by agency and the consultant. The agency will maintain one original of the contract and will distribute the others to appropriate parties, including at least one original to the consultant.

8) Project Completion- All original documentation related to each procurement, such as the RFQ, responses received, control record, agenda report, background data, evaluation criteria and scores, and meeting reports/notes will be submitted to the project manager for storage when the file becomes inactive. For audit purposes, complete files will be maintained for a minimum of five years after the project is closed out and completed unless a different time period is mandated by a funding entity. Procurement records sufficient to detail the significant history of procurement will be maintained. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, consultant selection or rejection, and the basis for the contract price.

804.11 Invitation For Bid (IFB) – This process is typically used for procurement of equipment, supplies and construction. As with the RFP and RFQ processes under SRTA's procurement policies and procedures, the IFB process only applies to purchases above $50,000. Under this procedure, bids are publicly solicited, and a firm-fixed-price contract (lump sum or cost per unit of work with a not-to-exceed amount) is awarded to the responsive and responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for bids, is the lowest in price.

1) Guidelines for IFBs:

   a) The IFB includes the complete assembly of related documents (whether attached or incorporated by reference) furnished to prospective bidders for the purpose of bidding.

   b) IFBs must be based on a clear and accurate description of the technical requirements for the material, product, or service to be procured. The description should not contain, in competitive procurements, features that unduly restrict full and open competition. The "brand name or equal" description may be used to define the performance or other necessary requirements of a procurement. When so used, the specific features of the brand name product that must be met by bidders must be clearly identified. Brand names that are known to meet the "or equal" requirements should be listed.

c) IFBs should be publicized through distribution to prospective bidders, posting on SRTA's website, posting in public places, advertising in newspapers, and such other means as may be appropriate in sufficient time to enable bidders to prepare and submit their best bids before the time set for the public opening of bids.

d) If the procurement is successful, the contract will be awarded to the responsive and responsible bidder submitting the lowest bid determined on the basis of the specifications set forth in the IFBs.

e) The IFBs, including specifications and attachments, should permit full and open competition consistent with the requirement for the property or services to be procured. The requirement should represent SRTA's minimum needs and be sufficiently described to promote full and open competition.

f) All bids should be opened publicly at the time and place stated in the IFB.

2) In order for sealed bidding to be feasible, the following conditions should be present:

a) A complete, adequate, and realistic specification or purchase description is available;

b) Two or more responsible bidders are willing and able to compete effectively for the business;

c) The procurement lends itself to a firm fixed-price contract, and the selection of the successful bidder can be made principally on the basis of price; and

d) There is no price negotiation with bidders before sending out the notice of intent to award.

3) If the sealed bid procurement method is used, the following requirements apply:

a) The IFB will be publicly advertised, and bids should be solicited from an adequate number of known suppliers or contractors, providing them sufficient time to prepare bids prior to the date set for opening the bids;

b) The IFB, which will include any specifications and pertinent attachments, should define the items or services sought in order for the bidder to properly respond;

c) All bids will be publicly opened at the time and place described in the IFB;

d) Bid amounts will be included in the bid opening documentation;

e) A firm-fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. For the procurement of items, when specified in bidding documents, factors such as discounts, transportation costs, and life cycle costs may be considered in determining which bid is lowest; payment discounts will only be used to determine the low bid when industry practice for the type of project involved indicates that such discounts are usually taken advantage of; and

f) Any or all bids may be rejected if there is a sound, documented reason.

4) For purchases of equipment or supplies that are better suited for an RFP or purchase on the open market instead of an IFB, approval may be sought from the Executive Director to utilize a different procurement process. An alternate procurement process to the IFB may be in SRTA's best interest in the following example situations:

a) The purchase may be made at a lower price on the open market.

b) Competitive bidding is an inadequate method of procurement because it is necessary to purchase prototype equipment or modifications in order to conduct and evaluate operational testing.

c) The article(s) to be procured is undergoing rapid technological changes, and it is in the public's interest to issue an RFP so that the broadest possible range of competing product and materials available, fitness of purpose, manufacturer's warranty, and other similar factors in addition to price can be taken into consideration.

5) If staff seeks authorization to utilize an alternate procurement process, documentation setting forth the reasons a deviation from the typical competitive bidding process is warranted, and a technical evaluation of the articles, prices, and suppliers should be placed in the contract folder.

6) Payment Method

Contracts awarded as a result of IFBs should be fixed price. Escalation may be appropriate where unusual risks for labor or material are present and some flexibility is necessary and feasible. When escalation is necessary, an escalation ceiling must be established and must be the same for all bidders. Payment for unbid items, including items in change orders will not call for payment to the contractor on the basis of cost, plus a fixed percentage of cost. Markup amounts must be negotiated and determined reasonable on each item added to a low bid procurement.

7) Solicitation of Bids

a) Preparation of IFBs. For supply and construction contracts, IFBs should contain the following information if applicable to the procurement involved. Additionally, requirements from the California Public Contract Code should be included if a construction-related contract.

i. Invitation number.

ii. Name and address of Executive Director.

iii. Date of issuance.

iv. Date, hour, and place of bid opening (prevailing local time should be used.)

v. Number of pages and numbered pages.

vi. A description and specifications of supplies to be furnished under each item in sufficient detail to promote full and open competition.

vii. The time of delivery or performance requirements.

viii. Statement of whether submission of electronic bids will be permitted.

ix. The IFB should set forth full, accurate, and complete information, including attachments.

x. Bid guarantee, performance, and payment bond requirements.

xi. A requirement that all bidders must allow an acceptance period of not less than a specified number of calendar days and that bids offering less than the minimum stipulated acceptance period will be rejected.

xii. Special experience and/or technical qualifications due to the complexity of the equipment being procured, or for some other special reason.

xiii. Any authorized special provisions relating to such matters as progress payments, patents, liquidated damages, etc.

xiv. Any additional contract provisions or conditions required by state, local, or other jurisdictions.

xv. All factors to be considered in the evaluation of bids that weigh on price. Bidders must know these factors to properly construct their bid prices. It is imperative that this process be followed to assure that any perception of arbitrary application of the price factors by buyers is eliminated.

xvi. Directions for obtaining copies of any documents that have been incorporated by reference. All documents incorporated in the IFB by reference must be readily available to all potential bidders.

xvii. A bid price form should be included that is tailored such that it breaks down all of the appropriate cost elements and options such that SRTA staff can determine the low bidder and the responsiveness of the bids.

xviii. Information on liquidated damages.

b) Bidding Time. Consistent with the need for obtaining the supplies, all IFBs should allow sufficient bidding time (i.e., the period of time between the date of distribution of an IFB and the date set for opening the bids) to permit prospective bidders to prepare and submit bids. Generally, bidding time should not be less than 21 calendar days when procuring standard commercial articles and services. It should not be less than 30 calendar days when procuring other-than-standard commercial articles or services. The exception is when the urgency of the need does not permit such delay.

c) Place and Method of Delivery of Supplies. IFBs specifying f.o.b. origin should state that bids will be evaluated on the basis of bid price plus transportation cost to the buyer from point of origin to one or more designated destinations.

d) Bid Sample. For the procurement of tangible items, a "bid sample" may be required by the IFB document to assist the buyer in determining whether the bid is an offer to perform exactly as required in the invitation. Such samples, however, may be used solely for the purpose of determining responsiveness and should not be used to determine the bidder's ability to produce the required items. Bidders should not be required to furnish samples unless there are certain characteristics of the product that cannot be described adequately in the specification or purchase description, thus necessitating inspection of a sample to assure procurement of an acceptable product. Submission of bid samples should be discouraged unless they are absolutely necessary.

e) Descriptive Literature for the Procurement of Tangible Items

   i. Definition. The term "descriptive literature" means information, such as cuts, illustrations, drawings, and brochures, which describe or show the characteristics or construction of a product or explain its operation. The term includes only information required to determine acceptability of the product. It excludes other information such as that furnished in connection with the qualifications of a bidder or for use in operating or maintaining equipment;

   ii. Use. Bidders should not be required to furnish descriptive literature as a part of their bids unless the project manager determines that such literature is needed to determine whether the product(s) offered meet the specification requirements of the IFB or establish exactly what the bidder proposes to furnish.

f) Final Review of IFBs. SRTA's executive director, or designee, shall review each IFB allowing adequate review time as necessary to correct any discrepancies or ambiguities that could limit competition unnecessarily.

g) Contacting Prospective Bidders. Notice of release of the IFBs should be sent via email or otherwise delivered to the maximum number of prospective bidders to promote and ensure full and open competition. Unnecessary restrictions on competition should be avoided. From the time the solicitation is being prepared to the time of contract award, only the Executive Director, or designee, should have contact with potential or actual proposers in order to reduce the likelihood of any unfair advantage in the competitive process. All questions should be answered in writing only.

h) Pre-bid Conference. A pre-bid conference may be used as a means of briefing prospective bidders and explaining to them complicated specifications and requirements, including DBE information, goals, and documentation as early as possible after the invitation has been issued and before the bids are opened or proposals are due. The pre-bid conference should not be used as a substitute for clarifying IFB discrepancies. If a modification is demonstrated necessary as a result of the pre-bid conference, such modifications should be made through a formal addendum and not through the pre-bid notes. SRTA will reference Caltrans' DBE database within the IFB documents to assist contractors and subcontractors in locating each other to potentially partner on the project and may be provided again at the pre-bid conference as needed.

i) Advertising. All IFBs should be advertised in a manner that promotes participation in the bidding by all qualified and capable firms. If there is a DBE goal, the goal amount should be advertised. Advertising only in the immediate local news media may not be adequate for large projects needing contractors of a type that are not common locally.

j) Records of IFBs and Records of Bids. The Executive Director, or designee, will retain a record of every IFB he/she issues and a copy of each abstract or record of bids. Executive Director, or designee, should review this record during each subsequent procurement action for the same and, when appropriate, similar items. This should ensure that the information in the file is utilized with the new procurement. The IFB file should show the date of the IFB and the original distribution source list..

k) Amendment of IFBs. If after issuance of IFBs, but before the time set for bid opening it becomes necessary to make changes or corrections in quantities, specifications, delivery schedules, opening dates, etc., or to clarify or correct discrepancies, the changes will be accomplished by issuance of an addendum to the IFB at least 72 hours before the bid is due. Distribution of the addendum will be made to each concern to whom the invitation for bids has been furnished and/or placed on SRTA's website. Before amending an IFB, the period of time remaining to bid opening and the possible need to extend this period should be considered and, if necessary, confirmed in the addendum. Any information given to a prospective bidder concerning an IFB should be furnished promptly to all other prospective bidders as an addendum to the IFB. No award should be made unless the addendum has been issued in sufficient time to permit all prospective bidders to consider the information in submitting or modifying their bids. In this regard, changes to DBE goals or requirements that may require additional time for bidders to conduct a good faith effort to locate DBE firms will be considered in determining whether an extension of the deadline is needed.

l) Responsiveness of Bids. To be considered for award, a bid should comply in all material aspects with the IFB. Bidders must use SRTA bid forms in order to be in material compliance with the IFB requirements. This applies to both the method and timeliness of submission and the substance of any resulting contract. It is imperative that all bidders be afforded an equal opportunity so that the integrity of the bidding system is maintained. Bids should be completed, executed, and submitted in accordance with the instructions contained in the IFB.

m) Time of Bid Submission. Bids should be submitted so as to be received at the location designated in the IFB, not later than the exact time set for opening of bids. Late bids must be rejected.

n) Modification or Withdrawal of Bids. Bids may be modified or withdrawn by written notice. The notice must be received at the location specified in the IFB not later than the exact time set for bid opening. A bid may be withdrawn, in person, by a bidder or his authorized representative provided:

   i. his/her identity is made known;

   ii. he/she signs a receipt for the bid; and

   iii. the withdrawal is prior to the exact time set for bid opening.

o) Late Modifications and Withdrawals. Modifications and requests for withdrawal of bids that are received after the exact time set for bid opening are considered "late modifications" and "late withdrawals," respectively. A late modification will not be considered.

8) Opening of Bids and Award of Contracts

The official designated as the bid opening officer should decide when the time set for bid opening has arrived and so declare to those present. All bids received prior to the time set for opening should be publicly opened, read aloud to the persons present, and be recorded. The name of the bidder and the total amount of each bid should be read and documented in the IFB file. Bidders may obtain copies of the bid documents that must be disclosed pursuant to the California Public Records Act at any time after the bid amounts are publicly read and recorded.

The original copy of each bid should be carefully safeguarded, particularly until a contract has been awarded. SRTA may allow for electronic bidding of IFBs. If electronic bidding is allowed, the electronic process will record all data, and the results will be immediately available on the SRTA website, or other industry-accepted locations, for the public to view.

9) Recording of Bids

All hard copy bids must be time and date stamped upon their receipt. A time-and-date stamp should be kept at the desks of the receptionists and administrative staff handling mail, and these staff members should be instructed to place a time-and-date stamp on all proposals/bids. To comply with FTA Circular 4220.1F, all bids received against an IFB will be documented using a bid summary form. The invitation number, bid opening date, general description of the procurement item, names of bidders, prices bid, and any other information required for bid evaluation should be entered into the bid summary. When the items are too numerous to warrant the complete recording of all bids, an entry should be made of the invitation number, opening date, general description of the procurement items, and the total price bid. The bid summary should be completed as soon as practicable after the bids have been opened and read. The Executive Director, or designee, serving as the bid opening officer will certify the accuracy of the information. If the IFB is cancelled before the time set for bid opening, the cancellation should be recorded, together with a statement of the number of organizations invited to bid and the number of bids received.

10) Review of Bids

Review of bids for responsiveness should be conducted by technically qualified staff and/or consultants without financial or organizational conflicts of interest. Consultants or non-employees that assist staff in evaluating and reviewing bids must fill out a declaration concerning conflicts prior to reviewing bids. No oral discussion or written communication should be conducted with bidders except to obtain clarification regarding the bid contents or provide information regarding protests or delays.

11) Cancellation of Invitation After Opening

Preservation of the integrity of the competitive bid system dictates that, after bids have been opened, award must be made to the bidder who submitted the lowest-priced, responsive bid unless there is a compelling reason to reject all bids and cancel the invitation. Cancellation of an IFB may be necessary if one of the following occurs (this is not an exhaustive list):

a) all bids contained unreasonable prices;

b) there is evidence of collusion or bad faith (although this could lead to a disqualification of the involved vendors versus the bid process); or

c) competition was not adequate to ensure a reasonable price.

The solicitation documents will be corrected, when necessary, before the procedure for re-solicitation may be followed.

12) Rejection of Individual Bids

Any bid that fails to conform to the essential requirements of the IFB, such as specifications, delivery schedule, or any alternatives to these or other requirements specifically provided for in the IFB should be rejected as nonresponsive. Ordinarily, a bid will be rejected when a bidder imposes conditions that would modify requirements of the IFB or limit its liability to the buyer in a way that gives the bidder an advantage over other bidders.

Minor deviations may be waived. A minor deviation is an error that does not go to the substance of a bid. A condition goes to the substance of a bid when it affects the price, quantity, quality, or delivery of the items offered. Waivers of minor deviations should be consistently applied to avoid allegations of favoritism. Any bid, except lowest price bid, may be rejected if SRTA determines that it is unreasonable as to price, and the determination is supported by review and analysis of the action. If a bid guarantee is required and the bidder fails to furnish the guarantee in accordance with the requirements of the IFB, the bid must be rejected.

13) Notice to Bidders of Rejection of All Bids

When it is determined to reject all bids, the Executive Director, or designee, should notify bidders in writing that all bids have been rejected, stating the reason(s) for such action if appropriate.

14) Award

Unless all bids are rejected, award should be made by written notice within the time specified for acceptance in the bid or extension thereof. Award should be made to that responsible bidder whose bid, conforming to the IFB, will be most advantageous to SRTA, price and other factors considered. Determination of the lowest bidder must include the bid amount that includes all options that may be awarded. If the option bid amounts are not used to determine the low bidder, such options, if exercised, will need to be justified as a sole source. Award should not be made until the protest period has ended and all required SRTA approvals have been obtained. All unsuccessful bidders will be notified at the time SRTA staff publicly issues a staff report. That should be as soon as possible in order to start the clock running on the protest period.

15) Responsible Bidder-Reasonableness of Price

Before awarding the contract, the executive director, with the assistance of technical staff or consultants, should determine that prospective contractor is responsible and that the prices offered are reasonable. These determinations should be made in the light of all prevailing circumstances.

16) Discounts

Prior to issuing an IFB (except one for construction), a determination should be made to establish the minimum period for prompt payment discounts to be considered in the evaluation. The minimum period should be stated in the IFB.

17) Delay of Award

If, after bid opening, administrative problems threaten to delay award beyond the bidder's acceptance period, bidders should be requested to extend the bid acceptance period. This request must be made and confirmed in writing prior to the expiration of their bids (with consent of sureties, if any) to avoid the need for re-advertisement

18) Information to Bidders

When award is made to other than the low bidder, the Executive Director, or designee, should promptly notify the unsuccessful lower bidders. The notification should state the reason for rejection of their bid. In addition, notification that an award has been made to another firm should be given immediately to all unsuccessful bidders.

19) Technical Evaluation Memorandum

A procurement memo should be prepared for each IFB procurement. The procurement memo should include a certifying statement confirming that the low bidder is acceptable with respect to the technical specifications of the IFB. It should be prepared by the project manager in cooperation with the executive director to ensure that the apparent low bidder is technically responsive. The memorandum should be supported by documentation and placed in the contract file. Any non-SRTA employee involved in evaluating bidders or bids will be given SRTA's conflict of interest form to both review and sign.

20) Protests

Protest procedures shall be included in the IFB.

804.13. General Provisions to Evaluate RFPs, RFQs, or IFBs:

1) Scope of Work

a) A common basis for responding must be provided. Specifications and scopes of work should set out the essential characteristics of the items or services to be procured. Whenever possible, the expected quality of services to be provided or the performance characteristics of the item should be specified.

b) Scopes of work should not call for features or quality levels which are not necessary to meet the proposal requirements.

c) All optional items will be identified by the agency, and the solicitation documents should set forth the expected needs and the manner in which the related proposal prices will be considered.

d) In order to foster free and open competition, specifications may not require a "brand name" product without allowing an "or equal" product to be offered. The specifications would, accordingly, describe the performance or other salient characteristics of the brand name product.

e) Because standard specifications and requirements allow for more efficient operations and result in lower prices, they should be used wherever suitable. Maximum use should be made of industry, federal, state and local government specifications and requirements.

2) Technical Specifications:

a) Specifications will incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Specifications will also seek to promote overall economy for the purposes intended, and encourage competition in satisfying the agency's needs. Descriptions will not contain features that unduly restrict competition. The description will include a statement of the qualitative nature of the material, product, or service to be procured. When necessary, the description will set forth those minimum essential characteristics and standards to which it must confirm if it is to satisfy its intended use.

b) Overly detailed product specifications should be avoided. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description will be used.

c) A "brand name or equal" description can be used only when an adequate specification or more detailed description cannot be provided, without performing an inspection and analysis, in time for the acquisition under consideration. If "brand name or equal" is used, the RFP must carefully identify the minimum needs, and clearly set forth those salient physical and functional characteristics of the brand name product in the solicitation.

3). Mistakes in Bids:

a) General. Technicalities or minor irregularities in bids may be waived if the project manager determines that it will be in the agency's best interest. The executive director may either give a responder an opportunity to cure any deficiency resulting from a technicality or minor irregularity in its bid, or waive the deficiency if it is to the agency's advantage to do so.

b) Mathematical Errors. Errors in extension of unit prices or in mathematical calculations will be corrected by the agency prior to award. In all cases of errors in mathematical computation, the unit prices will not be changed.

c) Mistakes Discovered Before Opening. A responder can correct mistakes discovered before the time and date set for bid opening by withdrawing the original bid and submitting a new bid prior to the time and date set forth for bid opening.

d) Confirmation of Proposal. If the project manager knows or has reason to conclude that a mistake has been made, the responder will be requested to confirm the bid. Situations in which confirmation will be requested include obvious, apparent errors on the face of the proposal or a proposal unreasonably lower than the other proposals submitted. If the proposer alleges mistake, the proposal will be corrected or withdrawn if any of the following conditions are met:

   i) If the mistake and the intended correction are clearly evident on the face of the proposal document, the proposal will be corrected to the intended correct proposal and must not be withdrawn. Examples of mistakes that may be clearly evident on the face of the proposal document are typographical errors, errors in extending unit prices, transportation errors, and mathematical errors.

ii) A proposer will be permitted to withdraw a low proposal if:

A) A mistake is clearly evident on the face of the proposal document but the intended correct proposal is not similarly evident; or

B) The bidder submits proof of evidential value, which clearly and convincingly demonstrates that a mistake was made.

C) Determination Required. When a proposal is corrected or withdrawn, or correction or withdrawal is denied, the executive director will prepare a determination showing that the relief was granted or denied.

4) Minor Irregularities in Proposals

a) A minor irregularity is one that is merely a matter of form and not of substance or pertains to some immaterial or inconsequential defect or variation in a proposal from the exact requirement of the solicitation. If such a situation exists, the correction of the irregularity or waiver of the requirement may be made if it would not be prejudicial to other responders.

b) A defect or variation in a proposal is considered immaterial and inconsequential (except for public works contracts) when its significance as to price, quantity, quality or delivery is trivial or be eligible when contracted with the total cost or scope of the procurement.

c) The project manager may either give the responder an opportunity to cure any deficiency resulting from minor informality or irregularity in a proposal, or waive the deficiency, whichever is to the advantage of the agency.

5) Multiple or Alternate Proposals- Unless multiple or alternate proposals are requested in the solicitation, these proposals will not be accepted. However, if a responder clearly indicates a base proposal, it will be considered for award as though it were the only proposal submitted by the responder. These provisions will be set forth in the solicitation and, if multiple or alternate bids are allowed, it will specify their treatments.

6) Determination of Responsiveness

a) Any proposal which fails to conform to the essential requirements of the RFP/RFQ/IFB, such as specifications, delivery schedule, warranty, or the required proposal documents, will be rejected as non-responsive.

b) A proposal will be rejected when the proposer imposes conditions, which modify requirements of the invitation for proposal. Proposals may be rejected in cases, including but not limited to, in which the responder:

i) Attempts to protect itself against future changes in conditions such as increased costs, if a total price to the agency cannot be determined for bid evaluation.

ii) Fails to state a price and in lieu thereof states that price will be "price in effect at time of delivery."

iii) States a price but qualifies such price as being subject to "price in effect at time of delivery."

iv) Where not authorized by the invitation for proposal, conditions or qualifies the proposal by stipulating that the proposal is to be considered only if, prior to date of award, responder received (or does not receive) award under a separate procurement.

v) Limits rights of agency under any contract clause.

vi) Fails to comply with all of the requirements of the RFP/RFQ/IFB.

vii) If a bond is required and a proposer fails to furnish it in accordance with the requirement of the RFP.

viii) Proposals received from any person or firm debarred or ineligible will be rejected if the period of debarment or ineligibility has not expired.

ix) Low bids received from firms determined to be not responsible pursuant to federal or state procurement regulations will be rejected.

x) A proposal may be rejected if a proposal guarantee is required and a proposer fails to furnish it in accordance with the requirement of the RFP. The originals of all rejected proposals, and any written findings with respect to such rejections, will be preserved in the file relating to the procurement.

xi) After submitting a proposal, if a proposer transfers all of his assets or the part of his assets related to the proposal during the period between the bid opening and the award, the agency may accept or reject the bid at its sole discretion.

7) Responsible Proposer Evaluation- Before awarding the contract, the agency will determine that a prospective consultant is responsible and that prices are reasonable. Proposers may be asked to provide any information required to determine the responsibility of the proposers. A responsible responder is one who meets the standards set forth below:

a) Has adequate financial resources, or the ability to obtain such resources as required during performance of the contract.

b) Is able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing business commitments.

c) Has a satisfactory record of performance. Consultants who are, or have been seriously deficient in current or recent contract performance, when the number of contracts and the extent of deficiency of each are considered, may be considered to be non-responsible responder. Documented past unsatisfactory performance will ordinarily be sufficient to justify a finding of non-responsibility.

d) Is otherwise qualified and eligible to receive an award under applicable laws and regulations.

e) Has the necessary organization, experience, operational controls, and technical skills, or the ability to obtain them.

f) Has the necessary production and technical equipment and facilities, or the ability to obtain them. Evaluation of the responsibility of prospective consultants may be made based upon the following sources:

i) From the prospective consultant's bids and proposals, replies to questionnaires, financial data such as balance sheets, profits and loss statements, cash forecasts, and financial histories of the consultant and affiliated concerns; current and past production records, list of tools, equipment, and facilities, written statements or commitments concerning financial assistance and subcontracting arrangements.

ii) Publications, including credit ratings, trade and financial journals, and business directories and registers may also be used.

iii) References such as suppliers, sub-consultants, customers of the prospective consultant, banks and financial institutions, commercial credit agencies, other government agencies, purchasing and trade associations, and better business bureaus and chambers of commerce.

iv) Documented past performance on contracts with the agency or its member agencies.

8) Rejection of All Proposals- Any time prior to the bid opening date and time, the agency may cancel or postpone the bid opening, or cancel the RFP/RFQ/IFB in its entirety. Preservation of the integrity of the competitive bid system dictates that after proposals have been opened, award will be made to that responsible proposer who submitted the lowest responsive proposal, unless: there is compelling reason to reject all proposals and cancel the invitation; or acceptance of the lowest responsible bidder would not be in the best interest of the agency.

Every effort will be made to anticipate changes in a requirement prior to the date of bid opening and to notify all prospective bidders of any resulting modification or cancellation, thereby permitting proposers to change their proposal and preventing unnecessary exposure of bid prices.

As a general rule, after opening, an invitation for proposals should not be canceled and re-advertised due solely to increased requirements for the items being procured. Award should be made on the proposals and the additional quantity should be treated as a new procurement.

Invitations for proposals may be canceled after opening but prior to award, and all proposals rejected, where it is consistent with federal and state procurement regulations. A written determination must be included in the invitation for proposal file stating that cancellation is in the best interest of the agency for reasons such as, but not inclusive of, the following:

a) Inadequate, ambiguous, or otherwise deficient specifications were cited in the invitation for proposals.

b) The supplies or services are no longer required.

c) The RFP did not provide for consideration of all factors of cost to the agency.

d) Proposals received indicate that the needs of the agency can be satisfied by a less expensive item differing from that on which proposals were received.

e) All otherwise acceptable proposals received are at unreasonable prices.

f) The proposals were not independently arrived at in open competition, were collusive,orwere submitted in bad faith. Such situation must be substantiated and reported to the agency's legal counsel.

g) The proposals received did not provide competition which was adequate to ensure reasonable prices. A price or cost analysis may be used to establish the reasonableness of prices.

When it is determined to reject all proposals, the agency will notify each proposer that all proposals have been rejected and stating the reason for such action.

805. Purchasing Authorization, Disbursements and Check Processing

805.1. Purchasing authorization is the agency's intent to ensure that monies are not spent without advanced approval.

1) A budget developed for the contract constitutes approval to proceed according to that specific financial plan.

   a) Total expenditures which causes the total project, contract, or grant to materially exceed the budget requires approval of the board of directors, or executive director if duly authorized, prior to such spending.

      nds

   b)

   c) The executive assistant will date stamp all bills/invoices upon receipt. A copy of the approved bill/invoice will be forwarded to the chief fiscal officer or accountant. Accounting then prepares an Invoice Payment Request, assigns a cost code and forwards it to both the agency project manager and executive director for approval. Accounting personnel enter the invoice into the accounting software program.

2) Check Processing/Accounts Payable

All invoice payment requests should include the vendor's name, invoice date and number; date payment must be mailed to arrive at the vendor or consultants on time, account allocation, description of expenditure, project number, invoice documentation, and amount of the invoice.

Accounts payable shall be paid no later than thirty (30) days after receipt of a correct invoice unless the contract specifically states an alternate due date, such as: Net 10 – payment is due 10 days after receipt of invoice. Those invoices that state "due immediately" will be paid within 30 days of receipt of invoice. Accountant will notify the agency project manager if for any reason an invoice cannot be paid on time, and of any invoices that have been returned for corrections.

   a) All checks written shall be created from the accounting software program wherein a check register may be generated.

   b) Checks under $100,000 shall be signed no less than every other week by the executive director. Checks over $100,000 shall require an additional signature from an authorized board member.

   c) Signed checks will be mailed by the executive assistant, barring an agency bill payment system being in place.

   d) Electronic payments will require the same approval process as manual checks.

3) Disbursement Verification

   a) The executive director and board (upon signing the check) may review the invoice payment requests to verify that at a minimum either the executive director or project manager have initialed their approval for payment and the request has been prepared accurately. The chief fiscal officer or accountant prints and reviews a disbursements journal upon the processing of checks and the board of directors reviews disbursements.

4) Internal Check Control

a) All blank checks will be locked in the agency's safe.

b) No signature stamp may be used.

c) Voided checks will be marked VOID and filed

d) No checks will be made payable to "Cash" or "Bearer." Petty Cash checks will be made out to the executive assistant who maintains the petty cash fund.

e) Blank checks will not be pre-signed.

f) All checks must have prior authorization attached.

806. Sole Sourcing

806.1. A sole source procurement is defined as a small or large procurement where only one source is practically available for the goods or services required. The purpose of the written sole source determination is to show that the competitive bid process is not practical because only one source is practically available to meet a specific need. Competition is not available in a sole source procurement thus distinguishing it from a proprietary procurement where the product is restricted to that of one manufacturer, but is sold through distributors and competition between them can be obtained. In addition, in sole source procurements, written documentation must be provided that the proposed price is deemed to be fair and reasonable.

806.2. Proprietary Specification: A propriety procurement is a procurement where the desired good/service must be restricted to one manufacturer/consultant because the good/service is compatible with or is an integral component of existing equipment or products; is necessary to support a specific need of a project or program; is covered by patent or copyright; must yield absolute continuity of results, or is one which a user has extensive experience, and the use of any other similar piece of equipment or services would require considerable reorientation and training. In such cases, an equitable evaluation of comparable products and/or services must be made and documented which shows that rejection of other products/services is solely based on their failure to meet that need. In cases where no other comparable source can be identified, a technical description of the product or service requested and a listing of those sources which were considered as alternates must be documented.

806.3 A sole source procurement is a purchase accomplished through solicitation of a proposal from only one source.. A sole source purchase must be documented as to the reasons why only one supplier is acceptable. This documentation will be furnished by the project manager and verified by the executive director, who is responsible for making the final determination on sole source procurements.

806.4 The following areas must be considered in sole source determinations: A contract amendment or change order that is not within the scope of the original contract is considered a sole source procurement. Sole source procurement may be used only when the award of a contract is infeasible under small or large-purchase procedures, sealed bids, or competitive proposals and at least one of the following circumstances applies:

1) The item is available only from a single source;

2) The public exigency or emergency (i.e., a threat to public health, welfare, safety, property or other substantial loss to agency, or a situation requiring immediate action by agency, as determined by agency) for the requirement will not permit a delay resulting from competitive solicitation;

3) The cognizant agency authorizes noncompetitive negotiations;

4) The item is an associated capital maintenance item as defined in 49 U.S.C. § 5307(a) (1) that is procured directly from the original manufacturer or supplier of the item to be replaced. The grantee must first certify in writing to the cognizant agency: (I) that such manufacturer or supplier is the only source for such item; and (II) that the price of such item is not higher than the price for such item by like customers.

A cost analysis, i.e., verifying the proposed cost data, the projection of the data, and the evaluation of the specific elements of costs and profit, is required. The executive director will conduct negotiations, as appropriate, as to price, delivery, and terms.

806.5. The board of directors, or the fiscal committee, must approve all sole source contracts..

807. Emergency Procurements

807.1 Emergency procurements (defined as purchases immediately necessary for the preservation of life or property, or to prevent an immediate termination of a critical agency function, facility, or activity) will be handled immediately and expedited as required. The executive director has the authority to approve the purchase of all goods and services in emergency conditions. If the executive director is unavailable to authorize an emergency procurement, the executive director's designee may provide the necessary authorization. Upon completion of the emergency procurement, the executive director will immediately document the actions taken and report to the board of directors the emergency procurement(s).

808. Addenda and Change Orders

808.1. An addendum is any change to a contract, task order, or work order for any professional services that alters the terms and conditions of the original document. Prior to proceeding with an amendment, a determination should be made as to whether a new procurement is most appropriate. Any change in the scope of a contract that increases the cost of the contract (and does not have change order provisions outlined below in Section 808.2) must follow the sole source procurement procedures. Addenda are formal changes that must be approved at the same signature authority level as the original document.

808.2. The agency shall have the right, based on a clause contained in the technical services agreement to issue an amendment, or change order, to correct errors, omissions, or discrepancies; to cover acceptable overruns as defined in Section 802.19 of these policies; to expand or reduce the scope of work within the contract without an increase in contract price; or to direct other changes in contract execution to meet unforeseen field, regulatory or market conditions. All change orders must be approved in advance in accordance with the value of the change order or the calculated value of the time extension.

808.3. All addenda and change orders will be documented and submitted to the project manager complete with explanations and back up information and, when applicable, a detailed breakdown of changes for review and/or recommendation of approval.

808.4 Verification of Addenda and Change Orders: The project manager will verify all amendments and change orders as to the:

1) Appropriateness of the modification of the contract, or whether a separate bid is required for the item and/or scope change under consideration.

2) The methods of calculating the amount of the amendment or change order are in conformance with the terms of the contract.

The issuance of change orders for contracts will be approvedat the same signatory level as the original document.