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RESOLUTION NO. 23-02

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE INGLEWOOD TRANSIT CONNECTOR JOINT POWERS AUTHORITY APPROVING CONTRACT POLICIES AND PROCEDURES.

**WHEREAS**, the Inglewood Transit Connector Joint Powers Authority (JPA) was established on July 7, 2022 pursuant to the Joint Exercise of Powers Act, Government Code sections 6500 *et seq.*, and a Joint Exercise of Powers Agreement; and

**WHEREAS**, the JPA Agreement specifically authorizes the JPA to make and enter into contracts, and to adopt reasonable rules and regulations for the conduct of the day-to-day operations of the JPA; and

**WHEREAS**, it has been determined that it is in the best interest of the JPA to adopt a resolution establishing Contract Policies and Procedures for the JPA to provide a needed framework for the JPA to contract for goods and services required for the Inglewood Transit Connector (Project); and

**WHEREAS**, the JPA has been presented with Contract Policies and Procedures which: (1) require the JPA to follow sound business and public policy principles in the procurement of goods and services so that these actions are performed efficiently and in a manner that serves the best interest of the JPA and the public; (2) address the methods in which the JPA will advertise contracts, procedures for evaluation and award,

1 and the process to be followed for modification or amendment of  
2 contracts; (3) provide for procurement of construction services  
3 using a traditional sealed bidding process, and also establish  
4 processes for procuring contracts for other goods and services  
5 not subject to the specified sealed bidding requirements; and  
6 (4) provide for an alternative method for procurement of  
7 contracts including both construction and other services, such  
8 as design-build contracts, design-build-operate contracts,  
9 design-build operate-maintain contracts, design-build finance -  
10 operate-maintain contracts, public-private partnerships or other  
11 types of alternative delivery contracts; and

12 **WHEREAS**, the Board has determined that the Contract  
13 Policies and Procedures will provide a sound framework for the  
14 JPA's conduct of its business and are in the best interest of  
15 the Project, the JPA and the public.

16 **WHEREAS**, during the JPA Board meeting on December 14, 2022,  
17 the JPA Board of Directors considered the adoption of Contract  
18 Policies and Procedures, included herewith as Attachment 2.

19 **NOW THEREFORE, BE IT RESOLVED** by the Inglewood Transit  
20 Connector Joint Powers Authority, as follows:

21 **SECTION 1.** The foregoing recitals are true and correct, and  
22 incorporated herein by this reference.

23 **SECTION 2.** The Contract Policies and Procedures included  
24 herewith as Attachment 2 are approved and are effective upon  
25 adoption.

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1 PASSED, APPROVED, and ADOPTED this 11th day of January 2023.

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Michael S. Bohlke  
CHAIR

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ATTEST:

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Aisha L. Thompson  
BOARD SECRETARY

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16 APPROVED AS TO FORM:

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Alfred Smith  
LEGAL COUNSEL

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**INGLEWOOD TRANSIT CONNECTOR JOINT POWERS AUTHORITY**

**CONTRACT POLICIES AND PROCEDURES**

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## **Section 1 Introduction**

### **1.1 Purpose and Title.**

(A) The Inglewood Transit Connector Joint Powers Authority (“JPA”) deems it necessary to adopt a resolution setting forth the policies and procedures of the JPA for procurement, award and administration of contracts (“Contract Policy”). Pursuant to California Public Contract Code Section 1100.7 and the JPA’s exercise of common powers in the manner applicable to a charter city, the JPA is exempt from all provisions of the Public Contract Code to the extent those provisions conflict with the JPA’s Joint Exercise of Powers Agreement, the JPA’s duly adopted Contract Policy, or provisions authorized by this resolution in an agreement approved by the JPA.

(B) No deviation from the policies and procedures set forth herein shall render any contract of the JPA void or voidable. Any deviation from the policies and procedures set forth herein shall be authorized by the Administrator.

## **Section 2 Basic Requirements and Exceptions**

### **2.1 Definitions.**

For the purposes of this Contract Policy, the following words shall have the following meanings:

Administrator means: (a) the Chief Executive Officer of the JPA; or (b) an individual designated by the Board of Directors or the Chief Executive Officer to perform the Administrator’s functions under this Contract Policy.

JPA means the Inglewood Transit Connector Joint Powers Authority, which is created by the JPA Agreement, comprised of the City of Inglewood and the Los Angeles County Metropolitan Transportation Authority.

Board or Board of Directors means: the Board of Directors which is the governing body of the JPA.

City means: the City of Inglewood.

Emergency means: a sudden, unexpected occurrence that poses a clear and imminent danger, where a contract is necessary to prevent or mitigate the loss or impairment of life, health, property, or protection of JPA property or essential public services.

Invitation for Bid (IFB) means: a procurement process pursuant to which the JPA procures goods or services on a lowest responsive and responsible bid basis.

JPA Agreement means: the agreement between City of Inglewood and Los Angeles County Metropolitan Transportation Authority under which the JPA is established.

LACMTA means: Los Angeles County Metropolitan Transportation Authority.

Micro-Purchase means: a purchase of supplies and materials and the amount is equal to or less than \$10,000.00.

Request for Information (RFI) means: a formal or informal process to request information and/or ideas from the market.

Request for Proposals (RFP) means: a procurement process whereby the JPA seeks proposals and enters into a contract for goods, services, construction or related activities (which may or may not be preceded by an RFQ or Request for Information).

Request for Qualifications (RFQ) means: as applicable, either (a) a one-step procurement process in which the JPA obtains professional and other services on a qualifications basis that does not consider or considers as only one element, the cost of the services to be provided, or (b) the first step in a two-step procurement process in which the JPA solicits qualifications and selects and invites a short list of responders to submit proposals pursuant to an RFP.

Small Contracts means: any contract or other procurement involving expenditures equal to or less than \$250,000.00. Small Contracts are separate and distinct from a Micro-Purchase and can be used for procurements equal to or less than \$250,000.00.

Working Day means: any day other than a Saturday, Sunday or a California state holiday.

## 2.2 Fair and Open Competition Requirement.

The underlying premise of this Contract Policy is to foster fair and open competition and to obtain needed goods and services on a timely basis and in a cost-effective manner. The JPA should follow sound business and public policy principles in the procurement of goods and services so that these actions are performed efficiently and in a manner that serves the best interest of the JPA and the public.

## 2.3 Use of Non-Competitive Procedures.

Procurement of goods and services without competition is authorized under limited conditions. Procurement of contracts or purchase of equipment and supplies may be made by non-competitive negotiation under the following circumstances:

(A) In case of an Emergency, the Board (acting through the Administrator) may use a non-competitive procedure, as set forth in Section 2.4;

(B) Where the JPA has advertised the contract as required by this Contract Policy and has undertaken reasonable efforts to solicit potential contractors and has obtained only one bid or proposal or has otherwise determined that competition is not available due to the goods or services to be procured or marketplace conditions;

(C) When the goods or services are to be provided by a government or other public entity, including but not limited to City or LACMTA;

(D) Where the JPA wishes to renew or extend the term of the contract and compensation provided pursuant to an existing contract under substantially the same terms and conditions, or the amendment of an existing contract that does not materially alter the terms and conditions of the contract (other than the term of the contract and compensation), provided that such renewal, extension or amendment is authorized or permitted by the contract;

(E) Where, after reasonable investigation, the JPA determines that there is only a single source of supply available, or only one contractor is qualified to provide the service or product;

(F) Where the equipment to be purchased is of a technical nature and the procurement thereof without advertising is necessary in order to assure standardization of equipment and interchangeability of parts;

(G) Where the item to be purchased is a capital maintenance item that is available only from the original manufacturer or supplier;

(H) Where the contract is for employment services;

(I) Where the contract is one for which only per diem and travel expenses are paid and there is no payment for services rendered;

(J) Where the procurement is a Micro-Purchase of supplies and materials;

(K) Where the purchase is pursuant to a joint purchase or similar arrangement whereby another public agency procures goods or services on a bulk basis pursuant to procurement policies and procedures applicable to that agency;

(L) A "sole source" award, provided that in advance of the award, the Administrator certifies in writing the sole source determination of the provider: (i) based on the need to utilize a specified material, provider or methodology in the best interest of the JPA; (ii) which could only be supplied, constructed, or installed by only one contractor or supplier; or (iii) as otherwise allowed by any law;

(M) Where pursuant to a change order or supplemental agreement contemplated or permitted by an existing contract; and

(N) When the Board otherwise determines that award of a contract pursuant to competitive procedures identified in this Contract Policy is either infeasible or would not produce an advantage, which determination shall be supported by written justification.

#### 2.4 Emergency Procedures.

In the case of an Emergency, the Board delegates to the Administrator, the authority to enter into a contract, task orders, change orders and amendments to contracts. The Administrator shall report any action taken pursuant to such authority to the Board at its next meeting (or soon thereafter as reasonable), with reasons justifying why the Emergency would not permit a delay resulting from a competitive solicitation for bids specified in this Contract Policy and justifying why the action taken was necessary to respond to the Emergency.

#### 2.5 Non-Discrimination in Procurement.

Contracts entered into by the JPA shall contain clauses as required by applicable law prohibiting discrimination in the performance of the contract against any person or group of persons, including without limitation, on account of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex,



gender, gender identity, gender expression, age, sexual orientation, or veteran or military status of any person.

## 2.6 Types of Procurement Methods.

(A) Micro-Purchases. This method, requiring only one quote, may be used for any purchase of supplies or services that are equal to or less than \$10,000.00.

(B) Small Contracts (equal to or less than \$250,000.00). This informal procurement method involves obtaining price or rate quotations from an adequate number of qualified sources (generally three unless only two qualified vendors exist) in order to determine a fair and reasonable price and make a contract award.

(C) Sealed Bids. A formal competitive sealed bid process involves procurement through an IFB process. Generally, formal bid documents are prepared and advertised and an award is made to the lowest responsive and responsible bidder. This method and related procedures are described in more detail in Section 4.

(D) Competitive Proposals. A competitively negotiated procurement method may be used for purchase of non-professional services (through a one-step Request for Proposal process or two-step Request for Qualifications followed by Request for Proposal process) or professional services (generally through a Request for Qualifications process). This method and related procedures are described in more detail in Section 5.

(E) Alternative Methods of Procurement. Alternative methods of procurement for progressive or fixed-price design-build, design-build-maintain, design-build-finance-maintain, design-build-operate-maintain, design-build-finance-operate-maintain, operations, maintenance, operations and maintenance, concession arrangements, early contractor involvement, early works agreements, construction management at-risk contracts, public-private partnerships, and other forms of alternative project delivery, or any combination of such methods, may be utilized by the JPA in cases where it may be efficient or advantageous for the JPA to enter into contracts that include responsibility for design and/or construction services as well as other services that are not appropriate for sealed bidding and or which the JPA does not wish to use a competitive negotiation procurement process. This method of procurement and related procedures are described in more detail in Section 6.

(F) Non-Competitive Purchases. Non-competitive purchases are used for the purchase of approved sole source procurements, Emergency procurements, intergovernmental agreements, and other procurements as may be approved by the Administrator or Board of Directors in light of special circumstances that justify this method of procurement as further described and discussed in Section 2.3.

## 2.7 Purchasing Agent Designation.

The ultimate authority to enter into contracts, execute task orders under existing contracts, execute amendments and change orders to existing contracts and make purchases on behalf of the JPA rests with the Board. The Board delegates this authority to the Administrator as set forth in this Contract Policy. The Administrator or designee shall act as purchasing agent for and on behalf of the JPA consistent with this Contract Policy. Approval of the Board shall be required where the contract, task order, amendment or change order (a) exceeds \$100,000.00

and is not otherwise consistent with the JPA's approved budget; or (b) exceeds \$250,000.00 and is consistent with the JPA's approved and current budget.

2.8 JPA to Issue Requests for Proposals, Requests for Qualifications and Invitations for Bids; Exception for RFP, RFQ or IFB Consistent with Approved Budget.

Requests for Proposals (RFP), Requests for Qualification (RFQ) and Invitations for Bids (IFB) shall be prepared by or under the supervision of the JPA's Administrator and shall not be released until approved and authorized for release by the Board. The foregoing notwithstanding, an Invitation for Bid, Request for Proposals or Request for Qualifications may be released without Board approval if the total cost of the goods or services to be procured is estimated by the Administrator or the consultant preparing the IFB, RFQ or RFP to be equal to or less than \$500,000.00 and is consistent with the JPA's approved budget. The Administrator shall inform the Board monthly of any and all RFPs, RFQs, IFBs or other solicitations that have been publicly released by the JPA administrator.

2.9 Existing Contracts.

The JPA shall accept assignment of, and assumption of the obligations of the City pursuant to, any contract procured by City in its role as sponsor of the Inglewood Transit Connector project. The contracts that the City assigns to the JPA are not subject to the requirements of this Contract Policy for procurement of new contracts.

Any amendments to this Contract Policy are only applicable to contracts entered into after approval of the amendments.

2.10 Piggybacking.

Without conducting a competitive procurement, the JPA may:

- (A) take an assignment of a contract for goods or services procured by another public agency;
- (B) purchase goods or services through a contract procured by another public agency; or
- (C) enter into a contract for goods or services with a contractor or vendor procured by another public agency to provide such goods or services,

if:

- (i) such public agency procured its contract under competitive procurement procedures reasonably comparable to a procurement procedure set forth in this Contract Policy, or such public agency competitively procured its contract in accordance with requirements applicable to such other public agency's procurement procedures;
- (ii) the JPA determines that the pricing is fair and reasonable; and
- (iii) where the compensation to be paid will be funded with federal funds or is to be counted toward local match for federal funding, the contract or an amendment thereto contains the clauses required by FTA Circular 4220.1F, Appendix D and 2 CFR §§ 200.318 – 200.326 as

amended, includes the certifications (including Buy America) required by federal regulations, and otherwise meets federal requirements.

The JPA has determined that contracts described in Section 2.9 meet these requirements.

### **Section 3 Approval and Award of Contracts**

#### **3.1 Requirement of Board Approval.**

Except as otherwise provided in this Contract Policy, all procurements and contracts are subject to approval by the Board.

#### **3.2 Small Contracts and Micro-Purchases.**

Award of Small Contracts and Micro-Purchases may be authorized by the Administrator without Board approval, subject to the following:

(A) Where the consideration to be rendered under a contract is other than monetary, such consideration must be valued on a monetary basis for the purpose of determining whether approval of the Board is required.

(B) If it is determined by the Administrator that more than one contract may be awarded to a single contractor in any one fiscal year for work normally considered one undertaking and the total of the contracts exceeds \$250,000.00, all contracts awarded following such determination, regardless of amount, shall be submitted to the Board for approval; provided that purchases during a single fiscal year shall not be split into multiple contracts for the purpose of evading the Board approval requirement.

#### **3.3 Rejection of Bids and Proposals.**

Procedures for review of and rejection or award of contracts procured by IFB, RFP or RFQ are determined by the procurement document for the specific procurement and take precedence over the general provisions below. Where the procurement document does not set forth such procedures, or for procurements other than by IFB, RFP or RFQ, the following rules apply:

(A) The Administrator may reject all bids and proposals received that are determined to be non-responsive or not within the competitive range, including proposals made by proposers who refuse to execute any required representations and certifications.

(B) The Administrator may reject for any one or more of the following reasons:

(1) All otherwise acceptable bids or proposals received exceed the funds budgeted and available for the contract or, in the case of contracts for which payment will be made to the JPA, offer inadequate compensation;

(2) The bids or proposals were not independently arrived at in open competition, were collusive or were submitted in bad faith; or

(3) Rejection is otherwise determined to be in the JPA's best interest.

(C) If, after rejecting bids or proposals, the Administrator determines and declares that, in his or her opinion, the services, supplies, equipment, or materials may be purchased at a

lower price in the open market, the JPA may proceed to purchase these services, supplies, equipment or materials in the open market without further observance of the provisions regarding contracts, bids or advertisements.

### 3.4 Contracts Containing Extraordinary Provisions.

Except with respect to Small Contracts, Micro-Purchases and contracts subject to Section 2.9, notwithstanding any provision of this Contract Policy to the contrary, any contract containing any of the following provisions shall be subject to approval of the Board:

(A) Any provision whereby the JPA agrees to indemnify or hold harmless any party to the contract or any third person against or on account of, any claim, liability, or matter arising out of, or connected with, the contract, other than reciprocal indemnification clauses whereby the indemnifying party indemnifies the other party against liability incurred by such party arising from the acts or failure to act of the indemnifying party.

(B) Any provision whereby the JPA agrees to assume responsibility for matters beyond its control (e.g., in rental contracts, a promise to assume full responsibility for damage to rented equipment, regardless of the cause of the damage).

(C) Any provision creating a contingent liability against the JPA (e.g., vendors' boilerplate rental contracts frequently contain clauses obligating the user of rented equipment to assume responsibility for contingent liabilities).

(D) Contracts of a hazardous nature or involving the generation, transportation, disposal or other handling of hazardous or toxic wastes (e.g., contracts for grading, dredging, excavating and handling toxic materials).

(E) Contracts for the sale or purchase of real property, except grants and transfers of real property right and interests from the City to the JPA.

## **Section 4 Sealed Bids**

### 4.1 Sealed Bids – Generally.

A competitive sealed bid process shall be used for all procurements except as otherwise provided in Sections 2.1 (Definitions), 2.3 (Use of Non-Competitive Procedures) or 2.4 (Emergency Procedures), or in Section 5 (Competitively Negotiated Contracts Including Professional Services), Section 6 (Alternative Method for Procurement of Contracts Including Construction and Other Services), or Section 11 (Purchase Of Materials, Supplies And Equipment) of this Contract Policy. A competitive sealed bid process shall be procured through an IFB procurement process.

### 4.2 Procedures For Sealed Bids.

(A) The notice inviting bids shall be posted at the offices of the JPA, or other place(s) designated by resolution of the Board, and advertised by public posting to the JPA's website and in a newspaper of general circulation within the boundaries of the JPA and other trade publications as deemed appropriate by the Administrator. The notice inviting bids shall set a date for the opening of bids. The first publication or posting of the notice shall be at least 10 days before the date of opening the bids.

(B) The Board may reject any bids presented and re-advertise. If two or more bids are the same and the lowest, the Board may accept the one it chooses. If no bids are received, the Board may utilize the non-competitive procurement procedures set out in this Contract Policy.

(C) After rejecting bids, the Board may pass a resolution by a majority vote of its members declaring that the materials or supplies are furnished at a lower price in the open market. Upon adoption of the resolution, it may have the project done in the manner stated without further complying with this Contract Policy.

(D) Unless otherwise approved by the JPA Administrator, all bids shall be presented under sealed cover and accompanied by one of the following forms of bidder's security: (i) cash; (ii) cashier's check made payable to the JPA; (iii) a certified check made payable to the JPA; or (iv) a bidder's bond executed by an admitted surety insurer, made payable to the JPA. The security shall be in an amount equal to at least 10 percent of the amount bid. A bid shall not be considered unless one of the forms of bidder's security is enclosed with it. If the successful bidder fails to execute the contract, the amount of the bidder's security shall be forfeited to the JPA except as provided in this Contract Policy.

(E) The Board may, on refusal or failure of the successful bidder to execute the contract, award it to the next lowest responsible bidder. If the Board awards the contract to the second lowest bidder, the amount of the lowest bidder's security shall be applied by the JPA to the difference between the low bid and the second lowest bid, and the surplus, if any, shall be returned to the lowest bidder if cash or a check is used, or to the surety on the bidder's bond if a bond is used.

## **Section 5 Competitively Negotiated Contracts Including Professional Services**

### **5.1 Use of Competitively Negotiated Procurement Procedures.**

This Section 5 outlines the JPA's procedures for competitively negotiated procurements, also known as a competitive RFP process, or in the case of the procurement of professional services on a qualifications basis, a competitive RFQ process. The procedures used in this Section 5 shall be used for:

(A) Contracts for professional services, consulting services, personnel services, and for other services that the Board has determined are to be competitively negotiated. These services are not limited to but may include architectural, engineering, legal, legislative advocacy, planning, and accounting services;

(B) Purchases of specialized equipment, computers, telecommunications equipment, microwave equipment and other related electronic equipment and apparatus, if the Board has approved the use of the procedures set forth in this Contract Policy for a particular procurement.

(C) Other contracts that the Board has determined are to be competitively negotiated.

### **5.2 Solicitation of Proposals – General.**

(A) An RFP or RFQ shall be the solicitation used to communicate the JPA's requirements to prospective contractors when the negotiated method of seeking competitive

proposals is used. The JPA shall furnish identical information concerning a proposed procurement to all prospective contractors receiving the RFP or RFQ.

(B) In determining sources to solicit, the Administrator shall use all means available to ensure that an adequate number of potential qualified proposers receive the solicitation in order to obtain the maximum open and competitive competition. Pre-solicitation announcement notices shall be published on the JPA website or other manner reasonably likely to attract proposers.

(C) The JPA may require that all proposals be submitted to the JPA's designated procurement manager for the project, who shall safeguard them in a manner and at a location the designated procurement manager deems appropriate to reasonably maintain the confidentiality and security of the proposals.

### 5.3 Proposal Evaluation.

(A) The evaluation factors that will be considered in evaluating proposals shall be tailored to each procurement and shall include only those factors that will have an impact on the source selection decision. The evaluation factors that apply to a particular procurement and the relative importance of those factors are within the broad discretion of the Administrator. All factors that are to be considered in an award of a contract must be identified in the RFP or RFQ and must allow for a fair and equitable evaluation of all proposals. Evaluation criteria could include matters such as previous experience providing similar services, qualifications of team members, satisfaction of previous clients, price, capacity to provide personnel when needed, and approach to providing the services.

(B) The Administrator, in his or her discretion, may establish a formal evaluation panel/committee to evaluate proposals in accordance with the stated evaluation criteria. Following evaluation, the Administrator may either recommend a selection to the Board or, if authorized to do so, itself select the recommended source for contract award.

(C) The most qualified or "shortlisted" firms may be asked to further present their qualifications in an interview or similar process. The shortlist of firms will be determined by the Administrator. The evaluators will consider the results of the interviews in making the selection recommendation.

### 5.4 Selection and Negotiations.

(A) The methods and procedures for selection and negotiation shall be set forth in the RFP or RFQ. The Administrator may adopt any lawful methods and procedures that he or she determines are in the best interest of the JPA. These may include requesting clarifications from proposers in the course of proposal evaluations, communications and discussions in the course of evaluations, request for revised proposals and best and final offers following discussions, and negotiations with proposers prior to award. The selection decision is subject to the approval of the Board.

### 5.5 Special Provisions Applicable To Procurement of Professional Services Contracts.

If the procurement is for professional services listed in California Government Code Section 4525, in addition to meeting the other requirements of this Section 5, the procurement process shall comply with applicable requirements (if any) of Government Code Sections 4525 *et seq.* In

particular, Government Code Section 4526 states that the procurement procedures for such contracts must:

(A) Assure that such services are engaged on the basis of demonstrated competence and qualifications for the types of services to be performed and at fair and reasonable prices to the public;

(B) Promote maximum participation of small business firms, as defined by the Director of General Services pursuant to Government Code Section 14837, and encouraging the placement of local businesses consistent with federal, state and local guidelines;

(C) Specifically prohibit practices which might result in unlawful activity including, but not limited to, rebates, kickbacks, or other unlawful consideration; and

(D) Specifically prohibit government agency employees from participating in the selection process when those employees have a relationship with a person or business entity seeking a contract that would subject those employees to the prohibition of Government Code Section 87100.

## **Section 6 Alternative Method for Procurement of Contracts Including Construction and Other Services**

### **6.1 Purpose.**

In certain cases, it may be efficient or advantageous for the JPA to enter into contracts that include responsibility for construction services as well as other services that are not appropriate for sealed bidding and for which the JPA does not wish to use a competitive negotiation procurement process. Such contracts could include progressive or fixed-price design-build, design-build-maintain, design-build-finance-maintain, design-build-operate-maintain, design-build-finance-operate-maintain contracts (including design services as well as construction services and potentially operations / maintenance), concession arrangements, early contractor involvement, early works agreements, construction management at-risk contracts (including professional services as well as a guarantee of the cost of construction services), public-private partnerships (which may include professional services, construction services, finance services and/or operation and maintenance services), and other forms of alternative project delivery, or any combination of such methods.

### **6.2 Board Authorization**

Use of procurement procedures under this Section 6 requires Board authorization. If the Board has given its authorization, the JPA shall follow the procedures set forth in this Section 6 and such other procedures as have been established by the Administrator. The Administrator shall determine the methods, procedures, and criteria for selection.

### **6.3 Process.**

Procurements under this Section 6 shall be conducted in accordance with the terms, conditions, processes, rules and procedures as stated in the procurement documents. To the extent not covered in the procurement documents (and to the extent covered, not inconsistent therewith), the procurement may include any of the following:

- (A) An RFI or similar process prior to commencing a procurement;
- (B) Procurement by RFP or RFQ followed by an RFP;
- (C) Prequalification or short listing or a similar process whereby a shortened list of potential proposers are invited to submit proposals;
- (D) Final evaluation of proposals based on qualifications, lowest bid or best value. For purposes of this section, "best value" means a value determined by objective criteria, including, but not limited to, price, features, functions, design, management, organization, key personnel, financing, equity contributions, life-cycle costs, and other criteria deemed appropriate by the JPA. The JPA shall develop and adopt criteria for making that evaluation prior to evaluation of proposals and shall include the evaluation criteria in the RFQ and RFP. Evaluation criteria may include pass-fail determinations;
- (E) Negotiations with proposers prior to award;
- (F) Requests for revised proposals or best and final offers from proposers;
- (G) Acceptance of unsolicited proposals for purposes of determining whether the proposal has sufficient merit to pursue a competitive procurement of the project, work or services described in the unsolicited proposal or to pursue negotiation of a contract. The JPA shall not award a contract to an unsolicited proposer without first conducting a competitive procurement, unless an exception applies under Section 2.3;
- (H) The JPA may require the party directly under contract with the JPA, one or more of that party's prime contractors, or any combination thereof, to provide performance and payment security in the form of bonds, guarantees, letters of credit or any other type of financial instrument, or any combination of the foregoing for all or part of the cost of the work under the contract. The JPA may set the amounts of such performance and payment security based on its determination of what is required to adequately ensure payment of subcontractors and protect the JPA's interests. The amount of any payment security shall not be less than the amount of any performance security;
- (I) The JPA may pay stipends or payments for work product on terms and conditions and in such amounts as determined in the JPA's discretion;
- (J) In exchange for such stipend or payment for work product, the JPA may require the proposer to grant to the JPA and its members the right to ownership or use any work product contained in the proposer's proposal;
- (K) To the extent permitted by applicable law, the JPA may allow contractors identified in a proposal for a contract procured under this Section to delay compliance with applicable licensing requirements until contract execution or financial close, as determined by the JPA in its sole discretion; and
- (L) To the extent permitted by applicable law, the JPA may set a rate of interest on payments due and owing but not yet made on contracts.

#### 6.4 Procurement Documents



The procurement documents shall include all of the following:

- (A) A reasonable description of the services to be provided and work to be performed;
- (B) A description of the format that proposals must follow and the elements they must contain, including the qualifications and relevant experience of the professional and/or contractor;
- (C) A statement of the criteria that will be used in evaluating the submittals; and
- (D) The date on when the proposals are due.

#### 6.5 Evaluation and Award.

Evaluations shall be conducted in a manner consistent with the evaluation criteria stated in the procurement documents and with procedures designed to assure fair and objective assessment of the responses from proposers.

The JPA may utilize subject matter experts to assist in evaluations, advisory panels, and other panels and committees as determined in the JPA's discretion. Members of advisory panels and evaluators need not be employees of the JPA.

Prior to conducting evaluations, the JPA shall set weightings for evaluation factors and for adjectives in any adjectival rating system in order to determine point scores. Except those stated in the RFQ or RFP, such weightings should not be revealed to panelists and evaluators prior to completing their evaluations, in order to avoid appearance of bias.

#### 6.6 Contracts That Include Professional Services.

If a contract subject to this Section 6 includes professional services of the type listed in Government Code Section 4525, the selection process for such contract shall comply with all applicable requirements (if any) of Government Code Sections 4525 *et seq.* as described in Section 5.5 of this Contract Policy. The statutory requirement to select contractors based on demonstrated competence and qualifications may be satisfied by a shortlisting step that includes evaluation of the design professional's qualifications.

#### 6.7 Contract Terms

The JPA may include in a contract procured pursuant to the alternative methods described in this Section 6 any provision that the JPA determines is necessary or appropriate in its discretion. The RFQ or RFP, as applicable, will include a form of contract or a term sheet. Examples of such provisions include, but are not limited to, the following:

- (A) Provisions addressing the allocation and management of project risks, including, without limitation, design, construction, geotechnical, delay, permitting, governmental approvals, change of law, change in utility costs, operations and maintenance, force majeure, inflation and financing risks.
- (B) Provisions providing that the JPA may pay the contractor by making periodic payments to the contractor through the term of the contract or any portion thereof. Such

payments may include: availability, milestone, progress, substantial completion or final acceptance payments; payments for costs related to design, construction, financing, operations and maintenance; payments for costs incurred from utilities, land acquisition, and any other project development costs; and a rate of return that the JPA determines to be appropriate on any investment by the contractor pursuant to the contract.

(C) Provisions providing that the JPA may make downward adjustments to payments owed to a contractor where the contractor fails to achieve performance specifications or otherwise fails to comply with its obligations under the contract.

(D) Provisions requiring that either the JPA or the contractor provide the utilities required during construction and operation of the project.

(E) Provisions requiring the use of arbitration or other alternative dispute resolution procedures to resolve disputes between the JPA and the contractor. Such alternative dispute resolution procedures may include, but are not limited to, binding or nonbinding process, arbitration or mediation, the establishment of a board to hear disputes and/or resort to the courts.

(F) Provisions addressing the JPA's requirements for operations, maintenance, renewal, rehabilitation, reequipping, use and change in use of the project, flexibility to expand the project, and provisions allocating performance obligations between the contractor and the JPA with respect to such requirements.

(G) Provisions providing for compensation, if any, of the contractor or the JPA upon early termination of the contract, including, but not limited to, termination by the JPA for its convenience, or termination by default of either the JPA or the contractor.

(H) Provisions specifying events of default and remedies available to the contractor and the JPA.

(I) Provisions setting forth the technical or other standards and specifications with which the contractor must comply, including, but not limited to, performance standards and output specifications, together with provisions allowing the JPA to enforce, amend or waive such technical or other standards and specifications.

(J) Provisions requiring that the contractor obtain and maintain insurance with such coverages and deductibles as determined by the JPA.

(K) Provisions regarding the maintenance and auditing of the contractor's books and records.

(L) Provisions requiring the contractor to waive certain rights and benefits conferred by Public Contract Code Section 7104, to the extent that it may be inconsistent with any provision of the contract.

(M) Provisions requiring the contractor to arrange for all or a portion of the financing required for funding its services under the contract, and allowing the JPA to elect to participate with the contractor in any gains realized through refinancing, or for the JPA to exclusively receive such gains.

(N) Provisions requiring the contractor to defend, indemnify and hold the JPA harmless from all claims, demands, liability, loss, damage, or injury to property or persons, arising out of or relating to the contract.

(O) Provisions requiring that the proper jurisdiction, forum and venue for any claims, causes of action or other proceedings concerning the contract shall be in the state and federal courts located in the State of California, County of Los Angeles; that the contractor submits to personal jurisdiction in the State of California, County of Los Angeles; and the contract shall be interpreted, construed and governed according to the laws of the State of California, or federal law if applicable.

## **Section 7 General Requirements**

7.1 The JPA shall take adequate measures to treat each proposer fairly and employ reasonable precautions to prevent the disclosure of confidential or proprietary information contained in any one proposal to other proposers, except as may be required by law.

7.2 The JPA may identify a process whereby proposers may request and receive authorization to propose an alternative technical concept or deviate from technical, financial or other specifications, provided the proposer has demonstrated to the JPA's satisfaction that the alternative technical concept or proposed deviation will meet or exceed the applicable specifications.

7.3 To the extent permitted by applicable law, the JPA may withhold statements of qualifications, proposals and other materials submitted in response to or in connection with a JPA procurement from release or disclosure until the award of the contract and the conclusion of any protest or other challenge to such award or the lapse of the protest period without challenge.

7.4 The JPA may require that all statements of qualifications, proposals and other materials be submitted to the JPA's designated procurement manager, who shall safeguard them in a manner and at a location the procurement manager deems appropriate to reasonably maintain the confidentiality and security of the statements of qualifications, proposals and other materials.

## **Section 8 Standard Form Contracts**

8.1 Preparation of Standard Form Contracts.

For Small Contracts, Micro-Purchases and other procurements where standard specifications for goods or services to be procured are available, the Administrator shall prepare, or cause to be prepared, standard agreements for procurement of goods and services. The standard agreements shall be approved as to form by the JPA's general counsel.

8.2 Criteria for Preparation of Contracts.

Each standard agreement shall be prepared utilizing the following criteria:

(A) A clear and accurate identification of the parties.

(B) A clear and complete statement of the work, services, or product to be performed, rendered, or provided.

(C) A clear expression of the maximum amount to be paid, if any, and the basis upon which payment is to be made.

(D) A statement of the time for performance or completion of the contract.

(E) Provisions specifying events of default and remedies available to the contractor and the JPA.

(F) If applicable, provisions setting forth the technical standards and specifications with which the contractor must comply, including, but not limited to, performance standards and output specifications, together with provisions allowing the JPA to enforce, amend or waive such technical standards and specifications.

(G) Provisions requiring that the contractor obtain and maintain insurance with such coverages and deductibles as determined by the JPA to be appropriate in its discretion.

(H) Provisions regarding the maintenance and auditing of the contractor's books and records.

(I) Provisions requiring the contractor to defend, indemnify and hold the JPA harmless from all claims, demands, liability, loss, damage, or injury to property or persons, arising out of or relating to the contract.

(J) Provisions requiring that the proper jurisdiction, forum and venue for any claims, causes of action or other proceedings concerning the contract shall be in the state and federal courts located in the State of California, County of Los Angeles; that the contractor submits to personal jurisdiction in the State of California, County of Los Angeles; and the contract shall be interpreted, construed and governed according to the laws of the State of California, or federal law if applicable.

### 8.3 Purchase Orders.

In lieu of a standard agreement form, the Administrator may prepare or cause to be prepared a form of purchase order for the purchase of materials, supplies and equipment procured in accordance with Section 11 below.

## **Section 9 Supporting Documents**

### 9.1 Responses to Solicitations.

Unless the procurement documents make them a part of the contract, bids and proposals received together with documents comprising the solicitation request may, but are not required to, accompany the contract for final approval by the Board.

### 9.2 Explanation of Failure to Award to Lowest Bidder.

If sealed bidding is provided for in this Contract Policy and an award is made not to the lowest bidder, a full explanation and justification must accompany the contract for final approval.

### 9.3 Local Government Entity/Cooperative Agreements.

If deemed necessary or advisable upon consultation with legal counsel, where one of the contracting parties is a county, city, district, authority or other local or regional public body, the contract shall be accompanied by a copy of the resolution, order, motion, or ordinance of the local or regional governing body granting authority to enter into the proposed contract and approving and authorizing execution of the agreement.

#### 9.4 Authorized Signatures.

Authority to execute contracts is limited to the Administrator and members of the Board who have been duly authorized by the Board. The Administrator is duly authorized by the Board to execute on behalf of the JPA and without formal Board approval, those contracts he or she is authorized to approve pursuant to this Contract Policy under Section 2.7. The JPA will maintain a record for audit purposes of all persons who have been authorized to execute contracts on behalf of the JPA.

#### 9.5 Public Entity Expending JPA Funds Right to Audit.

Every JPA contract wherein a government entity is receiving JPA funds shall require that the government entity place in each of its contracts involving an expenditure of JPA funds in excess of \$250,000.00, a provision which indicates that the contracting parties may be subject to an examination and audit by the JPA or its designee for a period of not less than three years after final payment under the contract.

#### 9.6 Retention of Evaluations.

Unless otherwise provided in the procurement documents, all proposals and any evaluations and rating sheets regarding such proposal, shall be retained for the period required by law or the JPA's record retention schedule, whichever is longer. Worksheets and notes of individual advisors and evaluators need not be retained except where individual ratings of evaluators are determinative of scores or rankings. Copies of proposals and evaluation and rating sheets shall be made available to the Board upon request. If such documents would become public information, they shall be redacted as appropriate to maintain confidentiality of any information (such as the names of the evaluators and the identity of references contacted) that would not otherwise be required to be disclosed publicly.

### **Section 10 Modification or Amendment of Contracts**

#### 10.1 Contracts Subject to Board Approval.

Contracts subject to the approval of the Board must also have such approval for a modification or amendment thereto, with the exception of the following which may be approved by the Administrator:

- (A) Amendments to contracts limited to an extension of the date of completion of performance for a period of one year or less. A contract may only be amended once under this provision;
- (B) Exercise of options to extend the original term of a contract set forth in the contract; and
- (C) Modifications within the scope of the Administrator's authority under Section 2.7.

## 10.2 Modifications or Amendments Taking Contracts Outside Scope of Exemption.

If an amendment to a contract has the effect of taking the contract as amended outside the scope of an exemption from the approval by the Board, such as an increase in monetary amount not specified in the contract, or an agreement by the JPA to indemnify or save harmless any person or entity, the amendment must be approved by the Board.

## 10.3 Modifications or Amendments Subjecting Contract to Lease or Purchase Requirements.

If the amendment has the effect of making the contract subject to the lease or purchase requirements contained in Section 11 or 12 of this Contract Policy, the provisions of these policies and procedures related to lease or purchase shall be complied with prior to the JPA's approval of the amendment.

# **Section 11 Contracts for Lease and Rental of Equipment**

## 11.1 Application of Section.

The provisions of this Section 11 shall apply to all equipment or property leased or rented by the JPA except automobiles provided under the terms of a separate employment agreement.

## 11.2 Contract Provisions.

Contracts for lease and rental of equipment must clearly provide that the JPA does not have responsibility for loss or damage to the rented equipment or property arising from a cause beyond the control of the JPA. Any provision obligating the JPA to return the equipment or property in good condition, subject to reasonable wear and tear, must also except or exclude loss or damage arising from causes beyond the control of the JPA. The contract must clearly restrict the JPA's liability for damage or loss to that resulting from the negligent act or omission of the JPA or the Administrator's officers, staff, or agents acting within the course and scope of their employment with the JPA. If the JPA does not elect to maintain the equipment, the contract shall place the obligation on the contractor, as lessor, to keep the equipment in good working order and to make all necessary repairs and adjustments without qualification, with a clear right in the JPA to terminate or cease payment for repairs and adjustments without qualification, to terminate or cease paying rent should the contractor fail to maintain the equipment properly. For this purpose, the contractor's representatives shall be given full and adequate access to the equipment at reasonable times.

## 11.3 Renewal Options.

For the purpose of determining whether equipment lease or rental contracts containing renewal options are subject to approval of the Board, the total cost and term of the lease or rental contract shall be computed by including the cost and term of all renewal options included in the contract.

## 11.4 Purchase Options.

Approval by the Board of the lease or rental contract does not include approval for the exercise of the option to purchase. The Board must approve any exercise of the option to purchase equipment in advance.

## **Section 12 Purchase Of Materials, Supplies and Equipment**

12.1 Purchase of Materials, Supplies and Equipment with Unit or System Prices equal to or less than \$250,000.00.

In lieu of issuing a written request for bids or proposals, and consistent with the definition of a Small Purchase under Section 2.1, the Administrator may obtain a minimum of three oral or telephone quotations from vendors selected by the Administrator, for acquisition of materials, supplies and equipment having a unit or system price equal to or less than \$250,000.00 and for which there are standard specifications (e.g., certain paper supplies, building materials). The Administrator shall solicit quotations. Written confirmation shall be obtained from each vendor submitting an oral quotation. Purchases may be documented through purchase orders rather than other standard form or customized contracts.

12.2 Purchase of Materials, Supplies and Equipment with Unit or System Prices of more than \$250,000.00

Purchases of materials, supplies or equipment having a unit or system price of more than \$250,000.00 should be made in accordance with the sealed bidding, competitive negotiations or alternative procurement processes identified in Sections 4, 5 and 6 of this Contract Policy. Purchases may be documented through standard or customized contract forms.

## **Section 13 Protests**

13.1 Right to File Protests.

A person that has indicated an interest in proposing or bidding on a contract, or that has timely submitted a response to any procurement of the JPA may file, in the case of a protest prior to award of the contract, a protest objecting to the form or content of the RFP, RFQ or IFB within the time periods and in accordance with the procedures outlined in Sections 13.2(A) and (B) below. In the case of a protest filed after award of a contract, the protest shall be filed in accordance with the procedures and within the time periods stated in Section 13.2(C) below. The following procedures apply in the event that the RFQ, RFP or IFB does not contain relevant protest procedures or to the extent that a procedure set forth below is not set forth in the RFQ, RFP or IFB. To the extent that any provision below conflicts or is otherwise inconsistent with a process or procedure set forth in an RFQ, RFP or IFB, the provision in the RFQ, RFP or IFB will prevail. To the extent that a provision of an RFP, RFQ or IFB does not permit protests, that prohibition will prevail over and negate a process permitted below that is inconsistent with that prohibition.

13.2 Requirements for Protests.

(A) For protests filed in advance of submittal of responses, the following procedures shall apply:

(1) Prospective proposers and bidders are encouraged to suggest changes, modifications, and improvements to the RFQ, RFP or IFB. Unless otherwise authorized by the Administrator, the deadline for submitting suggested changes, modifications, and proposals shall be five Working Days after the pre-proposal conference if any, and in the absence of a pre-proposal conference, no later than 14 Working Days prior to the date that submittals are due.

Such changes, modifications and proposals shall be made in writing to the JPA representative identified in the RFQ, RFP or IFB.

(2) If a proposed change, modification, or improvement is accepted by the JPA, said change, modification or improvement shall be incorporated into the RFP, RFQ or IFB through an addendum disseminated in the same manner as the RFQ, RFP or IFB.

(3) Protests dealing with restrictive specifications or alleged improprieties in a solicitation must be filed no later than ten Working Days prior to the date for submittal of responses. Protests shall be in writing and addressed to the procurement manager or coordinator designated in the RFQ, RFP or IFB.

(4) The protest shall contain a statement describing the reasons for the protest and any supporting documentation. Additional materials in support of the initial protest will only be considered if filed within the time limit specified above. The protest shall indicate the ruling or relief desired from the JPA.

(5) Materials submitted by a protester will not be withheld from any interested party, except to the extent that the withholding of information is permitted or required by law or regulation. If the protest contains proprietary material, a statement advising of this fact may be affixed to the front page of the protest document and the alleged proprietary information must be so identified wherever it appears. Notwithstanding a designation of material as proprietary, the JPA or its designee shall have the discretion to determine whether such material should be withheld from the other interested parties and if the JPA or its designee determines that the material should be made available, the protester waives, and shall not have, any claim or cause of action based on such disclosure.

(B) For protests filed after submittal of responses, but prior to, as applicable, determination of qualifications, determination of shortlisting or award of the contract, the following procedures shall apply:

(1) The Administrator or his or her designee shall follow the review and decision process outlined in this Contract Policy, modified as deemed necessary in the Administrator's sole discretion.

(2) If the solicitation is for sealed bids and the protest is received before the bids are opened, the sealed bids shall not be opened until the JPA makes a decision on the protest.

(3) The determination of qualifications, determination of shortlisting or award of the contract, as applicable, will not be made prior to resolution of the protest, unless the Administrator determines that:

(a) Items to be procured are urgently needed, or delivery or performance of the contract will be unduly delayed by failure to act promptly; or

(b) Failure to act or delay in acting will cause undue harm to the JPA.

(C) For protests filed after determination of qualifications, determination of shortlisting or award of the contract, as applicable, the following procedures shall apply:



(1) The protest shall be filed in writing with the JPA, by hand delivery or as otherwise specified in writing by the Administrator, not later than three Working Days after the Board takes formal action to determine qualifications, determine a shortlist or award a contract.

(2) The protest shall be filed by an actual bidder or proposer responding to the procurement. No other party has standing to protest.

(3) The protest shall identify the specific procurement involved.

(4) The protest shall identify the specific recommended action or decision being protested.

(5) The protest shall specify in detail the grounds of the protest, the facts supporting the protest and the status of the protester.

(6) The protest shall include all relevant supporting documentation with the protest at the time of submittal.

(D) Except as modified by the procurement documents, if a protest does not comply with the above requirements, the protest will not be considered and will be returned to the protester.

(E) Except with respect to supporting materials the protester asserts contain confidential material or information, the protester shall concurrently file a copy of the detailed statement with the other actual bidders or proposers.

(F) Evidentiary statements, if any, shall be submitted under penalty of perjury. The protester shall have the burden of proving its protest by clear and convincing evidence. Failure to file a protest within the applicable period shall constitute a waiver of the right to protest the determination, authorization or award, as applicable, other than any protest based on facts not reasonably ascertainable as of such date.

### 13.3 Statements by Other Parties.

Other potential or actual bidders or proposers may file by hand delivery, or as otherwise specified in writing by the Administrator, to the JPA statements in support of or in opposition to the protest within five Working Days of the filing of the protest described in Section 13.2. The JPA shall promptly forward copies of any such statements to the protester. Any evidentiary statements shall be submitted under penalty of perjury.

### 13.4 Resolution of Protest.

(A) The Administrator or his or her designee will respond to protests within five Working Days of receiving the protest, acknowledging receipt of the protest. A conference on the merits of the protest may be held with the protester and the JPA will promptly attempt to resolve a properly filed protest or perform additional fact-finding.

(B) If the Administrator or his or her designee is able to resolve the protest, a letter confirming resolution shall be sent to the protester.

(C) At any time after receipt of a protest, the Administrator or his or her designee may establish an independent team to evaluate the merits of the protest. The Administrator will determine the timeline for such evaluation.

(D) After receipt of a recommendation of the evaluation team, the Administrator or his or her designee will review the recommendation and notify the protester in writing of the decision on the protest.

(E) If at any time during this process, additional information is required by the JPA from the protester, such additional information shall be submitted by the protester as expeditiously as possible, but no later than the date specified in the request for additional information.

(F) For protests involving determination of qualifications, determination of shortlisting or award of the contract, if the Administrator's decision is to uphold the protest, a recommendation will be made to either:

(1) Reject all responses, cancel the procurement and solicit new responses,  
or

(2) Proceed with the procurement consistent with the decision in response to the protest.

#### 13.5 Election of Remedies

If a protest is made to award of a contract and the solicitation offered a stipend or payment for work product to unsuccessful proposers or bidders, then the filing of the protest will constitute an election of remedies and bar the protester from receipt of the stipend or payment for work product, unless otherwise decided by the Administrator in its discretion. The JPA reserves the right to charge a fee to any party who files a frivolous protest.