

RESOLUTION NO. 2018-105

**RESOLUTION OF THE BOARD OF DIRECTORS OF
THE SOUTHERN CALIFORNIA PUBLIC POWER
AUTHORITY AMENDING THE PROCUREMENT
CODE OF THE AUTHORITY.**

WHEREAS, the Southern California Public Power Authority (“the Authority”) is a public entity duly organized and existing under the Joint Exercise of Powers Act (Cal. Govt. Code § 6500 et seq.) pursuant to a Joint Powers Agreement (“JPA”) entered into by and among the Cities of Anaheim, Azusa, Banning, Burbank, Cerritos, Colton, Glendale, Los Angeles, Pasadena, Riverside and Vernon, and the Imperial Irrigation District (collectively, “Members”), with authority to engage in various activities supportive of the Members’ electric utilities; and

WHEREAS, the Authority’s Board of Directors (“Board”) has responsibility for the general management of the affairs of the Authority, and under the JPA has the power, among other things, to make and enter in contracts of every kind with any individual, firm association, partnership, corporation or any other organization of any kind, subject to such limitations as may be imposed by applicable law on the City of Riverside; and

WHEREAS, the Board adopted a Procurement Code for the Authority in 1992, and while exceptions or supplemental provisions have been adopted from time to time for specific projects the Procurement Code itself has not been amended or updated since its adoption; and

WHEREAS, amendments to the Procurement Code have been proposed by staff in order to update its provisions, ensure consistency with state law and with the procurement procedures of the Authority’s Members, and reflect the current procurement practices of the Authority.

NOW, THEREFORE, the Board of Directors of the Southern California Public Power Authority does hereby resolve, determine and order:

1. The Procurement Code of the Authority is hereby amended in its entirety as shown in Exhibit A attached hereto and made a part hereof as though set forth at length

2. This Resolution shall take effect immediately.

THE FOREGOING RESOLUTION is approved and adopted by the Board of Directors of the Authority this 20th day of December 2018.



PRESIDENT
Southern California Public
Power Authority

ATTEST:



SECRETARY
Southern California
Public Power Authority

**SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
PROCUREMENT CODE**

December 20, 2018

EXHIBIT A

TABLE OF CONTENTS

Section	Title	Page
	Preamble	1
1	Definitions	1
2	Sealed Competitive Bids Required - Exceptions	5
3	Requests for Competitive Proposals	6
4	Notice Inviting Bids or Proposals	7
5	Bid Security	7
6	Performance and Payment Bonds	8
7	Bid Opening	8
8	Right to Reject Bids	8
9	Lowest Responsive Bidder Determination	8
10	Recommendation of Award	9
11	Award	9
12	Contracts Requiring Board Approval	9
13	Contracts Not Requiring Board Approval	9
14	Execution of Task Orders	10
15	Contracts of Urgent Necessity	10
16	Contract Amendments and Extensions	11
17	Claims	11
18	Disposal of Surplus Materials	11
19	Exceptions by Project	12
20	Protest Procedure	12
21	Applicability of Public Contract Code	13
22	Member Procurement Policies and Practices	14

**SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
PROCUREMENT CODE**

Preamble

This Code shall govern procurement by the Southern California Public Power Authority of services and materials for the Authority, the construction, maintenance, or operation of any facility or Project, or the development or implementation of a Program. Notwithstanding the foregoing, this Code shall not apply to: (i) the acquisition by the Authority of any interest or capacity right in any Project or related facilities; or (ii) procurement related to financing by the Authority, including the issuance, undertaking, sale, or delivery by the Authority of any bonds, notes, other evidences of indebtedness or financial obligations, or (iii) procurement by the Authority of services, materials, or investments with respect thereto.

This Code is intended to comply with state law applicable to procurements by local public agencies and to reflect the purchasing rules and regulations of the Authority's members.

1. **Definitions:** The following terms, whenever used in this Code and initially capitalized, shall have the following meaning:

- a. **Authority:** The Southern California Public Power Authority.
- b. **Bidder:** A person, firm or corporation that submits a bid to provide services and/or materials to the Authority in response to the Authority's solicitation or otherwise in a manner provided for in this Code. The term "Bidder" includes a party submitting a response to a request for proposals.
- c. **Board:** The Board of Directors of the Authority.
- d. **Code:** This Procurement Code.

- e. **Competitive Proposal:** A proposal that is solicited for services and/or materials that may be defined by function or purpose, or a combination thereof, and which normally involves discussions or negotiations, or both, after receipt of proposals, to define the scope of service or material and other terms and conditions, including the contract price. A Competitive Proposal shall be submitted to the Authority in the manner indicated in the Authority's request for proposals.
- f. **Construction Contract:** A contract for the furnishing of services only or the furnishing of services and materials for the construction or repair of facilities.
- g. **Contract of Urgent Necessity:** Any contract for the purchase of services or materials, or both, which, as determined by the Purchasing Manager, is required to protect the public health and welfare or to prevent substantial delay or substantially increased cost to the Authority.
- h. **Executive Director:** The Executive Director of the Authority.
- i. **Goods and Services Agreement:** An agreement for procurement of materials, equipment, software or other tangible personal property coupled with necessary or desired services provided by the vendor related to the installation, use or deployment of such goods.
- j. **Joint Powers Agreement:** The Agreement that created the Authority entered into as of November 1, 1980, as amended.
- k. **Lowest Responsible Bidder:** The Responsible Bidder that submits the lowest cost Responsive Bid to the Authority's solicitation.

- l. **Member:** Each public agency that is a party to the Joint Powers Agreement.
- m. **Preselected Bidder:** A person, firm, or entity that is selected to receive an invitation to submit a bid or proposal to the Authority based on an ability to deliver a quality product in a timely manner.
- n. **President:** The President of the Authority.
- o. **Professional Services:** Accounting, appraisal, architectural, auditing, educational, instructional, engineering, environmental, financial, design, land surveying, construction management, legal, or planning services or any other service which is similarly professional, scientific, expert, or technical.
- p. **Professional Services Agreement:** An agreement for Professional Services.
- q. **Program:** An activity of the Authority on behalf of its Members intended to promote or enhance operating efficiency of the Members' electric utility operations.
- r. **Program Agreement:** A Professional Services Agreement, Goods and Services Agreement or other agreement not related to a Project.
- s. **Project:** Shall have the meaning ascribed thereto in Section 2 of the Joint Powers Agreement.
- t. **Project Manager:** In any particular Project, the Project Manager appointed by the Authority for that Project or, in the case of a Project for which the Authority has appointed an agent for construction or operation of a Project, the Project Manager appointed by that agent.

- u. **Project Matter or Project Vote:** Shall have the respective meanings ascribed thereto in Section 2 of the Joint Powers Agreement.
- v. **Purchasing Manager:** The Chief Financial and Administrative Officer of the Authority, or his or her designee. At any time when the position of Chief Financial and Administrative Officer is vacant, the Executive Director or his or her designee shall act as the Purchasing Manager.
- w. **Resolution Billing:** A method for obtaining contributions to the Authority's general fund to pay the cost of a Program Agreement and to allocate shares of such cost to Members that receive goods and/or services under the Program Agreement.
- x. **Responsible Bidder:** A bidder determined by the Purchasing Manager to be responsible based on its ability, capacity and skill to perform the services and deliver the materials solicited, including post-performance maintenance and warranty repairs; its facilities and resources; its history, character, integrity, reputation, judgment, experience and efficiency; and its record of performance of prior contracts with the Authority and others.
- y. **Responsive Bid:** A bid or proposal that meets the substantive requirements specified by the Authority in its solicitation without material qualification or exception, as determined by the Purchasing Manager.
- z. **Sealed Competitive Bid:** A bid for a defined service and material that will be awarded to the Lowest Responsible Bidder on the basis of price or evaluated cost without further discussion or negotiation.

- aa. **Specifications:** Any writing of the Authority, a Project Manager, or the Purchasing Manager (or otherwise approved by any of them) that describes the services or materials to be purchased and the terms and conditions of such purchase.
- bb. **Task Order.** An addendum to a Program Agreement that identifies the Member for whose benefit the Authority has or will execute the Program Agreement, specifies the services to be provided to the Member by the party with whom the Authority has contracted and sets forth the cost to the Member and other material terms.
- cc. **Vice President:** Any Vice President of the Authority.

2. **Sealed Competitive Bids Required - Exceptions:**

- a. Except as provided in Subsection 2b or Section 3 below, all contracts for the purchase of services or materials, or both, shall be by Sealed Competitive Bids and award of a contract shall be made to the lowest responsible bidder whose bid conforms to the invitation for bids.
- b. The following contracts shall not be subject to Subsection 2a above:
 - (1) Contracts for which the estimated contract amount is \$50,000 or less.
 - (2) Contracts of urgent necessity.
 - (3) A Professional Services Agreement or a Goods and Services Agreement involving no construction or repair of Authority facilities other than repairs associated with ordinary maintenance.

- (4) Contracts where the Purchasing Manager determines that only a single or sole source of supply is available for a service or material or that it is in the best interests of the Authority to issue a request for proposals in place of a bid solicitation.
 - (5) Contracts where the Board determines that Sealed Competitive Bids are not in the best interests of the Authority; provided, that, any such determination shall be made by the affirmative vote of not less than eight (8) directors plus, if such determination constitutes a decision on a Project Matter, the affirmative vote of directors entitled to not less than seventy-two percent (72%) of the Project Votes which may be cast thereon.
 - (6) Contracts for services or supplies that are purchased in cooperation with other public agencies, associations or when supplies or services can be purchased from a vendor offering the same prices, terms and conditions as in a previous award from the Authority or another public agency either by competitive bid or through a negotiated process and, in the opinion of the Purchasing Manager it is to the advantage of the Authority to do so.
3. **Request for Competitive Proposals:** Any contract described in Subsection 2b(3) or 2b(5) above shall be entered into through a request for Competitive Proposals, and when a request for Competitive Proposals is not practicable, informal bids or proposals shall be obtained from at least three (3) qualified Bidders. For a contract described in Subsection 2b(2), the Purchasing Manager shall determine

how many informal bids or proposals to obtain taking into account the circumstances giving rise to the urgency of the situation.

4. **Notice Inviting Bids or Proposals:**

- a. **Sealed Competitive Bids:** Notice inviting Sealed Competitive Bids shall be published, posted and advertised in the manner required by law sufficiently in advance of bid opening to allow qualified bidders a reasonable time to submit bids.
- b. **Competitive Proposals:** Notice of a request for Competitive Proposals shall be given in a manner to reach as broad a pool of qualified firms and individuals as is reasonably practicable, as determined by the Purchasing Manager.
- c. **Preselected Bidders:** Notice to Preselected Bidders shall be by letter, email or other common form of written communication.

5. **Bid Security:** Security in the amount of ten percent (10 %) of the bid price shall be required to accompany all bids or proposals on a Construction Contract unless waived by the Purchasing Manager. Security may consist of a bond, cash, or other security that is acceptable under applicable law and approved by the Purchasing Manager. If the bidder fails to enter into a contract in accordance with the bid or proposal, the security shall be forfeited as provided by law.

6. **Performance and Payment Bonds:**

- a. A performance bond and a labor and material payment bond by a surety company satisfactory to the Purchasing Manager, for one hundred percent (100%) of the contract price shall be required for all Construction Contracts with a contract price greater than \$25,000.

- b. A performance or payment bond by a surety company satisfactory to the Purchasing Manager may be required for all contracts other than Construction Contracts in the discretion of the Purchasing Manager.

7. **Bid Opening:**

- a. **Sealed Competitive Bids:** Sealed Competitive Bids shall be opened publicly at the time and place set forth in the notice inviting bids. Bids may be corrected or withdrawn by written notice prior to bid opening. After bid opening, the bids shall not be withdrawn and no material changes in price or terms and conditions of the bid shall be permitted except as permitted by law.
- b. **Competitive Proposals:** Competitive Proposals shall be opened in the manner indicated in the request for proposals.

8. **Right to Reject Bids:** The Authority, in the exercise of its sole discretion, shall have the right to reject all bids or proposals prior to award of any contract.

9. **Lowest Responsible Bidder Determination:** In determining which is the Lowest Responsible Bidder, account may be taken of those factors which result in the lowest ultimate cost to the Authority. Any such factors shall be set forth in the invitation for bids. In the event of a tie, the Purchasing Manager may select the successful bidder from among those bidders submitting the tied bids.

10. **Recommendation of Award:** A recommendation of award shall be prepared for all contracts which are to be awarded by the Board or the Executive Director. The recommendation shall include information on the Lowest Responsible Bidder; an explanation if the Lowest

Responsible Bidder and Lowest Responsive Bidder are different, information a description of the purchase; and any other information necessary to support the recommendation or as may be required by the Purchasing Manager.

11. **Award:**

- a. **Sealed Competitive Bids:** Award of contracts under Sealed Competitive Bids shall be to the Lowest Responsible Bidder responding to the terms and conditions of the specifications.
- b. **Competitive Proposal:** Award of contracts under Competitive Proposals shall be to the Bidder whose negotiated offer results in the contract most advantageous to the Authority taking into account price, contractual term and conditions, and evaluation parameters set forth in the request for proposal.

12. **Contracts Requiring Board Approval:** All contracts entered into pursuant to this Code in excess of \$100,000 annually shall be awarded by the Board and executed on behalf of the Authority by the President, Vice President, Executive Director, or any other officer of the Authority designated by the Board.

13. **Contracts Not Requiring Board Approval:** All contracts entered into pursuant to this Code for \$100,000 or less annually shall be awarded and executed on behalf of the Authority by the Executive Director, or any other officer of the Authority designated by the Executive Director, provided that appropriations for such contracts are included in a budget of the Authority or provision is made for payment by Members in a Resolution Billing. When two or more Members participate in a contract awarded by the Executive Director under this section 13 and no provision is made for

allocating a share of the costs of the contract to each Member, the Executive Director may propose and implement a proportionate share for each Member as he or she deems fair and reasonable; provided, that a Member dissatisfied with the Executive Director's determination may request that the matter be considered and decided by the Board at its next regular meeting. The Board's decision shall be final. Notwithstanding any of the foregoing, the Executive Director may, in his or her discretion, submit any proposed award of a contract to the Board for approval.

14. **Execution of Task Orders.** The Executive Director shall execute a Task Order associated with a Program Agreement for which funding is not included in the Authority's annual budget only if it includes or is accompanied by a commitment in writing, executed by the chief executive officer of the Member's utility or his or her duly authorized designee, that the Executive Director reasonably determines legally binds the Member to pay for the goods and services it receives under the Program Agreement.
15. **Contracts of Urgent Necessity:** Contracts of Urgent Necessity which would otherwise require Board approval may be awarded and executed on behalf of the Authority by the President, Vice President, Executive Director, or any other officer of the Authority designated by the Board, provided that any such Contract of Urgent Necessity shall be submitted for ratification by the Board at the first meeting following such award. If the Board fails to ratify such contract at such meeting, the contract shall be null and void but the Authority shall pay the contractor all reasonable expenses incurred by the contractor prior to receipt by the contractor of notice of such failure to ratify.

16. **Contract Amendments and Extensions:** The Executive Director or his or her designee shall have authority to amend or extend the term of an existing contract without approval of the Board in the following circumstances:
- a. Where the contract, as amended or extended (including any proposed new amendments) is one that the Executive Director could award without Board approval under this Code.
 - b. Where an amendment to a contract involves terms and conditions that the Executive Director determines are not material, provided that such changes may not involve the contract price.
 - c. Where the contract provides for an extension of up to one additional term. An extension under this subsection (c) may include changes to the terms and conditions that the Executive Director determines are not material, provided that such changes may not involve the contract price or further extension of the term.
17. **Claims:** It shall be the duty of the Executive Director, to pursue, with the authorization of the Board, all claims of the Authority under contracts entered into pursuant to this Code.
18. **Disposal of Surplus Materials:** Materials that are no longer used, needed, or are unsuitable for use shall be declared surplus by the Purchasing Manager. Upon approval of the Executive Director, or in the case of a Project the Project Manager, the Purchasing Manager shall dispose of the surplus material, by any of the following procedures:
- a. Exchanged or traded in on new materials;

- b. Sold utilizing competitive procedures similar to those prescribed herein;
- c. Sold at public auction;
- d. Sold utilizing a negotiation process when approved in accordance with Subsection 2b(5) herein;
- e. Disposal of as scrap or destroyed.

Members or, in the case of a Project, the project participants, shall have the right to obtain materials declared surplus prior to publicly disposing of such surplus material. The Purchasing Manager or the Project Manager (in the case of a Project Matter) shall notify Members or project participants in writing of the availability of such surplus materials. The written notice shall set forth the terms and conditions for obtaining such surplus materials.

19. **Exceptions by Project:** Procurements for any Project may be wholly or partially excepted from this Code provided that the Board, by the vote specified in Section 2b(5), approves such exception and rules for procurement for such Project.

20. **Protest Procedure:**

- a. Whenever a Construction Contract is not awarded to the Lowest Responsive Bidder, that bidder shall be notified no later than five (5) working days prior to the award of the contract.
- b. If a bidder files a protest with the Purchasing Manager against awarding the contract claiming it is the Lowest Responsible Bidder meeting specifications, the contract shall not be awarded until either the protest has been withdrawn or the

Board has made a decision relative to the protest. All such protests shall be filed with the Purchasing Manager no later than ten (10) working days after the bid opening.

- c. Within five (5) working days of the receipt of the protest the Purchasing Manager shall decide whether to grant or deny the protest.
- d. The Purchasing Manager's decision may be appealed to the Executive Director. If appealed, the appeal must be filed within three (3) working days of the date of the Purchasing Manager's decision. Within five (5) working days of the appeal, the Executive Director or his or her designee shall decide whether to grant or deny the protest.
- e. The decision of the Executive Director may be appealed to the Board. If appealed, the appeal must be filed within three (3) working days of the Executive Director's decision. The Board shall calendar the appeal on its agenda or may refer the matter to a designated hearing officer. The decision of the Board or hearing officer shall be final.
- f. Any bid protest that does not comply with the process provided for in this section shall not be reviewed.

21. Applicability of Public Contract Code: Provisions of the California Public Contract Code related to Construction Contracts for public works construction projects shall be applicable to Construction Contracts awarded pursuant to this Code unless a provision of this Code conflicts with a provision of the Public Contract Code, in which case the provision of this Code shall apply.

22. **Member Procurement Practices and Policies.** Nothing in this Code shall preclude the inclusion of terms and conditions reflective of a Member's unique procurement practices or policies in any Request for Competitive Proposals, any other bid or proposal solicitation, or any Program Agreement made pursuant to this Code.