



**FOOTHILL/EASTERN TRANSPORTATION  
CORRIDOR AGENCY**

**AND**

**SAN JOAQUIN HILLS TRANSPORTATION  
CORRIDOR AGENCY**

**Contracts and Procurement Services**

**Policies and Procedures Manual**

**as approved by the Boards  
June 9, 2016**

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## **PART I**     **POLICIES**

### **SECTION 1.0**     **ETHICS IN CONTRACTING AND PROCUREMENT**

This policy applies to the procurement of goods and services and for other contracts entered into by the Foothill/Eastern Transportation Corridor Agency (F/ETCA) and the San Joaquin Hills Transportation Corridor Agency (SJHTCA), individually or jointly referred to herein as the TCA, and sometimes referred to individually as an Agency. This policy directs that all contracting activities be performed by qualified individuals specifically delegated the authority, responsibility and accountability for said activities using sound business practices in an ethical manner, taking into consideration applicable law and regulations. Furthermore, this policy directs that contracts for provision of goods and services be procured from qualified sources that provide maximum value for each expenditure, taking into consideration the nature of the goods and services and, as appropriate, quality and reliability, competitive price and delivery schedule.

### **SECTION 2.0**     **POLICY GUIDELINES FOR CONTRACTS FOR GOODS AND SERVICES**

Consistent with the policy adopted by the Board<sup>1</sup>, the following guidelines will be implemented and maintained. These guidelines support a system of internal controls where a requirement to contract for or purchase goods and services is typically developed by the user Department, authorized by appropriate TCA staff, committed to contractors or suppliers by the Contracts and Procurement Department (CPD) and paid by Finance.

TCA representatives may contact suppliers/contractors regarding general requirements, product information, specifications, informal cost estimates and other information. Before making such contacts, the representative shall consult with CPD regarding appropriate procedures to be followed. All communications with potential suppliers/contractors shall be conducted in a manner consistent with the section entitled “Relationship with Contractors” in “Appendix F to the Agency Administrative Code, Code of Conduct” in each of the Amended and Restated Administrative Code of the Foothill/Eastern Transportation Corridor Agency and the Amended and Restated Administrative Code of the San Joaquin Hills Transportation Corridor Agency, respectively (each referred to herein as the “Administrative Code”). Under no circumstances are there to be discussions that could imply a commitment to purchase, create a noncompetitive situation or create a favored supplier relationship.

After release of the RFP/IFB package, CPD will be responsible for managing any communications between TCA and potential suppliers/contractors, in a manner consistent with the section entitled “Relationship with Contractors” in Appendix F to the Agency Administrative

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<sup>1</sup> References in this document to “Board” will refer to the Board or Boards of Directors of one or both of the Agencies, dependent upon the individual procurement activity.

Code, Code of Conduct. The process of obtaining quotations and negotiating pricing for the purpose of committing materials and services during the proposal stage or during the execution of a contract (which term includes purchase orders), shall be performed by the CPD<sup>2</sup> through its appropriate representatives with technical help as needed from the TCA staff. Except as may be provided in the RFP/IFB, potential suppliers/contractors may not rely on any information provided by Board members or TCA's officers, employees, agents, consultants or other representatives relating to an RFP/IFB.

For goods or services requiring TCA expenditure of \$10,000 or less (per Agency), including the purchase of goods to accomplish a unique task or a non-routine<sup>3</sup> service, if such purchase will not require the execution of a formal contract, the commitment for payment can be made through execution of a requisition by the Originator<sup>4</sup>, the appropriate ETM<sup>5</sup>, Finance and the CPD manager, to ensure compliance with this policy. In such cases, the appropriate ETM or his designee will be responsible for determining that the goods or services qualify for a simplified acquisition process and are consistent with authority delegated to such ETM under PART I SECTION 8.0, and for ensuring that all proper documentation is maintained and that the procurement was ethically conducted. Payment for such items or services will be processed by Finance. If the invoice for such goods or services varies from the approved requisition, prior to payment Finance will obtain approval from the Originator and the appropriate ETM or his designee.

The purchase of goods or services under a vendor account, where the TCA may have provided credit information but no contract is executed, will be subject to approval by the appropriate ETM. Payment for such items or services will be processed by Finance and approved by the Originator and the appropriate ETM or his designee.

The purchase of goods or services requiring TCA expenditure of \$2,500 or less (per Agency), for which no contract or vendor account is established, may be accomplished with the use of a Check Request form. The ETM responsible for the affected budget is responsible for the

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<sup>2</sup> At the direction of an Executive Team Member (ETM), alternate staff may perform efforts that this manual contemplates are to be performed by the CPD. In such case, the designated staff member will follow all other policies and procedures identified herein, and shall perform all related tasks in compliance with all policies and procedures that CPD would be required to follow if he or she performed such tasks. ETMs are the chief executive officer (CEO), chief communications officer, chief engineer, chief environmental planning officer, chief financial officer, chief strategy officer and chief toll operations officer. Each ETM may from time to time delegate authority for specified tasks that this manual contemplates are to be undertaken by the ETM.

<sup>3</sup> Non-routine items are those for which a vendor is not contacted more often than four times in a Fiscal Year, for which services do not exceed 30 days during the year, and for which expenses do not exceed \$25,000 per Agency, in the aggregate, during the year.

<sup>4</sup> Originator is the staff member delegated the responsibility for the affected budget by the appropriate ETM. The tasks to be performed by the Originator in this manual may be delegated; however, the responsibility and signature approval of all documents will remain with the Originator.

<sup>5</sup> The phrase "appropriate ETM" refers to the ETM whose department budget is impacted by the actions.

determination that the goods or services are routine business expenses or a one-time expense and consistent with authority delegated to such ETM under PART I SECTION 8.0.

Goods and services required to maintain routine business operations such as utility services and postage, for which only one source exists, are subject only to Board approval of budgeted funds and expense payment authorization by the affected ETM or his designee.

Invoices for the payment of materials, supplies and services, received as a result of duly executed contract requirements, will be paid by the TCA Finance department subject to the approval from appropriate staff and CPD. Deviation of invoices from contract requirements will also require the sign-off of the CPD manager, or designated representative. Invoices for the payment of jobsite services will require approval of the responsible TCA manager and the appropriate ETM or his designee that the work was performed and concurrence by the CPD department representative that the invoice activity is in compliance with the terms of the contract.

### SECTION 3.0 DISADVANTAGED BUSINESS ENTERPRISES

It is the policy of the TCA to ensure the participation of Disadvantaged Business Enterprises (DBEs) in federally funded contracts, per applicable Federal Regulations. The TCA has adopted programs which will constitute policy and demonstrate the TCA's commitment to promote, foster and utilize DBEs. A DBE officer has been appointed who is responsible for the implementation of the programs and their application to each federally funded contract.

### SECTION 4.0 NEGOTIATION PRACTICES

Ethical business conduct is required during negotiations and bidding. The TCA does not engage in the practice of "bid shopping" and avoids driving the bid price so low that the supplier's or contractor's performance and work quality will not meet the contract requirements. Negotiated commercial terms that force a supplier or contractor to develop a constant change order and claim strategy to recover costs and expected profits will not result in the best value for the TCA.

In a negotiated procurement, negotiations are to be engaged in when the potential savings appear to be substantially higher than the cost and time of negotiating. Specifically, CPD personnel may request that any or all technically qualified bidders or proposers re-evaluate their quotations and submit their best and final commercial offer. Final negotiations based on these offers may be undertaken by the negotiating team through CPD personnel, with cooperation and technical help from other TCA staff and consultants.



SECTION 5.0 CONFLICT OF INTEREST

By law, when transactions involve individuals who have a significant interest in a contract, that conflict of interest not only exposes them to personal sanctions, but may affect the validity of the contract itself.

TCA personnel and Board Members shall not be involved in transactions in which they are or it might appear that they are dealing with themselves, family members or business in which they have a significant interest.

SECTION 6.0 CONFIDENTIALITY

Competitive, technical and commercial information is sensitive, particularly when negotiations are involved. Only those with a need to know are to have access to information regarding the negotiations. Competitors shall not be advised how their quotations on a technical and/or commercial basis compare, nor any change(s) that would be required to qualify them as the successful bidder or proposer.

After issuance of a notice of intent to award (see PART III SECTION 4.2) or if no such notice is issued, after award is made, bidders or proposers, upon request, may be advised of their competitive position. Information as to the ranking and evaluation of competitors is public record except where non-disclosure of those records is authorized by the Public Records Act.

SECTION 7.0 CONTRACTING AUTHORITY AND POWER TO CONTRACT

Powers of public agencies in California are limited to those which are expressly delegated to them or, in rare instances, necessarily implied from the function to be performed by the agencies. The powers of the public agencies, including the contract power, are strictly construed within the scope of the delegation granted by the Legislature. Careful compliance with any limits on the contract power is necessary to ensure the validity of agency contracts and to avoid delays to its program functions.

The TCA's Board Members, officers, employees or agents cannot assume power to bind the TCA except as permitted by law and expressly authorized by the Board. The power of any such individual(s) to contractually commit the TCA depends on the delegation approved by the Board.

The power to enter into contracts necessary to carry out the functions of the TCA is expressly provided by the statutes that created them. This power specifically includes the power to enter into agreements regarding the "construction, maintenance, operation and insurance of the Corridor facilities and to employ engineers or experts in the design and construction of Corridor facilities."

Nothing in the statutes authorizing the creation of the TCA limits the grant of the contract power with respect to such agreements. Nor do these statutes specify the procedures to use in contracting. Ordinarily, in the absence of any expressly required procedures, any reasonable method of contracting may be utilized.

With respect to TCA contracts entered into under powers derived from its joint powers agreement (i.e. contracts that do not involve design, construction, maintenance or operation of, or insurance for, the Corridor facilities), the TCA is subject to the same contracting requirements that apply to the City of Irvine under its Charter. The only Charter restriction on contracting is found in Section 1004, concerning the process to be followed for public works construction contracts. With certain exceptions, Section 1004 requires such contracts to be awarded to the lowest responsible bidder after publication of notice at least ten days before the time for opening bids. The City publishes such notices either in the Irvine World News or the Orange County Register. Publication of notice regarding procurements may also be required for some federally funded contracts. Notices of TCA procurements that are required to be published may be published in either of said newspapers or in one or more alternative publications or on-line services, as determined by the CPD manager, as well as on TCA's website. In determining where to publish notices, the CPD manager shall consider how best to make the contracting opportunity known to the pool of potential bidders.

Section 1004 allows the Irvine City Council to set the threshold for small contracts that do not have to be competitively bid. The City Council set the "small contract" threshold with reference to the Uniform Public Construction Cost Accounting Act, Section 22000 et seq. of the Public Contract Code, which currently allows public works projects of \$45,000 or less to be performed by negotiated contract or purchase order and allows informal bidding for public works projects of \$175,000 or less. A similar threshold applies for federally funded contracts, allowing a simplified acquisition process to be used, and is currently \$150,000. The Board has determined that it is appropriate to apply a threshold of \$50,000 per Agency for simplified acquisitions to all of its contracts, including those entered into by TCA under powers derived from its joint powers agreement.

The CPD manager shall consult with TCA general counsel to resolve any questions regarding the procurement rules that apply to a particular contract.

Certain statutes, other than those creating the TCA, apply to public agencies because they relate to matters of general statewide concern. For example, laws regarding contracting for engineering, architectural or design services require any local public agency to contract on the basis of demonstrated competence and qualifications at a fair and reasonable price resulting from negotiation. Numerous provisions are required to be included in construction contracts, including those relating to bonds, payment of prevailing wages, claims and dispute provisions, provisions relating to retention from payments to the contractor and provisions allowing the contractor to substitute securities for retention. Applicable requirements will be set forth in detail in the TCA's contract documents.

In the absence of specific legal restrictions on the procedures to be used by the TCA in contracting, it is the policy of the TCA to seek a maximum of competition in its contracting activities, where possible, consistent with:

- Timely completion of the TCA's program of tollway planning, design, construction and operation.
- Accountability to the public and bondholders.
- Maximum flexibility in most effectively accomplishing contract activities.

For contracts involving expenditure of funds by TCA, competition (but not necessarily competitive bidding where award is solely on the basis of the lowest responsive/responsible bidder meeting specifications) will generally provide the greatest objectivity in demonstrating that the funds have been wisely and legally expended. The complexity of the tollway systems to be constructed and operated do not always lend themselves to competitive bidding and will require the TCA to use contracting procedures which best permit the needs of the TCA to be met. These will generally include some element of competition, whether in the form of competitive bids, competitive proposals or competitive negotiation (that is, a procurement process that includes elements of competition but also involves negotiation with one or more potential contractors), and also includes, in limited special circumstances, negotiation with limited sources, or even a sole source.

Similarly, the benefits of complex and sophisticated procurement methods appropriate for highly technical products, or system procurements, may not be realized on contracts of small monetary amounts. The TCA's policy recognizes that reasonable contracting procedures, as set forth in this policy statement, may justify less formalized procurement steps.

Generally, when multiple bidders are available and willing to bid, and procurement needs can be stated in detail, with precision, or where services or products are standardized, or when the Mini-Brooks Act does not apply, competitive bidding in the form of an Invitation for Bid (IFB) will be used to procure these goods and services. Procurements where the product or service to be acquired cannot be stated with specificity, such as a consultant's report, will be procured using a Request For Proposal (RFP) process. The RFP process includes technical and price competition. The proposal best meeting the TCA's needs will be selected based on objective criteria set forth in the RFP and the proposed price.

The TCA has developed evaluation forms to accomplish the foregoing goals. Routine support services for the TCA, when contracted out, will generally be selected on the basis of competitive bidding, with the contract awarded to the lowest responsive and responsible bidder.

In developing the solicitation document, whether an IFB, RFP or a request for statement of qualifications, the CPD manager and the Originator will coordinate to identify the selection

process most consistent with the needs of the TCA, the Originator and the TCA’s contracting policy.

All contracting activities must be fully and properly documented to demonstrate compliance with the law, contract policy and the procedures of the TCA. Each ETM shall ensure that appropriate files are maintained for contracts for which his or her department is responsible. For contracts handled by CPD, the CPD manager will ensure that the procurement file is complete; including documentation of the basis for selecting the contracting procedure utilized in awarding the contract, prior to recommending a contract for signature by the individual responsible for and authorized to execute the contract, per PART I SECTION 8.0, DELEGATION OF AUTHORITY TO EXECUTE CONTRACTS FOR GOODS AND SERVICES.

SECTION 8.0 DELEGATION OF AUTHORITY TO EXECUTE CONTRACTS FOR GOODS AND SERVICES

The authority to execute contracts for goods or services and change orders and amendments to such contracts on behalf of the TCA shall be as follows:

<u>Threshold<sup>6</sup></u>	<u>Officer</u>
<b><u>With Board Approval (per Agency)</u></b>	
Less than \$250,000	Contract Administrator
Less than \$5,000,000	Manager, Contracts and Procurement
Less than \$25,000,000	ETM (responsible for budget)
\$25,000,000 or more	CEO
<b><u>Without Board Approval (per Agency)</u></b>	
\$25,000.00	CEO or his designee

The CEO’s authority of \$25,000 (per Agency) without Board approval is limited to:

- \$25,000 per Agency, per vendor with a unique scope of services,
- OR
- a cumulative total of \$25,000, per Agency of all related contracts with the same vendor when the scope is a continuation of an existing or previous commitment,

AND, if not competitively procured:

- a cumulative maximum of \$25,000 per Agency, per vendor, within a fiscal year.

The CEO also will have the authority to execute contracts, task orders, change orders and amendments to contracts and establish vendor accounts on behalf of the TCA, without specific

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<sup>6</sup> If the contract could reasonably be construed as the continuation of a previous agreement or commitment with the same vendor, or if multiple contracts with the same vendor are awarded during an overlapping timeframe, the dollar value of all related contracts shall be added together in determining which threshold applies.

Board approval, for goods or services that are included in the Board-approved annual budget and considered to be routine business expenses.

Routine business expenses include:

- The purchase of office supplies, tools, building repairs, fixed assets, including furniture and computers, vehicles, etc.,
- The lease of equipment, such as copiers,
- General services contracts such as janitorial, building or landscape maintenance and repair, vehicle and equipment maintenance or repair, printing, mailing, computer consulting agreements, software licenses, messenger services, catering, etc. and
- Professional and consulting services engaged to supplement or support staff in the continued effort to design, construct and operate the toll roads.

Such authorization will be restricted as follows:

- Service or lease terms, or extensions thereto will not exceed 12 consecutive months<sup>7</sup>,
- The projected total value of the contract, including all change orders and other amendments, will not exceed \$100,000 (per Agency) in a fiscal year and will not exceed \$300,000 (both Agencies combined) over the life of the contract,
- The value of the contract, change order or amendment will not require an amendment to the approved budget, and
- Suppliers of such goods and services will be reviewed routinely, not less than every three years, to ensure that prices remain competitive.

The CEO may delegate his authority to execute documents “Without Board Approval” to an ETM. The ETM may delegate the authority to authorize check requests and/or requisitions. All such delegations will be documented in writing, identifying the individual to whom the authority is delegated and any dollar restrictions or budget account restrictions associated therewith.

#### SECTION 9.0 DELEGATION OF AUTHORITY TO EXECUTE OTHER CONTRACTS

The CEO or his designee has authority to execute contracts on behalf of the TCA that are not primarily intended to cover delivery of goods and services (including customer agreements, permits, applications for permits, memoranda of understanding and settlement agreements). This authority is subject to the requirement to obtain Board approval for any such contracts involving values greater than \$25,000 (per Agency) as well as the requirement to obtain Board approval of certain contracts as required by the Administrative Code, this Manual or other Board policies. The Toll Operations Department ETM or his designee has authority to execute routine contracts with customers, without separate Board approval.

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<sup>7</sup> Vendor accounts may be considered to involve ordinary business expenses even if they have no specific term limits, however, they will conform to all other requirements.

SECTION 10.0 EMERGENCY AUTHORIZATION FOR CEO

The CEO is authorized to execute contracts, task orders, change orders and amendments to contracts for the repair or replacement of equipment or facilities owned by the TCA in the event of an emergency. If such an emergency should occur, the CEO shall attempt to contact the Chairman and Vice Chairman of the Board before executing such action and within 48 hours notify the full Board of the action taken by the CEO. If the CEO is absent at the time of the emergency, this authority shall be delegated to the Acting CEO.

SECTION 11.0 INDEMNIFICATION AGREEMENTS

The CEO or his designee is authorized to approve agreements in which the TCA agrees to indemnify and/or hold harmless the other party or parties from claims and liability resulting from the acts or omissions of the TCA arising out of the following agreements and permits: (i) right-of-entry agreements; (ii) environmental permits (e.g., Clean Water Act Section 404 dredge & fill permits; Fish and Game Code Section 1601/1603 agreements); (iii) encroachment permits; (iv) agreements necessary for the acquisition of right-of-way; and (v) any contract involving expenditures or revenues less than \$25,000 (per Agency) for which the CEO or his designee has evaluated the possible level of TCA exposure and found it to be acceptable.

In all other cases, Board approval is required for any agreement whereby the TCA agrees to indemnify or hold harmless any party to the agreement or any third party against or on account of, any claim, liability, or matter arising out of, or connected with the agreement. The staff report requesting authorization for such agreement shall state that the agreement at issue contains the standard indemnification provision typically included in TCA contracts, or that TCA counsel has approved any revisions to such provisions.

SECTION 12.0 APPROVAL AS TO FORM

The TCA's Administrative Code requires contracts to be approved as to form by general counsel for the TCA. The CPD manager will have discretion to determine that certain contracts for goods and services do not require approval by counsel (for example, contracts on vendor standard forms involving less than \$25,000 per Agency, routine business expenses or contracts that are substantially in a form previously approved by counsel).

## **PART II**    **PROCUREMENT PROCEDURES**

### **SECTION 1.0**    **GENERAL**

This Part II contains the procedures for the implementation of the policies established in Part I applicable to procurement of contracts for goods and services. These procedures are applicable to the contracting and procurement effort required in support of the planning, design, construction and operation of the SR 73, SR 133, SR 241 and SR 261 Toll Roads and internal staff functions performed by the TCA directly. These procedures will be updated periodically to conform to programs and forms utilized by the TCA. Any such updates will be subject to review and approval by the CEO.

Based on the policies and procedures identified in this manual, the department may under limited circumstances and with the approval of the appropriate ETM, procure the needed goods or services. It is the ETM's responsibility to ensure that the procurement is administered by CPD whenever required by these policy and procedure guidelines. In all cases, it is the responsibility of the Originator to ensure that appropriate procurement procedures are followed and documentation is maintained.

### **SECTION 2.0**    **ACQUISITION PLANNING**

#### **2.1**    **Needs Assessment/Identification**

Each department within the TCA will, based on an overall evaluation of the project development and known scheduled activities, determine its contracting and purchasing needs. Routinely, but not less than annually, each department will review and identify its anticipated procurement needs for the coming year.

#### **2.2**    **Acquisition Judgment/Decisions**

During the course of acquisition planning, certain decisions must be made in order to assure that all aspects of acquisitions are coordinated to provide all necessary inputs in a timely manner. Some of these basic decisions may include:

- Whether the acquisition should be accomplished by use of a particular type of contract or other form of commitment.
- Assessment of the budget for any possible constraints; i.e., project budget, annual budget or fiscal year time frame.
- Timing of the acquisition and any supporting activities, which allows adequate time for the procurement process, including bidding or proposal submission.
- The availability of technical data and a description of the work involved in the acquisition.

These basic decisions must be formulated and either incorporated into or given proper consideration in the development of the acquisition plan.

### **2.3 Assess Costs/Establish Budget**

If an acquisition is considered an engineering or construction contract, the preliminary engineer's cost estimate will be the basis for determining the estimated cost of each contract and any additional cost factors which may influence the overall acquisition cost. If an acquisition is not considered an engineering or construction contract, the Originator determines the estimated cost based on his specialized knowledge of the goods or services to be procured. An assessment of these costs and the budget will determine the preliminary estimate for each acquisition.

### **2.4 Schedule**

The timing of the start and completion of each acquisition as it may relate to the support of or by another acquisition is factored into a schedule. The complexity of the acquisition will be considered in determining the time allotted for solicitation and selection. The schedule shall be prepared by the Originator in conjunction with the CPD manager or his designee.

### **2.5 Scope of Work (Contracts)**

The scope of work is a detailed description of all elements of the work to be performed. The scope of work must be written with clarity and absent of ambiguities. The development of the scope of work will be based upon the best data available at the time of preparation. The scope of work shall be prepared by the Originator and shall include but not be limited to the following major elements:

- General description of the project
- Applicable standards/plans
- Specifications (performance/technical)
- Work performed by consultant/contractor
- Materials and/or data furnished by TCA
- Work performed by others
- Coordination requirements
- Schedule and milestones
- Administrative requirements

### **2.6 Description of Purchase (Purchase Orders)**

The description of purchase shall be prepared by the Originator and shall be in sufficient detail to clearly describe the goods or services to be purchased. When available and applicable, part numbers/model number or other identifiers shall be used, provided that at least two acceptable



examples shall be included, if possible, and the words "or equal" shall follow the description. When applicable, plans and/or specifications shall be included. In limited circumstances, the item to be purchased may be designated by specific brand or trade name without the "or equal" qualifier, in accordance with PART II SECTION 3.4.

SECTION 3.0     PROCUREMENT REQUEST, STRATEGY, CONTRACT TYPE AND SOURCE SELECTION

**3.1**     **Document Need/Justification**

The procurement request (see Exhibit 1), in the form of a memo or e-mail, is the document that originates a solicitation process, contract issuance or account establishment. The procurement request identifies and defines a specific requirement for goods or a service required by the TCA and justifies the need for the specific action requested.

**3.2**     **Preparation**

The Originator is responsible for completing the procurement request.

**3.3**     **Procurement Approval**

The Originator shall confirm budget availability and compliance with TCA policies, and then shall submit the procurement request to the appropriate ETM for approval. Upon approval, if deemed appropriate by the ETM, the procurement request is forwarded to the CPD to begin the solicitation process. If the procurement is to be performed by other than CPD, the procurement request will be forwarded to the appropriate personnel.

**3.4**     **Content**

The procurement request shall contain sufficient information to support the preparation of the solicitation or commitment documents. It shall include, to the extent possible:

- Justification of need
- Recommended procurement strategy
- Scope of work or description of purchase
- Required completion/delivery schedule
- Milestone dates
- Specification/special instructions
- Suggested proposers/bidders list or sole source/limited source justification
- Recommended type of pricing
- Estimated TCA expenditure
- Budget code(s)

Procurement requests shall identify any particular material, product, thing or service that the requester believes should be specified in the procurement documents by specific brand or trade name, and shall include information supporting such specification allowing a determination that it is in the public interest to procure a proprietary item and allowing findings to be made under Public Contract Code section 3400 (applicable to contracts involving the construction, alteration or repair of public works). Approval may also be required from funding agencies. The chief engineer or chief toll operations officer shall have authority to determine that it is in the public interest to procure a proprietary item and to make the findings under Public Contract Code section 3400(b). The procurement file shall include information justifying any such determination and findings.

### **3.5 Procurement Strategy**

CPD shall verify the requirements and other data provided in the procurement request for completeness and accuracy. When verified, CPD shall develop a procurement strategy plan with recommendations from the Originator. Factors to be considered in developing a plan should include:

- Type of commitment (i.e. services contract, purchase order, account, lease, etc.)
- Size of contract (e.g., monetary value and volume of work)
- Limited bidders list/open competition/sole source
- Pricing of contract (e.g. firm fixed price, unit price, cost reimbursable)
- Type of scope (e.g. construction, professional services, other services, purchase, etc.)
- Frequency of needs (e.g. periodic purchases, emergency service calls, fixed timeframe)
- Specificity and/or variability of the scope
- Time constraint for solicitation process

For contracts involving an estimated expenditure of \$50,000 or less per Agency, a simplified procurement process may be used. For all such contracts, at least three quotes will be sought and obtained by facsimile, e-mail or phone. Written confirmation shall be obtained from each contractor/vendor submitting a quote by phone

### **3.6 Contract Type**

CPD will review the scope of work in conjunction with the procurement request to determine the type of commitment (e.g., services contract, purchase order, account, lease, etc.) and pricing (e.g., firm fixed price, unit price, cost reimbursable, or a combination of the three) that is best suited for the acquisition. This selection depends on several factors including:

- Clarity and completeness of scope of work
- Completeness of design
- Availability of material

- Availability of cost estimate
- Risk allocation
- Peculiarities of the services required
- Financing availability
- Frequency for need

### **3.7 Recommended Source**

CPD will review the procurement request and (a) review and approve the sources recommended by the Originator, (b) help identify other qualified suppliers, consultants, or contractors qualified to provide the goods and/or services, if required, (see PART II SECTION 5.0 for qualification and selection process), or (c) review and approve the sole source/limited source justification.

## **SECTION 4.0 ACCOUNTS AND OPEN PURCHASE ORDERS**

### **4.1 Vendor Determination**

In some instances, the establishment of an account or open purchase order, in lieu of multiple minor purchases, may be the most effective and efficient method to obtain certain goods or services for the TCA. An Originator will identify the recommended source and provide justification for establishment of an account. The Originator will identify whether the Account will require issuance of a written Purchase Order, an oral Purchase Order, or a credit application.

### **4.2 Document Preparation**

Upon request, CPD will prepare a Purchase Order, if needed, and requisition, for the anticipated funding needed in the current or affected fiscal year. Documents will be circulated for approval per PART III SECTION 2.0 to this manual.

For establishment of an account, enabling appropriate staff to obtain certain products such as hardware supplies and catered meals and avoiding the need for petty cash or expense account reimbursements, a credit application may be required. No commitments are made to specific vendors of minimum purchase values within a specified timeframe. CPD may assist in obtaining and submitting the necessary documents to the vendor upon approval by an ETM.

### **4.3 Account/Open Purchase Order Establishment**

Upon execution of a Purchase Order or acceptance by a vendor of the credit application, CPD will notify the Originator, appropriate staff and Finance of the account.

#### **4.4 Account /Open Purchase Order Management**

Accounts and Open Purchase Orders will be managed by the affected Department<sup>8</sup>. Invoices are received by Finance and submitted to the Originator for review and approval. The Originator is responsible to reconcile all receipts to the invoice and submit such to Finance for payment.

### **SECTION 5.0 PRE-QUALIFICATION/SHORTLISTING OF PROPOSERS/BIDDERS**

#### **5.1 Qualification of Sources**

TCA may implement a general pre-qualification process for potential contractors, or may undertake to pre-qualify or shortlist firms for specific procurements.

#### **5.2 Statement of Qualification**

A Statement of Qualification (SOQ) and performance data may be solicited from firms for purposes of pre-qualifying or short listing firms interested in submitting offers or bids for goods and/or services required by TCA.

##### **5.2.1 Notice of Intent (NOI) to Solicit SOQs**

###### **a. Preparation**

CPD may prepare a NOI to solicit Statements of Qualifications from interested firms. The notice shall give a brief description of the proposed work and instruct the interested firms to submit a letter of interest to the TCA.

###### **b. Announcement**

At CPD's option, the NOI may be published in one or more print publications or on-line services. In addition, the NOI may be listed on the TCA website.

##### **5.2.2 Request for Statement of Qualification (RFSOQ)**

###### **a. Preparation and Release**

CPD, with input from the appropriate TCA staff, shall prepare and issue a RFSOQ package to all firms responding to the NOI. CPD shall maintain an RFSOQ log showing the names, addresses and telephone numbers of firms issued RFSOQs and the date issued. In cases where the NOI has not been advertised, the package shall be issued to firms selected by CPD in conjunction with the Originator.

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<sup>8</sup> The affected Department is the one whose budget supports the expenses.

**b. Receipt and Review**

All responses to the RFSOQ shall be received and logged by CPD. CPD shall review the responses for completeness using the SOQ/Responsiveness Checklist and forward all complete responses to a review committee for evaluation. The review committee shall include the appropriate disciplines necessary to evaluate the technical qualifications of submitting firms. Each member of the committee shall independently evaluate the SOQs on a separate form using a common evaluation methodology. If the RFSOQ contemplates short listing, the committee will provide rankings for the SOQs.

**c. Notification of Deficiencies (General Pre-Qualification)**

If the RFSOQ is intended to result in a general list of pre-qualified firms for future procurements, the review committee shall advise CPD of any firms not meeting the minimum requirements. CPD shall notify those firms of their deficiencies and what actions, if any, must be taken in order to become pre-qualified.

**d. Notification of Deficiencies (Specific Procurements)**

If the RFSOQ is intended to result in a list of pre-qualified firms or a shortlist for a specified procurement or group of specific procurements, the review committee shall advise CPD of any deficiencies in the submittals. CPD shall take action in accordance with the RFSOQ, which may include requesting additional information or clarification from the firm. CPD shall forward any additional information or clarifications submitted to the evaluation committee to be factored into the evaluation process.

**e. Prequalification List or Shortlist**

For RFSOQs that are intended to result in a list of pre-qualified firms, following receipt of evaluation results from the review committee, CPD shall prepare a list consisting of all firms which have been determined to meet the minimum requirements. For RFSOQs that are intended to result in a shortlist of firms eligible to participate in specific procurements, following receipt of evaluation results and rankings from the review committee, CPD shall prepare the shortlist. Each firm that submitted an SOQ will be advised whether it is on the list. CPD shall maintain copies of submittals in accordance with TCA's records retention policy.

**5.2.3 Debriefings**

The RFSOQ may offer firms the opportunity for a debriefing following issuance of a list of pre-qualified firms or shortlist. In such event, upon request CPD, with key members of the evaluating committee, will debrief firms that were not included in the list. Firms will be advised regarding significant deficiencies and weaknesses in their submittals, and provided with reasonable responses to relevant questions about whether the TCA followed applicable laws, regulations and solicitation requirements.

## SECTION 6.0 SOLICITATION

### **6.1 Public Contract Types**

Public agencies may enter into a variety of different types of contracts. How a contract is characterized may determine the appropriate procurement process to be used under agency policy, regulations, or law. The principal types of contracts are purchases, general services, consulting services, professional services and public works contracts. Task orders do not fall within a separate category of contract, but rather may be issued for activities under master contracts for any of the service categories below.

- a. Purchases usually involve the acquisition of goods or products, whether by contract or account.
- b. General Service Contracts, generally involve routine activities, such as window washing, messenger service, landscape maintenance, etc.
- c. Consulting Services Contracts are unique in that the object of the contract is the solution of a problem and the deliverable under the contract is generally a contract report setting forth that solution or the advice of the consultant.
- d. Professional Services Contracts include services such as design, engineering and architectural, legal services and similar other personnel activities other than those performed by TCA's employees.
- e. Public Works Contracts are contracts for the construction, alteration, modification, repair or improvement of physical structures or to the real property of the TCAs. The purchase of equipment to be installed in buildings or on the property of the TCAs can be considered a public works contract if the installation cost is a substantial portion of the total contract price. For purposes of the Labor Code prevailing wage requirements, installation work is considered public works, and a maintenance contract may be considered public works.

### **6.2 Selection of Appropriate Procurement Process**

The procurement process (competitive bid, competitive proposals or qualifications-based selection) is dependent on the type of contract being considered. Competitive bid procurements are generally required for all well-defined contract work where the bidder has little or no discretion in the work to be performed. Construction contracts, purchase orders or routine services, i.e., non-consulting, non-professional services are examples. Competitive proposals are generally used for specialized purchases, or for contracts dealing with consulting or professional services where pricing is only one of several selection factors. Design, Engineering and Architectural including Soils Engineering and testing contracts are subject to selection based on

experience and qualification, followed by a negotiation of price (see PART II SECTION 9 for specific procedures). Design-build contracts may be procured through competitive proposals or bids, at the option of the TCA.

A "two-step" procurement process may occur in cases where contractors/vendors are evaluated for compliance with the TCA's requirements for qualifications as a first step which is followed by a process in which either (1) sealed bids are submitted and selection is based on the lowest price of those qualified bidders or (2) proposals are submitted and selection is based on the quantitative and/or qualitative evaluation of proposals or the result of negotiations with one or more of the proposers. This is a contracting procedure which can be utilized for some types of general services, professional and consulting services and complex procurements. In those procurements, the description of the end product to be provided to the TCA usually cannot be reduced to detailed specifications. An example of the latter is electronic data processing or telecommunications systems. This process may be used for the selection of a single contractor/vendor or be applied in the award of master contracts, where multiple contracts may be established with qualified contractors/vendors for "on-call" services. Work under such contracts is generally assigned by Task Order issued to the selected firm, either after a competitive bid or competitive proposal process. If the master contract is for consulting or professional services, a task order may be issued to the selected service provider based on a negotiated price.

### **6.3 Sole Source/Limited Source Procurement**

In cases where sole source/limited source procurement is requested, a justification for the sole source or limited source procurement shall be submitted as part of the procurement request. The decision to award a contract without competition will be reviewed by CPD and is subject to approval of the appropriate ETM, based on the following criteria:

- a. In the case of emergency where a contract is necessary for the immediate preservation of the public health, welfare, or safety or protection of TCA property;
- b. There is only a single source of supply available, or only one contractor is qualified to provide the service or product;
- c. 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;
- d. When the goods or services can only be provided by a government or other public entity;
- e. Low cost items where competitive bidding or other complex procurement method is not justified;
- f. The contract is one for which only per diem and travel expenses are paid and there is no payment for services rendered; or

g. When the award of a contract pursuant to competitive procedures identified in this Manual is infeasible, would not produce an advantage, or would not be in the best interest of the TCA and the public.

Sole source or limited source awards shall be requested by the Originator, authorized by the appropriate ETM and reviewed by the CPD manager, prior to initiating the solicitation process. In cases of an unresolved disagreement between the CPD manager and the ETM, the decision will be elevated to the CEO.

#### **6.4 Establish Proposers/Bidders List**

The Originator or SOQ review committee shall, with the CPD manager, or his designee, identify the potential market for the contract, with the goal of identifying at least three qualified firms that appear likely to submit bids or proposals. In addition, the RFP/IFB may be listed on the TCA website.

In determining sources to solicit, staff 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 in a manner reasonably likely to attract bidders or proposers.

#### **6.5 In-House Engineering Cost and Schedule Estimate for Engineering/Construction Contracts**

A confidential in-house engineering cost and schedule estimate shall be prepared for each major engineering or construction contract (including design-build contracts). The estimate shall be reviewed by the appropriate corridor manager and forwarded to the director, design & construction or chief engineer or by the Originator and forwarded to the ETM for further review and approval. The chief engineer or other ETM will then forward a copy of the approved estimate to CPD for the file. No bids or price proposals shall be opened prior to the review and approval of the in-house engineering cost and schedule estimate.

#### **6.6 Preparation and Issuance of RFP/IFB Packages**

##### **6.6.1 Preparation**

CPD shall, in close cooperation with appropriate TCA staff, develop the RFP/IFB package. The Originator shall be responsible for the preparation of the scope of work, including the specifications, drawings, exhibits and other documents that will explain or clarify the work to be performed. The Originator shall ensure that any changes impacting the scope of work that occur during the RFP/IFB package development are incorporated in the scope of work. CPD is responsible for coordinating the balance of the package. All communications with potential suppliers/contractors shall be conducted in a manner



consistent with the section entitled “Relationship with Contractors” in Appendix F to the Agency Administrative Code, Code of Conduct.

### **6.6.2 Issuance**

CPD shall release the RFP/IFB package to the firms identified by the Originator (or review committee) and arrange for a pre-proposal/pre-bid conference as appropriate. In the case of construction contracts, packages will be released to all contractors who respond to the Public Notice and pay the stipulated document fee, if required. All payments by contractors for the purchase of the RFP/IFB packages are to be submitted to the TCA Accounting Department daily.

### **6.7 Schedule**

CPD shall coordinate the preparation of a procurement schedule based upon the Originator’s Acquisition Schedule (see PART II SECTION 2.4) and with the input from the Originator and appropriate TCA staff. The schedule shall identify key milestone activities, such as:

- Estimated time for preparing RFP/IFB documents
- Proposed date for issuing the RFP/IFB documents
- Final date for solicitation protests
- Proposal/bid closing date and time
- Estimated period for negotiations
- Proposed contract award date
- Final date for protest of award
- Anticipated date for notice to proceed
- Proposed project completion date

### **6.8 Proposers/Bidders File**

CPD shall maintain a proposers/bidders file. The file shall include the entire proposal/bid package with addenda and a list of all firms receiving the package, including the names, addresses and telephone numbers of the firms, the dates the package and subsequent addenda were issued and other information relating to communications with each firm.

### **6.9 Solicitation Protest**

A protest to the terms of the solicitation documents may be filed only after the protester has informally discussed the nature and basis of the protest with the CPD manager or his designee in an effort to remove the grounds for protest.

A solicitation protest notice must be submitted in writing to the CPD manager, prior to the bid opening, best and final offer opening date, or such earlier protest deadline date as may be specified in the RFP/IFB, and shall state the grounds of the protest. A solicitation protest shall not be considered after this time unless the grounds for protest were not and could not have been known to the protester prior to the final date for solicitation protests. Additional requirements relating to protests may be included in the RFP/IFB.

A detailed solicitation protest, with a detailed statement of the grounds, legal authority and facts, including all documents and evidentiary statements in support of the protest, shall be filed with the CPD manager within 7 calendar days of the filing of the solicitation protest notice.

Evidentiary statements, if any, shall be submitted under penalty of perjury. The protester shall have the burden of proving its protest.

Other potential proposers/bidders may file a statement in support of or in opposition to the protest within 7 calendar days of the filing of the detailed solicitation protest. Any evidentiary statements shall be submitted under penalty of perjury.

The CPD manager shall prepare a response to the detailed solicitation protest and shall submit it, the protest and any support or opposition from other potential bidders to the CEO of TCA within 14 calendar days of the filing of the detailed solicitation protest. The response shall set forth all legal authority and facts, including declarations and document, in support of TCA's position.

The CEO shall issue a written protest decision within 14 calendar days of the receipt of CPD's response to the protest. Unless otherwise required by law, no evidentiary hearing or oral argument shall be provided, except at the sole discretion of the CEO, a hearing or argument may be permitted if necessary to obtain a full and fair understanding of any aspect of the protest or for protection of the public interest or an express, legally recognized interest of a potential proposer/bidder.

If the CEO concludes that the protester has established proof of the basis of its protest, TCA may withdraw the RFP/IFB and take any other appropriate actions, including issuance of a new RFP/IFB.

If a solicitation protest is filed, the solicitation process may, at the sole discretion of the TCA, continue while the protest is being decided or until it is withdrawn. If the TCA determines, at its sole discretion that the protest is so lacking in merit that the protester is unlikely to succeed in the protest, TCA may reject the protest. Such determination shall be in writing and shall state the facts on which it is based.

Additional requirements relating to protest may be included in the RFP/IFB.

SECTION 7.0 PRE-PROPOSAL/PRE-BID CONFERENCE

**7.1 Purpose**

A pre-proposal/pre-bid conference may be held when contracts are complex in nature, high in dollar value or where schedule is critical. The main purpose of the conference is to assure submission of proposals/bids that are accurate and conducive to review and competitive proposal/bid analysis and to maximize the responsiveness and acceptability of proposals/bids with a minimum risk of protests or inequality in the opportunity to compete. The goal is to clarify complex proposal/bid requests, remove ambiguities and give all firms an opportunity to present their questions. CPD, in consultation with the Originator and appropriate TCA staff, shall use discretion as to whether or not mandatory attendance at the conference is required. CPD shall coordinate the conference with the Originator. The conference shall be scheduled approximately one or two weeks after the issuance of the RFP/IFB Package.

**7.2 Conference Agenda**

CPD shall prepare a conference agenda and distribute the agenda to all those invited to the conference prior to the conference date. The following is a sample agenda:

**Opening**

- a. Attendance Record
- b. Introduction of attendees

**Proceedings**

- a. Organization structure
- b. General description of the project
- c. Specific description of the scope of work
- d. Selection Process
  1. Policy matters
  2. Proposals/bids
  3. Oral interviews
  4. Instructions on DBE if applicable
- e. General Discussion
  1. Questions and answers

**Closing**

- a. Review of methods for submitting proposals/bids and proposal/bid opening dates
- b. Review procedure of handling further questions during the proposal/bid cycle with emphasis that only written responses will be binding
- c. Adjournment

### **7.3 Conference Minutes**

Any questions provided at the conference, or as a result of the conference, shall be documented in conference minutes and clarifications/answers issued as an addendum to the RFP/IFB. In addition, CPD shall prepare and distribute copies of the minutes to all other parties attending the conference.

## **SECTION 8.0 ADDENDUM TO RFP/IFBs**

### **8.1 Purpose**

The addendum provides a uniform method of informing all proposers/bidders of additions, deletions, clarifications, revisions or deviations to the RFP/IFB package which may affect the timing or basis of the proposals/bids.

### **8.2 Distribution**

CPD will coordinate input from contributing sources and ensure that the addendum is issued to, received and acknowledged by the proposer/bidder.

## **SECTION 9.0 PROPOSAL/BID EVALUATION**

### **9.1 Receipt of Proposals/Bids**

CPD shall receive and log in all proposals/bids. The time and date of receipt, along with the signature of the individual receiving the package, shall be placed on each package.

### **9.2 Confidentiality of Proposals/Bids; Review of Conflicts**

All proposals/bids shall be kept sealed and in a secure place until the scheduled date and time of opening. The evaluation of proposals/bids shall be carried out, independently, in strict confidence by each member of the evaluating team. Each member of the evaluation team shall be required to sign a confidentiality agreement and to disclose any financial interest or other potential conflicts that he or she may have relating to the proposer/bidder and its team. The CPD manager, or designated representative, shall be responsible for reviewing the disclosures and determining whether the individual should be allowed to participate in the evaluation.

### **9.3 Public Opening of Bids (Certain Construction Contracts)**

If so indicated in the IFB, bids will be opened and read publicly at the time and place identified. Bidders or their authorized agents are invited to be present. All bids will be recorded on the bid opening summary form. The information recorded on the forms includes the names of the

bidders, bid amount, type of security enclosed (cash, cashier's check, certified check, or bid bond) and the amount of security.

#### **9.4 Initial Responsiveness Review**

CPD shall initially review all proposals/bids, utilizing a checklist, to determine the responsiveness to the RFP/IFB. All submittals that have been determined non-responsive shall be so noted. Responsiveness means that the proposal/bid fully complies with all significant requirements of the solicitation. Failure to attend any mandatory pre-bid conference may also result in a determination of non-responsiveness. A proposal/bid that is materially non-responsive must be rejected.

Before rejecting a proposal/bid for non-responsiveness, the recommendation may be reviewed by legal counsel, at the discretion of the CPD manager. CPD shall advise those firms that their submittals have been determined to be non-responsive, and will not be included in the final review process.

Clarification may be sought from the proposer/bidder with respect to minor irregularities that do not impact the core qualifications or price of the proposal/bid. The CPD manager may consult with legal counsel in determining whether a clarification is permissible.

#### **9.5 Evaluation**

##### **9.5.1 Proposals (Negotiated Contracts)**

###### **a. Technical Review**

Each member of the technical evaluation committee shall independently evaluate and rank the technical proposal on a separate form using a common evaluation methodology. Criteria used as the basis for evaluation and ranking should be identified in the RFP and may include such factors as 1) professional excellence, demonstrated competence and specialized experience of the firm; 2) staffing capability, workload and ability to meet schedules; 3) education and experience of key personnel; 4) nature and quality of completed work for other clients; 5) reliability and continuity of the firm; 6) work plan/methodology; 7) company management and commitment to the project; and 8) other factors deemed relevant to the contract effort.

###### **b. Oral Interview**

CPD may arrange for an oral interview with firms submitting a technical proposal. The number of firms to be interviewed will vary based on the terms of the RFP. In some cases all firms may be interviewed, and in others the interviews may be limited to firms shortlisted by the evaluation committee. The oral interviews shall be conducted by the evaluation committee as necessary. Each member of the committee shall independently evaluate the oral interview on a separate form using a common evaluation methodology. If

all firms are interviewed, the interviews may be considered as part of the overall evaluation instead of using separate evaluation forms.

### **9.5.2 Bids**

#### **a. Technical Review**

The bid documents shall be reviewed by the Originator and/or other TCA department representatives, whichever is appropriate, to ensure that the bids are complete and in compliance with the IFB. The completed review shall be submitted to CPD.

#### **b. Commercial Review**

The commercial portion of the bid documents shall be analyzed and reviewed by CPD with support from Finance as necessary. The results of the review are to be included with the technical review in the bid analysis summary.

#### **c. Other Review**

Any other portions of the bid documents shall be analyzed as determined by CPD.

#### **d. Proposal/Bid Clarification Meeting**

A bid clarification meeting may be held with proposer/bidder if there is doubt as to the intent of the pricing data, technical data, or other pertinent factors of the proposal/bid for which clarification is appropriate as determined by the CPD manager. The meeting is chaired by CPD and attended by those lead personnel involved in the project. Attendees shall adhere to the established topics for discussion.

### **9.6 Ranking of Firms**

The CPD manager or his designee, with input from the evaluation committee, shall be responsible for the preparation of information summarizing the selection proceedings, including a summary of the evaluation forms and a ranking of the firms. If Board authorization is required for the execution of the contract, the information will be submitted by CPD to the appropriate TCA department representative for inclusion in a staff report to the Committee and Board, requesting authorization to award.

### **9.7 Debriefing of Proposers**

CPD, with key members of the evaluating committee, may debrief proposers at their request. Firms will be given a summary of the rationale for award, advised regarding significant deficiencies and weaknesses in their offers, and provided with overall rankings and reasonable responses to relevant questions about whether the TCA followed applicable laws, regulations and solicitation requirements.

## SECTION 10.0 NEGOTIATION/ACCEPTANCE

### **10.1 Established Negotiation Plan**

Prior to any negotiations, a negotiation team and team leader will be identified by the appropriate ETM. The team will develop a negotiation plan, identifying the objectives to be achieved. With respect to negotiations based on submitted proposals, the proposal must be reviewed and analyzed in detail by CPD and appropriate other staff and consultants to verify all cost data submitted and to assure that all proposal guidelines have been followed. In addition, if appropriate, a detailed analysis will be made of the estimated working hours to be expended for each category of work to reveal the level of understanding of the scope of work. From these analyses and reviews, a listing of objectives to be accomplished during the negotiations will evolve.

For engineering/construction contracts, the in-house engineering cost and schedule estimate (see PART II SECTION 6.5) based upon the scope of work is critical to the evaluation of proposals or bids for the work. This estimate must be completed and sealed before any review of proposals for the work can be opened and reviewed. It is important to remember that this estimate is based upon the best information available at the time, but is primarily a "benchmark" for comparison, and as such, its various elements shall be used as a basis for establishing guidelines in the negotiation. During proposal reviews/evaluations, additional information, or a different approach to the work may be presented which would cause consideration of adjustments to the in-house engineering cost and schedule estimate.

### **10.2 Negotiation Meetings**

Negotiations on a complex proposal may involve multiple meetings in order to address all the issues before agreement can be attained. Normally, the beginning session will address the scope of work and the distribution of working hours to support the work before considering financial and contractual matters.

### **10.3 Negotiation Documentation (Record of Negotiations)**

A record of each negotiation meeting shall be maintained. It is important to obtain sufficient notes of the proceedings to document all the issues discussed and the individual agreements reached. Verbatim minutes of the meeting are not necessary. At the lead negotiator's option, the meeting notes shall be prepared by CPD and circulated to all parties for their review and comment. Upon completion of the negotiations, the record of negotiations shall be properly bound together and maintained in the contract files.

### **10.4 Purchases by County of Orange**

In accordance with Section 5.4 of the Administrative Code, the CEO may authorize use of the Purchasing Agent of the County of Orange to purchase personal property for TCA.

## **PART III    REQUIRED APPROVALS; EXECUTION AND ADMINISTRATION OF CONTRACTS**

### **SECTION 1.0    GENERAL**

This Part III contains the procedures for the implementation of the policies established in Part I applicable to the approval, execution and administration of contracts. These procedures are applicable to the contracting and procurement effort required in support of the planning, design, construction and operation of the SR 73, SR 133, SR 241 and SR 261 Toll Roads and internal staff functions performed by the TCA directly. These procedures will be updated periodically to conform to programs and forms utilized by the TCA. Any such updates will be subject to review and approval by the CEO.

Based on the policies and procedures identified in this manual, the department may under limited circumstances and with the approval of the appropriate ETM, procure the needed goods or services. It is the ETM's responsibility to ensure that the procurement is administered by CPD whenever required by these policy and procedure guidelines. In all cases, it is the responsibility of the Originator to ensure that appropriate procurement procedures are followed and documentation is maintained.

### **SECTION 2.0    APPROVALS**

#### **2.1    Contracts Requiring Board Authorization**

For all contracts that require Board approval per these Policies, the Originator shall prepare the staff report to the executive team for review and approval. If the CEO determines that review by the Operations & Finance Committee is required, then upon approval, the appropriate department shall submit the board report to the Operations & Finance Committee as required for review and subsequent submittal to the Board for approval. If the CEO determines that review by the Operations & Finance Committee is not required, then upon approval by the executive team, the appropriate department shall submit the board report directly to the Board for review and approval.

Reports to the Board for award of contracts for the purchase of goods or services will include a procurement summary report. The procurement summary report will include the type of procurement, award criteria, and price, bid results or proposer rankings or ratings.



## **2.2 Contracts Under CEO Authorization**

Contracts (including documents committing TCA even though not labeled as a “contract”) involving \$25,000 or less (per Agency), or for routine business expenses, as further defined in PART I SECTION 8.0 to this manual, and for which funds are included in the TCA approved annual budget can be approved at the discretion of the CEO, or his designee, without further Board action. If the contract could reasonably be construed as the continuation of a previous agreement or commitment with the same vendor, or if multiple contracts with the same vendor are awarded during an overlapping timeframe, the dollar value of all related contracts shall be added together in determining whether the contract must be submitted for Board approval. If both Agencies are party to the same contract, expenditures under the contract will be allocated to each Agency and a determination made whether the contract exceeds the Board approval threshold for either or both of the Agencies.

CPD will provide a report to the Board quarterly, identifying all requisitions approved in the prior quarter. The report will identify the contractor/vendor name, a short description, value and expiration of the commitment.

## **2.3 Authority to Execute**

Authority to execute contracts or other commitment documents is detailed in PART I SECTIONS 8.0 and 9.0 to this Manual.

### **SECTION 3.0 BOARD APPROVAL PROCESS**

#### **3.1 Board Committees**

If the CEO determines that review by one or more Committee(s) of the Board is required, then the appropriate department shall submit board reports or memoranda to the appropriate Committee(s) for review with subsequent submittal to the Board. The Committee(s) will review the report or memorandum, add their comments, and forward their recommendations to the Board for approval. Board agenda items are generally expected to be mailed to the Board members one week prior to the Board meeting date through the TCA clerk of the Board. If the CEO determines that no Committee review is required, then upon approval by the executive team, the appropriate department shall submit the board report directly to the Board for review and approval.

#### **3.2 Board Approval**

The Board may approve the recommendation to award, may, after consideration, direct certain specific actions, or may provide adjustments to the recommendations. The Board may also approve a contingency level of additions to contracts for goods and services, executable without further Board action. The following provides a guideline of contingency amounts to be requested by staff.

Contract Contingency Request Guideline

For Construction and Professional Services		
With Contract Term of:	<b>Total Expenditure Below \$500,000</b>	<b>Total Expenditure of \$500,000 or More</b>
Less than 12 months	10%	5%
Greater than 12 months	5%	5%
For Operations and General Support Services		
With Contract Term of:	<b>Total Expenditure Below \$500,000</b>	<b>Total Expenditure of \$500,000 or More</b>
Less than 12 months	10%	5%
Greater than 12 months	-0-	-0-

After approval, the Board action is recorded in the minutes of the meeting and CPD disseminates the documents for execution by both parties.

SECTION 4.0 CONTRACT PREPARATION AND AWARD

**4.1 Preparation of Contract Documents**

For procurements of goods and services CPD, with input from the Originator and others as appropriate, shall be responsible for the preparation of the final contract documents. Where specifications, drawings and technical provisions are required they shall be prepared by the Originator or other designated department representative and submitted to CPD for inclusion into the final contract documents. CPD shall be responsible for preparing the balance of the contract documents with input from the technical staff on terms and conditions.

The Originator and other staff, as appropriate, along with the appropriate ETM or his designee shall review and approve the completed contract and requisition prior to transmitting to the contractor for signature.

For contracts that are not primarily intended to cover delivery of goods and services (including customer agreements, permits, applications for permits, memoranda of understanding, intergovernmental agreements and settlement agreements) the responsible department shall either prepare the contract terms or review terms developed by the other party(ies).

It is mandatory that all agreements, oral or otherwise, be formalized and incorporated in the appropriate part of the contract documents prior to execution by any party.

**4.2 Notice of Intent to Award (NOIA) (Contracts for Goods and Services)**

For contracts for goods and services, CPD shall prepare a memo that shall constitute the notice of intent to award (NOIA). The NOIA shall contain language stating that TCA is

recommending the Board approve the award of the contract at their next meeting. The NOIA shall also be transmitted via facsimile or e-mail to all proposers/bidders no later than the day the Board agenda item is published. The 7 calendar day protest period shall commence on the day the NOIA/Board agenda item is published. However, the contract may be awarded prior to the expiration of the protest period.

In the event there is not sufficient time between bid opening and the next Board meeting to publish a NOIA, all proposers/bidders will be notified via facsimile or e-mail of the Board award on the date of the Board meeting. The date of the notice of Board action awarding the contract will constitute the beginning of the 7 calendar day protest period.

After approval by the Board and with the approval of the appropriate ETM the contractor shall be issued a notice of award.

If no Board authorization is required, CPD shall post the NOIA and transmit copies to all proposers/bidders via facsimile or e-mail. The contract will not be fully executed until expiration of the 7 calendar day protest period unless specifically approved by the appropriate ETM.

#### **4.3 Funding Approval**

The contract administrator will prepare a requisition based on the information provided by the Originator. The requisition and the appropriate procurement documents (RFSOQ, RFP, IFB, services contract, purchase order, amendment, account establishment documents, etc.) will be circulated for review and approval to the following individuals: the Originator; ETM or designee; manager, budget and planning; assistant controller (accounting); CEO, if required; and the CPD manager.

#### **4.4 Execution of Contracts (for Goods and Services)**

##### **4.4.1 Contracts Requiring Board Authorization**

Upon approval by the Board of the award of a contract, and with the approval of the CEO, or his designee, the contract may be issued to the contractor/vendor for signature.

##### **a. Purchase Orders**

The CEO or authorized staff member may execute purchase orders prior to transmittal to the vendor.

##### **b. Other Contracts for Goods and Services**

The CEO or authorized staff member will execute the contract only after the contract has been signed by the contractor and reviewed by CPD upon return to the TCA. Further, TCA, when possible, shall not execute the contract until the NOIA has been

posted for a minimum of 7 calendar days as discussed in 4.2 above. CPD shall return a fully executed original to the contractor.

#### **4.4.2 Contracts Under CEO Authorization**

The execution of certain contracts per PART I SECTION 8.0 of this manual does not require Board approval unless the TCA is indemnifying a contractor or vendor or if other peculiar conditions are present in the documents which modify the TCA's basic philosophy of procurement/acquisition.

##### **a. Contracts**

Except for Purchase Orders, the CEO or his designee will execute such a contract only after the contract has been signed by the contractor/vendor, returned to the TCA and reviewed by CPD. At the discretion of the CEO or his designee, the CPD manager may execute such contracts, but only with written or electronic authorization by the CEO or his designee of the document.

##### **b. Purchase Orders**

The CEO or his designee may execute purchase orders prior to transmittal to the vendor. At the discretion of the CEO or his designee, the CPD manager may execute such contracts, but only with written or electronic authorization by the CEO or his designee of the document.

##### **c. Accounts/Open Purchase Orders**

The CPD manager or his designee will establish accounts with vendors, upon written authorization from the appropriate ETM.

#### **4.5 Distribution**

CPD shall distribute one fully executed contract to the other party(ies) to the contract, retaining one original for the TCA files. A copy of the executed document will be provided to TCA document control and an electronic version will be made available to TCA staff for reference purposes.

#### **4.6 Notice to Proceed**

Should a contract require issuance of one or more notices to proceed, CPD shall prepare the notice, obtain appropriate signature(s), transmit to the contractor, and make appropriate internal distribution.

#### **4.7 Protest of Award (Contracts for Goods and Services)**

A notice of protest of the award of a contract must be filed with the TCA within 7

calendar days after the posting of NOIA by CPD, or, if no NOIA is posted, within 7 calendar days of award of the contract by the TCA. The protester shall concurrently file a copy of the notice of protest with the intended recipient of the award. The notice of protest shall state the grounds of the protest.

A detailed statement of protest with a detailed statement of the grounds, legal authority and facts, including all documents and evidentiary statements in support of the protest, shall be filed with the CPD manager within 14 calendar days of the notice of protest.

Evidentiary statements, if any, shall be submitted under penalty of perjury. The protester shall have the burden of proving its protest.

Other bidders may file a statement in support of or in opposition to the protest within 7 calendar days of the filing of the detailed statement of protest. Any evidentiary statements shall be submitted under penalty of perjury.

The CPD manager shall prepare a response to the award protest and shall submit it, the protest and any support or opposition from other bidders to the CEO within 14 calendar days of the filing of the detailed statement of protest. The response shall set forth all legal authority and facts, including declarations and documents, in support of TCA's position.

The CEO shall issue a written protest decision within 30 calendar days of the receipt of CPD's response to the protest. Unless otherwise required by law, no evidentiary hearing or oral argument shall be provided, except at the sole discretion of the CEO a hearing or argument may be permitted if necessary to obtain a full and fair understanding of any aspect of the protest or for protection of the public interest or an express, legally recognized interest of a bidder.

If the CEO concludes that the protester has established proof of the basis of its protest, TCA may withdraw the NOIA and/or the award and take any other appropriate actions, including issuing a new NOIA.

If a notice of protest is filed, no new award of the contract will thereafter be made until the protest is withdrawn or decided; except the contract may be awarded if the TCA determines, at its sole discretion, that the public interest would benefit from proceeding with the award prior to a decision or if the TCA determines, at its sole discretion, that the protest is so lacking in merit that the protester is unlikely to succeed in the protest, TCA may reject the protest. Such determination shall be in writing and shall state the facts on which it is based. The TCA may then proceed with the award process.

Additional requirements relating to protest may be included in the RFP/IFB.

## SECTION 5.0 POST AWARD/PRE-CONSTRUCTION MEETING

The post award/pre-construction meeting occurs after the contract has been awarded and executed and prior to mobilization or start of work. The Originator or staff member responsible for oversight of the contract shall determine whether such a meeting is needed.

The post award/pre-construction meeting serves to reinforce communications between the contracting parties, introduce to each other all key personnel involved in the project, identify their involvement in the project, establish a formal starting date for the work, and to motivate the contractor and set a cooperative professional tone for the future working relationship.

Generally, the meeting is arranged by CPD and attended by those lead personnel involved in the project. For construction contracts, the meeting will be chaired by the corridor manager or his designee and attended by CPD and lead personnel from the construction engineering manager, the design manager and others as appropriate. For other types of contracts, the Originator will chair the meeting with appropriate support staff, including CPD staff and consultants present.

## SECTION 6.0 PROGRESS MEETINGS

### **6.1 Purpose**

Progress meetings are held for contracts that require formal review of contractors' operations and assessment of the progress of the work. These meetings provide a forum for discussion and resolution of changes and problems which surface during the life of the contract. The minutes of these meetings will also provide a record of issues and problems related to the work. Minutes from these meetings are the responsibility of the Originator.

### **6.2 Frequency**

Progress meetings should be regularly scheduled and held as frequently as necessary under the circumstances of the contract. Most contracts require monthly or quarterly meetings. Construction contracts may require weekly or bi-weekly meetings. Frequency of meetings will be held as deemed appropriate by the corridor manager or Originator.

### **6.3 Leadership**

Corridor manager or Originator shall chair the progress meetings with support from CPD upon request.

## SECTION 7.0 MODIFICATION TO CONTRACT DOCUMENTS

### **7.1 Amendment**

An amendment is a written instrument that modifies a contract document with mutual consent of contracting parties. Amendments are also sometimes referred to as modifications. The modification may change the contract price, scope of work, contract schedule or correct errors in the contract documents.

All requests for modification shall be submitted with adequate information for CPD to evaluate if an amendment is warranted. If warranted, CPD, with input from the Originator of the request, shall prepare the Amendment and route the document for review and approval. Documents may be routed electronically through the TCA accounting system or manually for approval.

### **7.2 Change Orders**

Change Orders are modifications specifically permitted by the contract, and are categorized into unilateral and bilateral types and construction and non-construction for development and administration. The following procedures are descriptive, and specific contracts may provide for different procedures to be followed.

#### **7.2.1 Bilateral Change Orders**

Bilateral change orders are defined as changes where the contractor and the TCA have agreed to the terms and conditions, schedule and price of the change to the contract. This is generally obtained through negotiations between the parties. A bilateral change order is signed and agreed to by both parties.

#### **7.2.2 Unilateral Change Orders**

These types of change orders are also identified as "directed changes" to the work and are usually the result of disagreements between the contractor and the TCA pertaining to responsibility for the work for or lack of agreement on the amount of compensation for the work. If the TCA is convinced that compensation is due to the contractor, but a negotiated agreement cannot be made, the change order may be written on a time and material basis, a reimbursable basis, or a fixed amount of compensation can be determined by the TCA, all of which may be subject to the contractor submitting a claim if the contractor disagrees.

#### **7.2.3 Change Orders for Construction/Engineering Contracts**

The corridor manager or Originator, as appropriate, will take the lead role in the negotiations and preparation of change orders for all construction/engineering contracts. CPD will participate, if requested, in the negotiations and will make every effort to ensure that a fair and equitable settlement is obtained. CPD will assist in the preparation and processing of all associated documents.

#### **7.2.4 Change Orders for Non-Construction/Engineering Contracts**

The Originator, or CPD with input from the Originator, will take the lead role in negotiations and preparation of change order documents for non-construction/engineering contracts. CPD will participate in the negotiations, as needed, and will make every effort to ensure that a fair and equitable settlement is obtained. CPD will assist in the preparation and processing of all associated documents.

#### **7.2.5 Change Order Administration**

Copies of all change orders and correspondence regarding all change orders shall be forwarded to CPD as they occur, for insertion into the contract files.

Although it may not be required to notify a surety company of a change order, or to give them an opportunity to approve a change order, CPD should, with appropriate input from the Originator, evaluate each proposed change order to determine if the surety should be notified and/or given the opportunity to approve.

### **7.3 Approvals**

Amendments and change orders resulting in expenditure obligations exceeding the authorization levels previously approved by the Board shall be submitted to the Board for approval by the appropriate TCA department (see PART III SECTION 2.0 for process).

Amendments that do not require further Board authorization shall be executed according to PART I SECTIONS 8.0 or 9.0.

In all cases CPD will prepare a requisition and circulate such with the draft documents for review and approval similar to the procedure identified in PART III SECTION 4.3.

## **SECTION 8.0 CLAIMS AND DISPUTES**

### **8.1 Purpose**

A claim is a means by which a contractor notifies the TCA that a condition or circumstance has occurred which entitles it to additional compensation or an extension to the scheduled date of completion. The contractor must give notice of a claim within 10 calendar days of first knowledge of the condition, or within such other time period set forth in the contract. Notice of the existence of a claimed differing site condition shall be given verbally immediately and followed up in writing upon discovery and if possible prior to disturbing the conditions on the site. All matters shall be given in writing within 10 days of discovery.



### Conditions of Claims

The following are a few examples of conditions or circumstances that may lead to a claim:

- inconsistencies, errors or omissions in the contract documents,
- work delays caused by others,
- unavailability of access to the work or work areas,
- conflict in interpretation of contract document,
- differing site conditions, or
- changes in schedule or sequence of work.

## **8.2 Acknowledgment of Claim**

On receipt of a formal claim, CPD will assign a claim number, log the claim in the claims register, set up a claims check list, open an official claim file and return an acknowledgment letter to the claimant. Acknowledgment of claims shall be made within two working days after receipt. The acknowledgment merely advises the contractor that the claim has been received and will be taken under advisement. No reference as to the disposition of the claim shall be made in the acknowledgment letter. For construction contracts this function will be the responsibility of the construction engineering manager (CEM). Copies of all correspondence between the CEM and the contractor shall be forwarded to CPD, upon request. The procedure may vary due to specific directions being incorporated in any given contract.

## **8.3 Claims Review and Approval**

CPD shall review all claims to verify that the contract provision(s) referenced by a claim are applicable. For construction or design-build contracts, this review will be performed by the corridor manager or the CEM as applicable.

If in the opinion of the appropriate ETM, or his designee, the claim is determined to be justified, negotiation shall be conducted with the contractor and upon resolution a change order/amendment to the contract shall be issued (see PART III SECTION 7.0 for procedure). If the claim is considered unjustified, the contractor shall be notified in writing and advised of its right to file an appeal with the CEO of the TCA.

All appeals shall be forwarded through CPD to the appropriate ETM for resolution.

Upon receipt of approval and subsequent successful negotiations with the claimant on the final amount and terms of the claim, CPD shall prepare and execute a settlement and release agreement. TCA Finance shall be notified immediately upon settlement of a claim.

If a claim is rejected, CPD shall advise the contractor in writing of the rejection. The letter shall include a reference to the contract dispute clause for procedures should further pursuance of the claim be desired by the contractor.

Disputes will be resolved through the process identified in the contract. In the event the process identified in the contract includes an appeal to the CEO, that step need not be repeated if such appeal has already occurred as provided in this Section 8.3.

## SECTION 9.0 CONTRACT TERMINATION/SUSPENSIONS

### **9.1 Termination for Default**

Should the contractor commit a material breach-of-contract, CPD with input from the Originator, shall prepare a notice of default letter to the contractor, if appropriate. The letter will clearly describe the detail of the breach and state, in effect, that the contractor's failure to promptly comply with the terms of the contract may result in the TCA terminating the contract. The notice shall be reviewed for legal sufficiency by TCA legal counsel and approved by the appropriate ETM. The CEO will be notified of any such notice prior to issuance by the CPD manager.

If the contractor fails to cure the default, CPD may prepare a notice of termination for approval by the appropriate ETM. The notice of termination shall be reviewed for legal sufficiency by TCA legal counsel. The CEO will be notified of any such notice prior to issuance by the CPD manager.

All subsequent administrative matters will be handled by CPD on an expedited basis. Acknowledgment of receipt of the letter by the contractor will be obtained whenever practical. However, a failure or refusal by the contractor to sign should not prejudice the legal effectiveness of the notice.

Upon delivery of the notice of termination to the contractor, CPD shall immediately notify Finance to hold further payments in abeyance until further notice.

### **9.2 Termination for Convenience**

Each construction contract must, and other contracts may, permit the TCA to unilaterally terminate the contract for any reason. The only criteria necessary for termination for convenience is that the execution of this action must be in accordance with the terms of the contract. The procedure for termination for convenience will generally be in accordance with those procedures outlined in PART III SECTION 9.1 above, except that a "notice of default letter" is not required.

### **9.3 Termination by Mutual Agreement**

The contract may also be terminated by mutual agreement of the parties. Any such termination would be negotiated and treated as modification to the contract and a contract amendment would be required. This option may be preferable to the exercise of a unilateral right to terminate, as a final financial settlement may be negotiated and thereby avoid or minimize contract amounts otherwise payable.

#### **9.4 Suspension of Contract**

Each construction contract must, and other contracts may, permit the TCA to suspend the work wholly or in part for such a period as it may deem necessary when conditions arise which are unfavorable for the suitable prosecution of the work, or for the failure on the part of the contractor to perform any provisions of the contract or to make satisfactory progress toward completion. If a suspension of the work is necessary, CPD will notify the contractor in writing. The notice of suspension shall be reviewed by TCA legal counsel and approved by the appropriate ETM.

#### **9.5 Notification of Bonding Surety**

CPD shall forward copies of the termination notice, suspension notice and default letter, where applicable, to the bonding surety concurrently with delivery to the contractor.

### **SECTION 10.0 ACCEPTANCE/NON-COMPLIANCE OF THE WORK**

#### **10.1 Criteria**

The TCA may issue a notice of non-compliance at any time. The notice will serve to inform the contractor that the TCA considers the work to be incomplete or defective in some manner and acceptance will not be forthcoming until the items noted have been completed or corrected.

A notice of substantial completion, notice of acceptance or a notice of non-compliance is used to formally advise the contractor of the status of the contractor's work, as the TCA views it. The notice of substantial completion applies only to construction contracts, and marks the point in time when the project can be used for the purpose intended, as well as the point at which the contractor's builder's risk policy is no longer effective. However, certain portions of the work (primarily punch list items or other work that does not preclude use of the project by TCA) will remain the contractor's responsibility after substantial completion occurs. A notice of acceptance marks the point in time when the TCA acknowledges that all work has been completed and takes full care, custody and control of the project).

#### **10.2 Procedures**

When the contractor believes that the work under the terms of the contract has been substantially or fully completed, the contractor will submit a request for substantial completion or a request for acceptance to the TCA advising TCA regarding the work that has been completed. Upon receipt of this request, CPD will coordinate a review of the contractual work with other disciplines as necessary to determine if the contractor has complied with and completed all obligations and requirements of the contract. If the work is acceptable, CPD will issue a notice of substantial completion or notice of acceptance to the contractor. If the work is incomplete or not in compliance with contract requirements, the contractor will be advised in writing regarding the

deficiencies in the work that must be corrected before a notice of substantial completion/acceptance will be issued.

For construction contracts, notices of substantial completion/acceptance will be given by the chief engineer based on approval by the corridor manager as recommended by the CEM. Acceptance of other contracts will be given by the ETM of the affected department based on the approval by the appropriate staff and consultants.

## SECTION 11.0 CONTRACT CLOSURE

### **11.1 Closeout Status Checklist Report, Construction Contracts**

When a construction contract is nearing completion and is scheduled for closeout, but not less than 30 days prior to closeout, the corridor manager will notify the responsible contract administrator or CEM to initiate a closeout status checklist report for submission to the corridor manager and CPD manager.

### **11.2 Closeout Package, Construction Contracts**

The responsible contract administrator or CEM shall submit the closeout package and construction contracts to CPD for document control when the required evidence of compliance, as stated in the closeout status checklist report discussed in PART III SECTION 11.1 above, has been satisfied. The data will be presented in a well-organized manner, following the outline of the closeout status checklist report.

### **11.3 Notice of Completion, Construction and Public Works Contracts**

Subcontractors and laborers working on public works projects have certain stop notice rights and rights to call on the payment bond. Under Civil Code section 9560, claims on the payment bond must be filed within 15 days after recordation of a notice of completion or within 75 days after completion of the work if no notice of completion was filed. Under Civil Code section 9356, stop notices must be served before 30 days after a notice of completion (sometimes called a notice of acceptance) is recorded, or 90 days after completion if no notice of completion is recorded. Under Civil Code section 9362, no later than ten days after completion or ten days after recordation of a notice of cessation or completion, the public entity is required to notify stop notice claimants of the time within which an action to enforce payment of the claim must be commenced.

There is no statutory requirement for TCA to file a notice of completion. If deemed advisable, CPD may process a notice of completion for a contract and file it with the Orange County Recorder's Office. This notice must meet statutory requirements and must be filed within 15 days after all contract work has been accepted (Civil Code sections 9200(a) and 9204) or within 75 days after cessation of labor (Civil Code sections 9200(b) and 9204).

Filing a statutory notice of completion is not the same as issuance of a notice of acceptance. CPD will forward a notice of acceptance of the work to the contractor in accordance with the contract terms and conditions.

#### **11.4 Final Invoice, Release of Claims and Final Payment, Construction Contracts**

The notice of acceptance may be delivered together with instructions to the contractor to provide a final invoice and submit the invoice along with copies of the notice of acceptance and a conditional waiver and release upon final payment. Final payment shall not be authorized without a duly executed release being on file in the TCA office.

#### **11.5 Final Release of Retention, Construction Contracts**

Under Public Contract Code section 7107, retention is required to be released within 60 days after the date of completion of the work. The statute defines “completion” for this purpose as follows:

- (1) The occupation, beneficial use and enjoyment of a work of improvement, excluding any operation only for testing, startup or commissioning, by the public agency, or its agent, accompanied by cessation of labor on the work of improvement.
- (2) The acceptance by the public agency, or its agent, of the work of improvement.
- (3) After the commencement of a work of improvement, a cessation of labor on the work of improvement for a continuous period of 100 days or more, due to factors beyond the control of the contractor.
- (4) After the commencement of a work of improvement, a cessation of labor on the work of improvement for a continuous period of 30 days or more, if the public agency files for record a notice of cessation or a notice of completion.

The statute allows the agency to withhold up to 150% of any amounts in dispute. If any stop notices have been filed, sufficient monies shall be retained to cover the value of those notices until the stop notice is released.

#### **11.6 Closeout Letter/Retention File**

CPD, having ensured that all closeout documentation has been submitted and accepted, shall prepare and issue a closeout letter to the contractor. The letter shall advise the contractor that the contract is “closed,” provide the effective date, advise that no further work will be performed (other than corrective and warranty work) and no further payments are to be made against the contract. The letter shall advise the contractor of any contractual requirements beyond the end of the contract (i.e., retention of records). A copy of the letter shall be placed in the closeout file and copies distributed to all required personnel. CPD shall assure that the complete contract file is kept for the period prescribed by law.

The CEM shall coordinate closeout requirements for construction contracts and assure that all records, plans, etc. are complete and archived for TCA and eventual use or reference by Caltrans.

### **11.7 Closeout Documentation, Non-Construction Contracts for Goods and Services**

CPD will, no less than 30 days prior to expiration of the term of a contract, or upon notification from the Originator of pending completion of a contract, review the terms and conditions and identify the necessary steps to confirm closure of the contract. The contractor will be notified of the upcoming completion and closeout, if deemed appropriate, to ensure cessation of services. If determined appropriate by the Originator, such notice of pending contract closure will be issued in lieu of a closeout letter. Final invoice or retention payment will follow the procedure identified above.

In the absence of a notice of pending contract closure or closeout letter, CPD will prepare a contract closeout recommendation. Such notice will be circulated for review and approval by the Originator, other department staff as deemed appropriate, the appropriate ETM, Finance and the CPD manager.

### **11.8 Financial Closure**

With approval of the appropriate closure documentation, the CPD manager or his designee will close the contract in the accounting system, eliminating any remaining encumbered balance.

## **SECTION 12.0 CONTRACT FILES (ALL CONTRACTS)**

### **12.1 File System**

Contract development and management relies heavily on written communications. These communications must be for reference throughout the active life of the contract and beyond. In order to allow ready retrieval, a system of filing contractual documentation shall be used. The system shall consist of a method of separating documentation by subject and identifying the subjects by means of an index number. All appropriate documentation will be submitted to the TCA's document control system.

### **12.2 Responsibility**

CPD is responsible for ensuring that the master contract files of record for all contracts for goods and services are complete, current and properly ordered. As soon as a contract has been identified, a number is assigned to it and a contract file is then maintained until the contract is closed out and all paperwork is completed. Files pertaining to construction contracts shall be maintained by the CEM and turned over to CPD after the contract has been closed out.

Files for contracts that are not primarily intended to cover delivery of goods and services (including customer agreements, permits, applications for permits, memoranda of understanding, intergovernmental agreements and settlement agreements) shall be maintained by the responsible department.

### **12.3 Master File**

A master contract file of record shall be maintained in the central file. If a file is removed from the central file, a sign-out card will be left in its place to indicate the date the file was removed and the name of the individual in possession of the file.

For contracts with a small volume of paperwork, the files shall be maintained in a single 6-part file folder with the breakdown for filing in accordance with the "Part" breakdown shown on the "Filing System" (see Exhibit 2). For contracts with a minimal volume of paperwork, may be maintained in a single file folder.

For contracts with a volume of paperwork exceeding the capacity of a single 6-part file folder, individual folders, on a selective basis, shall be prepared and maintained in accordance with the expanded filing system (see Exhibit 2).

## **SECTION 13.0 CONTRACT REPORTING**

### **13.1 Contract Management System Reporting (Contracts for Goods and Services)**

Each department shall maintain records regarding contracts that it is responsible for, with a searchable database identifying all of its contracts.

CPD's contract management system shall be maintained on the TCA accounting software system, and shall be available to all staff involved in the procurement process. The system shall provide basic administrative information identifying at a minimum, the following:

- Title (a short description of the procurement)
- Contract or purchase order number (sequential numbers issued through the electronic system)
- Procurement Status (SOQ, RFP, IFB, Pending Execution, Active, Closed, etc.)
- Lead Department
- Contracting Agency
- Authorization Type (Board, CEO, ETM, RBE, etc.)
- Contract Administrator
- Technical Representative (corridor manager, Originator)
- Effective Date
- Expiration Date
- Authorized Amount
- Total Contract Value

- Amount of invoices paid or being processed (information provided through Finance)

Additional detail and supporting information will also be available with respect to contracts managed by CPD, within the limitations of the system. CPD will maintain operational manuals for the system and provide the appropriate documentation to staff upon request.

### **13.2 Reports**

For contracts in the CPD database, reports may be generated from the standard reports available within the system. CPD will assist with the generation of any reports, upon request, subject to workload priority.

### **SECTION 14.0 EXHIBITS**

CPD will maintain a file of “standard” sample forms and review such on a periodic basis to ensure compliance with any changes in policy, procedure, or legal and management concerns.

The following exhibits are subject to review and adaptation for a particular circumstance. Copies of standard forms are available upon request from CPD. Any questions regarding the proper usage of documents should be referred to CPD.

<b><u>Exhibit Number</u></b>	<b><u>Description</u></b>
<b>1.</b>	<b>Procurement Request</b>
<b>2.</b>	<b>Filing System</b>



[DATE]

To: Manager, Contracts and Procurement  
Cc: Manager, Budget and Planning

From: **(ORIGINATOR)**

Subject: [Short Description]  
CONTRACT NO. \_\_\_\_\_(if existing)

Short Title: Procurement Request

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1. Description/Requirement/Needs Analysis

*Provide a brief description of the action requested and the reason it is necessary*

*Examples:*

*RFP or IFB for potential Contract*

*new contract for construction of improvements, consultant services, etc. or  
purchase order for specific goods*

*amendment or change order to existing contract or purchase order  
establishment of an account for the purchase of goods*

2. Scope of Work/Services or Goods to be purchased or leased

*Provide a description of the services or product requested. All deliverables should be identified. Be as specific as possible. Attach a detailed scope of services if appropriate. If timing requires the procurement process to begin before the completion of a Scope of Work/Services, provide a brief description and note when final scope is anticipated.*

3. Authorization Required

*Identify the anticipated authorization to be required per the CAPS Manual (ETM, CEO, RBE, Board).*

4. Schedule

*Provide the required completion date for the procurement. When must a contract be issued, when do services need to be complete, when do goods need to be received.  
If for an amendment or change order, please note any changes to the existing schedule.*

4.1 Board Schedule (if applicable)

*Identify Committee(s):*

*Committee Meeting Date(s):*

*Board Date:*

5. Vendors

*Provide a list of suggested proposers or bidders, request assistance in development of such or provide sole source justification, if appropriate.*

6. Negotiations

*If a proposal or price quote has been received, it should be attached and noted here. Make note of any terms and conditions agreed upon with Vendor.*

7. Budgeted/estimated value  
*In addition to estimated (or established) amount, identify budget category, general ledger code, budget/cash flow description. Identify if funds are available within the approved budget or if a transfer or amendment will be needed. If so, provide the source of funds. Add more lines as necessary.*

<b>FY</b>	<b>Agency</b>	<b>GL Key</b>	<b>GL Object</b>	<b>PL Key</b>	<b>PL Object</b>	<b>% Split</b>	<b>Amount Requested</b>	<b>Budget</b>

8. Recommended type of pricing  
*Lump Sum, Fixed Fee, Cost Plus, Time & Material, Not-to-Exceed*
9. Specification/special instructions

Approved for Procurement:

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[Name, Title]  
 Department Representative  
 (individual identified by an Agency Officer as responsible for the impacted budget, if different from the Originator))

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[Name, Title]  
 Executive Team Member

If Non-competitively procured, approval by the CEO is required:

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Michael A. Kraman  
 Chief Executive Officer

*Please complete each section, attach any referenced documents or identify item as "N/A".*

**FILING SYSTEM**

Contract No. \_\_\_\_\_ Contractor/Consultant: \_\_\_\_\_  
 Description of Work: \_\_\_\_\_

_____	CA-12.0	TIME/CHRON SHEET	
_____	CA-12.1	PRE-PROPOSAL/BID	
_____	CA-12.1.1	RFQ/RFSOQ	
_____	CA-12.1.1.1	LOI (Letter of Invitation)/ RFQ/ADVERTISING	
_____	CA-12.1.2	RFP (Request for Proposal)/ IFB (Invitation for Bid)	
_____	CA-12.1.3	PREVAILING WAGE RATES (Revised _____)	
_____	CA-12.1.3.1	CERTIFIED PAYROLL	
_____	CA-12.1.4	ADDENDA	
_____	CA-12.1.5	MEETINGS	
_____	CA-12.1.6	CORRESPONDENCE <b>PRIOR TO AWARD</b>	<b>PART 1</b>
_____	CA-12.1.6.1	BID PROTEST	
_____	CA-12.1.7	OPINION LETTERS	
_____	CA-12.1.8	(Open)	
_____	CA-12.2	TECHNICAL PROPOSAL	
_____	CA-12.3	PROPOSAL ANALYSIS	
_____	CA-12.4	COST PROPOSAL	
_____	CA-12.5	RECORD OF NEGOTIATIONS	
_____	CA-12.5.1	REQUISITION/BOARD REPORT for <i>CONTRACT AWARD</i>	
*****			
_____	CA-12.6	CONTRACT DRAFTS (to be purged when Contract executed)	
_____	CA-12.7	CONTRACT [and AMENDMENTS—12.7(1), 12.7(2), etc.]	
_____	CA-12.7.1	MOU (MEMORANDUM OF UNDERSTANDING)	
_____	CA-12.7.2	EBD (ESCROW BID DOCUMENTS)	
_____	CA-12.7.3	LICENSES/PERMITS	
_____	CA-12.7.4	SUMMARY OF TERMS	<b>PART 2</b>
_____	CA-12.7.5	NOIA (NOTICE OF INTENT TO AWARD)	
_____	CA-12.7.6	NTP (NOTICE TO PROCEED)	
_____	CA-12.7.7	SUBCONTRACTS	
_____	CA-12.7.8	CONTRACT CLARIFICATIONS	
_____	CA-12.7.9	REQUISITION/BOARD REPORT for <i>CHANGES</i> (include in Amendment File or Change Order File)	
_____	CA-12.8	INSURANCE & BONDS	
_____	CA-12.8.1	INSURANCE	
_____	CA-12.8.2	BONDS	
_____	CA-12.8.3	INSURANCE CLAIMS	

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_____	CA-12.9	CHANGES	
_____	CA-12.9.1	POTENTIAL CHANGE ORDERS LOG	
_____	CA-12.9.2	POTENTIAL CHANGE ORDERS (Numerically)	<b>PART 3</b>
_____	CA-12.9.3	CHANGE ORDERS/TASK ORDERS (Numerically)	
_____	CA-12.9.4	VALUE ENGINEERING PROPOSALS (Numerically)	
_____	CA-12.10	CLAIMS	
*****			
_____	CA-12.11	CORRESPONDENCE	<b>PART 4</b>
_____	CA-12.11.1	Correspondence <b>TO</b> Contractor/Consultant	
*****			
_____	CA-12.11.2	Correspondence <b>FROM</b> Contractor/Consultant/EVALS	<b>PART 5</b>
_____	CA-12.11.3	Correspondence <b>WITH</b> TCA, OTHER	
*****			
_____	CA-12.12	PUBLIC RELATIONS	
_____	CA-12.13	REPORTS/STUDIES	
_____	CA-12.14	MINUTES OF MEETINGS	
_____	CA-12.14.1	MEMOS	
_____	CA-12.15	INVOICES & RELATED ISSUES	
_____	CA-12.15.1	INVOICES & TRANSMITTALS	
_____	CA-12.15.2	INVOICE DOCUMENTATION	
_____	CA-12.15.3	STOP NOTICES & RELEASES/RELEASE BONDS	
_____	CA-12.15.4	LOC (LETTER OF CREDIT)	
_____	CA-12.16	SUSPENSIONS/TERMINATIONS	<b>PART 6</b>
_____	CA-12.17	CONTRACT CLOSEOUT	
_____	CA-12.17.1	RETENTION	
_____	CA-12.18	PROGRESS REPORTS	
_____	CA-12.19	LEGAL ISSUES	
_____	CA-12.20	DRB (DISPUTES REVIEW BOARD)	
_____	CA-12.21	SAFETY PROGRAM	
_____	CA-12.22	QA/QC PROGRAMS	
_____	CA-12.23	DBE/LABOR ISSUES	
_____	CA-12.24	PARTNERING	
_____	CA-12.25	VALUE ENGINEERING	

File Labels should be formatted as follows:

Pendaflex Labels should be formatted as:

Contract Number - Contractor Name  
CA-12.1 - RFP and Scope of Work  
Description of Work

Contract #  
Contractor's Name  
Description of Work