

PROCUREMENT AND CONTRACTING

Purpose and Applicability

This policy establishes rules for procurement and contracting approved by the Board of Directors based on applicable laws and Board directives to staff. Primary procurement authority for SANDAG is derived from Public Utilities Code (PUC) section 132352.4. As stated in PUC section 132352.4(b)(7), with Board approval, the agency may use any procurement method authorized for state or local agencies by state or federal law.

Detailed procedures for carrying out this policy are described in the Procurement Manual, the Construction Manual, and standard operating procedures approved by the Chief Executive Officer (CEO) and Office of General Counsel (OGC). Code of Federal Regulations, Volume 2, Part 200, Federal Transit Administration Circular 4220.1G, and the Caltrans Local Assistance Procedures Manual also establish rules and guidance that SANDAG must consider when administering procurements and contracts using federal or state Department of Transportation (DOT) funds. All references to the CEO in this policy also apply to the CEO's delegates to the extent permitted by Board Policy No. 017 and as set forth in the Delegation of Authority policy approved by the CEO.

Definitions

Best Value Selection: Means the contract award is made to the highest ranked responsive and responsible offeror(s) as determined by objective criteria, which include, but is not limited to, price, features, functions, life-cycle costs, and other criteria deemed appropriate by SANDAG. Price must be a significant evaluation factor, but SANDAG is not required to award to the lowest price offeror.

Cardinal Change: A cardinal contract change is work added that is outside of the scope of what offerors could have reasonably expected the work to include at the time of the original solicitation. A cardinal contract change cannot be identified easily by assigning a specific percentage, dollar value, number of changes, or other objective measure that would apply to all cases. Relevant factors include the nature and extent of the changed work to be performed, the amount of effort involved, whether the change was originally contemplated at the time the original solicitation was issued and/or contract was entered into, and/or the cumulative impact on the contract's quantity, quality, costs, and delivery terms. Generally, an amendment or change order that is either outside of the original contract scope, or greater than 25 percent of the price of the original solicitation value should be documented as a noncompetitive procurement (sole source).

Contract: Any binding written document, whether or not it contains a dollar amount, that states that SANDAG agrees to carry out or refrain from one or more actions. Contract documents include, but are not limited to, Memoranda of Understanding, agreements for services, sponsorship agreements, purchase orders, task orders, amendments, change orders, job orders, nondisclosure agreements, letters of intent regarding future transactions, and real property purchase agreements.

Contractor: A person or entity contracting directly with SANDAG to provide goods or services. Sometimes also referred to as a consultant or vendor.

Exigency or emergency: A situation that will not permit a delay resulting from carrying out the typically required competitive procurement or amendment requirements for the supplies or services due to the serious injury that would be caused to SANDAG or the public if delay occurs.

Failure to plan: Circumstances that constitute failure to plan include, but are not limited to, staff not adequately tracking contract expiration dates, staff not allowing enough time to conduct a new solicitation prior to contract expiration, issues with a non-performing contractor that have not been addressed through a formal Notice to Cure, and failure to timely replace a project manager who is absent from work, has left the agency, or has changed roles.

Limited Competition: Use of the small purchase procedures when formal purchase procedures are otherwise warranted to avoid a noncompetitive sole source. Permitted only under the limited conditions described in this policy.

Lowest Bidder Selection: Means the contract is awarded to the lowest priced responsive and responsible bidder meeting specifications for award, not including sales tax.

Micro Purchase Amount: An amount that will not exceed the ceiling amount for micro purchases set by the Board of Directors or the applicable funding agency(ies) for the procurement, whichever is lower.¹

Mini Brooks Act Services: Services described in Government Code section 4525 et seq. Those services include: architectural, landscape architectural, engineering, environmental, land surveying, construction engineering, or program management, construction management, feasibility studies (includes environmental studies and analysis), preliminary engineering, design, engineering, surveying, mapping or architectural related services, as those terms are defined in the Government Code.

Noncompetitive Procurement (Sole Source): A procurement leading to award of a contract to a contractor or entity that was not required to compete against other potential contractors.

Qualifications Based Selection: Means the contract award is made to the highest ranked responsive and responsible offeror(s) as determined solely by offeror qualifications. An offeror's price proposal is not reviewed unless the offeror is determined to be most qualified. This selection method is only used for Mini Brooks Act Services.

Small Purchase Amount: An amount that is higher than the Micro Purchase Amount but lower than the amount set in PUC section 132352.4 requiring formal procurement procedures.²

Subcontractor: A person or entity hired by a SANDAG contractor at any tier with no direct contractual relationship with SANDAG. Sometimes also referred to as a subconsultant or supplier.

¹ As of March 2025, the Board of Directors approved micro purchase amount is \$10,000.

² As of March 2025, this amount is \$150,000.

1. **Rules for Procurement of Services** - The following requirements apply to procurements of services, including Mini Brooks Act Services.
 - 1.1 Micro Purchases. These procedures apply to the procurement of all services at or below the Micro Purchase Amount.
 - 1.1.1 A micro purchase procurement is a noncompetitive purchase technique; however, the price of the service must still be fair and reasonable.
 - 1.1.2 There should be equitable distribution of contract awards among qualified service providers in the local area and no splitting of procurements to avoid competition.
 - 1.1.3 An offer is only required from the contractor of choice and a purchase order, invoice, or simple letter agreement may be used instead of the SANDAG standard contract language template. when the risk to SANDAG is considered low, in the discretion of the Director or Manager of Contracts and Procurement or the OGC.
 - 1.1.4 If it is reasonably possible that the amount awarded will need to be amended to exceed the Micro Purchase Amount, the procedures in Section 1.2 or 1.3 of this policy, as applicable, shall be utilized.
 - 1.2 Small Purchases. These procedures apply to procurements at or below the Small Purchase Amount that exceed the Micro Purchase Amount. These procedures apply to the procurement of all Small Purchases of services excluding Mini Brooks Act Services with federal funding. All procurements that are predominantly Mini Brooks Act services and that will be funded in whole or in part with federal or state DOT funds, shall be procured using the procedures in Section 1.3.2 and 1.6 of this policy.
 - 1.2.1 If the final estimated value of the contract is expected to be less than the Small Purchase Amount, staff may select a qualified proposer whose proposal is most advantageous to SANDAG, price and all other factors considered, using an informal competitive process. The CEO shall determine the selection procedure for this informal process, to distribute work in a fair and equitable manner. Prior approval of the selection procedure shall be obtained from the CEO via approval of the small purchase procedures in the Procurement Manual.
 - 1.2.2 An informal competitive process shall be followed with price or rate quotations obtained from an adequate number of qualified sources to ensure SANDAG is obtaining a fair and reasonable price. The informal competitive process must be documented by staff. In obtaining price or rate quotations for Mini Brooks Act Services or goods or services with complex descriptions, a written scope of work or specifications shall be developed and supplied to all proposers.
 - 1.2.3 Selections will be made on a best value basis unless the procurement is not federally funded and is for Mini Brooks Act Services. For such services, selections shall be qualifications based. Procurements of Mini Brooks Act Services with federal funds must use the formal processes in Sections 1.3.2 and 1.6.
 - 1.2.4 If it is reasonably possible that the amount awarded will need to be amended to exceed the Small Purchase Amount, the procedures in Section 1.4 of this policy shall be utilized.

- 1.3 Formal Procurements. If the estimated total cost of required services will exceed the Small Purchase Amount, SANDAG must solicit proposals in writing and award the work in a formal, competitive procurement process that is in the best interest of SANDAG and applicable to the type of services to be procured as set forth in the Procurement Manual. Exceptions to this requirement include when services will be performed by another government entity or when a justification for noncompetitive procurement applies.
- 1.3.1 Solicitation Process for Formal Procurements
- 1.3.1.1 A "one-step" procurement procedure is typically used for service contracts in excess of the Small Purchase Amount. The "one-step" competitive process is as follows:
- 1.3.1.2 Proposers shall submit a response to a SANDAG Request for Proposals (RFP) or Request for Qualifications (RFQ). The RFP/RFQ shall include:
- 1.3.1.2.1 Pass/fail criteria to be used as an initial screening of responses. Such criteria shall include, but not be limited to, insurance requirements, licensing, and any other consideration which would make the proposer ineligible to perform the work.
- 1.3.1.2.2 All evaluation factors and their relative importance.
- 1.3.1.2.3 The standard contract language that the successful proposer will be required to comply with, including applicable federal clauses and certifications.
- 1.3.1.3 Notice of the services required shall be published at least once in a newspaper of general circulation and at least one minority publication in San Diego County, on SANDAG's electronic vendor portal and in such publications as appropriate in San Diego County, at least three weeks before the proposal due date. The notice shall state, at a minimum, SANDAG is interested in receiving responses from qualified firms, indicate how additional information can be obtained, and the time and place for receiving responses.
- 1.3.1.4 Notice shall also be sent to firms or individuals previously known to be interested in providing the required services, including small and emerging businesses on SANDAG various interested party lists, and to appropriate Disadvantaged Business Enterprises (DBE) firms or individuals listed in the SANDAG vendor database and the California Unified Certification Program (CUCP) Database.
- 1.3.1.5 Responses to an RFP/RFQ shall list all proposed subcontractors, the work they will perform, and identify which of them, if any, are certified DBEs.
- 1.3.1.6 Responses to an RFP/RFQ shall include a detailed cost estimate.
- 1.3.1.7 For procurement that are all or predominantly Mini Brooks Act Services, separately bound or sealed cost proposals shall be submitted as part of the process and shall not be opened until after the evaluation committee has ranked the proposers. Cost proposals shall be excluded as an evaluation factor for Mini Brooks Act Services. Sections 1.3.2 and 1.6 of this policy concern Mini Brooks Act Services procedures.

- 1.3.1.8 For all other services, the cost proposal shall be submitted along with the technical proposal and will be used as an evaluation factor by the evaluation committee.
- 1.3.1.9 The responses shall be evaluated by an evaluation committee. The evaluation committee should consist of SANDAG staff who are not all in the same chain of command. For procurements in excess of \$5 million, at least one person on the evaluation committee should be from outside the agency, unless waived at the discretion of the procuring department's Director.
- 1.3.1.10 The top-ranked firm(s) should then be interviewed. If only one firm is in the competitive range, an interview may be deemed unnecessary. The final list of qualified firms shall be based on the response to the RFP/RFQ, references, the interview, and other relevant factors.
- 1.3.2 A "two-step" procurement process may be used for procurements of any service but are most often used for Mini Brooks Act Services. The RFQ process is as follows:
 - 1.3.2.1 Letters of Interest/Statements of Qualifications (LOIs/SOQs) are solicited from the firms registered in the electronic vendor portal for the particular services specialty.
 - 1.3.2.2 Notice of the professional services required shall be on SANDAG's electronic vendor portal and in any such other publications as appropriate in San Diego County, at least three weeks before the proposal due date. The notice shall state that SANDAG is interested in receiving Letters of Interest or Statements of Qualifications (LOIs/SOQs) from qualified firms, and indicate how additional information can be obtained, and the time and place for receiving responses.
 - 1.3.2.3 Requests for LOIs/SOQs will be sent to firms or individuals registered on the SANDAG vendor portal.
 - 1.3.2.4 "Pass/fail" criteria will be established by staff and clearly stated in the LOI/SOQ to be used as a screening of responses. Such criteria shall include but not be limited to: adherence to project budget, insurance requirements, and if required, DBE participation.
 - 1.3.2.5 An evaluation committee will be formed. The evaluation committee should consist of SANDAG staff who are not all in the same chain of command. For procurements in excess of \$5 million, at least one person on the evaluation committee should be from outside the agency, unless waived at the discretion of the procuring department's Director.
 - 1.3.2.6 The evaluation committee will evaluate the SOQs and a memo will be prepared for the CEO summarizing the evaluation committee's findings and recommending one or more qualified firms to be invited to receive an RFP. Following approval by the CEO, staff shall then issue an RFP to the qualified firm(s). The RFP shall include all evaluation factors and their relative importance, and the contract that the successful proposer will be expected to execute (including all applicable federal clauses and certifications).
 - 1.3.2.7 From this point, the steps above for a one-step procurement should be followed.

- 1.4 Selection Process for Services Other Than Mini Brooks Act Services. When the services to be procured are not Mini Brooks Act Services, selection may be based on a best value determination. If there are some Mini Brooks Act Services mixed in with a procurement that is predominantly for services that do not qualify as Mini Brooks Act Services, then the best value selection process is to be used rather than qualifications only. A summary of the findings of the evaluation committee will be included in a recommendation memo to the CEO. The memo shall include the evaluation committee's recommendation for negotiations with one or more firms in the competitive range and the best value evaluation factors.
 - 1.4.1 The CEO will approve or reject the recommendation based upon information provided by the evaluation committee, and other factors as deemed appropriate, including, but not limited to, qualifications, ability to meet schedule and budget, cost of work, meeting insurance requirements, and DBE participation for federally funded projects.
 - 1.4.2 Approval by the CEO of the recommendation shall be deemed approval to enter into negotiations with one or more firms in the competitive range.
 - 1.4.3 The cost proposals from the firm(s) in the competitive range shall be used as a basis for negotiation. Negotiations will be conducted by the CEO, and can include factors other than cost, such as staffing levels, project schedule, etc. If negotiations are only conducted with one firm and those negotiations fail, staff will enter into negotiations with the next ranked firm. If negotiations are conducted with more than one firm in the competitive range, then staff may attempt to obtain the most favorable terms by negotiating with all of the firms. Once negotiations are complete, a contract incorporating the negotiated terms and conditions will be prepared for the approval of the CEO.
- 1.5 Services with Highly Specific Scope. For those services that are able to be defined with a very explicit scope of work containing detailed, straight-forward specifications that will allow consistent responses, proposers will be considered qualified or not qualified based on predetermined criteria. Cost proposals will then be opened for those proposers considered qualified and the contractor with the lowest bid will be awarded the contract. The CEO will determine whether the nature of any of the services are appropriate for using this low bid procedure.
- 1.6 Services that Are Predominantly Mini Brooks Act Services. When the work will predominantly be Mini Brooks Act Services, scoring and selection will be qualifications-based. Only the most qualified firm(s) shall have its cost proposal reviewed. The separately submitted cost proposal shall be used as a basis for negotiation and can include factors other than cost, such as staffing levels, project schedule, etc. Should negotiations fail, the CEO may authorize negotiations with the next ranked firm. Once negotiations are complete, a contract incorporating the negotiated terms and conditions will be prepared for the approval of the CEO.
- 1.7 Compliance with Brooks Act Provisions for Federally Funded Contracts. If federal funds are used and the services in the contract are of the types included in the Mini-Brooks Act, SANDAG shall comply with the provisions of the Brooks Act even if the amount awarded will be less than the Small Purchase Amount threshold.

- 1.8 Multiple Award On-Call Contracts. All on-call contracts will be awarded in accordance with the SANDAG Procurement Manual and applicable procedures. When SANDAG has a need to procure services within a particular genre, such as planning, environmental, or legal services, but the specific project assistance that will be needed is not known in a sufficient amount of detail, then a two-phase process will be used.
 - 1.8.1 First, an RFP or RFQ will be used to select one vendor or a short-list of vendors to be placed under an on-call contracting arrangement for a specific period of time.
 - 1.8.2 Second, if only one vendor was awarded an on-call contract, each time services are needed, the vendor will be sent a scope of work prepared by SANDAG. The on-call vendor will then send a proposal to SANDAG and staff will evaluate the proposal and negotiate terms and conditions of the task order with the vendor. If multiple vendors are awarded an on-call contract, a secondary task order solicitation will be sent to all vendors within the relevant genre(s) of the on-call to allow for full and open competition. Selection will be based on the evaluation factors in the RFP or RFQ issued in the first phase.
 - 1.8.3 Task orders for services other than Mini Brooks Act Services shall be awarded on a best value basis. Award of Mini Brooks Act Services shall be qualifications based.
 - 1.8.4 Noncompetitive task order procurements shall only be permitted under the conditions set forth in Section 4 of this policy.
 - 1.8.5 Task orders that include phased project work must include a description of the plan for future deliverable(s) or service(s) within the solicitation document and resulting task order to establish clearly that such future deliverable(s) and/or service(s) are conditioned upon applicable matters within SANDAG's discretion such as availability of funds, budget, contractor performance, and SANDAG's best interest. The solicitation for phased work task orders must contain a sufficient description of the scope of work to avoid later work from being categorized as noncompetitively procured.

2. Rules for Procurement of Equipment, Supplies, and Materials

- 2.1 When a purchase is predominantly equipment, supplies, and materials (goods), SANDAG staff are required to use a competitive procurement process, unless a justification in Section 4 of this policy applies. Pursuant to PUC section 132352.4(b)(4), SANDAG is required to use the lowest bidder selection process.
- 2.2 Micro Purchases. For purchases below the micro purchase amount, a micro purchase procurement method may be used. A micro purchase is a noncompetitive purchase technique; however, the price of the item must still be fair and reasonable. There should be equitable distribution among qualified suppliers in the local area and no splitting of procurements to avoid competition. A bid is only required from the vendor of choice and no contract is required.
- 2.3 Small Purchases. For purchases in excess of the Micro Purchase Amount and less than the formal procurement threshold, a simplified competitive procurement method may be used:

- 2.3.1 Staff shall obtain written bids or document oral bids from at least three suppliers in a manner that permits prices and other terms to be compared.
 - 2.3.2 Staff shall recommend the supplier that will provide the best value to SANDAG, taking into account the possible range of competing products and materials available, fitness of purpose, manufacturer's warranty, and other similar factors in addition to price.
 - 2.3.3 Staff shall obtain approval as required in the administrative delegation of authority policy and the small procurement procedures for use of the recommended supplier.
- 2.4 Formal Procurements. For purchases in excess of the stated threshold, an invitation for bids (IFB) shall be issued and the award will be made to lowest responsible bidder submitting a responsive bid:
- 2.4.1 The IFB will be posted on the SANDAG electronic vendor portal with a link from the SANDAG Web site.
 - 2.4.2 Notice of the IFB will be published in at least one newspaper of general circulation and at least one minority publication in San Diego County and in such other publications as appropriate at least two weeks before the bid opening date. The notice shall state that SANDAG is interested in receiving bids from qualified firms, and indicate how additional information can be obtained, the date, location and time for receiving and opening the sealed bids.
- 2.5 For purchases that are better suited for a Request for Proposals (RFP) (negotiated purchase) or purchase on the open market, instead of an IFB (low bidder), approval may be sought from the Director of Contracts and Procurement Services to utilize a different procurement process in accordance with PUC section 132352.4(b)(7). An alternate procurement process to the IFB may be in the best interest of SANDAG in the following example situations:
- 2.5.1 Contract negotiations with the offerors will be needed.
 - 2.5.2 Competitive bidding is an inadequate method of procurement because it is necessary to purchase prototype equipment or modifications in order to conduct and evaluate operational testing.
 - 2.5.3 The article(s) to be procured is undergoing rapid technological changes and it is in the public's interest to issue an RFP so that the broadest possible range of competing product and materials available, fitness of purpose, manufacturer's warranty, and other similar factors in addition to price, can be taken into consideration.

3. Rules for Procurement of Public Works Construction

- 3.1 PUC section 132352.4(b)(3) mandates that SANDAG establish rules for competitive procurement for construction of public works projects. SANDAG must solicit bids in writing and award the work to the lowest responsive and responsible bidder or reject all bids. Additionally, Government Code section 14085 et seq. requires that whenever any public entity is to receive state or federal funds for the purposes of project

planning, design, rights-of-way, construction, acquisition, or improvement of exclusive public mass transit guideways it shall prepare various policies, procedures, and performance standards, which are subject to review and approval by the State of California prior to the implementation of the project or the project phases affected. This documentation must include the overall project financing plan and the overall project development schedule, as well as other items such as policies and procedures for contract provisions, bidding and awards, change orders, payments and audits, and contractor claims. This policy, the Procurement Manual, the Construction Manual, and applicable procedures are meant to address these requirements.

- 3.2 Micro Purchases. For construction contracts estimated to cost an amount equal to or less than the Micro Purchase Amount, the work may be awarded without competition so long as the price is determined to be fair and reasonable. Otherwise, staff shall seek a minimum of three bids which may be either written or oral to permit prices and other terms to be compared.
- 3.3 Small Purchases. For construction contracts estimated to cost in excess of the Micro Purchase Amount, but not more than the \$50,000 limit in PUC Code section 132352.4(b)(3), the following procedures shall be followed:
 - 3.3.1 An Invitation for Bids (IFBs) with the same scope of work and specifications will be sent to a minimum of three qualified bidders. The bid period will be a minimum of three calendar days. When possible, IFBs should be sent to at least two certified DBE firms. The IFB will contain the time and location for receiving and opening bids.
 - 3.3.2 The contract will be awarded to the lowest responsive and responsible bidder after a Notice of Intent to Award has been issued to all bidders and the protest period has expired.
 - 3.3.3 Bid bonds will only be required on bids that are under \$50,000 when requested by the applicable Director or his or her designee.
- 3.4 Formal Procurements. For public works construction procurements estimated to cost more than \$50,000, a formal procurement process will be used to award the work to the lowest bidder.
 - 3.4.1 Public notice shall be given by publication once a week for at least two consecutive weeks, with the first publication occurring at least three weeks before the day set for receiving bids, as follows:
 - 3.4.1.1 In a newspaper of general circulation, published in San Diego County;
 - 3.4.1.2 In a trade paper of general circulation published in Southern California devoted primarily to the dissemination of contract and building news among contractors and building materials supply firms; and
 - 3.4.1.3 In at least one minority or community newspapers as appropriate to best meet SANDAG's DBE goals.
 - 3.4.1.4 Advertisements may also be placed in other minority and community newspapers, as appropriate. Appropriate DBEs listed in the current SANDAG vendor database will be notified of any work advertised under this policy.

- 3.4.1.5 The notice shall state the time and location for receiving and announcing sealed bid amounts and shall describe the work to be done.
- 3.5 Contractor Prequalifications. SANDAG may, for prospective contractors whose bid could exceed \$500,000, adopt and apply a uniform prequalification system for rating bidders on the basis of a standard experience questionnaire and financial statement verified under oath in respect to the contracts upon which each bidder is qualified to bid. A contractor may request to be prequalified for a predetermined contract amount prior to bidding.
- 3.5.1 In no event shall any bidder be awarded a contract if such contract award would result in the bidder having under contract(s), work cumulatively in excess of that authorized by its qualification rating.
- 3.6 Form of Bids. SANDAG shall furnish each bidder with a standard bid form, to be filled out, executed, and submitted as its bid.
- 3.6.1 All bids shall be submitted as a sealed bid in a form directed by SANDAG, which shall mean either submission in a sealed envelope or electronically through the use of SANDAG's web-based solicitation system.
- 3.6.2 All bids shall be accompanied by one of the following forms of bidder's security: cash, a cashier's check, certified check, or a bidder's bond executed by an admitted surety insurer and made payable to SANDAG. A bid shall not be considered unless accompanied by one of the forms of bidder's security, which may be in either hard copy or electronic format. Bidder's security shall be at least 10 percent of the amount bid. Bidder's bonds must be issued by bonding companies registered in the State of California.
- 3.6.3 Any bid may be withdrawn any time prior to the time fixed in the notice for bid opening only by written request to the SANDAG CEO. The request shall be executed by the bidder or its designated representative. Bids shall not be withdrawn after the time fixed for public opening.
- 3.6.4 On the day specified in the notice, staff shall post the preliminary bid results on the SANDAG electronic vendor portal within 24 hours.
- 3.7 Review of Bids. After the bids are opened, staff shall review all bids in order to determine which bidder is the lowest responsive and responsible bidder. The term "lowest responsive and responsible bidder" shall mean the lowest monetary bidder (excluding taxes) whose bid is responsive and who is responsible to perform the work required by the solicitation and contract documents.
- 3.7.1 Responsiveness. All bids will be evaluated to determine whether or not they are responsive. The term "responsive" generally means that the bid has been prepared and submitted in accordance with the requirements of the solicitation and bid documents. In the event one or more bids is found nonresponsive, SANDAG will determine whether the non-responsiveness is material to the solicitation requirements and whether clarification is needed from one or more bidders. Responsiveness requirements shall generally include, but will not be limited to, the following:
- 3.7.1.1 Bid Booklet - with all bid amounts filled in

3.7.1.2 Designation of Suppliers and Subcontractors with dollar amounts, if applicable

3.7.1.3 Acknowledgment of Addenda, if applicable

3.7.1.4 Contractor's License Requirements

3.7.1.5 Ability to Meet Minimum Insurance Requirements

3.7.1.6 Public Contract Code 10162 Questionnaire

3.7.1.7 Bidder's Bond

3.7.1.8 Noncollusion Affidavit

3.7.1.9 Certification of Restrictions on Lobbying

3.7.1.10 Disclosure of Lobbying Activities

3.7.1.11 Certification Regarding Debarment

3.7.2 If the lowest monetary bidder's bid is responsive, then the bidder's qualifications will be evaluated to determine whether or not the bidder is responsible to perform the work required by the contract documents. The term "responsible" generally means that the bidder is able to demonstrate that it possesses: (1) the capacity to perform the work required by the contract documents with respect to financial strength, resources available, and experience; and (2) the integrity and trustworthiness to complete performance of the work in accordance with the contract documents.

3.7.3 SANDAG may investigate the responsibility and qualifications of bidders to whom the award is contemplated for a period not to exceed 90 days after the bid opening. The 90-day review period may be extended upon the written request by staff and written approval by the affected bidders.

3.8 Award or Rejection of Bids. The bidder deemed to be the lowest responsive and responsible bidder will be recommended to the CEO for contract award.

3.8.1 If staff finds the lowest monetary bidder's bid is not responsive or the lowest monetary bidder is not responsible, then the responsiveness and responsibility of the next low monetary bidder may be reviewed. If staff finds the next low monetary bidder is responsive and responsible, then that next low bidder shall be deemed the apparent lowest responsive and responsible bidder, and the findings will be reported as recommendations to the CEO. Staff may continue to review the responsiveness and responsibility of the next lowest monetary bidder until he/she finds the lowest monetary bidder that is also responsive and responsible, and deemed lowest responsive and responsible bidder. In the event one or more low monetary bidders are found to be nonresponsive, those bidders will be given notice and a reasonable opportunity to present additional evidence to SANDAG within five working days after the bidder receives the notice.

3.8.2 The CEO may authorize a Limited Notice to Proceed (LNTP) to the apparent lowest responsive and responsible bidder for an amount not to exceed \$250,000 prior to the award of the construction contract if the CEO determines that the award of an LNTP is justified.

- 3.8.3 If in the best interest of SANDAG, the CEO may, on refusal or failure of the successful bidder to execute the contract, award it to the second-lowest responsive and responsible bidder. If the second-lowest responsive and responsible bidder fails to execute the contract, the CEO may likewise award it to the third-lowest responsible bidder. On the failure or refusal of any bidder to execute the contract, its bidder's security shall be forfeited to SANDAG.
- 3.8.4 For all contract awards in excess of \$25,000, the successful bidder must furnish a performance bond equal to at least one-half of the contract price and a payment bond equal to one hundred percent of the contract price. Federally funded contract awards shall require a performance bond equal to one hundred percent of the contract price. Bonds may be in either hard copy or electronic format. Bidders bonds must be issued by bonding companies registered in California. Notwithstanding the foregoing, depending upon authorization from the funding source(s), the performance and payment bond requirements may be modified within the Invitation for Bids with prior approval of the CEO.
- 3.8.5 Failure to furnish the required bonds shall constitute failure to execute the contract.
- 3.9 Return of Bidder's Security. SANDAG may withhold the bidder's security of the second- and third-lowest responsive and responsible bidders until the contract has been finally executed. SANDAG shall, upon request, return cash, cashier's checks, and certified checks submitted by all other unsuccessful bidders within 30 days after the bid opening, and the bidder's bonds shall be of no further effect.
- 3.10 Procedure for Subcontractor Substitution. Subcontractor substitutions shall be made only pursuant to the provisions of the Subletting and Subcontracting Fair Practices Act, Public Contract Code section 4100 et seq., as it may be amended from time to time. Notwithstanding the foregoing, nothing in this policy is intended to require SANDAG to strictly comply with the Subcontracting Fair Practices Act. The CEO is hereby designated to carry out all functions of the awarding authority under Section 4100 et seq.
- 3.11 Relief from Maintenance and Responsibility. SANDAG will, upon written application by the contractor, consider granting relief from maintenance and responsibility on major elements of each major construction project as permitted in the contract specifications. The CEO is hereby delegated authority to grant said relief in writing to the contractor and shall report actions on contracts over \$25,000 to the Board.
- 3.12 Acceptance of Work. SANDAG will, upon written application by the contractor, accept the entire work on major construction contracts, provided that the work has been completed, in all respects, in accordance with the contract plans and specifications. The CEO is hereby delegated the authority to accept such work on behalf of the Board and shall report to the Board all acceptances over \$25,000.
- 3.12.1 In determining whether to accept the entire work on major construction projects, these procedures should be followed:
- 3.12.1.1 The contractor shall request acceptance in writing.
- 3.12.1.2 Concurrence with the request by the SANDAG Resident Engineer shall be in writing to the CEO and include these findings: (1) that the contract has been

completed in accordance with the plans and specifications, (2) a statement as to the financial condition of the contract, and (3) a statement as to whether the contract was completed on time or with an apparent overrun.

3.13 Job Order Contracting. A Job Order Contract (JOC) is a competitively bid, firm fixed price, indefinite quantity contract that is based upon specific unit pricing contained in a unit price book (prepared by the public agency or by independent commercial sources) setting forth detailed repair and construction items of work, including descriptions, specifications, units of measurement and individual unit prices for each item of work. The JOC includes unit pricing for work at time of award, but not the specified quantity and location of the work to be performed. At the time a Job Order is issued, the scope of work will identify the quantity and specific location of the work to be performed. JOC procurements are authorized pursuant to PUC section 132352.4(b)(7).

3.13.1 JOC General Requirements. JOCs shall be awarded under written agreement subject to the following limitations:

3.13.1.1 The specifications were advertised in accordance with this policy based on the maximum potential value of the JOC.

3.13.1.2 The specifications provided for competitive bidding on unit-cost terms for all labor, material, and equipment necessary to perform all work contemplated for individual Job Orders.

3.13.1.3 The JOC does not exceed a term of three years in duration.

3.13.1.4 The JOC shall only be used for the performance of minor routine or recurring construction, or for the renovation, alteration, or repair of existing public facilities.

3.13.1.5 The JOC may not contain any provision which would guarantee the contractor cumulative Job Orders in excess of \$50,000.

3.13.2 Issuance of Job Orders. Following award of a JOC, job orders may be issued by the CEO in accordance with this policy, administrative policies, and procedural manuals upon certification by that individual that it is not in conflict with other Board policies and it is the best interest of SANDAG to use the JOC procurement process because one or more of the following criteria have been met:

3.13.2.1 Use of the JOC process will result in a cost savings through economies of scale or expedite the delivery of work; or

3.13.2.2 Advertising for bids is undesirable because it will be practically impossible to obtain what is needed or required by an unforeseen deadline if the traditional competitive bidding method is used; or

3.13.2.3 The entity or entities providing funds for the project have authorized use of the JOC process.

3.13.3 An individual Job Order may not exceed the sum of \$2,000,000, except in the case of an emergency as defined in this policy, or as specifically authorized by the CEO, whose authorization shall not be delegated.

- 3.13.4 No public work that logically should be performed as a single contractual transaction requiring the expenditure of more than \$2,000,000 shall be separated into separate job orders for purposes of avoiding this limitation.
- 3.13.5 Non-prepriced items of work may be included in Job Orders provided that the non-prepriced items are within the scope and intent of the JOC, do not make up more than 25% of the bid amount, and are priced reasonably and in conformity with all applicable laws, regulations and policies.
- 3.13.6 Job Order Contract Intergovernmental Agreements. The SANDAG CEO may permit, subject to requirements of this section and subject to such terms and conditions that the CEO may prescribe, any public entity, including the California Department of Transportation, or any municipal corporation, school or other special district within San Diego County, to participate via the Service Bureau in JOCs entered into by SANDAG, and may enter into any agreements necessary.
- 3.14 Design-Build Contracting. Design-build contracting is a project delivery method in which both the design and construction of a project are procured from a single entity. Notwithstanding other provisions of this policy, SANDAG is permitted to use the design-build contracting method when allowed by law and in accordance with such law.
- 3.15 Construction Manager/General Contractor Contracting. Construction Manager/General Contractor (CM/GC) contracting is a project delivery method using a best value selection process in which a construction manager is procured to provide pre-construction services during the design phase of the project and construction services during the construction phase of the project. Notwithstanding other provisions of this policy, SANDAG is permitted to use the CM/GC contracting method on regional projects in accordance with Public Contracts Code sections 6950-6958; in accordance with the Otay Mesa East Toll Facility Act, Section 31460 et seq. of the Streets and Highways Code; or as otherwise permitted by law. A competitive negotiation process, similar to the process described in this policy for the procurement of services, will be used to procure CM/GC services. Selection criteria for CM/GC procurements shall be subject to Board approval.
- 3.16 Design Sequencing Contracting. Design sequencing contracting is a method of project delivery that enables the sequencing of design activities to permit each construction phase to commence when the design for that phase is complete, instead of requiring design for the entire project to be completed before commencing construction. This is a variation of the design-bid-build project delivery method. SANDAG is permitted to use the design sequencing contracting method on transit projects in accordance with Public Contracts Code sections 6950-6958.
- 3.17 Community Benefits Agreement. The SANDAG Community Benefits Agreement shall apply to all construction projects awarded on or after May 19th, 2011, with a prime contract awarded by SANDAG with a SANDAG estimated construction contract award value of \$5,000,000 or greater. It shall apply to all Job Order Contracts with an individual job order valued at \$250,000 or greater and issued under a master Job Order Contract with an award value of \$5,000,000 or greater.

4. Other Than Full and Open Competition

- 4.1 SANDAG will utilize full and open competition when soliciting bids or proposals for procurements in excess of the Small Purchase Amount unless use of another method is fully justified.
- 4.2 Limited Competition. Under certain circumstances, a procurement may be justified that does not utilize full and open competition. These procurements are known as limited competition procurements. Staff may limit the number of sources and use small purchase procedures when the agency's need for the supplies or services is of such an unusual and compelling urgency that SANDAG would be seriously injured, financially or otherwise, unless the agency is permitted to limit the number of sources from which it solicits bids or proposals and use a simplified acquisition procedure.
 - 4.2.1 Contract awards using this authority shall be supported by written justifications and approvals and require that offers be requested from as many potential sources as is practicable under the circumstances.
 - 4.2.2 The total period of performance of a contract awarded using this authority shall not exceed the time necessary to meet the unusual and compelling requirements of the work to be performed under the contract and/or for the agency to enter into another contract for the required goods and services through the use of full and open competitive procedures.
 - 4.2.3 Such contracts shall not exceed one year, including all options, unless the CEO determines that exceptional circumstances apply and the determination is documented in the contract file and reported to the Board.
- 4.3 Noncompetitive procurement also is known as sole source procurement. Sole source procurements are not favored and only may be used when adequate justification exists and approval has been obtained from the CEO. Noncompetitive and limited competition procurements shall only be permitted when the conditions in this Section 4 are met.
- 4.4 When the project will be paid for in whole or in part by federal funds, one of the conditions allowing a limited competition or sole source procurement set forth in the latest version of Federal Transit Administration Circular 4220.1G, or the equivalent from other federal funding agencies, must be met. For projects funded in whole or in part by Caltrans or Federal Highway Administration funds, the applicable provisions in the Caltrans Local Assistance Procedures Manual must be met.
- 4.5 When there are no federal funds involved, one of the following additional factors may be utilized to justify a limited competition or sole source procurement:
 - 4.5.1 There is only one contractor capable of providing the services because the services are unique or highly specialized.
 - 4.5.2 The services should be purchased from a particular contractor in the interest of economy or efficiency as a logical follow-on to services already in progress under a competitively awarded contract based on a documented cost benefit analysis.
 - 4.5.3 The cost to prepare a competitive procurement exceeds the cost of the services.
 - 4.5.4 The services are essential to maintain research or operational continuity.

4.5.5 The good or service provided is utilized by SANDAG staff members with specialized training and/or expertise in using the good or services and retraining would incur substantial cost in time and/or money.

4.6 The Director of Contracts and Procurement Services will report noncompetitive contract awards to the Board of Directors on a semi-annual basis.

5 General Rules

5.1 Bid splitting, the intentional dividing of procurements into smaller quantities in order to avoid the statutory threshold for advertised competition, is strictly prohibited.

5.2 SANDAG reserves the right to reject any or all bids or proposals and to waive any immaterial irregularity. No bid or proposal shall be binding upon SANDAG until after the contract is signed by both the contractor and SANDAG.

5.3 Late bids or proposals shall not be accepted after the time and date designated in the applicable solicitation.

5.4 The Board's Equal Employment Opportunity Program and adequate audit provisions to allow the SANDAG independent performance auditor access to the contracted entity's records needed to verify compliance with the terms specified in the contract will be incorporated by reference in all SANDAG contract templates.

5.5 The CEO is not required to make a contract award if he/she determines the proposals received or contract terms negotiated by SANDAG staff are not in the best interests of SANDAG.

5.6 For purchases in excess of the Micro Purchase Amount involving federal funds, all applicable federal requirements and certifications must be attached to the purchase order or contract. For purchases that exceed \$50,000, a standard agreement should be used instead of a purchase order in order to ensure provisions are included to protect the interests of SANDAG.

5.7 The Board's Disadvantaged Business Enterprise (DBE) Program shall be incorporated by reference in all services contracts that are federally funded. DBEs shall have every possible opportunity to participate in the procurement of services as set forth in the Board's DBE program.

5.8 Responsibility Requirements. For all contracts in excess of \$1 million, the following uniform system of determining whether or not a bidder or proposer is "responsible" shall be applied. Multi-million-dollar contract awards must include sufficient pre-award analysis to demonstrate the bidder or proposer has been formally evaluated against SANDAG's project requirements. The CEO will consider the following non-exclusive list of factors in relation to the work to be performed for the project:

5.8.1 Financial Requirements:

5.8.1.1 The following guidelines may be used by staff to evaluate this factor:

5.8.1.1.1 Evidence of availability of sufficient working capital in the form of liquid assets, lines of credit, or similar sources to cover time periods during which

the bidder or proposer will be required to provide goods or services without yet being eligible for payment from SANDAG;

- 5.8.1.1.2 The bidder or proposer should have completed contract(s) with a contract duration similar to the potential contract award and whose cumulative value meets or exceeds their bid or proposal amount. In the case of an on-call, as-needed, or phased contract, the maximum estimated contract amount shall be used in place of a bid or proposal amount;
- 5.8.1.1.3 The bidder or proposer should have successfully completed contracts during the previous five years that together exceed five times the annual value of the SANDAG contract.

5.8.2 Experience Requirements:

5.8.2.1 The following guidelines will be used by staff to evaluate this factor:

- 5.8.2.1.1 The bidder or proposer must demonstrate their firm's experience on work similar to the SANDAG contract by submitting a list, covering at least the previous five years, of all projects of any type that have been completed or are in process that the bidder or proposer provides to be considered in determining its requisite experience. The list shall contain a name, title, email address, and phone number for staff to contact to verify the contract details;
- 5.8.2.1.2 The bidder or proposer shall demonstrate individual experience by submitting a list of all key personnel, including project managers, who will be involved in the SANDAG contract. These key personnel shall have at least three years of experience on contracts where the work is similar to the SANDAG contract. The individuals listed shall have been involved at the same level of responsibility on successfully completed contracts during the previous five years that together exceeds the value of the SANDAG contract. For each individual listed, the bidder or proposer shall include the name, title, address, and phone number of an individual or organization who can verify the individual's experience;
- 5.8.2.1.3 The bidder or proposer shall submit a summary of all claims made in the last five years arising out of previous contracts listed (this summary shall include all claims by owner against bidder or proposer or bidder or proposer against owner, and the final status of each claim);
- 5.8.2.1.4 The bidder or proposer shall state whether or not it has defaulted on a contract within the last two years;
- 5.8.2.1.5 The bidder or proposer shall list any violation of the Apprenticeship Requirements under the State Business and Professions Code or Labor Code found by an appropriate authority within the last two years;
- 5.8.2.1.6 The bidder or proposer shall state whether it has been found guilty of failure to pay required prevailing wages on a public contract within the last two years;

- 5.8.2.1.7 The bidder or proposer shall state whether it has been formally found to be a nonresponsible bidder or proposer, for reason other than being nonresponsive, by a public agency within the last two years;
 - 5.8.2.1.8 The bidder or proposer shall list how many projects it will be working on concurrently with the SANDAG project;
 - 5.8.2.1.9 The bidder or proposer shall state whether it has ever been terminated by an owner or client, or rejected from bidding in a public works project in the last five years;
 - 5.8.2.1.10 The bidder or proposer shall state whether a surety ever completed any portion of the work of its projects within the last five years;
 - 5.8.2.1.11 The bidder or proposer shall state whether it, any of its officers, or any of its employees who has a proprietary interest in it, has ever been disqualified, removed, or otherwise prevented from bidding on, or completing a federal, state, or local government project because of a violation of a law or safety regulation, and if so, explain the circumstances; and
- 5.8.2.2 For all items identified under subsections 5.8.2.1.3 – 5.8.2.1.11, the bidder or proposer shall provide the name of owner, title of project, contract amount, location of project, date of contract, and name of the bonding company.
- 5.8.3 Reporting Forms: In order to demonstrate that financial and experience requirements are met, the bidder or proposer shall submit, when requested by SANDAG, a Statement of Experience and Financial Condition Questionnaire verified under oath that shall meet the requirements in this section of the policy.
- 5.8.3.1 Failure to provide accurate information relative to its financial status or experience may result in the debarment of the bidder or proposer from future SANDAG work.
 - 5.8.3.2 The Statement of Experience and Financial Condition Questionnaire shall not be considered public records nor open for public inspection to the extent they are exempt under the California Public Records Act.
- 5.8.4 SANDAG will make its determination of responsibility based upon information submitted by bidder or proposers, and, if necessary, interviews with previous owners, clients, design professionals, or subcontractors with whom the bidder or proposer has worked, including SANDAG. If a bidder or proposer is determined to be nonresponsible, it shall be afforded an administrative hearing upon the submission of a timely protest of such issue. Any additional evidence submitted in the course of the protest procedure shall be considered in making the recommendation to the CEO regarding determination of the lowest responsive and responsible bidder or proposer and award of the contract.
- 5.9 In the event that circumstances dictate other than the processes indicated in this policy for procurements that will exceed \$1 million, prior Board concurrence shall be obtained following submittal of a written statement by staff setting forth the reasons for not pursuing all or part of any of the processes.
- 5.10 Board consent shall be obtained for the following solicitations and awards:
- 5.10.1 All services and job order contracting solicitations valued at \$5 million or more;

- 5.10.2 All final awards of services and job order contracts that are the result of a solicitation valued at \$5 million or more;
- 5.10.3 All final awards of construction solicitations valued at \$5 million or more;
- 5.10.4 All awards that were originally solicited for less than \$5 million, but for which an amendment is sought that will cause it to exceed the \$5 million threshold that would have required approval;
- 5.10.5 Procurements that exceed \$300,000 where circumstances dictate other than the procurement processes required or authorized by this policy.
- 5.11 In limited instances, a retroactive effective date can be applied to a contract document in accordance with the SANDAG Procurement Manual and with consideration of appropriate funding sources. A retroactive effective date should only be applied in exigent or emergency situations as described in this policy. Failure to plan as defined in this policy is not a permissible reason for use of a retroactive effective date in a contract.
- 5.12 When SANDAG procures goods or services to respond to public exigency or emergency, it will limit its contract only to the quantities or period of performance necessary to see it through the emergency or exigent situation.

6 Conflicts of Interest

- 6.1 A contractor is eligible for award of a contract by SANDAG so long as the contract in question does not create an actual, potential, or apparent conflict of interest. A prohibited conflict of interest exists when, because of other activities, relationships, or contracts, a firm or its staff is or may be unable to render impartial, objective assistance or advice to SANDAG; or a firm's objectivity in performing the contract work is or might be otherwise impaired; or where a firm would receive an unfair competitive advantage. Prohibited conflicts of interest include, but are not limited to, the following situations unless otherwise authorized by applicable federal or state law:
 - 6.1.1 Except in cases of design-build, CM/GC, or other approved alternative delivery method, any firm that provides design services to SANDAG will be ineligible for award of a construction contract to construct the improvements, which are the subject of the design services.
 - 6.1.2 Any firm that provides design services to SANDAG will be ineligible for award of any contract to provide construction management services resulting from the specific project for which design services were provided.
 - 6.1.3 Any firm that provides construction management services to SANDAG will be ineligible for award of a construction contract for which construction management services were or will be provided.
 - 6.1.4 Any firm that assists SANDAG or any of its member or affiliated agencies in the preparation of a solicitation document will not be allowed to participate as a bidder or proposer or join a team submitting a proposal in response to

the solicitation. SANDAG may in its sole discretion, however, determine there is not an organizational conflict of interest for a prospective firm where:

- 6.1.4.1 The role of the firm was limited to provision of preliminary design, reports, or similar “low-level” documents that will be incorporated into the solicitation, and did not include assistance in development of instructions to offerors or evaluation criteria; or
- 6.1.4.2 Where all relevant documents and reports delivered to the agency by the firm are made available to all offerors; or
- 6.1.4.3 The role of the firm was limited to preparation of a California Environmental Quality Act (CEQA) or National Environmental Policy Act (NEPA) document related to the project where the CEQA and NEPA processes have been completed prior to issuance of the solicitation.

6.1.5 SANDAG shall not contract with, and will reject any bid or proposal submitted by, the following persons or entities, unless the CEO finds that special circumstances exist that justify the approval of such contract:

- 6.1.5.1 Persons employed by SANDAG;
- 6.1.5.2 Profit-making firms or businesses in which SANDAG employees serve as officers, principals, partners or major shareholders;
- 6.1.5.3 Persons who, within the immediately preceding twelve (12) months, were employed by SANDAG and (1) were employed in positions of substantial responsibility in the area of service to be performed by the contract, or (2) participated in any way in developing the contract or its service specifications; or
- 6.1.5.4 Profit-making firms or businesses in which the former employees described in subsection 6.1.5.3 serve as officers, principals, partners or major shareholders.

6.2 General contractors or subcontractor firms may provide services on other SANDAG projects. A contractor or subcontractor shall not, however, participate in the review and analysis of, or render opinions regarding, its work performed on other SANDAG projects or as limited in this section. Unless otherwise defined by the CEO, a general contractor is a contractor whose procurement is typically for a two-year period with an option for one or more one-year option extensions to provide services as needed for various assigned projects from time to time on a work order or task order basis, rather than for one specific predefined project. General contractors support SANDAG staff in managing other SANDAG contractors. Subcontractors to general contractors are not classified as general contractors. General contractor procurements will be identified as such during the solicitation process.

6.3 A Notice of Potential for Conflict of Interest shall be included within any applicable solicitation issued by SANDAG. The notice shall be the policy of the Board as listed in this policy. Any solicitation issued in accordance with this policy shall include or make reference to Section 6 of this policy.

- 6.4 For purposes of this Section 6, “firm” shall be defined as any company or family of companies where there is a single parent board of directors or staff of officers who can influence the policies and actions of the design company, construction management company, and the construction company. A “firm” also shall include any partnership, corporation, association, or other legal entity or any member of a joint venture that meets the above-stated definition. “Ineligible” firms shall include the prime contractor for the services, subcontractors for portions of the services, and affiliates of either. An affiliate is a firm that is subject to the control of the same persons through joint ownership or otherwise.
- 6.5 If there is any doubt by a firm regarding a potential conflict of interest for a specific project or function, the OGC will, upon written request, provide a written determination on behalf of SANDAG. This procedure is encouraged prior to submittal of proposals or bids. In the event a conflict of interest is determined to exist, a written appeal may be made by the affected firm to the CEO within five calendar days of notice from SANDAG regarding the OGC’s determination. The CEO shall determine the adequacy of the appeal and make a subsequent final decision. No further appeal shall be considered.
- 6.6 SANDAG staff and third parties with whom SANDAG does business shall comply with SANDAG administrative policies concerning Standard of Conduct and all relevant Board Policies and administrative policies and procedures.

7 Protests to Solicitation, Bid, or Award

- 7.1 SANDAG shall include in all solicitations a procedure to be followed by interested parties who wish to protest a specification or procedure related to a procurement. Interested parties are defined as firms that submitted a bid or proposal in response to the solicitation. The procedure shall include the following:
- 7.1.1 A requirement that protest submittals shall be in writing, be specific to the specification being protested, state the grounds for protest, and include all documentation needed to enable SANDAG to reach a decision.
 - 7.1.2 A statement that the protest shall be submitted within clearly defined time limits prior to receiving proposals or opening bids or prior to award of contracts. In no event shall the time limit for a solicitation exceeding the Micro Purchase Amount be less than three business days or the Small Purchase Amount be less than five business days.
 - 7.1.3 A statement specifying the review and determination process by SANDAG, including time limits for response.
 - 7.1.4 Requirements for submittal of protest reconsideration.
 - 7.1.5 A statement regarding review of the initial protest by a protest review committee and review of protest reconsiderations by the CEO, as appropriate.
 - 7.1.6 A statement that protests will be rejected if they are not complete.

8 Procedure for Contractors with Claims Against SANDAG

- 8.1 On all SANDAG contracts not involving construction, with an award estimated of more than \$100,000, a section shall be included in the contract provisions that specifies how a contractor should file a notice of potential claim for additional funds and the procedures for review and disposition thereof.
- 8.2 On all SANDAG construction contracts estimated to cost more than \$25,000, a section shall be included in the contract provisions that specifies how a contractor should file a "Notice of Potential Claim" and the procedures for review and disposition thereof.
- 8.3 Written notice of the potential claim must be given to SANDAG prior to the time the contractor shall have performed the work giving rise to the potential claim, if based upon an act or failure to act of SANDAG; or in all other cases, within 15 calendar days of the happening of the event, thing or occurrence giving rise to the potential claim.
- 8.4 It is the intention of these claim requirements that differences between the parties arising under and by virtue of the contract be brought to the attention of SANDAG at the earliest possible time in order that such matters may be settled, if possible, or other appropriate action promptly taken. The contractor shall agree to have no right to additional compensation for any claim that may be based on any such act, failure to act, event, thing or occurrence for which no written notice of potential claim as herein required was filed. A claim must be presented and acted upon as a prerequisite to suit thereon.
- 8.5 If a contractor files an appropriate notice of potential claim, the administrative procedure shall be as follows:
 - 8.5.1 SANDAG staff shall respond in writing within 25 calendar days with an appropriate decision. It is expected that SANDAG staff shall investigate the area of claim thoroughly and shall issue a decision that is fair to all parties. It is further expected that every effort will be made to resolve the claim at the job level.
 - 8.5.2 If it appears to staff that the claim cannot be settled, the project manager and contracts staff shall, as soon as practicable, forward the details of the claim to the CEO and shall so notify the contractor of the action.
 - 8.5.3 The CEO shall direct the appropriate department director to obtain all pertinent information, including any oral or written presentation, concerning the claim the contractor might wish to present. The department director shall provide all information to the CEO, including any recommendations.
 - 8.5.4 The CEO shall report a final decision in writing to the contractor. The written decision shall notify the contractor that this action completes the contractor's administrative remedies and any further dispute would have to be resolved by either a nonbinding Dispute Resolution Board or arbitration if provided for in the provisions of the contract and agreed to by both parties or litigation.
 - 8.5.5 Any final recommendation of a Dispute Resolution Board or arbitrator shall be presented to the CEO for approval before going to the Board for action.
- 8.6 Any claim disputes not resolved by the CEO shall be reported to the Board at one of the Board's regular meetings.

- 8.7 If a contract amendment proposed for the settlement of a claim causes a budget impact over \$300,000, the amendment must be sent to the Board for approval.
- 8.8 Federal Transit Administration review and concurrence may be required for claim settlements that exceed \$100,000 if federal funds are involved.
- 8.9 A list of all outstanding claims exceeding \$100,000 which involve the use of federal funds shall be included in the federal grants quarterly report.

9 Debarment Procedures

- 9.1 In addition to all other remedies permitted by law, SANDAG may, upon advice of the CEO and OGC, by issuance of a resolution by the Board of Directors, declare a contractor ineligible to bid on SANDAG contracts for a period not to exceed three years for any of the following grounds:
- 9.1.1 Unjustified failure or refusal to timely provide or properly execute contract documents;
 - 9.1.2 Unsatisfactory performance of contract;
 - 9.1.3 Excessive and/or unreasonable claims while performing work for SANDAG;
 - 9.1.4 Two or more occasions within a two-year period of failure to submit bond or insurance documents acceptable to SANDAG in the time periods required;
 - 9.1.5 Unjustified refusal to properly perform or complete contract work or warranty performance;
 - 9.1.6 Unjustified failure to honor or observe contractual obligations or legal requirements pertaining to the contract;
 - 9.1.7 Conviction under a state or federal statute or municipal ordinance for fraud, bribery, theft, falsification or destruction of records, receiving stolen property or of any other similar crime;
 - 9.1.8 Any offense or action which indicates a lack of business integrity and which could directly affect the reliability and credibility of performance of the contractor on future contracts with SANDAG;
 - 9.1.9 Any debarment of the contractor by another governmental agency; and
 - 9.1.10 Two or more claims of computational, clerical, or other error in cost proposal submission within a two-year period;
 - 9.1.11 False statements or certifications in documents submitted as part of a bid or any supplementary documentation thereto; or
 - 9.1.12 Unjustified failure or refusal to timely provide or properly execute contract documents.
- 9.2 SANDAG may permanently debar a firm for a conviction under federal or state antitrust statutes involving public contracts or the submission of bid proposals, for any corrupt practices involving the administration or award of a contract with

SANDAG, or permanent debarment of the bidder or proposer or contractor by another governmental agency, as permitted by law.

- 9.3 The firm shall be provided notice and an opportunity to present evidence and show cause before the Board why such ineligibility should not be declared after the CEO has established a factual basis for debarment.
- 9.4 A firm's debarment shall be effective amongst SANDAG and any of its subsidiary entities. Debarment prohibits SANDAG and subsidiary entities from executing contracts with the debarred firm.
- 9.5 Debarment constitutes debarment of all divisions or other organizational elements of the firm, unless the decision is limited by its terms to specific divisions, organizational elements, or commodities. The debarment decision may be extended to include any affiliate of the firm if the affiliate is (1) specifically named, and (2) given written notice of the proposed debarment and an opportunity to respond.
- 9.6 Notwithstanding the debarment of the firm, the Board may continue contracts in existence at the time the firm is debarred, unless the Board directs otherwise, after receiving advice from the CEO and OGC as to the effects of termination of an existing agreement.

10 Contractor Assurances

- 10.1 SANDAG contractors must assure they meet all applicable laws concerning labor law, labor rates, EEO, and licenses.
- 10.2 SANDAG contractors shall assure all services requiring a licensed contractor or subcontractor shall be performed by licensed contractors.
- 10.3 Contractors will be responsible for complying with the provisions of the federal Fair Labor Standards Act of 1938 as amended.
- 10.4 Contractors must provide the minimum scope of insurance as stipulated in the contract. Contractors shall be required to provide Workers' Compensation Insurance to their employees in accordance with the provisions of Section 3700 of the Labor Code. Prior to commencement of work, the contractor shall be required to provide a certificate of compliance and proof of any required insurance to SANDAG.
- 10.5 Contractors must agree to meet labor compliance requirements on SANDAG contracts, which shall be consistent with the California Labor Code.
- 10.6 Contractors shall comply with the EEO requirements set forth by Title VI of the 1964 Civil Rights Act on any project where federal funds are included; and any other requirements established by an applicable federal funding agency.
- 10.7 Contractors shall comply with Section 1735 of the Labor Code and all other California laws prohibiting discrimination based on protected class status.
- 10.8 Contractor shall be required to pay workers no less than the stipulated prevailing wage rates paid for such work or craft in the San Diego area by the contractor or any of its subcontractors, unless it is otherwise authorized by law.

- 10.9 Contracts including construction services in excess of \$1 million shall include a provision requiring the entity contracting with SANDAG to commit that the entity and its subcontractors at every tier will use a skilled and trained workforce to perform all construction work on the project consistent with PUC section 132354.7 unless one of the exceptions in Section 132354.7(a) are met.
- 10.10 All contractors shall assure compliance with the Board's Equal Employment Opportunity Program and agree to audit provisions to allow the SANDAG independent performance auditor access to the contracted entity's records needed to verify compliance with the terms specified in the contract.

11 Amendments and Change Orders

- 11.1 Contracts may be amended in accordance with the SANDAG Procurement Manual and related procedures. Unplanned amendments are not favored and should only be needed when events that could not have reasonably been anticipated with sufficient planning occur. Staff shall provide detailed reasons and justifications for amendment requests.
- 11.2 Contracts staff shall review all amendments and the contract procurement history to ensure bid splitting and avoidance of competition is not occurring. Contracts staff shall ensure justifications for amendments are allowable and in the event it is unclear if the justification is adequate, consult with the OGC.
- 11.3 Any amendment to a contract document that constitutes a cardinal change requires a sole source justification in accordance with Section 4 of this policy.
- 11.4 Pursuant to Board Policy No. 017, the CEO has authority to enter into agreements not currently incorporated in the budget and make other modifications to the budget in an amount up to \$300,000 per project per fiscal year, subject to the limitations in this policy. The Board will be notified of all such amendments.
 - 11.4.1 The Executive Committee or Transportation Committee or, if not practical, the Board Chair, First Vice Chair, or Second Vice Chair are hereby authorized to approve such amendments that will cause the project budget to be changed in an amount exceeding \$300,000 when waiting for Board approval could potentially delay a project or increase the cost of the change. Approval of such items by the Board Chair, First Vice Chair, or Second Vice Chair is not the preferred practice and should only be used if a regular or special meeting of an authorized legislative body is infeasible or impractical. In such an instance, the CEO shall notify the Board of the action at the next regular Board meeting.
- 11.5 Notwithstanding any need for a budget approval from the Board of Directors or others permitted to authorize such an amendment under the previous subsection, all amendments in excess of \$500,000, shall be reported to the Board of Directors on a monthly basis, with a brief explanation of the need for the amendment. The \$500,000 amount shall be cumulative of all amendments to the original dollar amount in the solicitation or contract, whichever amount is higher.
- 11.6 All amendments, including change orders, utilizing federal funds shall conform to the Code of Federal Regulations, Volume 2, Part 200 and the most recent version of

Federal Transit Administration Circular 4220.1G or the equivalent from other applicable federal funding agencies.

- 11.7 Construction Contract Change Orders. Change orders are a type of amendment made to public works construction contracts.
 - 11.7.1 All construction contracts may be amended by a suitable change order. Change orders shall be processed in accordance with the SANDAG Procurement and Construction Manual(s), this policy, and applicable procedures. Such procedures shall be consistent with the Board of Directors intent to be apprised of contract amendments.
 - 11.7.2 All change orders shall be approved by the CEO, except the following, which shall be brought before the Board for decision:
 - 11.7.2.1 Change orders that would require review as an amendment pursuant to this Section 11; and
 - 11.7.2.2 On contracts where the price of the original contract or solicitation value exceeds \$5 million, change orders where the value of such change order exceeds 25 percent of the price of the original contract or otherwise qualifies as a cardinal change.

12 Contract Administration

- 12.1 During the life of the contract, the staff member(s) authorized to administer the contract shall track the performance of contractors and subcontractors, use of Disadvantaged Business Enterprises (DBEs), the milestone dates for contractor performance and deliverables, and the rate at which funding for the contract is being used and report any concerns to their manager.
- 12.2 A Notice to Cure shall be sent to a contractor when its performance falls behind deliverable dates or milestones by more than 60 days. Such correspondence shall be reviewed by the OGC prior to being sent and submitted to Contracts Department staff for recordkeeping. Failure of the contractor to cure the matter(s) in the notice within 30 days shall result in the matter(s) being reported to the Board of Directors as set forth in Section 12.4 of this policy.
- 12.3 When a contract exceeds \$100,000 in aggregate value, final contractor performance shall be evaluated upon completion or termination of the contract. This requirement also shall apply to task orders in excess of \$100,000.
- 12.4 To ensure timely communication of critical contract concerns related to contractor performance or claims, the Director of Contracts & Procurement Services will track the following criteria to include in a monthly report to the Board of Directors when a contract value will exceed \$1 million in aggregate:
 - 12.4.1 Contracts for which a Stop Work Notice is issued for a vendor performance concern.
 - 12.4.2 Contracts for which a Notice to Cure is issued and not resolved within the timeline required by this policy.

- 12.4.3 Contracts with at least two instances of documented non-excusable delays. A non-excusable delay is defined as a delay of more than five working days when that delay was solely within control of the contractor.
- 12.4.4 Contracts for which the contractor is responsible for compensable delays, based on liquidated damages or otherwise, in excess of \$50,000. A compensable delay occurs when there is going to be some compensation to SANDAG for the delay because the contractor is liable for an extension of time or cost compensation or both.
- 12.4.5 Contracts with "critical path" delays. A critical path delay is defined as a significant contractor delay in reaching a milestone or maintaining a project schedule that results in a determination that the contractor will not be able to reasonably accomplish the work by the contracted deadline.
- 12.4.6 When there is notice of a potential claim by the contractor related to the contract.
- 12.4.7 When there is notice of an actual claim by the contractor related to the contract.
- 12.4.8 In other situations when the OGC or Director of Contracts & Procurement Services determines the Board of Directors should be placed on notice of significant contractual issues related to priority projects.
- 12.5 Employees assigned as project managers over projects with a budget in excess of \$1,000,000 shall meet specific job qualifications, including completion of a formal project management training or certification program within 60 days of being assigned such responsibilities.
- 12.6 Persons administering SANDAG contracts and overseeing the work of a contractor, including but not limited to, contract analysts, project managers, and contract managers, shall, at minimum, receive formal training at least once per year. Training shall be provided by procurement and contracting subject matter experts and/or management. Training shall at minimum, include the following subjects:
 - 12.6.1 Assigned roles, responsibilities, and procedures of persons in the procurement and contracting process;
 - 12.6.2 What is required from contractors for invoices based on SANDAG contract language. Elements of invoice review shall include:
 - 12.6.2.1 Ensuring fee schedules align with the applicable contract rates.
 - 12.6.2.2 Tracking of invoices and invoice approval processes.
 - 12.6.2.3 The amount of detail and itemization required in invoices and progress reports prior to payment to the contractor being authorized. How to cross-check against the contract document to verify invoiced work reflects work performed consistent with the contract. The requirement that staff must validate the work has been performed and meets contractual requirements before invoices are authorized for payment using information such as detailed timesheets or task specific assignment sheets that support labor or work product results, subcontractor invoices, and goods and/or receiving receipts from third parties.
 - 12.6.3 Procurement planning and oversight functions such as tracking of contracts, phased procurements, monitoring of expiration dates, procurement timelines for

any changes to projects or potential amendments or change order needs, steps and timelines needed to prepare for various sized and timed procurements, and avoidance of requests for a contract with a retroactive effective date.

- 12.6.4 The requirement that competition must be open and full unless a permitted justification in this policy applies, and the frequency that competition must occur as required by applicable laws, rules and regulations. Information provided shall include:
 - 12.6.4.1 How to ensure sole sources are limited and are thoroughly being reviewed and analyzed to ensure potential risks are mitigated.
 - 12.6.4.2 Instruction explaining failure to plan is not an adequate justification for a noncompetitive procurement or retroactive effective date in a contract.
- 12.6.5 Reporting requirements to the Board of Directors for procurement and contract actions as described in this policy.
- 12.6.6 The requirement that performance evaluations of contractors be submitted upon completion or termination of a contract document.
- 12.6.7 Explanation of justifications allowed for amendments with examples of both allowable and non-allowable justifications. This shall include training for contract analysts to ensure they are reviewing and analyzing whether justifications are allowable by among other things, reviewing amendment requests and procurement history, identifying excessive amendments, identifying potential bid splitting or avoidance of competition, ensuring amendments are not being issued to non-performing consultants, and making enquiries to confirm there are no conflicts of interest.
- 12.6.8 The Procurement Manual, Construction Manual, and any relevant Standard Operating Procedures.
- 12.6.9 Information that must be included in the record of negotiation for contracts not procured using the low bid process to ensure an adequate record exists of the steps taken to negotiate the contract.
- 12.6.10 Contract negotiation training to include reasons and intent of negotiations to provide the best contract terms and conditions for SANDAG, best practices, and the risks of not negotiating and/or not following best practices.
- 12.6.11 Proper use of the on-call contract process, competition required to award task orders or job orders, and methods that must be used to ensure fairness and equity in the award of task orders. The requirement that on-call procurements are appropriately advertised to reach sufficient, qualified and a variety of contractors and subcontractors, including outreach efforts using public platforms and attendance of outreach events to attract new and disadvantaged contractors and subcontractors.
- 12.6.12 Internal control requirements in Board Policy No. 041, including those applicable to limitation of sole source procurements.
- 12.6.13 The types of contract documents requiring review and approval by the OGC pursuant to Board policies and applicable procedures.

12.6.14 Conflicts of interest that can arise based on personal relationships of staff. This training shall include information on how to eliminate improper influence by any person on evaluation committees for selection of contractors.

12.6.15 Instruction that staff should not dictate the selection of particular subcontractors and should be sensitive to the fact that suggestions to contractors to hire particular subcontractors may be perceived as unduly coercive or create an appearance of favoritism or a lack of competitive contracting.

12.7 Following completion of all projects with contracts exceeding \$5 million in aggregate, analyses shall be conducted, with lessons learned documented and corrective action plans for future projects prepared and presented to the CEO. The analyses will be shared with relevant internal stakeholders and presented to the CEO within 60 days of completion of the project. The documentation will be saved in the project files for future reference. Any lessons learned will be noted and incorporated into standard operating procedures and future procurements of a similar nature.

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