RESOLUTION NO. 20-18

RESOLUTION OF THE SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS (SGVCOG) ADOPTING AN UPDATED PURCHASING AND PROCUREMENT POLICIES AND PROCEDURES

WHEREAS, the San Gabriel Valley Council of Governments (SGVCOG) requires various goods and services to carry out the mission of the organization and effectively serve the member agencies; and

WHEREAS, purchasing and procurement procedures provide a process designed to enable the organization to effectively manage and coordinate purchases, implement projects and programs, and to ensure sound business principles and legal requirements are followed; and

WHEREAS, effective procedures enable the organization to establish a system of financial controls for the efficient use and expenditure of public funds, to ensure the process is conducted in a manner that serves the best interests of the SGVCOG and the public, and to ensure fair competition; and

WHEREAS, the SGVCOG adopted Resolution No. 14-25 approving amendments to the existing purchasing and procurement policy; and

WHEREAS, the SGVCOG Purchasing and Procurement Policies and Procedures has been further updated and consolidated as a component of the SGVCOG's integration with the ACE Project.

NOW, THEREFORE, BE IT RESOLVED that the Governing Board hereby establishes the Purchasing and Procurement Policies and Procedures, attached hereto and incorporated herein as Exhibit A, which supersedes Resolution No. 14-25 in its entirety, and determines that purchases and contracts for any materials, supplies, equipment or services shall be made in accordance with the provisions of this Policy.

PASSED AND ADOPTED by the Governing Board of San Gabriel Valley Council of Governments, County of Los Angeles, in the County of Los Angeles, State of California, on the 15th day of October 2020.

San Gabriel Valley Council of Governments

Margaret Clark

Margaret Clark, President

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SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS

Purchasing and Procurement Policies and Procedures Manual

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INTRODUCTION

The following manual is intended to provide an overview of the purchasing and procurement policies and procedures for San Gabriel Valley Council of Governments, which will be referred to as “SGVCOG” or “the Organization” throughout this manual.

Effective January 2018, the SGVCOG Governing Board approved restructuring its construction entity, the former Alameda Corridor-East (ACE) Construction Authority into the SGVCOG. As a result of this restructure, the policies and procedures and administration of the ACE project will now reside within the administration and oversight of SGVCOG. All policies and procedures documented in this manual will cover both existing policies of SGVCOG as well as the former ACE project policies and procedures. Existing staff of the ACE project report to SGVCOG administration with oversight from the Capital Projects Construction Committee of the SGVCOG Governing Board.

SGVCOG is a government entity incorporated in the State of California that was formed by a Joint Powers Agreement on March 17, 1994.

In 2020, the San Gabriel Valley Regional Housing Trust (SGVRHT) was established to fund and finance the planning and construction of homeless housing, and extremely low, very low, and low-income housing projects. The SGVRHT Board of Directors approved an Agreement with the SGVCOG for core staffing services. As part of this Agreement, the SGVCOG provides administrative support, which includes financial management and contract support. Therefore, the purchasing and procurement policies and procedures set forth herein shall apply to the SGVRHT.

Mission

“The SGVCOG is a sub-regional government that serves as a unified voice to maximize resources and advocate for regional and member interests to improve the quality of life in the San Gabriel Valley."

Purpose and Scope

This manual will document the purchasing and procurement procedures for the purchase of goods and services used for the operation of the SGVCOG. These procedures enable the SGVCOG to effectively manage and coordinate the purchasing and procurement process, to ensure the process subscribes to sound business practices and legal requirements, to establish a system of financial controls for the efficient use and expenditure of public funds, to ensure the process is conducted in a manner that serves the best interests of the SGVCOG and the public, and to ensure fair competition.

If a particular grant or award has provisions that are more restrictive than those in this manual, the more restrictive provisions will be followed only for that grant or award.

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Definitions

- **Amendment:** A modification considered outside the original contract scope and formalized with a bilateral contract change document only. Both parties are required to execute the document.
- **Bid:** A complete, properly signed response to an invitation for bid, which if accepted, would bind the Bidder to perform the resultant Contract.
- **Bid Protest**: A protest of a procurement decision made strictly pursuant to the procedure outlined in this manual.
- **Change Orders**: represent the commercial and technical resolution of a contract modification that is within the original scope of contract. The change order document can be unilateral or bilateral in execution.
- **Claim**: Differences that have developed during the contract, under protest or under notice of potential claim, which are not resolved at the time the contractor returns the proposed final pay estimate.
- **Consultant:** The person, firm or entity selling goods or services to SGVCOG under a Contract.
- **Eligible Protestor**: An Eligible Protestor is one who would be immediately eligible for contract award if all of its arguments are upheld. For example, in a competitive bid situation, the third lowest bidder is an Eligible Protestor only if its Bid Protest would, if upheld, cause the rejection of the low bidder and the second low bidder.
- **Executive Director:** Administrative head of the SGVCOG and responsible to the Governing Board for the efficient operation of the organization.
- **Governing Board**: Governing Board of the SGVCOG may also be designated as "Board." The Governing Board is designated to review bid protests pursuant to this procedure for Governing Board awarded contracts.
- **Hearing Officer**: The Executive Director of the SGVCOG is the designated Hearing Officer to review bid protests pursuant to this procedure for Executive Director awarded contracts.
- **Interested Party**: Any bidder whom a protestor seeks to exclude from contract award consideration in order for it to be considered for award.
- **Options**: Provision for additional work that is separately defined and individually priced/scheduled within the original agreement. The SGVCOG's decision to exercise/not exercise the option can be delayed for a specified time limit.
- **Potential Claim:** Written notice provided to the SGVCOG by the contractor when the:
    - Parties are unable to reach bilateral agreement on a change and the contractor is provided a unilateral change order ("protest"); or,
    - Contractor perceives that it is entitled to additional compensation (time or money) for something it believes to constitute extra work performed or to be performed.
- **Project Manage**r: SGVCOG staff responsible for overseeing a consultant contract.

- **Small Business Enterprise**: A business that meets that meets specific race-neutral ownership and economic criteria established by State and Federal guidelines. SBE eligibility requirements vary among contracting agencies depending on the funding. Projects that are federally funded require SBE certification standards as defined by the United States Small Business Administration (SBA) and those that are State funded require SBE certification standards as defined by the California Department of General Services (DGS).
- **Solicitation:** As applicable, an Invitation for Bid, Request for Proposal, Request for Qualifications or a Request for Quotation.
- **Technical Evaluation Committee (TEC)**: Individuals approved by Contracts staff to evaluate a solicitation.

Authority to Procure

(1) No purchase of personal property, services or commodities by any person other than the Executive Director shall be binding upon SGVCOG, or constitute a lawful charge against any funds, except in emergencies and as may be otherwise provided through action by the Board.

(2) Employees responsible for procuring personal property, services and commodities on behalf of the SGVCOG cannot also be responsible for approving requisitions for purchases, receiving the goods purchased, or the approval/processing of invoices for payment for their department.
   a. In such instances, the Administrative Services Manager is authorized to approve such requisitions.

(3) Except as otherwise provided for in this manual or as directed by the Executive Director, only those employees who are trained, deputized and authorized by their department head, have the authority to procure services and commodities for the organization.

(4) Employees designated by the Executive Director are authorized to approve the purchase of office supplies necessary for routine operations. Designated employees are staff tasked with office management, which may include the Administrative Services Manager, and assigned Senior/Principal Management Analysts. Routine operations includes but not limited to materials, supplies, equipment or services in accordance with the provisions of this purchasing and procurement policy.

Cancellation

Any service contract may be canceled or terminated by the Executive Director, as appropriate, without approval by the Board if such contract was executed by an employee not designated to execute such contracts.

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Effective Date(s) of Procurement Policies

The effective date of the purchasing and procurement policies described in this manual is October 15, 2020. If a policy is added or modified subsequent to this date, the effective date of the new/revised policy will be indicated parenthetically immediately following the policy heading.

The contents of this manual were approved as official policy and documented procedures of the Organization by the Governing Board, and Executive Director. All SGVCOG staff members are bound by the policies and procedures herein, and any deviation from established policy and procedure is prohibited. Modifications of this manual to reflect changes to updated laws do not require approval of the Governing Board. Similarly, revisions to provide clarification or reflect operating practices do not require Governing Board approval.

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PURCHASING AND PROCUREMENT POLICIES AND PROCEDURES

Overview of Purchasing

THE POLICIES DESCRIBED IN THIS SECTION APPLY TO ALL PURCHASES MADE BY SGVCOG.

SGVCOG requires the practice of ethical, responsible, and reasonable procedures related to purchasing, agreements and contracts, and related forms of commitment. The policies in this section describe the principles and procedures that all staff must adhere to in the completion of their designated responsibilities.

The goal of these procurement policies is to ensure that materials and services are obtained in an effective manner and in compliance with the provisions of applicable local, state or federal statutes and grant requirements.

Responsibility for Purchasing

Final authority for purchasing / contracting actions and decisions rests with the Governing Board. The Board will act on recommendations from the Executive Director to award contracts in excess of $250,000 and to increase contract contingency.

The Executive Director is authorized to approve and enter into contracts and contract modifications (including but not limited to change orders, amendments, and all other contract modifications) on behalf of the SGVCOG, as follows:

(1) Contracts with a contract price that does not exceed $250,000;

(2) Modifications to contracts approved by the Executive Director that, cumulatively with the initial contract price and prior contract modifications, do not result in a total contract price in excess of $250,000;

(3) Modifications to Board approved contracts that, cumulatively, do not increase the Board approved contract price by more than ten percent (10%), or such lesser amount as the Board may establish. In the event that the amount of the contract award is reduced due to a post-award or interim audit, the 10% authorization for amendments applies to the lower amount. The Executive Director shall not delegate this authority under (1) or (2) without express Board authorization. However, the Executive Director may delegate the authorization for contract modifications to the Board-approved construction contracts that cumulatively, do not increase the Board-approved contract price by more than five percent (5%). The powers of the Executive Director pursuant to this Paragraph are subject to: (i) the existence and provisions of a Board approved Budget; (ii) the provisions of this Purchasing and Procurement Manual; and (iii) the Applicable Laws.

The Executive Director may conduct a procurement not to exceed $500,000 in response to emergency conditions. The requirements and process are provided in the Emergency Procedures section of this Manual. The Executive Director shall report to the Board at its next regularly scheduled meeting each new contract awarded on an emergency basis and shall report monthly to the Board all other new contracts and contract modifications entered into by the Executive Director without express Board approval.

The Executive Director has primary responsibility to ensure that the Procurement Manual is followed and that all actions are in accordance with applicable laws and codes as interpreted by the General Counsel. The Executive Director may carry out this responsibility through use of SGVCOG staff and consultants.

Code of Conduct in Purchasing - MUST

In accordance with 2 CFR Part 200.318(c)(1), ethical conduct in managing the Organization's purchasing activities is essential. Staff must always be mindful that they represent SGVCOG and share a professional trust with other staff and funding sources.

- Officers, Board members, employees, and agents will not solicit or accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. The Governing Board may establish standards to evaluate when a financial interest is not substantial or the value of an unsolicited gift is of nominal value. Substantial financial interest and nominal value, as approved by the Governing Board, is defined as follows:
  - Substantial financial interest means all interest in real property, investments, and business positions.
  - Unsolicited gifts with a nominal value of $50 or less may be accepted with the approval of the Executive Director.
- Staff will discourage the offer of and decline individual gifts, favors, or gratuities that might influence the purchase of supplies, equipment, and/or services. Staff will notify their immediate supervisor if they are offered such gifts.
- No officer, Board member, employee, or agent will participate in the selection or administration of a contractor if a real or apparent conflict of interest would be involved. See the SGVCOG's adopted policy on Conflict of Interest Code.

Competition

In accordance with 2 CFR Part 200.319, as a means to promote open and full competition, purchasers will:

- Be alert to any internal potential conflicts of interest.
- Be alert to any noncompetitive practices among contractors that may restrict, eliminate, or restrain trade.
- Not permit contractors who develop specifications, requirements, or proposals to bid or propose on such procurements.

- Award contracts to bidders or proposers whose product or service is most advantageous in terms of price, quality, and other factors.
- Issue solicitations that clearly set forth all requirements to be evaluated.
- Reserve the right to reject any and all bids when it is in the Organization’s best interest and properly documented
- Not give preference to state or local geographical areas unless such preference is mandated by federal statute.
- Only use “name brand or equivalent” description as a means to define the performance or requirements.

Nondiscrimination Policy

Contractors who are the recipients of Organization funds, or who bid or propose to perform any work or furnish any goods under agreements with SGVCOG, will agree to these important principles:

- Contractors will not discriminate against any employee or applicant for employment because of race, religion, color, sexual orientation, national origin, handicap, gender, age, or any other category protected by state or federal law, except where it is a bona fide occupational qualification reasonably necessary to the normal operation of the contractors.
- Contractors agree to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. Notices, advertisements, and solicitations placed in accordance with federal law, rule, or regulation will be deemed sufficient for meeting the intent of this section.

Advertising Procedures for Procurement

The public advertising plan is designed to encourage maximum participation in solicitation for selected procurement methods. SGVCOG will publicly advertise requests for sealed bids and proposals using a plan designed to reach the maximum potential bidders and proposers.

Examples of public advertising that may be used include:

- SGVCOG’s public website
- SGVCOG’s social media accounts
- Sealed bid or request for proposal databases, if available
- Print and electronic advertisements (newspapers, emails)
- Audio advertisements (radio station, Pandora©, Spotify©)
- Direct solicitation of recommended or previously used contractors
- Direct solicitation of minority, small, women-owned, and veteran-owned businesses or businesses in labor surplus areas
- Professional associations

Public advertisements will include, at a minimum:

- SGVCOG's legal name and address, including contact name and phone number
- Date, time and location, including address, of bid/proposal meeting, as applicable
- Notice that participation in the meeting is mandatory for the bidder's or proposer's solicitation to be considered, as applicable
- Sealed bid requests will include any specifications and pertinent attachments and will define the items or services in order for the bidder to properly respond
- Proposal requests will identify all evaluation factors and their relative importance
- Sealed bid requests will identify the time and place sealed bids will be opened (for local governments and tribal governments, bids will be opened publicly)
- Notice to bidders/proposers that incomplete bid/proposal packages will not be considered.

Announcements of pending procurements will be undertaken to ensure that the firms that are most likely to be interested in providing the services are provided adequate notice to obtain the Request for Proposals (RFP), Request for Qualifications (RFQ) or Invitation for Bids (IFB). Advertisements will not coincide with a holiday period unless specifically approved by the Executive Director for extenuating situations.

All SGVCOG procurement actions will be advertised, with the exception of the following situations:

A. Small purchases (under $25,000) or service agreements (under $100,000);
B. An emergency situation, as defined in Emergency Procedures, exists;
C. Situations in which there is only one responsible source of supply including, but not limited to: (a) when the public interest requires the standardization of equipment or the interchangeability of parts; (b) there is a follow on contact for continued development of specialized equipment; (c) the goods or equipment to be procured will be used for testing or experimental purposes; (d) there is only one source of the goods or equipment; or
D. The SGVCOG's need is of a unique and compelling urgency.

Procurement Thresholds and Authorization Limits

Purchases are classified into four (4) purchasing categories. These categories are based on the dollar amount and type of purchase. Each category establishes a separate purchasing limit, authorization level and procedure. The following table summarizes the required approval levels, solicitation, and documentation:

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Amount of Purchase	Required Approvals	Required Solicitation	Required Documentation
● Micro Purchases ($10,000 or Less)	● Executive Director	● Price must be considered reasonable based on current market ● Purchase can be made from a contractor successfully used in the past, with reasonable pricing ● As much as possible, micro-purchases will be rotated among qualified suppliers, provided pricing is comparable	● Receipt or invoice approved by individual(s) in Required Approvals column
● Small Purchases ($25,000 or less or $100,000 or less for technical agreements or professional services agreements)	● Executive Director	● 3 quotes (catalogue, Internet, written, etc.) ● Or select a contractor from pre-qualified contractor list ● Written proposals from at least 3 firms; letter proposals acceptable ● Evaluation criteria	● Documentation of quotes obtained ● Procurement documentation Scope of work ● Procurement documentation (proposals, evaluations, record of negotiation). ● Executed contract ● Correspondence
● Intermediate Purchases ($250,000 or less)	● Executive Director	● Competitive Request for Proposals ● Or select a contractor from pre-qualified contractor bench ● Evaluation criteria	● Procurement documentation ● Procurement documentation (proposals, evaluations, record of negotiation). ● Executed contract ● Correspondence

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Amount of Purchase	Required Approvals	Required Solicitation	Required Documentation
● Major Purchases ($250,000 or more)	● Executive Director ● Governing Board	● Competitive Request for Proposals or Sealed Bid Method of Procurement ● Scope of work ● Evaluation Criteria	● Copy of RFB/RFP ● Proposal scoring grids, including who participated in the scoring ● Proposal and contract of winning bidder/proposer ● Procurement checklist

The Executive Director is authorized to enter into any contract on behalf of SGVCOG. These policies will also apply to renewals of existing contracts.

Solicitation for Procurements - MUST

To help ensure full and open competition, solicitations for goods and services, requests for proposals (RFPs), and invitation for bid (IFBs or sealed bids) will provide for all of the following:

1. A clear and accurate description of the technical requirements for the material, product, or service to be procured. Descriptions will not contain features which unduly restrict competition in accordance with *2 CFR Part 200.319(c)(1).* Description may also include the following:
   - Technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.
   - Preference for products and services that conserve natural resources, protect the environment, and are energy efficient, to the extent practicable and economically feasible
2. Requirements which the offeror must fulfill and all other factors to be used in evaluating bids or proposals in accordance with *2 CFR Part 200.319(c)(2).*
3. Description may include a statement of the qualitative nature of the material, product, or service to be procured and, when necessary, must set forth the minimum essential characteristics and standards to which it must confirm if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible to avoid impeding competition in accordance with *2 CFR Part 200.319(c)(1).*
4. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equivalent" description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met will be clearly stated in accordance with *2 CFR Part 200.319(c)(1).*
5. Required delivery or performance dates/schedules.
6. Clear indications of the quantity(ies) requested and unit(s) of measure, if applicable.

7. A description of the format, if any, in which the requested information, proposals, or bids must be submitted, including the name of the person to whom it should be sent.
8. The date by which information, proposals, or bids are due.

Prohibition of Bidder working with SGVCOG

In conjunction with any contract award or with any action on a contract, SGVCOG may prohibit a contractor from bidding on future contracts by finding, upon substantial evidence, nonresponsibility which arises from any one of the following: (1) commission of fraud or a criminal offense in connection with soliciting, obtaining or preparing a public contract; (2) violation of federal or state antitrust statutes in relation to a bid on a public contract; (3) commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; (4) commission of any other offense that indicates a lack of business integrity or business honesty; (5) present prohibition by another public entity; (6) breach of a statutory or contract provision which specifies or requires exclusion as a remedy; or (7) any other cause so serious it substantially affects the contractor's present responsibility.

Before a finding of nonresponsibility is made, and before a contract requiring competitive bidding is awarded to other than the lowest bidder, a bidder must have been notified of any evidence of its nonresponsibility, must have been afforded an opportunity to rebut such evidence and must have been permitted the opportunity to present evidence of responsibility to perform the contract. Any finding of nonresponsibility shall focus on present non-responsibility, shall be for the purpose of protecting the interests of the public and is not intended to punish a bidder.

The duration of any prohibition shall be the period of time SGVCOG finds shall best protect the interests of the public but shall not exceed two years. However, in the event of prohibition for breach of a statutory or contract provision which specifies or requires prohibition as a remedy, the duration shall be the period specified in said statutory or contract provision.

Procurement Procedures - MUST

The following are SGVCOG’s general procurement procedures:

1. SGVCOG will avoid purchasing unnecessary or duplicative items for the performance of the activities required by a federal award in accordance with *2 CFR Part 200.318(d).*
2. For procurements exceeding $10,000 an analysis will be made of lease and purchase alternatives to determine which would be the most economical and practical procurement for the federal government. This analysis will only be made when both lease and purchase alternatives are available to the program.

3. SGVCOG will enter into state and local intergovernmental or inter-entity agreements where appropriate for procurement or use of common or shared goods and services in accordance with *2 CFR Part 200.318(e).*
4. SGVCOG will use federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs in accordance with *2 CFR Part 200.318(f).*
5. Documentation of the cost and price analysis associated with each procurement decision, including contract modifications, in excess of $10,000, will be retained in the procurement files pertaining to each federal award in accordance with *2 CFR Part 200.323.*
6. All pre-qualified lists of persons, firms, or products which are used in acquiring goods and services must be current and include enough qualified sources to ensure maximum open and full competition in accordance with *2 CFR Part 200.319(d).*
7. SGVCOG will maintain records sufficient to detail the history of procurement, including, but not limited to:
    a. Rationale for the method of procurement;
    b. Selection of contract type;
    c. Contractor selection or rejection; and
    d. The basis for the contract price.
8. SGVCOG will make all procurement files available for inspection upon request by a federal or pass-through awarding agency.
9. SGVCOG will not utilize the cost-plus-a-percentage-of-costs or percentage of construction cost methods of contracting in accordance with *2 CFR Part 200.323(d).*
10. Consideration will be given to dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, women's business enterprises, and labor surplus area firms.
11. Purchases will be made in accordance with the thresholds, required approvals, required solicitation methods, and documentation requirements indicated in the PROCUREMENT THRESHOLDS AND AUTHORIZATIONS LIMITS section of this manual.

Determining Procurement Method and Contract Type

1. Sealed Bid Contracts will be used when:
    a. A complete, adequate and realistic definition of the work, typically a combination of specifications and detailed design, can be developed;
    b. Allowed by law or regulation;
    c. Two or more responsible bidders are willing to compete for the work;
    d. The procurement lends itself to a firm, fixed price contract and the selection of the successful bidder can be made principally on the basis of price; and,
    e. There is time to complete the necessary procedures.

2. Competitive Negotiated Procurements are appropriate under one or more of the following conditions:
    a. The procurement is for a non-standard item or a complex service;
    b. The item or services to be procured do not allow for the formulation of specifications upon which the basis for award can be price; or,
    c. The selection of the best qualified firm is based upon evaluation of several factors.

3. Small Purchases will be used when:
    a. The procurement is less than $25,000, except in the case of professional and technical services where the upper limit is one hundred thousand dollars ($100,000); and
    b. The Contracts Department determines that this process will be the most efficient and economical method.

4. Non-Competitive Procurements will be used when the Contracts Department has prepared written justification documenting the conditions that preclude competition, including:
    a. An emergency situation, as defined in Emergency Procedures, exists;
    b. Situations in which there is only one responsible source of supply including, but not limited to: (a) when the public interest requires the standardization of equipment or the interchangeability of parts; (b) there is a follow on contact for continued development of specialized equipment; (c) the goods or equipment to be procured will be used for testing or experimental purposes; (d) there is only one source of the goods or equipment; or
    c. The SGVCOG's need is of a unique and compelling urgency.

5. Force Account Work will be used when agreements with the local agency, railroad or public utility provide for self-performance of construction work. Payment under the force account is based upon the actual cost of labor, equipment, and materials furnished, with consideration for overhead.

Sealed Bid Method of Procurement

The sealed bid procurement process will be used for the award of all major construction projects contracts. Through this process it is anticipated that awards will be made to technically and commercially qualified responsive contractors, at the lowest cost to the project.
Under this method of procurement bids are publicly opened and firm fixed price contracts are awarded to the lowest responsive conforming bidder.

A Project Manager will be assigned and designated as the person in charge of the work.

The open competitive sealed bidding process requires:

- A complete technical documentation (i.e. scope of work, plans, specifications, estimates etc.) that is adequate for potential bidders to establish quantities, productivity rates, and pricing data necessary to prepare firm fixed priced bids.
- Bids will be opened at the time and place specified in the bid package.
- Bids will be opened publicly and read aloud.

Bid Package Preparation

The Contracts Department in coordination with the assigned Project Manager shall:
1. Establish the procurement schedule.
2. Designate the members of the contract formation team, including role of counsel.
3. Assure adequate funds are available for the anticipated procurement and if not, take necessary action to obtain required funding.
4. Ensure the final Plans, Specifications and Estimate (PS&E) package complies with all applicable Federal and State regulations and procedures.
5. Ensure the final PS&E package has been reviewed and approved by the city in which the construction activity will occur.
6. Confirm that SBE goals have been set in accordance with the SGVCOG's program.
7. Develop the advertisement in accordance with the applicable section of this Manual and obtain Executive Director approval to initiate the procurement by releasing the advertisement.
8. Provide support during advertising, pre-bid and bid opening stages of the solicitation.
9. Conduct contractor pre-bid site visits if required.

The Contracts Division shall lead the contract formation process by:
1. Reviewing technical specifications and the scope of work for clarity and completeness to assure the ability to attract firm price bids.
2. Developing contract Terms and Conditions and commercial requirements for the bid package, with support from the team and legal counsel, as appropriate.
3. Developing instructions to bidders, including required forms, with input from team.
4. Consolidating and preparing the final bid package for team review and agreement.
5. Assuring bid packages are in compliance with SGVCOG policies and procedures.
6. Moderating and documenting the pre-bid conference with the assistance of the team. Determine if the material covered in the pre-bid conference warrants issuance of an addendum.
7. Creating bidders mailing list of contractors who have obtained packages.

All addendum to bid packages will be reviewed and approved in a manner identical to the original bid document.

The assigned Project Manager is responsible for concurring with content of the addendum and Contracts Department will obtain Executive Director approval to issue the addendum.

In order to facilitate the safeguarding of bids, the Contracts Division shall:
- Receive log date/time stamp all bids.
- Maintain security of all bid packages until designated time and place for public opening.
- Return late bids unopened to the bidder with a letter of explanation.

Sealed Bid Opening Process

The bid opening process will be as follows:
1. The Contracts Department will publicly open all bids and announce each bid either item by item or by total amount.
2. Non-responsive bids will not be read, but the bidder's identity and reason for not announcing the bid will be announced. The contract specifications govern what constitutes a non-responsive bid and includes the following:
    - Failure to sign bid and required forms
    - Failure to furnish required bid bond
    - Failure to include a unit bid price for each item
    - Failure to include a total amount for the bid
    - Failure to prepare the bid in ink
    - Failure to submit a completed addenda certification statement
    - Failure to submit a non-collusion affidavit
    - Failure to commit to the achievement of the SBE contract goals or to demonstrate good faith efforts to do so
    - Inclusion of conditions or qualifications not provided for in the specifications
    - Submission of a materially unbalanced bid
3. After the bids are opened, the Contracts Department will review all bids to determine the responsible bidder submitting the lowest responsive bid.
    - A responsive bid meets all requirements of the advertisement.
    - A responsible bidder is physically organized and equipped with the financial ability to undertake and complete the contract.
    - A bidder may be deemed not responsible because of a State or Federal suspension or debarment action.
4. Negotiations with contractors during the period following the opening of bids and before contract award are prohibited.

Sealed Bid Award Process

The Contracts Department in coordination with the assigned Project Manager will lead the Bid Analysis process to review the unit bid prices for reasonable conformance with the engineer's estimated prices. The analysis may also consider the following in determining reasonableness of pricing and adequacy of competition:

- Number of bids
- Distribution or range of bids
- Mathematically or materially unbalanced bids
- Current market conditions and workloads
- Potential for savings if the project is re-advertised
- Justification for significant bid price differences
- Reasonableness or errors in the engineer’s estimate

The Contract Division will prepare an award recommendation package consisting of the Bid Tabulation Summary Sheet, Bid Analysis, SBE certifications, and the partially completed Local Agency Contract Award Checklist. The recommendation is submitted to the Executive Director for Board approval.

The SGVCOG reserves the right to reject all bids and not award the contract if awarding the contract is determined not to be in the best interest of the public.

Contract Files

The SGVCOG will retain the following completed documents for the successful bidder in the project files:

- Bidder SBE Information.
- A list of bidders and total amounts bid with an item-by-item breakdown, “Bid Tabulation Summary Sheet” of the three lowest bidders.
- “Good Faith Effort Statement of SBE Participation” form is to be retained if the commitment level does not meet SBE goals.
- Non-collusion Affidavit form
- Bid Opening Checklist form
- Executed contract
- Pre-construction conference minutes
- Original Bid Documents (IFB and addendums)

Rejection of Bids

SGVCOG may reject all bids at its discretion. If a successful bidder fails to enter into a contract awarded to him, or if a contract is not commenced by the contractor or his surety, SGVCOG may abandon the matter or may re-advertise the original proposal or modification thereof, or the unfinished portion thereof as herein provided, or may award the contract to the next lowest and best bidder with the consent of such bidder.

Exhibit A

Competitive Proposal Method of Procurement

The SGVCOG will use competitive proposal procedures as an alternative to the formal advertised procedure, when it is determined that the services or items to be procured do not allow for the formulation of specifications upon which the basis for award can be strictly priced.

This policy and procedure is always followed for the procurement of professional and technical services in excess of $100,000 and may be used in other instances with the approval of the Governing Board when deemed appropriate.

Procurement by competitive proposals involves the solicitation of offers through a publicly advertised RFP. The RFP may solicit either a technical proposal or both technical and cost proposal and any other relevant information such as schedule dates and deadlines for the completion of the work.

An RFP usually involves non-standard items or complex services. The RFP contains the following information:

- Description of work
- Program and approach
- Detail of tasks
- Experience and resumes of key personnel.

All of this information must be presented to the SGVCOG in the form of a technical proposal.

The SGVCOG reserves the right to make a selection and award based on the original proposals, without negotiation with any offerors. If negotiations are conducted, SGVCOG will negotiate with all offerors deemed to fall within the competitive range, defined as having a reasonable chance of being selected for the award.

Procedures and Preparation for Competitive Proposal

Contracts staff and assigned Project Manager should prepare a Request for Proposal or Qualification (RFP or RFQ) using the most current standard format and "boilerplate" language. The contents of the RFP/RFQ must be kept confidential until the document is released to prospective proposers. The RFP should contain the following:

1. A scope of work, which describes accurately in clear and concise language the technical requirements to be met by a consultant. The scope of work should describe in logical steps the complete service or item to be delivered from inception to 100 percent completion.
2. A work schedule should be included if applicable to the assignment.
3. An evaluation criteria against which the proposals can be evaluated.

The assigned Project Manager of the RFP/RFQ should also:

1. Prepare a cost estimate in the same format that the consultant's cost proposal will be required to follow;
2. Identify and later provide support to a Technical Evaluation Committee (TEC) which should consist of 4-6 members with relevant technical qualifications; for design or construction management assignments, the TEC should include representative(s) of the local jurisdiction(s) in which the project is located;
3. Ensure the estimated cost of the contract is included the SGVCOG annual budget;
4. Determine whether or not a "two-step" selection process using an Expressions of Interest for pre-qualifications should be used;

Depending on the complexity of the work to be performed, each RFP will be unique. Nevertheless, certain terms or concepts are standard and must be included in each RFP package outlined below:

1. Introductory Letter/Cover Letters: The introductory letter should briefly explain what services are being sought, and under what parameters they are being procured. At a minimum, the letter should include:
    a. The Title of the Project
    b. Listing of the documents included in the RFP
    c. Schedule of dates proposals are due and pre-proposal conferences and/or oral presentation will be held
    d. SGVCOG address and identification of responsible contracts staff
    e. Instructions regarding how proposals should be submitted (hard copy, electronic, etc).
2. Project Description: The project description portion of the RFP/RFQ explains the technical and professional services being procured. Depending on the complexity of the project it should contain:
    a. Background Information/Project History.
    b. General Scope of Services.
    c. Detailed Scope of Services.
    d. Schedule Information.
    e. References, Project Specific Data; where SGVCOG has compiled a listing of reference information, arrangements for viewing and copying the data should be set forth in this section.
3. Proposal Requirements: Proposal requirements should be clearly enumerated and at a minimum include:
    a. Instructions regarding SBE participation goals.
    b. Guidance regarding proposal format including amount and type of information required and any limits placed on submittal information (including page limits).
    c. Forms that must be filled out.
    d. Time requirements.
4. Method of Selection: All RFP/RFQ's issued by SGVCOG must identify evaluation factors and their relative importance. These factors are usually enumerated either in descending order of importance or weighted individually.
    a. Cost cannot be an evaluation factor for architectural and engineering

procurements.

5. General Provisions: This section should contain a copy of the anticipated contract, including all clauses and provisions that are mandated by law or regulation (including state or federally required clauses or provisions).
6. Documents and Attachments: This section should contain any pertinent special documents, exhibits or information relating to this procurement.

Small Purchases and Service Agreements Method of Procurement

Small purchases and entering into service agreements will be made on a competitive basis except where it is clearly in the best interest of the project to accomplish such procurements non-competitively.

Small procurements shall utilize simplified procurement procedures and shall only be used for purchases that do not exceed $25,000 and for technical or professional service agreements that do not exceed $100,000.

Procurement packages shall not be split or procured over a period of time in order to use the small procurement procedures.

The Executive Director must approve the request to procure equipment or contracts for services. Once the procurement requisition has been approved by the Executive Director, and if the requirement is under $25,000 for purchases or $100,000 for service agreements, the purchase is completed following these guidelines.

The Contracts Department will develop the appropriate terms and conditions for small procurements.

Purchasing Office Supplies

1. The Executive Director may establish lines of credit at office supply stores.
2. The Administrative Services Manager is authorized to approve the purchase of office supplies necessary for routine operations.
3. Office supplies may be ordered on the basis of pricing data in current vendor catalogs.
4. A procurement file will be established for each vendor used by the SGVCOG to provide office supplies. These files will retain the invoice with billed price, signed by the person verifying receipt of all material billed.

Small Procurement Procedure

A small purchase file will be established for each procurement. The file for small purchases will include the following information:

1. Purchase requisition;
2. Small Purchase Bid Tabulation Sheet which includes the Contracts Manager's determination that the price is fair and reasonable;
3. Copy of each vendor's quotation (if required);

4. Copy of terms and conditions (if required);
5. Copy of signed small purchase agreement/order;
6. Receipt for equipment/services; and,
7. Any correspondence regarding the procurement.

Price reasonableness will be determined based on:
- Comparison to recent previous purchases;
- Current price lists;
- Catalogues; or
- Similar items or billing rates from a related industry (competitors).

For items/services under $5,000, the purchase or contract can be awarded after receipt of one price quote (oral or written) and a written determination by the Contracts Manager that the price is fair and reasonable, and forwarded to the Executive Director for approval.

For purchases between $5,000 and $25,000, a minimum of three written quotations shall be solicited and a decision to purchase will be made on the basis of lowest price, except for the two following conditions:
- In the event that only one price quotation is received, the Contracts Manager shall provide a written statement giving the basis for the determination that the price is fair and reasonable, and forwarded to the Executive Director for approval.
- In the event the price variance between multiple responses reflects a lack of adequate competition (i.e., erroneous pricing, different materials, mathematical errors, etc.), the Contracts Manager shall provide a written statement giving the basis for the determination that the price is fair and reasonable, and forwarded to the Executive Director for approval.

The procurement of technical or professional services between $5,000 and $100,000 differs from purchases of supplies or equipment in that selection is not based solely on price. These procurements will follow the following process:
1. The SGVCOG will solicit written proposals from at least three prospective firms. Due to the relative straightforward nature of the services, letter proposals are acceptable.
2. The firms will be evaluated on the basis of their qualifications, understanding of the task, and other relevant factors. The basis for selection of the most qualified firm will be documented and the recommendation forwarded to the Executive Director for approval.
3. The Executive Director will review the selection recommendation and if appropriate, authorize negotiations, and approve the award of the contract.
4. Contract files will include:
    a. Scope of work;
    b. Proposal letters;
    c. Basis of selection;
    d. Record of negotiation;

e. Executed contract with terms and conditions; and,
f. Correspondence.

Informal Competitive Procurement

Informal competitive procurement procedures will generally be used for purchases in excess of $10,000, but not exceeding $25,000 and involves an invitation for selected providers of a product or service to bid on the right to supply that product or service to the SGVCOG. A minimum of three (3) proposals shall be sought on each occasion that this option is used. The purchase will generally be made from the lowest bidder whose bid conforms to the requirements. If the purchase is not made from the lowest bidder, the reason the purchase was made from a higher bidder will be documented in writing.

The SGVCOG may contract with the vendor or supplier of any federal, state or local governmental department or agency (Public Agency) that has selected the vendor or supplier after complying with the Public Agency's competitive procurement requirements, and it is in the best interest of the SGVCOG to do so. The SGVCOG's Executive Director will determine whether the purchase of goods and services directly from the vendor or supplier of a Public Agency is in the best interest of the SGVCOG based upon price, quality and whether the terms and conditions of the cooperative procurement contract meet the SGVCOG's requirements.

Extension of Due Dates and Receipt of Late Offers

Solicitations should provide for sufficient time to permit the preparation and submission of offers (quotes, bids, proposals) before the specified due date. However, an extension may be granted if a prospective proposer so requests and is approved by the Contracts Manager. Approval of extensions will be documented in the procurement file.

Contractor offers are considered late if received after the due date and time specified in the solicitation. Late offers will be so marked on the outside of the envelope and retained, unopened, in the procurement file. Contractors that submit late offers will be sent a letter notifying them that their offer was late and could not be considered for award.

Affirmative Consideration of Minority, Small Business, Women-Owned Businesses, and Labor Surplus Area Firms

Positive efforts will be made by SGVCOG to utilize small businesses, minority-owned firms, women's business enterprises, veteran owned businesses, and labor surplus area firms whenever possible. Therefore, the following steps will be taken:

1. Ensure that small business, minority-owned firms, women's business enterprises, and labor surplus area firms are used to the fullest extent practicable in accordance with *2 CFR Part 200.321.*

2. SGVCOG will directly solicit bids or proposals from small business, minority-owned firms, women's business enterprises, and labor surplus area firms. These businesses will be solicited whenever they are a potential source. SGVCOG will ensure these businesses are included in solicitations, when practicable.
3. SGVCOG will evaluate procurements to determine if it is practical to separate purchases or projects into smaller components in order to encourage solicitation responses from these businesses.
4. Establish delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women’s business enterprises. Make information on forthcoming opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small business, minority-owned firms, women's business enterprises, and labor surplus area firms.
5. Utilize organizations as the Small Business Administration and the Department of Commerce's Minority Business Development Agency to determine validity of, assistance with, or location of the businesses addressed in this section, as appropriate.
6. Consider in the contract process whether firms competing for larger contracts should subcontract with small businesses, minority-owned firms, women's business enterprises, and labor surplus area firms.

Non Competitive Method of Procurement (Sole Source) and Emergency Procurements

Procurement of supplies and services without competition is authorized under limited conditions and subject to written justification documenting the conditions, which have precluded the competition.

Procurement by noncompetitive negotiation may be used only when approved by the Board and at least one of the following circumstances applies:

A. An emergency situation, as defined in Emergency Procedures, exists;
B. Situations in which there is only one responsible source of supply including, but not limited to: (a) when the public interest requires the standardization of equipment or the interchangeability of parts; (b) there is a follow on contract for continued development of specialized equipment; (c) the goods or equipment to be procured will be used for testing or experimental purposes; (d) there is only one source of the goods or equipment.
C. The SGVCOG’s need is of a unique and compelling urgency;

Emergency Situations

The SGVCOG may conduct a procurement on an emergency basis if the procurement is essential to an SGVCOG requirement to deal with an existing emergency condition, as defined in the next paragraph. The emergency procurement of supplies or services shall be limited to quantities and time periods sufficient to meet the immediate threat and shall not be used to meet long-term requirements.

An "emergency condition" is defined as a situation (such as a flood, epidemic, riot, equipment failure, or other reason declared by the Executive Director) that creates an immediate threat to the SGVCOG construction sites or to the public's health, welfare, or safety. The existence of an emergency condition creates an immediate need for supplies, services, or construction which cannot be met through normal procurement methods, and the lack of which would seriously threaten one or more of the following:

A. The health or safety of any person;
B. The preservation or protection of property;
C. There is a substantial disruption of public service; or
D. The continuation of necessary SGVCOG functions.

Due to the need for quick response under these emergency conditions, the Executive Director has been authorized to expend funds, in an amount not to exceed $500,000, without prior Board action. Any funds in excess of that amount shall require Board approval.

At the next regularly scheduled Board meeting, the Executive Director will submit a full report explaining the necessity for an emergency expenditure.

Procedures for Emergency and Other Non-Competitive Procurements

The Executive Director will evaluate staff recommendations and validate the need to make a procurement by non-competitive means.

The Executive Director will designate a Project Manager who will establish initial contact with firms, individual or other public agencies to determine if they have the resources/technical ability to respond in the timeframe required. The Project Manager will oversee the preparation of a cost estimate to serve as the basis for negotiation.

The Executive Director will approve the recommendation for the firm proposed to accomplish the work and authorize the assigned Project Manager and Contracts Manager to enter into negotiations.

If circumstances warrant, the Executive Director may authorize the firm/individual to proceed as soon as there is sound basis that the SGVCOG will be able to obtain a fair and reasonable price. Such approval will be in writing and will include dates by which the procurement will be finalized.

In each instance where these procedures are used, the Contracts Department shall do the following:

A. Prepare a written scope of work, including a schedule for the delivery/performance of work and the basis for acceptance.
B. Develop the appropriate terms and conditions for the agreement/contract.

C. Prepare a written statement of determinations and findings (D&F) recording all the facts that provide justification to negotiate the noncompetitive or emergency procurement.

Except for emergency procurement situations, the Executive Director shall sign the D&F and obtain Board approval before the procurement can be awarded.

Contract files will be established for each procurement action. Documents to be kept in the files include, but are not limited to:

A. Detailed scope of services and, if available, design and technical documents.
B. Cost estimate.
C. Approved D&F.
D. Commercial terms and conditions.
E. Documentation of contact with prospective firms.
F. Record of negotiation.
G. Executed contract.
H. Contract correspondence.
I. Claims and changes files.
J. Payment files.
K. The Contracts Manager will maintain files regarding progress, acceptance of work, and other appropriate material.

Single Distributor/Sole Source

Sole source procurements are authorized when requirements are so critical, or call for such specialized expertise, that only one source is capable of satisfying those requirements.

Sole source refers to the source, not the product or service. Justification for a sole source purchase depends on a needed item being available from only a single supplier. Sole source purchases may arise from a number of circumstances, such as the purchase of equipment for which there is no comparable, competitive equivalent; the replacement of parts available from the manufacturer only; and the purchase of equipment and supplies that will be used in the design of a custom product.

Detailed documentation justifying the sole source purchase and ensuring that the cost charged by the vendor is reasonable and customary is required. Documentation shall include the following:

- Is this a sole source (available from only one vendor; one-of-a-kind and is not sold through distributors)? Or is this a sole brand (various vendors are able to supply the specified model and brand name) and competitive bids (informal or formal) will be solicited for the requested brand only?
- Detailed description of the unique performance features of the product or brand requested that are not available in another product or brand
- Unique qualifications that this vendor possesses
- Analysis as to the reason the unique features and qualifications are required

- Description (brand names, model numbers, vendor names and contact information) of the other items and brands that were evaluated and rejected and reasons for the rejection
- A proprietary product is manufactured by only one company but may be sold through distributors and competition between them may be able to be obtained.

Sole source justification based solely on a vendor's capability to deliver in the least amount of time is not sufficient.

Sole source justification based on personal preference or an established relationship with a supplier is not a valid basis for a sole source selection.

Prior Written Approval

The awarding agency expressly authorizes a noncompetitive proposal in response to a written request from SGVCOG.

Authorized Purchasing Alternatives

SGVCOG encourages departments to develop lists of pre-approved contractors that can be used throughout the year. Acquisition of brand name or compatible products and furnishings to assure compatibility with other SGVCOG products, equipment, or offices or because the brand name or compatible product has superior performance results as determined through either SGVCOG or other reliable testing.

The Executive Director may require a pre-qualification process for bidders, suppliers, or professionals (hereinafter collectively referred to as "bidder(s)"). The SGVCOG may, at its discretion, select bidders for pre-qualification. The pre-qualification questionnaire may include questions pertaining to the following criteria:

- The familiarity and experience of the prospective bidder with the particular type of purchase or contract designated.
- The sufficiency and availability of personnel, equipment, materials, and other facilities or resources of the prospective bidder to accomplish the designated work or provide the construction or contract supplies, materials, or reports and opinions.
- The ability of the prospective bidder to provide required bonds and insurance, including indemnity.
- The financial ability/condition of the prospective bidder to accomplish the work designated.
- The experience of the prospective bidder to perform the designated work as well as the experience in performing similar work.
- The safety record of the prospective bidder.
- The record of the prospective bidder within the preceding 5 years regarding performance, claims, arbitration, mediation, or litigation filed by or against the prospective bidder regarding public or private construction contracts or other

contracts where the prospective bidder provided services, supplies, materials, opinions or reports.
- Such other information as is deemed appropriate for the particular purchase or contract.
- The Executive Director shall apply a uniform rating system to the prospective bidders for each purchase or contract. Bidders that are deemed qualified shall be provided the opportunity to submit bids or proposals; no other bids are required to be sought, although the SGVCOG may solicit additional bids if in the exercise of its discretion, it determines it to be in the organization's best interest.

Bonding Requirements

SGVCOG will require bonding when deemed necessary to help ensure the interests of the organization and the funding source is protected. In accordance with 2 CFR Part 200.325, Minimum bonding requirements will include the following:
- A bid guarantee in the form of a bid bond, certified check, or other negotiable instrument from each bidder equivalent to five percent of the bid price assuring that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
- A performance bond on the part of the contractor for 100 percent of the contract price, to be executed in connection with a contract to secure fulfillment of all the contractor’s obligations under the contract.
- A payment bond for 100 percent of the contract price, executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in execution of the work provided for in the contract.

Insurance Requirements

Certificates of insurance will be required by the successful contractor to confirm that the insurance policies required by the contract have been obtained. These certificates of insurance or other documentation of insurance are required from the contractor following award of the contract but no later than contractor’s site mobilization. No work will be authorized until the required insurance documentation is received by the SGVCOG’s Contracts Department. The SGVCOG will have an expert in insurance matters review the policies for adequacy.

Insurance policies will be monitored to ensure that contractors extend the policies prior to the expiration dates.

Typical required insurance coverages include, but are not limited to:

A. General Liability Insurance
    a. Bodily injury
    b. Property damage
    c. Personal injury

B. Excess Liability Coverage

C. Worker's Compensation and Employer's Liability Insurance
D. Builder's Risk
E. Automotive Liability
    a. Bodily injury
    b. Property damage
F. Contractor's Equipment
G. Professional Liability Insurance
H. Railroad Protective Insurance

Contractor Files and Required Documentation

The Contracts Department, in coordination with Document Control, will create a contractor file for each new contractor or re-activated contractor from whom SGVCOG purchases goods or services.

The Finance Department will mail (or email) a blank Form W-9 to the contractor and request completion of the Form W-9 and the return of the signed document before procuring goods or services from the contractor or making any payment to the contractor. Completed, signed Form W-9 or substitute documentation will be retained in each contractor's file.

Contractors will be issued a Form 1099 at the end of each calendar year in accordance with the SGVCOG's Accounting and Financial Policies & Procedures.

Contractor files will have the following information:

1. Completed and signed Form W-9. Contractors being reactivated are required to complete a new Form W-9 to verify current name, address, and tax ID number.
2. Contractors with a post office (PO) box will provide a physical location address for the master file. The PO Box number may be used for postal purposes.

The following procedures will be performed prior to creating or re-activating all contractor files to help ensure that each contractor only has one master file:

1. Search for existence of the tax ID number in the master file
2. Search for name variations and name standardization (entity resolution) (e.g. Doe, John; J Doe; John Doe)
3. Search for matching or similar addresses
4. Perform an online search of the contractor and the physical address to determine validity
5. Search for matches against the employee master file

Contractor Master File Maintenance

SGVCOG will monitor the contractor master file on a regular basis, with a full review of the master listing completed every year prior to year-end.

The Contracts Department will review the master file for:

1. Duplicate contractors. Contractors with the same or similar tax ID number, name, address, email, contact, and other information. Duplicate contractors will be merged, or inactivated.
2. Contractors with a post office (PO) box address. Contractors with only a PO Box will be required to provide a physical location address for the master file.
3. Contractors without activity in the past three years will be inactivated. Inactivated contractors must go through the contractor creation process before being re-activated.
4. The Organization will utilize the Internal Revenue Service (IRS) Taxpayer Identification Number (TIN) On-line Matching service to match name and TIN with IRS records.

Procurement Grievance Procedures/Protest to Solicitations/Contract Awards

The SGVCOG will ensure to the fullest extent possible to conduct all of its solicitations and award all of its contracts in a fair and open manner. To avoid protests to its solicitations or its contract awards, the SGVCOG will use its best efforts to resolve concerns raised concerning solicitations and awards by encouraging frank and open discussions. Moreover, any member of the public or a representative of any entity, public or private, is always able to address the SGVCOG's Governing Board about any topic during the public comment period at each regularly scheduled Governing Board Meeting.

Should a protest occur, it is the policy of the SGVCOG to handle such a protest in an expeditious, cost effective and procedurally simple manner that allows for a proper and thorough evaluation of the basis of the protest.

Filling of Protests

Bid Protests based on the bid documents must be delivered to the SGVCOG's Contracts Manager no later than the close of business on the tenth calendar day before the bid opening date. All Bid Protests based on bid documents that are not timely raised are waived.

Bid Protests based on bids or the award process must be delivered to the SGVCOG's Contracts Manager no later than the close of business the fifth business day after notice of intent to award is issued by the SGVCOG.

All Bid Protests are to be in writing. A protestor must submit four (4) copies of any Bid Protest to the SGVCOG. All Bid Protests must be delivered to the SGVCOG at 4900 Rivergrade Road, Suite A120, Irwindale, CA 91706, attention Contracts Manager. In addition, a protestor must submit one (1) copy of the Bid Protest to each individual Interested Party. Timeliness of a submission will be determined based on the SGVCOG's time stamp clock, which will be used to confirm receipt of a bid or Bid Protest. The risk of timely delivery of a Bid Protest by mail or other delivery service is on the protestor. The protestor must maintain a proof of service, showing service of the Bid Protest to the SGVCOG. The Bid Protest deadline will be strictly enforced.

Bid Protests must contain the following information:

1. Name, address, telephone, fax (if applicable) and e-mail address of the protestor;
2. Procurement identifier (e.g. RFP/IFB number);
3. The name of all Interested Parties;
4. A clear statement of the legal and factual basis for the Bid Protest, with specific references to the relevant language from the bid documents or relevant statutes and codes. Each argument must be identified specifically and argued in separate sections of the Bid Protest. A protestor must include copies of relevant materials, including any cases cited which are not issued by California courts. Any argument not raised in the Bid Protest will be deemed waived;
5. A clear statement of the relief requested and the statutory or case law basis for such relief;
6. Information establishing that the protestor is an Eligible Protestor as defined above; and
7. All protests must be verified by an officer or authorized partner of the protestor.

<u>Review of Protests</u>

1. Executive Director Awarded Contracts (contracts valued up to $250,000):
   a. All Bid Protests will be submitted to the SGVCOG's Contracts Manager. The Contracts Manager will conduct an administrative review to determine if the Bid Protest is timely and meets the criteria for a valid Bid Protest as identified in the appropriate sections of this manual.
   b. Upon determination that a Bid Protest is valid, the Contracts Manager will submit the Bid Protest to the Executive Director, who serves as the SGVCOG's Hearing Officer. The Hearing Officer shall request in writing that staff and all Interested Parties respond to the Bid Protest and shall set forth the time in which they have to respond.
   c. Upon consideration of the Bid Protest and any oppositions, and any specific requests for a hearing, the Hearing Officer will determine, at his or her sole discretion, whether a hearing is warranted.
   d. If there is no reasonable basis for the Bid Protest in law or fact on the face of the Bid Protest, the Hearing Officer, may, in his or her own discretion, dismiss the Bid Protest without receipt of oppositions and without a hearing. The Hearing Officer may make a final decision on a Bid Protest without the benefit of a hearing. All decisions of the Hearing Officer will be in writing and will explain the reasons for any action that is taken.
   e. If there is a hearing, the Eligible Protestor or an Interested Party can arrange for the attendance of a court reporter. The requesting party shall be solely responsible for the cost of a court reporter. However, the

requesting party must permit any person the right to order and pay for a copy of the resulting transcript.

f. The Hearing Officer shall issue his or her decision as soon as reasonably possible, but in no event more than 14 calendar days after receipt of oppositions, unless there is a hearing. In the event of a hearing, the Hearing Officer's decision shall be issued not later than 10 calendar days after the hearing. The Hearing Officer can accept information in both oral and written form at the hearing. At the hearing, the Eligible Protestor will be provided the opportunity to make an oral presentation based on the information previously submitted by the Eligible Protestor in writing. Staff will present its response to the Bid Protest. Interested Parties will also be afforded the opportunity to make an oral presentation. The Hearing Officer may ask questions of staff, the Eligible Protestor and any Interested Parties.
g. The Hearing Officer shall issue his or her decision in writing to the Eligible Protestor, and all Interested Parties. The Hearing Officer shall set forth the reasons for the decision in this writing. However, the Hearing Officer is not required to issue detailed findings of fact or law. The decision will be served by fax or e-mail, and by certified mail.
h. The Hearing Officer's decision shall be final and there shall be no further administrative recourse.

2. Governing Board Awarded Contracts:
    a. All Bid Protests will be submitted to the SGVCOG's Contracts Manager. The Contracts Manager will conduct an administrative review to determine if the Bid Protest is timely and meets the criteria for a valid Bid Protest as identified in the appropriate sections of this manual.
    b. Upon determination that a Bid Protest is valid, the Executive Director will, as soon as reasonably possible, schedule a hearing of the Bid Protest for a regular or special Governing Board meeting.
    c. The Executive Director will include the Bid Protest, along with staff's written evaluation of the Bid Protest, and information received concerning the Bid Protest from any Interested Parties in the agenda materials for the meeting.
    d. The Contracts Manager shall notify the Eligible Protestor and all Interested Parties in writing of the scheduled date of the hearing before the Governing Board. The Eligible Protestor or an Interested Party can arrange for the attendance of a court reporter. The requesting party shall be solely responsible for the cost of a court reporter. However, the requesting party must permit any person the right to order and pay for a copy of the resulting transcript.
    e. At the Governing Board meeting, the Eligible Protestor will be provided the opportunity to make an oral presentation based on the information previously submitted by the Eligible Protestor in writing. Staff will present its response to the Bid Protest. Interested Parties will also be afforded the opportunity to make an oral presentation. The Governing

Board may ask questions of staff, the Eligible Protestor and any Interested Parties. At the conclusion of the hearing, the Governing Board shall make a determination regarding the Bid Protest. The decision of the Governing Board is final and there shall be no further administrative recourse.

Regardless of whether a Bid Protest is outstanding, the SGVCOG may proceed with issuance of a contract if it determines that doing so is in the best interests of the SGVCOG. That determination will be made by the SGVCOG in its sole discretion.

Each party or bidder for SGVCOG contracts is deemed to have specifically waived its rights to challenge the SGVCOG's actions in court, until and unless it has first exhausted its rights and obligations pursuant to this procedure.

If the SGVCOG prevails in any action regarding a Bid Protest in any venue, the SGVCOG reserves the right to seek reimbursement of its costs to the fullest extent allowed by law.

Contract Administration

SGVCOG must maintain oversight to ensure contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase order. SGVCOG adopts the following policies and procedures on contract administration in accordance with *2 CFR Part 200.318(b).*

1. Contract administration files will be maintained:
    a. For each contract greater than $10,000 a separate file will be maintained.
    b. For contracts less than $10,000, contract records may be combined in a single file by grant or other funding source.
2. Contract administration files will contain:
    a. The required documentation specified in the PROCUREMENT THRESHOLDS AND AUTHORIZATIONS LIMIT chart for the original scope of work and for all amendments.
    b. Where the contract work is identified in the grant award or budget, the identification and scope of the work contained in the award or budget, and all approved changes.
3. Authorization of work:
    a. No work will be authorized until the contract for the work has been approved and fully executed.
    b. No change in the work will be authorized until an amendment to the contract for the work has been approved and fully executed.
    c. No amendment of a contract for work will be executed until it has been approved and authorized as required in the PROCUREMENT THRESHOLDS AND AUTHORIZATIONS LIMIT chart and, where required by the terms of the grant award or budget, approval by the funding source.

4. Conformance of work:
    a. For each grant award, based on applicable laws, regulations and grant provisions, the designated Project Manager will establish and maintain a system to reasonably assure that the contractor:
        i. Is in conformance with the terms, conditions, and specifications of the contract, and
        ii. Provides timely follow-up of all purchases to assure such conformance and adequate documentation.
5. The Project Manager, in coordination with the Executive Director, will authorize payment of invoices to contracts after final approval of work products.
6. SGVCOG reserved the right to revise, delete, clarify, amend and/or supplement the information contained in Contract Amendments as it deems appropriate, in its sole and absolute discretion. SGVCOG will inform Contractor, in advance, in writing, when any such deletions, changes, etc. occur. Modifications to reflect changes to employment laws do not require approval of the Governing Board. Similarly, revisions to provide clarification or reflect operating practices do not require Governing Board approval.

Contract Provisions

In accordance with 2 CFR Part 200 Appendix II, the SGVCOG includes provisions for the following items, as applicable, in all contracts charged to federal awards, at the amounts indicated and as determined by the regulation or SGVCOG, with contractors and subgrants to grantees:

1. Contracts for more than the simplified acquisition threshold set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
2. All contracts in excess of $10,000 must address termination for cause and for convenience by SGVCOG including the manner by which it will be affected and the basis for settlement.
3. Equal Employment Opportunity
4. Davis-Bacon Act, as amended (40 U.S.C. 3141-3148)
5. Copeland “Anti-Kickback” Act (40 U.S.C. 3145)
6. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708)
7. Rights to Inventions Made Under a Contract or Agreement
8. Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended
9. Debarment and Suspension (E.O.s 12549 and 12689)
10. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)
11. Bonding requirements: See BONDING REQUIREMENTS section of this manual.
12. Nondiscrimination Policy: See NONDISCRIMINATION POLICY section of this manual.
13. Right to Audit Clause. See RIGHT TO AUDIT CLAUSE section of this manual.
14. Workers’ Compensation. See INSURANCE section of this manual.

Right to Audit Clause

SGVCOG requires a "Right to Audit" clause in all contracts between the Organization and contractors that either:

1. Take any form of temporary possession of assets directed for the Organization, or
2. Process data that will be used in any financial function of the Organization.

This Right to Audit clause will permit access to, and review of, all documentation and processes relating to the contractor's operations that apply to SGVCOG, as well as all documents maintained or processed on behalf of SGVCOG, for a period of three years. The clause will state that such audit procedures may be performed by SGVCOG employees or any outside auditor or contractor designated by the Organization.

Procurement Records

In accordance with 2 CFR Part 200.324(b), SGVCOG will, on request, make available for the federal awarding agency, pre-award review and procurement documents, such as requests for proposals, when any of the following conditions apply:

- The procurement process does not comply with the procurement standards in 2 CFR Part 200.
- The procurement is expected to exceed the federally-defined simplified acquisition threshold and is to be awarded without competition or only one bid is received.
- The procurement exceeds the simplified acquisition threshold and specifies a "name brand" product.
- The proposed award exceeds the federally-defined simplified acquisition threshold and is to be awarded to other than the apparent low bidder under a sealed-bid procurement.
- A proposed contract modification changes the scope of a contract or increases the contract amount by more than the amount of the federally-defined simplified acquisition threshold.

Procurement Records

In accordance with 2 CFR Part 318(i), the SGVCOG will maintain records sufficient to detail the history of procurement including, but not limited to, the following

- Rationale for the method of procurement
- Selection of contract type
- Contractor selection or rejection
- Basis for contract price

Exhibit A

Revolving Door Prohibition

In order to prevent the appearance of impropriety, an unfair competitive advantage to companies hiring former SGVCOG employees, and the potential to compromise the loyalty of the SGVCOG employees who may be desirous of future employment with a SGVCOG contractor, all SGVCOG employees and contractors are subject to post-employment restrictions set forth in this Section:

1. The SGVCOG shall not contract with a former SGVCOG employee for one (1) year after leaving SGVCOG employment if that former employee held a position of substantial responsibility in the area of service to be performed by the contract or participated in any way in developing the contract or its specifications.
2. The SGVCOG shall not contract with a business where a person who left SGVCOG employment within the preceding one (1) year serves as an officer, principal, partner, or major shareholder, or has been identified as key personnel, if the former SGVCOG employee held a position of substantial responsibility in the area of developing the contract or its specifications.
3. The SGVCOG shall not contract with a business which has a subcontractor which employs a person who left employment with SGVCOG in the preceding one (1) year and where the former SGVCOG employee has been identified as key personnel, in the area of services to be performed by the contract or participated in any way in developing the contract or its specifications.
4. No SGVCOG employee shall accept employment with a company which is performing services under contract with the SGVCOG at any time after leaving SGVCOG employment where the employee was engaged in control, inspection, oversight, review, audit or management of the SGVCOG project on which the company is performing services.

Appendix

Appendix A – Sample Professional Services Agreement
Appendix B – Sample IFB Contract Agreement
Appendix C – Sample IFB Instructions
Appendix D – Sample Pro Forma Agreement
Appendix E – Sample Proposal Evaluation Criteria
Appendix F – Sample RFP Boilerplate
Appendix G – Template Delegated Authority Contract/Amendment Summary Report

Attest:

I, Marisa Creter, Executive Director and Secretary of the Governing Board of the San Gabriel Valley Council of Governments, do hereby certify that Resolution 20-18 was adopted at a regular meeting of the Governing Board held on the 15th day of October 2020 by the following vote:

AYES:	Arcadia, Azusa, Baldwin Park, Claremont, Diamond Bar, Duarte, El Monte, Glendora, Industry, La Canada Flintridge, La Verne, Monrovia, Monterey Park, Pomona, Rosemead, San Dimas, San Gabriel, San Marino, Sierra Madre, South El Monte, South Pasadena, Temple City, Walnut, West Covina LA County District #1, LA County District #5, San Gabriel Valley Water Districts
NOES:	
ABSTAIN:	
ABSENT:	Alhambra, Bradbury, Irwindale, La Puente, Montebello, LA County District #4
Vote Not Recorded	Covina

Marisa Creter

Marisa Creter, Secretary