

SALINAS VALLEY BASIN GROUNDWATER SUSTAINABILITY AGENCY

PROCUREMENT POLICY

1. Procurement of Services and Supplies

1.1 General

(a) Professional and consulting services (“Services”) are of a technical and professional nature, and, due to the nature of the services to be provided, do not fall within the “low bid” competitive bidding process.

(b) Except as provided in subparagraph (c) below, when selecting professional or consulting consultants, the Salinas Valley Basin Groundwater Sustainability Agency (“Agency”) representatives evaluating the proposals will consider the consultant’s demonstrated experience and competence, insurability, understanding of the scope of work, financial ability, resources to perform the work, willingness to cooperate with the Agency representatives and other consultants, and proposed methods to ensure timely and acceptable performance and management of the work. An award of a contract will be made to a qualified consultant whose proposal will be most advantageous to the Agency, with price and other factors considered.

(c) The selection for professional services of private architectural, landscape architectural, engineering, environmental, land surveying, or construction project management firms will be on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required, pursuant to Government Code Section 4526.

(d) Selection of the successful vendor of supplies or equipment (“Supplies”) will be based on the proposal that is most advantageous to the Agency, with price and other factors considered.

1.2 Contracting Authority \$25,000 or Less

The General Manager of the Agency (“General Manager”) may, by negotiated contract or purchase order, enter into contracts for Services or Supplies in the amount of \$25,000 or less, provided there are funds in the approved budget for such Services or Supplies.

1.3 Contracting Authority \$25,000-\$100,000

(a) The General Manager, after seeking written proposals, may enter into contracts for Services or Supplies of more than \$25,000 and less than \$100,000, provided there are funds in the approved budget for such Services or Supplies.

(b) If the General Manager enters into a contract for Services or Supplies of more than \$25,000 and less than \$100,000, the General Manager will inform the Agency Board of Directors (“Board”) of such contract as soon as practicable.

1.4 Contracting Authority \$100,000+

The General Manager will seek competitive written proposals for Services or Supplies estimated to cost more than \$100,000. Such contracts must be approved by the Board.

1.5 Renewals or Extensions

The General Manager may amend, extend or renew contracts for Services or Supplies with existing contractors, consultants or suppliers (each, an “Amendment”) without seeking competitive proposals, provided the total not to exceed amount of the contract with the amendment, extension or renewal is less than \$100,000, and further provided there are funds in the approved budget for such Services or Supplies.

If the General Manager enters into an amendment, extension or renewal for Services or Supplies of more than \$25,000 and less than \$100,000, the General Manager will inform the Agency Board of such contract as soon as practicable.

Amendments, extension or renewals that result in the not to exceed amount of the contract to be in excess of \$100,000 must be approved by the Board.

1.6 Exceptions. The Agency or its representatives are not required to obtain competitive proposals in the following circumstances:

(a) When the Services or Supplies are needed on an emergency basis.

(b) When competitive procurement would fail to produce an advantage and when the procurement process is undesirable, impractical, or impossible. Examples include situations when the Services or Supplies are to be performed in partnership with other public agencies or nonprofit organizations; or are to be paid for with private dollars;

(c) When the Services or Supplies are either: (i) available from only one source, or (ii) unique due to the specialized skill or experience of the contractor, consultant or supplier, or (iii) proprietary in nature.

(d) When the Services or Supplies are required to match, integrate or be compatible with an existing project or program and the work, materials or services are from a contractor, consultant or vendor who previously satisfactorily performed/provided work, materials or services to a Member of the Agency or the Agency.

(e) When the Services or Supplies are obtained by cooperative procurements or “piggyback” on the procurement process of another agency. The Agency shall have the authority to join with other public jurisdictions in cooperative purchasing plans, programs or pricing agreements. The Agency may also contract for Services and Supplies at a price established by competitive procurement by another public jurisdiction in substantial compliance with that public agency’s competitive procurement process. The Agency may also contract with any federal, state, municipality or other public agency.

2. Public Works Projects

2.1 Defined

A Public Works Project as used herein is defined in Public Contracts Code section 20150.2 to mean:

- (a) A project for the erection, improvement, and repair of public buildings and works.
- (b) Work in or about streams, bays, waterfronts, embankments, or other work for protection against overflow, except maintenance, repair, or reconstruction work.
- (c) Supplies and materials used in maintenance, repair, or reconstruction work in or about streams, bays, waterfronts, embankments; or other maintenance, repair, or reconstruction work for protection against overflow.

2.2 Prevailing Wages

Unless exempt, all Agency public works contracts awarded are subject to prevailing wage

requirements in accordance with California Labor Code Section 1720. When prevailing wages are required, the Agency will affirmatively state in the call for bids or the contract documents that the work to be covered by the bid or contract is a "public work."

2.2 Projects \$10,000 or Less

Public works projects of \$10,000 or less may be let by informal bidding procedures as set forth in Public Contract Code sections 20150.6 – 20150.9.

2.3 Competitive Bidding for Projects \$10,000 +

It will be unlawful to split or separate into smaller work orders or projects any project for the purpose of evading the provisions of this article requiring work to be done by contract after competitive bidding. Public works projects of more than \$10,000 are, except as otherwise provided in this section, let to contract by the following formal bidding procedure:

(a) The Notice Inviting Bids will state the time and place for receiving and opening of sealed bids and accurately describe the project. The notice will be published at least 14 calendar days before the date of opening the bids in a newspaper of general circulation, printed and published in the jurisdiction of the Agency. The notice may be sent to construction trade journals serving the vicinity of the Agency. In addition to notice required by this section, the Agency may give such other notice as it deems proper.

(b) Sealed bids will be submitted by bidders prior to the deadline established for opening bids.

(c) The Board may award the contract to the lowest responsible bidder after receiving bids through the formal bid process.

(d) A bid bond, performance bond, and payment bond are required. A warranty bond may be required. All bids for construction work will be presented under sealed cover and will be accompanied by one of the following forms of bidder's security: cash; a cashier's check made payable to the Agency; a certified check made payable to the Agency; or a bidder's bond executed by an admitted surety insurer, made payable to the Agency. Upon an award to the lowest bidder, the security of an unsuccessful bidder will be returned in a reasonable period of time. In no event will that security be held by the Agency beyond 60 days from the time the award is made.

2.4 Emergency Bid Procedures

In the case of an emergency as declared by the State of California or County of Monterey, the Board may proceed to replace or repair any and all structures pursuant to the provisions of Public Contract Code section 20134 (a).

2.5 Specifications of Contractor's License Classification in Notice Inviting Bids

The Agency will specify the classification of the contractor's license which a contractor must possess at the time a contract is awarded and through completion of the work. The specification will be included in any plans prepared for a public project and in any Notice Inviting Bids. This requirement will apply only with respect to contractors who contract directly with the Agency. A contractor who is not awarded a public contract because of the failure of the Agency to comply with this requirement will not receive damages for the loss of the contract.

2.6 Specifications by Brand or Trade Name or "Equal"

Neither the Agency, nor any Agency officer or person charged with the letting of contracts for the construction, alteration, or repair of public works, will draft or cause to be drafted specifications for bids in connection with the construction, alteration, or repair of public works in such a manner as to limit the bidding, directly or indirectly, to any one specific concern. When a product is designated to match others in use on a particular public improvement either completed, or in the course of completion, calling for a designated material, product, item, or service by specific brand or trade name, unless the specification lists at least two brands or trade names of comparable quality or utility and is followed by the words "or equal."

Specifications will provide a period of time prior to or after the award of the contract for submission of data substantiating a request for a substitution of "an equal" item. If no time period is specified, data may be submitted any time within 35 days after the award of the contract. The Agency reserves the right to determine whether or not any substitute is "equal".

2.7 Exceptions

The Agency may make a finding that is described in the Notice Inviting Bids or request for proposals that a particular material, product, item, or service is designated by specific brand or trade name for any of the following purposes in order:

- (a) That a field test or experiment may be made to determine the product's suitability for future use.
- (b) To match other products in use on a particular public improvement either completed or in the course of completion.
- (c) To obtain a necessary item that is only available from one source.
- (d) To respond to an emergency declared by a local agency, but only if the declaration is approved by an at least four-fifths vote of the Board issuing the invitation for bid or request for proposals.
- (e) To respond to an emergency declared by the state, a state agency, or political subdivision of the state, but only if the facts setting forth the reasons for the finding of the emergency are contained in the public records of the authority issuing the Notice Inviting Bids or request for proposals.

2.8 Subletting and Subcontracting Fair Practices Act

The specifications for the work or improvement will provide that any person making a bid or offer to perform the work, will, in his or her bid or offer, set forth the name and the location of the place of business of each subcontractor who will perform work or labor or render service. The bidder whose bid has been accepted may not substitute any person as subcontractor in place of the subcontractor listed in the original bid, except as allowed under the California Public Contract Code Section 4100.

2.9 Award to Lowest Responsible Bidder

If a contract is awarded, it will be awarded to the lowest responsible bidder. The lowest responsible bidder is the lowest bidder whose offer best responds in quality, fitness and capacity to the particular requirements of the work. Bids from the lowest responsible bidder may be rejected in the following circumstances:

- (a) The awarding authority may reject all bids if the acceptance of the lowest responsible bid is deemed not to be in the Agency's best interests.
- (b) If the lowest responsible bidder refuses to execute the contract, the awarding authority may award the contract to the next lowest bidder if the awarding authority decides that the action is in the Agency's best interests.

- (c) The contract may be awarded to the next lowest responsible bidder if the lowest bidder is nonresponsive.

2.10 Additive or Deductive Bid Items; Identity of Contractors

The Agency may require a bid for a public works contract to include prices for items that may be added to, or deducted from, the scope of work in the contract for which the bid is being submitted. Whenever additive or deductive items are included in a bid, the bid solicitation will specify which one of the following methods will be used to determine the lowest bid. In the absence of a specification:

- (a) The lowest bid will be the lowest bid price on the base contract without consideration of the prices on the additive or deductive items.
- (b) The lowest bid will be the lowest total of the bid prices on the base contract and those additive or deductive items that were specifically identified in the bid solicitation as being used for the purpose of determining the lowest bid price.
- (c) The lowest bid will be the lowest total of the bid prices on the base contract and those additive or deductive items that when taken in order from a specifically identified list of those items in the solicitation, and added to, or subtracted from, the base contract, are less than, or equal to, a funding amount publicly disclosed by the local agency before the first bid is opened.
- (d) The lowest bid will be determined in a manner that prevents any information that would identify any of the bidders or proposed subcontractors or suppliers from being revealed to the public entity before the ranking of all bidders from lowest to highest has been determined.

This section does not preclude the Agency from adding to or deducting from the contract any of the additive or deductive items after the lowest responsible bidder has been determined.

2.11 Rejections of Bids

In its discretion, the Board may reject any bids presented. If after the first invitation of bids all bids are rejected, after reevaluating its cost estimates of the project, the Agency will have the following options: revising the project, abandoning the project or re-advertising for bids.

2.12 No Bids

If no bids are received, the project may be performed by Agency staff or negotiated contract without further complying with bidding requirements.

2.13 Bidder's Relief from Bids

A bidder will not be relieved of the bid unless by consent of the Board, nor will any change be made in the bid because of mistake. The bidder may bring an action against the public entity in a court of competent jurisdiction in the county in which the bids were opened for the recovery of the amount forfeited, without interest or costs. If the plaintiff fails to recover judgment, the plaintiff will pay all costs incurred by the public entity in the suit, including a reasonable attorney's fee to be fixed by the court. If an action in superior court is filed, the bidder will establish to the satisfaction of the court that: a mistake was made; he or she gave the public entity written notice within five (5) working days (excluding Saturdays, Sundays, and state holidays) after the opening of the bids of the mistake specifying in the notice in detail how the mistake occurred; the mistake made the bid materially different than he or she intended it to be; the mistake was made in filling out the bid and not due to error in judgment or to carelessness in inspecting the site of the work or in reading the plans or specifications.

A bidder who claims a mistake or who forfeits his or her bid security will be prohibited from participating in further bidding on the project on which the mistake was claimed or security forfeited.

If the public entity deems it is for its best interest, it may, on refusal or failure of the successful bidder to execute the contract, award the contract to the second lowest bidder. If the second lowest bidder fails or refuses to execute the contract, the public entity may award the contract to the third lowest bidder. On the failure or refusal of any bidder to whom a contract is awarded to execute the contract, the bidder's security will be forfeited.

2.14 Contracting by Electronic Transmission

The Agency may enter into and make payment on contracts by way of electronic transmission, including but not limited to the issuance of solicitation documents and the receipt of responses thereto, provided that it adopts methods and procedures set forth in Public Contract Code.

2.15 Payment, Performance, and Warranty Bonds

A direct contractor (excluding a design professional) that is awarded a public works contract involving an expenditure in excess of \$10,000 will, before commencement of work, provide the Agency an approved payment bond and a performance bond. Each bond will be in a sum not less than 100 percent of the total amount payable by the terms of the contract. The Agency will state in its call for bids that a payment bond and a performance bond are required for a public works contract involving expenditure in excess of \$10,000.

The contract documents may require that the contractor provide an appropriate warranty bond after substantial completion of the project.

2.16 Insurance

Prior to the commencement of the work, every contractor (and subcontractor) will provide insurance as set forth in the contract documents or as required by law, including but not limited to Workers Compensation Insurance and General Liability Insurance.

2.17 General Manager's Authority

The General Manager or his/her approved designee is authorized to manage the construction contract and approve change orders, provided such funds are available within the approved construction budget. Any change orders exceeding the approved construction budget by more than 10% require the approval of the Board.

2.18 Release of Retention

The Agency will release retention proceeds withheld from an original contractor within 60 days after the completion of the project or within the time limits set forth in California Public Contract Code. In the event of a dispute between the public entity and the original contractor, the public entity may withhold from the final payment an amount not to exceed 150 percent of the disputed amount. In the event that retention payments are not made within the time periods, the Agency will be subject to a charge of 2 percent per month on the improperly withheld amount, in lieu of any interest otherwise due. Additionally, in any action for the collection of funds wrongfully withheld, the prevailing party will be entitled to attorney's fees and costs.

2.19 Waiver of Public Works Bidding Process

The General Manager has the ability to waive the requirements of competitive bidding set forth in this chapter if the Agency utilizes firms providing construction procurement services that are competitively bid or if the Agency uses public works contractors which were obtained through a bid process conducted by another public agency.