

**CONTRACT POLICIES AND PROCEDURES**

**Section 1 Introduction.....3**

1.1 Purpose and Title .....3

**Section 2 Basic Requirements and Exceptions.....3**

2.1 Definitions .....3

2.2 Fair and Open Competition Requirement .....4

2.3 Use of Non-Competitive Procedures .....4

2.4 Types of Procurement Methods .....5

2.5 Purchasing Agent Designation .....5

2.6 Existing Contracts .....6

**Section 3 Approval and Award of Contracts.....6**

3.1 Requirement of Board Approval.....6

3.2 Small Contracts and Micro-Purchases.....6

3.3 Rejection of Bids and Proposals.....6

**Section 4 Sealed Bids .....7**

4.1 Sealed Bids – Generally .....7

4.2 Procedures For Sealed Bids .....7

**Section 5 Competitively Negotiated Contracts Including Professional Services .....7**

5.1 Use of Competitively Negotiated Procurement Procedures.....7

5.2 Solicitation of Proposals – General.....8

5.3 Proposal Evaluation.....8

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5.4 Selection and Negotiations.....	8
5.5 Special Provisions Applicable To Procurement of Professional Services Contracts.....	8
<b>Section 6 Procurement of Contracts for Construction and Other Services .....</b>	<b>9</b>
6.1 Construction Work. ....	9
6.2 Contracts that Include Professional Services .....	9
<b>Section 7 Modification or Amendment of Contracts .....</b>	<b>9</b>
7.1 Contracts Subject to Board Approval.....	9
<b>Section 8 Protests .....</b>	<b>10</b>
8.1 Right to File Protests .....	10
8.2 Requirements for Protests.....	10
8.3 Resolution of Protest .....	11

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## **Section 1**      **Introduction**

### 1.1      Purpose and Title.

(A)      The JPA deems it necessary to adopt a policy to set forth the policies and procedures of the JPA for procurement, award and administration of contracts. This may be referred to as the “JPA’s Contract Policies and Procedures”.

(B)      Except as noted, the policies and procedures in this Policy are advisory, not mandatory, and any deviation shall not render any contract of the JPA void or voidable. Any deviation from the policies and procedures in this Policy shall be authorized by the Executive Director or Board, as applicable.

(C)      Pursuant to the JPA Agreement, the JPA shall be subject to the procedures applicable to a general law county. For clarity, the Board elects to be subject to the procedures applicable to counties with populations of 500,000 or over.

## **Section 2**      **Basic Requirements and Exceptions**

### 2.1      Definitions.

For the purposes of this Policy, the following words shall have the following meanings

Executive Director means: (a) the Executive Director of the JPA as described in the JPA Agreement Section 7.3 (e); or (b) the Coordinating Assessor if there is no Executive Director.

JPA means the California County Assessors' Information Technology Joint Powers Authority, which is created by the JPA Agreement, comprised of 32 counties: Alameda, Calaveras, El Dorado, Humboldt, Kern, King, Los Angeles, Madera, Marin, Mariposa, Merced, Modoc, Mono, Monterey, Napa, Placer, Riverside, Sacramento, San Bernardino, San Joaquin, San Luis Obispo, Shasta, Siskiyou, Solano, Sonoma, Stanislaus, Tehama, Tulare, Tuolumne, Ventura, Yolo, and Yuba.

Board or Board of Directors means the Board of Directors which is the governing body of the JPA.

Invitation for Bid (IFB) means a procurement process pursuant to which the JPA procures goods or services on a low bid basis.

JPA Agreement means the Joint Exercise of Powers Agreement of the California County Assessors' Information Technology Authority under which the JPA is established.

Micro-Purchase means a purchase of supplies and materials and the amount is less than \$10,000.00.

Request for Information or RFI means a formal or informal process to request information and/or ideas from the market.

Request for Proposals or RFP means a procurement process whereby the JPA seeks proposals and enters into a contract for goods, services, construction or related activities (which may or may not be preceded by an RFQ or Request for Information). Contracts may be procured on a low bid, best value or method that the JPA deems to be in the best interest of the JPA.

Request for Qualifications or RFQ means a procurement process in which the JPA obtains professional and other services on a qualifications basis that does not consider or considers as only one element, the cost of the services to be provided.

Small Contracts means any contract or other procurement involving expenditures equal to or less than \$100,000.00. Small Contracts are separate and distinct from a Micro-Purchase and can be used for procurements of less than \$10,000.00.

Working Day means any day other than a Saturday, Sunday or holiday for the JPA.

## 2.2 Fair and Open Competition Requirement.

The underlying premise of this policy is to foster fair and open competition and to obtain needed goods and services on a timely basis and in a cost-effective manner. The JPA should follow sound business and public policy principles in the procurement of goods and services so that these actions are performed efficiently and in a manner that serves the best interest of the JPA and the public.

## 2.3 Use of Non-Competitive Procedures.

Procurement of goods and services without competition is authorized under limited conditions. Procurement of contracts or purchase of equipment and supplies may be made by non-competitive negotiation under the following circumstances:

(A) Where the JPA has advertised the contract as required by this Policy and has undertaken reasonable efforts to solicit potential contractors and has obtained only one bid or proposal or has otherwise determined that competition is inadequate;

(B) When the goods or services are to be provided by a government or other public entity;

(C) Where the JPA wishes to renew or extend the term of the contract and compensation provided pursuant to an existing contract under substantially the same terms and conditions, or the amendment of an existing contract that does not materially alter the terms and conditions of the contract (other than the term of the contract and compensation), provided that such renewal, extension or amendment is authorized or permitted by the contract;

(D) Where, after reasonable investigation, the JPA determines that there is only a single source of supply available, or only one contractor is qualified to provide the service or product;

(E) Where the equipment to be purchased is of a technical nature and the procurement thereof without advertising is necessary in order to assure standardization of equipment and interchangeability of parts;

(F) Where the item to be purchased is a capital maintenance item that is available only from the original manufacturer or supplier;

(G) Where the contract is for employment or other services that the Board has designed to procure without a competitive process;

(H) Where the contract is one for which only per diem and travel expenses are paid and there is no payment for services rendered;

(I) Where the procurement is a Micro-Purchase involving the purchase of supplies and materials and the amount is less than \$10,000.00;

(J) Where the purchase is pursuant to a joint purchase and similar arrangement whereby another public agency procures goods or services on a bulk basis pursuant to procurement policies and procedures applicable to that agency;

(K) A "sole source" award, provided that in advance of the award, the Executive Director certifies in writing the sole source status of the provider: (i) based on (the need to utilize a specified material, provider or methodology in the best interest of the JPA; (ii) which could only be supplied, constructed, or installed by only one contractor or supplier; or (iii) as otherwise allowed by any law; and

(L) When the Board otherwise determines that award of a contract pursuant to competitive procedures identified in this Policy is either infeasible or would not produce an advantage, which determination shall be supported by written justification.

#### 2.4 Types of Procurement Methods.

(A) Micro-Purchases. This method, requiring only one quote, may be used for any purchase of supplies or services that does not exceed \$10,000.00.

(B) Small Contracts (up to \$100,000.00). This informal procurement method involves obtaining price or rate quotations from an adequate number of qualified sources (generally three unless only two qualified vendors exist) in order to determine a fair and reasonable price and make a contract award.

(C) Sealed Bids. A formal competitive sealed bid process involves procurement through an IFB process. Generally, formal bid documents are prepared and advertised and an award is made to the lowest responsive and responsible bidder. This method and related procedures are described in more detail in Section 4.

(D) Competitive Proposals. This competitively negotiated procurement method may be used for purchase of non-professional services (through a Request for Proposal process) or professional services (generally through a Request for Qualifications process). This method and related procedures are described in more detail in Section 5.

(E) Non-Competitive Purchases. These are used for the purchase of approved sole source procurements, Emergency procurements, intergovernmental agreements, and other procurements as may be approved by the Administrator or Board of Directors in light of special circumstances that justify this method of procurement as further described and discussed in Section 2.3.

#### 2.5 Purchasing Agent Designation.

The ultimate authority to enter into contracts, execute amendments and change orders to existing

contracts and make purchases on behalf of the JPA rests with the Board. The Board delegates this authority to the Executive Director as set forth in this Policy. The Executive Director or his or her designee shall act as purchasing agent for and on behalf of the JPA consistent with this Policy. The Executive Director or his or her designee is hereby authorized to approve and execute the following contracts, amendments, and change orders on behalf of the JPA:

(A) All procurements when the annual aggregate cost does not exceed \$200,000.

(B) Except as delegated above or by a separate action of the Board, all other contracts, amendments, and change orders shall be approved by the Board.

## 2.6 Existing Contracts.

The policies and procedures contained in this Policy shall not apply to any contract awarded by the JPA prior to the adoption of this Policy. Any amendments to this Policy are only applicable to contracts entered into after approval of the amendments.

## **Section 3**      **Approval and Award of Contracts**

### 3.1 Requirement of Board Approval.

Except as otherwise provided in this Policy, all procurements and contracts are subject to approval by the Board.

### 3.2 Small Contracts and Micro-Purchases.

Award of Small Contracts and Micro-Purchases may be authorized by the Executive Director without Board approval, subject to the following:

(A) Where the consideration to be rendered under a contract is other than monetary, such consideration must be valued on a monetary basis for the purpose of determining whether approval of the Board is required.

(B) If it is determined by the Executive Director that more than one contract may be awarded to a single contractor in any one fiscal year for work normally considered one undertaking and the total of the contracts exceeds \$200,000.00, all contracts awarded following such determination, regardless of amount, shall be submitted to the Board for approval; provided that purchases during a single fiscal year shall not be split into multiple contracts for the purpose of evading the Board approval requirement.

### 3.3 Rejection of Bids and Proposals.

Procedures for review of and rejection or award of contracts procured by IFB, RFP or RFQ are determined by the procurement document for the specific procurement and take precedence over the general provisions below. Where the procurement document does not set forth such procedures, or for procurements other than by IFB, RFP or RFQ, the following rules apply:

(A) The Executive Director may reject all bids and proposals received that are determined

to be non-responsive or not within the competitive range, including proposals made by proposers who refuse to execute any required representations and certifications.

(B) Executive Director may reject for any one or more of the following reasons:

(1) All otherwise acceptable bids or proposals received that exceed the funds budgeted and available for the contract or, in the case of contracts for which payment will be made to the JPA, offer inadequate compensation;

(2) The bids or proposals were not independently arrived at in open competition, were collusive or were submitted in bad faith; or

(3) Rejection is otherwise determined to be in the JPA's best interest.

#### **Section 4      Sealed Bids**

##### **4.1      Sealed Bids – Generally.**

A competitive sealed bid process shall be used for all procurements except as otherwise provided in Sections 2.3 (Use of Non-Competitive Procedures) and 2.4 (Emergency Procedures) of Section 2 (Definitions) or in Section 5 (Competitively Negotiated Contracts Including Professional Services), Section 6 (Alternative Method for Procurement of Contracts Including Construction and Other Services), or Section 11 (Purchase Of Materials, Supplies And Equipment) of this Policy. A competitive sealed bid process shall be procured through an IFB procurement process.

##### **4.2      Procedures For Sealed Bids.**

(A) The notice inviting bids shall be posted at the office of the JPA, or other place(s) designated by resolution of the Board, and advertised by public posting to the JPA's website and in a newspaper of general circulation and other trade publications as deemed appropriate by the Executive Director. The notice inviting bids shall set a date for the opening of bids. The first publication or posting of the notice shall be at least 10 days before the date of opening the bids.

(B) The Board may reject any bids presented and re-advertise. If two or more bids are the same and the lowest, the Board may accept the one it chooses. If no bids are received, the Board may utilize the non-competitive procurement procedures set out in this Policy.

#### **Section 5      Competitively Negotiated Contracts Including Professional Services**

##### **5.1      Use of Competitively Negotiated Procurement Procedures.**

This Section 5 outlines the JPA's procedures for competitively negotiated procurements, also known as a competitive RFP process, or in the case of the procurement of professional services on a qualifications basis, a competitive RFQ process. The procedures used in this Section 5 shall be used for:

(A) Contracts for professional services, consulting services, personnel services, and for other services that the Board has determined are to be competitively negotiated. These services are not limited to but may include system design, system architecture, system infrastructure, project

management, engineering, legislative advocacy, accounting services, legal services and related requirements;

(B) Purchases of specialized equipment, computers, software, licenses, telecommunications equipment, other related electronic equipment and apparatus, if the Board has approved the use of the procedures set forth in this Policy for a particular procurement.

(C) Other contracts that the Board has determined are to be competitively negotiated.

#### 5.2 Solicitation of Proposals – General.

(A) An RFP or RFQ shall be the solicitation used to communicate the JPA's requirements to prospective contractors when the negotiated method of seeking competitive proposals is used. The JPA shall furnish identical information concerning a proposed procurement to all prospective contractors receiving the RFP or RFQ.

(B) In determining sources to solicit, Executive Director shall use all means available to ensure that an adequate number of potential qualified proposers receive the solicitation in order to obtain the maximum open and competitive competition. Pre-solicitation announcement notices shall be published on the JPA website or other manner reasonably likely to attract proposers.

#### 5.3 Proposal Evaluation.

(A) The evaluation factors that will be considered in evaluating proposals shall be tailored to each procurement and shall include only those factors that will have an impact on the source selection decision. The evaluation factors that apply to a particular procurement and the relative importance of those factors are within the broad discretion of the Executive Director. All factors that are to be considered in an award of a contract must be identified in the RFP or RFQ and must allow for a fair and equitable evaluation of all proposals. Evaluation criteria could include matters such as previous experience providing similar services, qualifications of team members, satisfaction of previous clients, capacity to provide personnel when needed and approach to providing the services.

(B) The Executive Director, in his or her discretion, may establish a formal evaluation panel/committee to evaluate proposals in accordance with the stated evaluation criteria. Following evaluation, the Executive Director may either recommend a selection to the Board or, if authorized to do so, itself select the recommended source for contract award.

(C) The most qualified or "shortlisted" firms may be asked to further present their qualifications in an interview or similar process. The shortlist of firms will be determined by the Executive Director. The evaluators will consider the results of the interviews in making the selection recommendation.

#### 5.4 Selection and Negotiations.

The methods and procedures for selection and negotiation shall be set forth in the RFP or RFQ. The Executive Director may adopt any lawful methods and procedures that he or she determines are in the best interest of the JPA. The selection decision is subject to the approval of the Board.

#### 5.5 Special Provisions Applicable To Procurement of Professional Services Contracts.

If the procurement is for professional services listed in California Government Code Section 4525, in addition to meeting the other requirements of this Section 5, the procurement process shall comply with applicable requirements of Government Code Sections 4525 *et seq.* In particular, Government Code Section 4526 states that the procurement procedures for such contracts must:

(A) assure that such services are engaged on the basis of demonstrated competence and qualifications for the types of services to be performed and at fair and reasonable prices to the public;

(B) assure maximum participation of small business firms, as defined by the Director of General Services pursuant to Government Code Section 14837;

(C) specifically prohibit practices which might result in unlawful activity including, but not limited to, rebates, kickbacks, or other unlawful consideration; and

(D) specifically prohibit government agency employees from participating in the selection process when those employees have a relationship with a person or business entity seeking a contract that would subject those employees to the prohibition of Government Code Section 87100.

## **Section 6 Procurement of Contracts for Construction and Other Services**

### **6.1 Construction Work.**

The Executive Director shall follow the procedures set forth in the Public Contract Code for the procurement of any public works or similar construction work.

### **6.2 Contracts That Include Professional Services.**

If a contract subject to this Section 6 includes professional services of the type listed in Government Code Section 4525, the selection process for such contract shall comply with all applicable requirements of Government Code Sections 4525 *et seq.* as described in Section 5.5 of this Policy. The statutory requirement to select contractors based on demonstrated competence and qualifications may be satisfied by a shortlisting step that includes evaluation of the design professional's qualifications.

## **Section 7 Modification or Amendment of Contracts**

### **7.1 Contracts Subject to Board Approval.**

Contracts subject to the approval of the Board must also have such approval for a modification or amendment thereto, with the exception of the following which may be approved by the Executive Director:

(A) Amendments to contracts limited to an extension of the date of completion of performance for a period of one year or less. A contract may only be amended once under this provision.

(B) Amendments that change the amount of the contract, provided that the amendment

does not increase the contract amount by more than 10%. Multiple amendments of a contract that in the aggregate increase the contract amount by more than 25%, shall, upon the aggregate amendments exceeding such amount, be subject to Board approval. This authority shall not exceed a maximum value of \$200,000 per contract per fiscal year.

(C) Contracts let or awarded on the basis of any law requiring competitive bidding may be modified or amended only if the contract so provides and if authorized by the law requiring competitive bidding.

(D) Modifications within the scope of the Executive Director's authority under Section 2.7.

## **Section 8      Protests**

### **8.1      Right to File Protests.**

A person that has timely submitted a bid or proposal in response to any procurement of the JPA may file a protest objecting to the form or content of the RFP, RFQ or IFB within the time periods and in accordance with the procedures outlined in Sections 12.2 below. The following procedures apply in the event that the RFP, RFQ or IFB does not contain relevant protest procedures or to the extent that a procedure set forth below is not set forth in the RFP, RFQ or IFB. To the extent that any provision below conflicts or is otherwise inconsistent with a process or procedure set forth in an RFP, RFQ or IFB, the provision in the RFP, RFQ or IFB will prevail. To the extent that a provision of an RFP, RFQ or IFB does not permit protests, that prohibition will prevail over and negate a process permitted below that is inconsistent with that prohibition.

### **8.2      Requirements for Protest.**

(A) Protests shall be filed after submittal of proposals, statements or qualifications or bids and within five Working Days after notification of protestor's selection status. The following procedures shall apply

- (1) Protests must be submitted in writing.
- (2) Protests shall be sent to [insert address].
- (3) The JPA reserves the right to award the contract during the pendency of a protest.

(B) If a protest does not comply with the above requirements, the protest will not be considered and will be returned to the protester. The procedures and timelines for a protest are mandatory.

(C) Evidentiary statements, if any, shall be submitted under penalty of perjury. The protester shall have the burden of proving its protest by clear and convincing evidence. Failure to file a protest within the applicable period and pursuant to the procedures of this section shall constitute a waiver of the right to protest the determination, authorization or award, as applicable, other than any protest based on facts not reasonably ascertainable as of such date.

### 8.3 Resolution of Protest.

(D) The Executive Director or his or her designee will respond to protests within five Working Days of receiving the protest, acknowledging receipt of the protest. A conference on the merits of the protest may be held with the protester and the JPA will promptly attempt to resolve a properly filed protest or perform additional fact- finding.

(E) If the Executive Director or his or her designee is unable to resolve the protest within ten Working Days after receipt of the protest, he or she may establish an independent team to evaluate the merits of the protest. The Executive Director will determine the timeline for such evaluation.

(F) If at any time during this process, additional information is required by the JPA from the protester, such additional information shall be submitted by the protester as expeditiously as possible, but no later than three Working Days after receipt of a request.

The merits of the protest shall be made by the body awarding the protested contract or decision. The Executive Director shall make a recommendation on the protest when the awarding body is the Board. All decisions shall be in writing and be provided to the protestor.