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# Procurement Policy & Procedures Manual



SOUTHERN CALIFORNIA  
ASSOCIATION OF GOVERNMENTS

## Table of Contents

1.	Introduction .....	5
2.	Guiding Principles .....	6
3.	Approval Authority .....	7
3.1.	Caltrans' Approval Authority.....	7
3.2.	Regional Council Contract Approval Threshold .....	7
3.3.	The Executive Director and Chief Financial Officer's Approval Authorities .....	8
3.3.1.	The Chief Financial Officer's Delegation of Approval Authority For Purchase Orders (PO's).....	8
3.4.	Approval Authority Thresholds and Processing Time.....	8
4.	Roles and Responsibilities .....	11
4.1.	Role of the Project Manager (PM) .....	11
4.2.	Role of the Contracts Administrator (CA).....	12
4.3.	Responsibilities Matrix .....	14
5.	Types Of Agreements.....	14
5.1.	Purchase Order (PO) Agreement.....	14
5.1.1.	Standard PO Agreement.....	14
5.1.1.1.	Purchasing Computer Hardware, Software, and Peripherals Using a PO	14
5.1.1.2.	Purchasing Graphic/Printing Services Using a PO .....	15
5.1.1.3.	Fixed Assets and Controlled Items .....	15
5.1.1.4.	Ordering Office Supplies .....	16
5.1.1.5.	Other Miscellaneous Purchase Goods and Services Using a PO.....	17
5.1.2.	Blanket PO Agreement.....	18
5.2.	Software License Agreement .....	19
5.3.	Maintenance Agreement .....	19
5.4.	Equipment Lease or Rental Agreement .....	20
5.5.	Real Property Agreements .....	20
5.6.	Legal Services Contracts Authorized by the Chief Counsel.....	20
5.7.	Professional Service Consultant Agreement (Contract) .....	21
5.7.1.	Cost Plus Fixed Fee (CPFF) Contract.....	21
5.7.2.	Unit Rate (Cost Per Unit of Work) Contract.....	21
5.7.3.	Time and Materials (Specific Rates of Compensation) Contract .....	22
5.7.4.	Firm Fixed Price (Lump Sum) .....	22
5.8.	Sub-recipient Agreements .....	22
5.8.1.	Procedures for Processing a Continuing Cooperative Agreements (CCA) .....	23
6.	Procurement Methods .....	24
6.1.	Emergency Procurement .....	24
6.1.1.	Procedures for an Emergency Procurement.....	24

## Table of Contents

6.2.	Noncompetitive Procurement (Sole Source).....	24
6.2.1.	Procedures for a Sole Source Contract.....	25
6.3.	Purchase Using a State and Local Intergovernmental Agreement (Master Service Agreement- MSA).....	27
6.4.	Purchases Using a Purchase Card .....	27
6.5.	Request for Qualification (RFQ) 1 or 2-Step Process.....	28
6.6.	Informal Solicitations.....	28
6.6.1.	Steps in the Informal Solicitation Process for Purchase Orders (PO's) and Contracts:.....	29
6.6.2.	Formal Solicitations (Purchases).....	33
6.6.3.	Steps in the Formal Solicitation Process:.....	35
7.	Other Informal/Formal Solicitation Process Requirements.....	40
7.1.	Documenting the Rationale for the Procurement Method .....	40
7.2.	Assigning Request for Proposal (RFP) Numbers .....	40
7.2.1.	RFP Naming Convention - Legend.....	41
7.2.2.	Electronic Contract File Library - Naming Convention .....	42
7.3.	Solicitation Cancellation .....	42
7.4.	Proposal Review Committee (PRC).....	43
7.5.	Pre-Bid/Pre-Proposal Conference .....	44
7.6.	Proposal Submission .....	45
7.7.	Pre-Award Audit .....	45
7.8.	Debriefing.....	45
7.9.	Protests .....	46
7.10.	Contract Specifications .....	46
7.11.	Contract Term.....	47
7.12.	Reporting Requirements.....	47
7.13.	Ethics (Standards of Conduct - also see sections 6.6.1 C, 6.6.3 G and 7.10).....	48
8.	Post Award Administration.....	48
8.1.	Post Award Administration Requirements.....	48
8.2.	Contract Invoicing.....	49
8.3.	Amendments.....	51
8.3.1.	Contract or Purchase Order (PO) Amendments.....	51
8.3.2.	Amendment Processing.....	53
8.4.	Contract Close-Outs .....	55
9.	Other Requirements.....	55
9.1.	Insurance .....	55
9.2.	Disadvantaged Business Enterprise (DBE).....	55
9.3.	W-9 Form .....	56
9.4.	9.4 Public Records Request.....	56

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## Table of Contents

9.4.1.	Procedure:.....	57
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# SCAG Procurement Policy & Procedures Manual

## 1. Introduction

A. SCAG's Procurement Manual sets forth general guidelines that will govern the conduct of SCAG's procurement activities. The Contracts Department has the responsibility for ensuring that the procurement process subscribes to legal requirements, sound business practices is conducted in a manner that ethically serves the best interest of SCAG and the public, and ensures fair and open competition. This Manual is intend to govern procurements using Consolidated Planning Grant (CPG) funds. CPG funded procurements shall comply with the following legal requirements and guidance, or successors there to, in accordance with the following order of precedence:

1. 49 CFR Part 18 Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments
2. 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31
3. 2 CFR Part 225 (Office of Management and Budget - OMB Circular A-87)
4. Federal and State Non Discrimination and Disadvantaged Business Enterprise (DBE) Requirements
5. Master Fund Transfer Agreement between SCAG and Caltrans
6. Caltrans Local Assistance Procedures Manual (LAPM 5 & 10)
7. Caltrans Regional Planning Handbook
8. SCAG Procurement Manual

Procurements using other funding sources should generally comply with the aforementioned legal requirements and guidance.

B. Contracts Department:

- Leyton Morgan, Manager of Contracts Ext. 982
- Laura Aguilar, Contracts Administrator Ext. 922
- Ted Dorjee, Contract & Purchasing Assistant Ext. 938
- Sandee Scott, Senior Contracts Administrator Ext. 996
- Lori Tapp, Contracts Administrator Ext. 957
- Ranjini Zucker, Senior Contracts Administrator Ext. 887

C. The manual is intended to provide policies and procedures to comply with the applicable requirements and guidance. SCAG staff is expected to exercise professional judgment in implementing such policies and procedures, and shall consult with the Contracts Department in coordination with the Legal Division for guidance. The final decision on any procurement matter rests with the Chief Financial Officer.

# SCAG Procurement Policy & Procedures Manual

## 2. Guiding Principles

- A. In accordance with 49 CFR Part 18, Section 18.36 (c) (1) & (2), or successors there to, SCAG and any of its subrecipients shall conduct all procurement transactions in an ethical manner that provides for full and open competition. Some of the situations considered to be restrictive of competition include but are not limited to:
1. Placing unreasonable requirements on firms in order for them to qualify to do business;
  2. Requiring unnecessary experience and excessive bonding;
  3. Noncompetitive pricing practices between firms or between affiliated companies;
  4. Noncompetitive awards to consultants that are on retainer contracts;
  5. Organizational conflicts of interest;
  6. Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance of other relevant requirements of the procurement,
  7. Any arbitrary action in the procurement process; and
  8. Unfair competitive advantages (see section 7.10.B).
- B. In accordance with Government Code 1090 and the Regional Council (RC) Policy Manual, Article IV (Conflict of Interest Policy), Section 2.6.3 current RC members and any firms they work for as well as SCAG staff are precluded from proposing on SCAG solicitations (RFP’s, bids...) if they have a financial interest in the contract (as determined by SCAG’s Legal Division). The RC Policy Manual Article IV, Section 2.7.2 also precludes a RC member from proposing on SCAG contracts for one year from the time the member’s term expires.
- C. All staff shall comply with both SCAG’s Conflict of Interest Policy ([http://info/policies/docs/COI\\_Policy\\_Approved070600.DOC](http://info/policies/docs/COI_Policy_Approved070600.DOC)) and SCAG’s Ethics Policy (<http://info/policies/pdfs/scagEthicsPolicy062811.pdf>). Also see section 7.13.
- D. All agreements (contract, PO...) funded with Consolidated Planning Grant (CPG) funds must be competitively procured or procured with a sole source justification if the purchase exceeds the federal micro purchase threshold, currently \$3,500.
- E. SCAG (and any of its subrecipients) will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts State licensing laws.
- F. SCAG (and any of its subrecipients) will have written selection procedures for procurement transactions. These procedures will ensure that all solicitations:
1. Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product, or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and

## SCAG Procurement Policy & Procedures Manual

accurate description of the technical requirements, a “brand name or equal” description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated; and

2. Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.
- G. SCAG (and any of its subrecipients) will ensure that all pre-qualified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, SCAG and any of its subrecipients will not preclude potential bidders from qualifying during the solicitation period.
- H. The SCAG Chief Financial Officer (or designee) in coordination with SCAG legal counsel, shall resolve any issues regarding interpretation of the policies and procedures contained in this manual.
- I. The Procurement department shall have adequate internal controls to ensure all contracts are processed in accordance with the policies specified in this manual, including but not limited to ensuring that:
1. Unauthorized persons are prohibited from accessing Procurement’s Systems.
  2. Procurement’s systems neither allows the staff that created the requisition to also create the Purchase Order, nor allows the person that created a vendor to also pay an invoice from that vendor (proper segregation of duties).
  3. All requisitions contain proper approvals before being converted into a Purchase Order.
  4. Staff have a mechanism to report unauthorized activities as well as any suspicions of fraud, waste or abuse.
- J. This manual will be periodically updated to reflect any changes.
- K. Effective July 1, 2014, this manual will be certified annually (around June each year) by the Chief Financial Officer for any required revisions.

### 3. Approval Authority

#### 3.1. Caltrans’ Approval Authority

Effective May 2006 Caltrans does not require SCAG to receive approval from Caltrans for any contracts, regardless of value. However, SCAG is still required to provide Caltrans with copies of contract documents (listed below) for purchases funded through Consolidated Planning Grant (CPG) funds (primarily FHWA and FTA funds) and Caltrans administered grants. SCAG is not required to provide copies of contract documents to Caltrans for contracts that are funded through sources other than CPG and state funding.

#### 3.2. Regional Council Contract Approval Threshold

- A. Any SCAG consultant agreement valued at or above \$200,000 must be approved in advance (prior to execution of the contract) by the Executive Administration Committee

## SCAG Procurement Policy & Procedures Manual

and the Regional Council<sup>1</sup>, in accordance with the Regional Council Policy Manual, Article VIII, Section 1.1 (updated September 2009, pg. 26).

- B. The threshold for Executive/Administration and Regional Council approval of contract amendments is \$75,000, in accordance with the Regional Council Policy Manual, Article VIII, Section 1.3 (updated September 2009, pg. 26).

### **3.3. The Executive Director and Chief Financial Officer's Approval Authorities**

- A. In accordance with the Regional Council Policy Manual, Article VIII, Section 1.2 (updated September 2009, pg. 26) the Regional Council delegates authority to the Executive Director or his designee (the Chief Financial Officer) to approve and sign purchase orders, consultant contracts and agreements that are less than \$200,000.
- B. Only the Executive Director (or designee) is authorized to sign contracts and agreements binding upon SCAG. Contracts and agreements also require the signature of the Chief Counsel or Deputy Legal Counsel (to approve as to form).
- C. In the event that the responsible party is absent or unavailable to sign the contract, the authorized designee shall sign on that person's behalf.

#### **3.3.1. The Chief Financial Officer's Delegation of Approval Authority For Purchase Orders (PO's)**

- A. PO's that are less than \$5,000 only require the Manager of Contracts' approval.
- B. PO's that are \$5,000 or greater requires the Manager of Contracts' and Chief Financial Officer's approval.
- C. In the event that the Contracts Administrator, Manager of Contracts, or CFO is absent or unavailable to sign the PO, the authorized designee shall sign on that person's behalf.

### **3.4. Approval Authority Thresholds and Processing Time**

- A. Table 1 below provides SCAG's approval authority thresholds and average processing time for each Procurement Method, and for all funding sources **excluding the General Fund** (see Table 2 below for General Fund).

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<sup>1</sup> Includes purchase orders, leases for SCAG's HQ or regional offices, banking or financial service agreements as well as retirement, health and employee benefits related contracts. Also, per a 4/2/09 the RC Agenda Item 6.2.3, the RC reduced its approval threshold from \$250K to \$200K.

## SCAG Procurement Policy & Procedures Manual

<b>Table 1 - Approval Authority Thresholds and Average Processing Time</b>			
<b>Procurement Method</b>	<b>Threshold</b>	<b>Approval Authority</b>	<b>Processing Time (in weeks)</b>
Formal – 1	\$200,000 or greater (subject to Audit if \$250K or greater)	Regional Council	15 (from receipt of final Scope of work to Notice- to-Proceed)
Formal – 2	\$50,000 but < \$200,000	CFO (or designee)	11 <sup>2</sup>
Informal	>\$3,500 but < \$50,000	CFO (or designee)	2 – 7
Micro/Non-Competitive	\$1 - \$3,500	Contracts Manager	2
Sole Source - 1	\$200,000 or greater (subject to Audit if \$250K or greater)	CFO/Regional Council	2 – 6
Sole Source - 2	\$3,001 but < \$200,000	CFO (or designee)	2
Amendment - 1	\$75,000 or greater (subject to Audit if the amendment increases the contract's value to \$250K or greater)	Regional Council	2 – 6
Amendment - 2	\$1 but < \$75,000 (subject to Audit if the amendment increases the contract's value to \$250K or greater)	CFO (or designee) if the amendment is 30% or greater of the contract's original value, or increases the contract's value to \$200,000 or greater, then the RC must approve this amendment.	2

B. Agreements (contracts and purchase orders...) and amendments to them are reported to the Regional Council (RC). Agreements and amendment not approved by the RC are reported to the RC for informational purposes.

<sup>2</sup> Note: The 11 weeks typically consists of the following major activities:

- 1.5 weeks for RFP creation and issuance;
- 4.0 weeks for RFP posting;
- 3.0 weeks for evaluating proposals and conducting any interviews;
- 2.5 weeks for negotiating and executing the final contract.

11 weeks total anticipated processing time

Add 4 more weeks for contracts \$200K or greater (for Regional Council Approval)

## SCAG Procurement Policy & Procedures Manual

- C. Further, while contract amendments are limited to no more than thirty (30) percent of the original total amount of the contract, any amendment(s) with an individual or aggregate amount of \$75,000 or greater requires Regional Council approval.
- D. Table 2 below provides SCAG’s approval authority thresholds and processing time for each Procurement Method, for purchases funded from **the General Fund** (see Table 1 above for all other funds).

<b>Table 2</b>			
<b>Approval Authority Thresholds &amp; Average Processing Time Processing for <u>General Fund</u> Contracts</b>			
<b>Procurement Method</b>	<b>Threshold</b>	<b>Approval Authority</b>	<b>Processing Time (in weeks)</b>
Formal	\$100,000 or greater (subject to Audit if \$250K or greater)	Regional Council	11
Sole Source - 1	Contracts < \$200,000	Executive Director (any amendment that increases the contract’s value to \$200,000 or greater must be approved by the RC)	2 - 11
Sole Source - 2	\$200,000 or greater (subject to Audit if \$250K or greater)	Regional Council	2 – 15
Amendment	\$1 but < \$75,000 If the amendment is 30% or greater of the contract’s original value, or increases the contract’s value to \$200,000 or greater, then the RC must approve this amendment. The amendment is also subject to Audit if it increases the contract’s value to \$250K or greater.	Regional Council	2 – 6

- E. Consistent with the Federal Acquisition Regulation (FAR) Part 13.003 (B) (1) each acquisition of supplies or services that has an anticipated dollar value of \$3,500 or less does not require a competitive selection process (or a sole source justification), but does require the purchaser to document what he/she is purchasing and why (e-mail is acceptable), as well as to document the price paid for the good(s) or service(s) is fair and reasonable (see Section 6.6.1 G).
- F. Purchases greater than \$3,500 but less than \$50,000 require an Informal Solicitation (See Section 6.6)
- G. In accordance with a March 6, 2008 Regional Council agenda item 5.2.2, a Formal Solicitation (See Section 6.6.2) is required for procurements \$50,000 or greater.
- H. Splitting of purchases (“fragmenting”) in order to avoid competitive procurement requirements is prohibited.

# SCAG Procurement Policy & Procedures Manual

## 4. Roles and Responsibilities

### 4.1. Role of the Project Manager (PM)

A. The SCAG PM's duties include but are not limited to:

1. Developing the Scope of Work which must include:
  - Background
  - Objective/Purpose
  - Clearly defined Statement of Work to be performed
  - Deliverables
  - Schedule by task and fiscal year
2. Providing Contracts with a Cost Estimate for the project as required by the Caltrans Local Procedures Manual (July 2016) Section 10.2, Estimated Cost of Consultant Work, (pg.2) & 49 CFR Part 18, Section 18.36 (f) (1). In accordance with a policy approved on March 5, 2009 by the Regional Council (agenda item 3.1.3), this document must be kept confidential. Staff cannot disclose the project's budget to anyone outside of the Proposal Evaluation Committee.
3. Verifying funding source/amount of funds.
4. Entering the requisition into SCAG's Financial Management Information System
5. Providing Sole-Source Justification, if applicable.
6. Reviewing and signing off on the Scope of Work that goes into the Request For Proposal
7. Recommending staff for the Proposal Review Committee (PRC), as approved by the Contracts Administrator.
8. Scoring proposals and any consultant interviews.
9. Providing the Contracts Administrator information for the Cost/Price Analysis and Fair and Reasonable Determination.
10. Assisting with any negotiations with the selected consultant.
11. Providing Regional Council Agenda write-up (for contracts \$25,000 or greater - includes sole source contracts) within established time frames
12. Reviewing and signing off on the contract, as to accuracy of the description of the project and consultant services (including the scope of work), budget, and schedule.
13. Monitoring and being cognizant of project costs to ensure project remains within the allocated budget and is completed on schedule.
14. Monitoring consultant's work, progress, and expenditures.
15. Reviewing and approving consultant's invoices for payment, including the Line Item Budget or Price Sheet.
16. Requesting all contract amendments within established timeframes, including, but not limited to: Scope of Work, Schedule changes, Cost, etc.
17. Receiving all deliverables
18. Completing Project & Contract Close Out Form.
19. Providing the following for the master contract file, if required by the Caltrans Local Assistance Procedures Manual, Section 10.8 Completing the Project (Project Records):

## SCAG Procurement Policy & Procedures Manual

- Log of verbal communication with the consultant to include: the date, time, name of the person contacted, and a brief description of the conversation.
  - Any written information or correspondence considered pertinent to the consultant contract
  - Copies of deliverables.
- B. To verify that the necessary steps have been completed for a project, the PM may use the Responsibilities Matrix as a guide.
- C. The PM is not authorized to:
1. Direct the consultant to start work prior to issuance of a Notice-to-Proceed by the Contracts Administrator.
  2. Direct the consultant to perform work not included in Scope of Work.
  3. Direct the consultant to proceed with a change to the contract prior to an executed amendment.
  4. Sign the contract or any binding documents requested by the consultant. The PM may sign appropriate forms, such as non-disclosure statements and meeting minutes.
  5. Extend the time-period of the contract without an amendment to the contract.
  6. Allow the consultant to exceed the rate ceiling of any Direct Labor position classification, or allow the consultant to incur costs funded contract amount.
  7. Allow the consultant to incur costs that do not conform with the California's State Department of Personnel Administration rules, or any successors there to (SCAG's Travel Guidelines - for meals, lodging, mileage, expenses, etc.) located at <http://www.dot.ca.gov/hq/asc/travel/ch12/1consultant.htm>.

### 4.2. **Role of the Contracts Administrator (CA)**

- A. In accordance with Section 10.2 of the Local Assistance Procedures Manual (July 2016, pg. 4, the Contract Administrator (CA) is responsible for ensuring the quality of consultant contract products or services. The CA is appointed as soon as the need for consultant services is identified. The CA is involved throughout the development of the selection process and the contract provisions, and in the administration of the consultant's work. The CA must be a qualified local agency employee, or have staff that is qualified to ensure the consultant's work is complete, accurate, and consistent with the terms and conditions of the consultant contract.
- B. The CA's duties include but are not limited to:
1. Reviewing requisition and scope of work for completeness and accuracy.
  2. Preparing and releasing RFP, including advertising it via Planet Bids (see Section 6.6.3 F) and other professional trade publications, as well as SCAG's website.
  3. Arranging Pre-bid/proposal conferences, questions and answers (if any).
  4. Receiving, reviewing and evaluating the consultant's proposals for completeness, required documentation, and responsiveness to the RFP's requirements, identifying exceptions (as required).
  5. Arranging and leading the proposal evaluation meeting with the PRC.
  6. Determining the need for, arranging as necessary and leading a consultant interview meeting

## SCAG Procurement Policy & Procedures Manual

7. Receiving and approving Consultant Selection Memo from the PRC.
  8. Coordinating audit of selected consultant's proposal (if \$250,000 or greater, or there is reason for an audit).
  9. Completing Cost/Price Analysis and Fair and Reasonable Determination and leading negotiations (if any).
  10. Coordinating contract execution.
  11. Coordinating placement of the Board Report (RC Write up) on applicable Regional Council Agenda and completing the Procurement Summary section of the report.
  12. Leading negotiations.
  13. Issuing Notice-to-Proceed to consultant.
  14. Ensuring consultants do not exceed the rate ceiling of any Direct Labor position classification (rates may be change via amendment), or allow consultant to incur costs beyond funded contract amount.
  15. Closing out the contract file.
- C. The CA is responsible for maintaining a file for each contract with the following documents, if applicable:
1. Cost Estimate (per 49 CFR Part 18, Section 18.36 (f) (1) - In accordance with a March 5, 2009 Regional Council agenda item 3.1.3, this document must be kept confidential. Staff cannot disclose the project's budget to anyone outside of the Proposal Evaluation Committee.
  2. RFP, RFP Addendum(s) & RFP Mailing List.
  3. Copy of Questions and Answers from the Pre-Bid Conference.
  4. Original of all proposals (identify the winning proposal).
  5. Proposal Summary Memo.
  6. Debarment & Suspension Certification(s).
  7. Conflict of Interest Certification(s).
  8. Non-Disclosure Form for each PRC Member.
  9. List of Questions for Consultant Interviews.
  10. Original Evaluation Sheets (Proposal and Interview).
  11. PRC Memorandum of Selection.
  12. Original Winning Proposal.
  13. Sole-Source Justification (if applicable).
  14. Cost Price Analysis and Fair & Reasonable Determination.
  15. Pre-Award and Post-Award Audit (if applicable).
  16. Contract Approval Routing.
  17. PO (generated in SCAG's Financial Management Information System for encumbrance purposes).
  18. Certificate of Insurance with endorsement.
  19. Original Contract.
  20. Notice-to-Proceed Letter(s).
  21. Correspondences (Letters, Emails, Faxes).
  22. Amendment(s).
  23. Other supporting documents.
- D. In accordance with the Caltrans Local Assistance Procedures Manual, Section 10.8, *Administer the Contract*, the CA is also responsible for conducting post award

## SCAG Procurement Policy & Procedures Manual

administration. This includes but is not limited to: attending the kick-off meeting and other meetings on contract issues, monitoring the project's progress, receiving/reviewing reports, and reviewing and approving invoices, ensuring consultant's expenditures conform to the California State Department of Personnel Administration Rules - SCAG's Travel Guidelines, etc. Note - SCAG staff, including Contracts staff, cannot authorize a consultant to exceed the rates in the State's Rules.

- E. Contract files will be closed out in accordance the Section 8.4, and maintained in accordance with 49 CFR § 18.42, or successors there to. See SCAG's Record Retention Policy.

### 4.3. Responsibilities Matrix

Contracts shall meet with SCAG PM's semi-annually to review and update as necessary the Responsibilities Matrix. Further, to facilitate execution of each year's Overall Work Program (OWP) projects, Contracts may establish and maintain a quarterly meeting with SCAG staff to review project schedules.

## 5. Types Of Agreements

The Contracts Department uses various types of agreements to procure goods and services based on the type of good or service to be procured. All agreements (contract, PO...) funded with Consolidated Planning Grant (CPG) funds must be competitively procured or procured with a sole source justification if the purchase exceeds the federal micro purchase threshold, currently \$3,500. Each agreement type is described in turn below:

### 5.1. Purchase Order (PO) Agreement

There are two (2) types of PO's, Standard and Blanket. A PO should be issued to a vendor prior to any order being placed with a vendor.

#### 5.1.1. Standard PO Agreement

- A. A Standard PO is an agreement containing the terms and conditions for SCAG to procure off-the-shelf purchases of goods or services. A Standard PO is ideal for an infrequent purchase that requires a single purchase transaction. This means that once the good or service has been received by SCAG, the Accounting Department processes the invoice for payment and the PO is closed in SCAG's Financial Management Information System.
- B. See Purchase Requisition Instructions (available on Contract's intranet webpage) for further instruction on creating requisitions.

#### 5.1.1.1. Purchasing Computer Hardware, Software, and Peripherals Using a PO

- A. It is crucial that any computer equipment being ordered is compatible with SCAG's computer network. Therefore, orders that are charged to a

## SCAG Procurement Policy & Procedures Manual

specific project require review and approval from the Chief Information Officer (or designee).

- B. All orders for computer hardware, software, and peripherals must be submitted directly to the IT Division for review and approval.
- C. The IT Division will be responsible for entering the requisition in SCAG's Financial Management Information System for all orders that will be charged to the IT Division budget.

### **5.1.1.2. Purchasing Graphic/Printing Services Using a PO**

- A. SCAG staff must submit all printing jobs directly to the Graphics Department. Depending on the technical aspects of the request, and the Department's/Division's workload, the Manager of Media and Public Affairs will determine whether the job can be printed in-house or if it needs to be outsourced.
- B. If the Manager of Media and Public Affairs determines that the job must be outsourced, the Graphics Department must initiate a Purchase Requisition.
- C. If the cost of the printing job is estimated to be below \$50,000 and the job will require an outside printer, in accordance with the Caltrans Local Assistance Procedures Manual, Section 10.5, *Consultant Selection Using The One-Step RFP Method*, the Contracts Department must receive and evaluate a minimum of three offers. If Contract receives 2 offers or less, a justification must be documented to proceed with the procurement. If Contracts only receives one offer, re-advertisement of the RFP should be considered as an option.
- D. All vendors must submit their quote directly to the Contracts Department or staff designed by Contracts using the specifications from the RFQ via fax or email by the deadline stated. No offers will be accepted after the deadline.
- E. Contracts and Graphics personnel will evaluate the bids and make an award recommendation.
- F. If the cost of the job is estimated at \$50,000 or above, Formal Solicitation is required and must be requested in accordance with Section 6.6.2.

### **5.1.1.3. Fixed Assets and Controlled Items**

- A. A **Fixed/Capital asset** is defined as a purchased asset with an expected life of more than one (1) year and a total acquisition cost of \$5,000 or more, which is capitalized. **Fixed assets** are tagged and inventoried by the Information Technology (IT) Services Division.

## SCAG Procurement Policy & Procedures Manual

- B. Items which cost under \$5,000 are categorized as **controlled items** and are **not** capitalized but treated as an expense. They are also tagged and inventoried by Facilities. A **controlled item** is any equipment or asset, such as for example:
1. Computer Hardware and Software, including laptop computer
  2. Personal Digital Assistant (PDA) or tablet
  3. Printer
  4. Facsimile Machine
  5. Calculator (over \$100)
  6. Furniture
- C. Capital asset purchases must be coordinated with the IT Services Division. Capital/Fixed assets purchased with federal funds must comply with 49 CFR Section 18.32, or successors there to (available at <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&rgn=div5&view=text&node=49:1.0.1.1.12&idno=49>), regarding use, record keeping and disposition of equipment. Property records for Fixed/Capital assets must include the following:
1. Description of the property
  2. A serial number or other identification number
  3. The source of property and who holds title
  4. The acquisition date
  5. Cost of the property
  6. The location, use and condition of the property
  7. Disposition data including the date of disposal and sale price of the property.
- D. In the event that the asset is no longer needed, it must be disposed of according to the grant requirements of the respective funding agency. Equipment purchased with federal funds must comply with disposition requirements set forth in 49 CFR Section 18.32(e), or successors there to. Arrangements can be made with either the IT Services Division for appropriate disposition of the asset.

### 5.1.1.4. Ordering Office Supplies

- A. Effective February 1, 2013, the ordering office supplies will be transferred from Reprographics to the Contracts Division. Inventory items will continue to be available on the 11th floor. The new procedures are as follows:
1. Inventory Items
    - a). Inventory items will continue to be available through Reprographics. There is a self-serve counter where basic

## SCAG Procurement Policy & Procedures Manual

- supplies can be obtained at any time and additional supplies are available on the back shelves in Reprographics;
- b). Regional offices may obtain inventory supplies by submitting a Purchase Requisition Form. Inventory items will be ordered through Office Depot and shipped directly to the Regional offices; and
  - c). A list of the inventory items may be viewed at <http://info/operations/pdfs/SatelliteOrderForm.pdf>.
2. Non-Inventory Items
- a). Non-Inventory Items may be viewed online at [www.officedepot.com](http://www.officedepot.com)
  - b). A Purchase Requisition Form (available on the Intranet at <http://info/formbank/pdfs/PurchaseRequisitionFormFillable.pdf> ) must be completed by staff for all orders (email orders will no longer be accepted), and submitted to Contracts;
  - c). Regional Offices must also submit a Purchase Requisition Form for all orders;
  - d). Contracts staff will verify that the items being ordered are not inventory items;
  - e). Orders will be placed once per week, or more frequently, depending on the urgency;
  - f). Orders will be grouped to meet the minimum total of \$50 to avoid delivery charges;
  - g). Contracts staff will place orders using Office Depot's online ordering system; or may choose to obtain additional quotes depending on the cost of the item(s) being purchased and urgency of the order;
  - h). Orders for RUSH non-inventory items must typically be received no later than 4:00 in order to obtain next day delivery;
  - i). For Los Angeles office orders, Reprographics staff will coordinate receipt/delivery of the order, and orders for Regional office will be shipped directly to the Regional offices;
  - j). Requester will sign-off on the packing slip documenting that the order is complete, or note any discrepancies;
  - k). Contracts will resolve any noted discrepancies with Office Depot; and
  - l). Packing slips will be given to Contracts, and will be matched against the invoice for payment processing.

### **5.1.1.5. Other Miscellaneous Purchase Goods and Services Using a PO**

- A. Other types of goods or services that are not mentioned above may include, but are not limited to the following:
  1. Advertisements/Public Notices
  2. Awards/Plaques (note these items cannot be purchased with CPG funds, and are normally funded from the General Fund).

## SCAG Procurement Policy & Procedures Manual

3. Books (over \$100, including tax and shipping)
4. Building/Maintenance Services
5. Building Rent/Lease
6. Catering
7. Cellular Phones
8. Conference Facilities
9. Courier Services
10. Equipment Rental (Audio/Visual)
11. Furniture
12. Internet Access Accounts
13. Memberships
14. Office/Reprographics Equipment (other than fixed assets or controlled items)
15. Office Supplies (that are not available through Reprographics)
16. Promotional Items
17. Sponsorships - SCAG's Chief Operating Officer or designee can approve sponsorship up to \$5,000 (per the SCAG Bylaws, Article V, Section (3) Duties, bullet (a). If more than \$5,000, then the sponsorship requires prior approval by the Legislative and Communications Committee and/or Regional Council)
18. Subscriptions (\$500 and over for magazines, periodical, newspapers, journals, etc.)
19. Telephone Hardware/Software
20. System Maintenance and Upgrades
21. Temporary Staffing
22. Video Conference System (Lease and Maintenance)

### 5.1.2. **Blanket PO Agreement**

- A. A Blanket PO is a type of agreement designed to consolidate repetitive and frequent purchases from qualified vendors. It is designed to give staff flexibility in ordering like or similar supplies and services that have multiple deliveries over an extended period of time.
- B. In most cases, Blanket PO's are established at the beginning of each fiscal year for a specific time period, usually for the entire fiscal year. A Requisition is used to initiate a Blanket PO. Once the order has been established in SCAG's Financial Management Information System, staff may request delivery releases on an "as needed" basis, unless there is a predetermined delivery schedule set-up with the vendor.
- C. For example, a Blanket PO is ideal for the purchase of office supplies. Office supplies are procured frequently and a Blanket PO eliminates the need for entering a requisition in SCAG's Financial Management Information System each time that a small dollar amount item is needed. The user enters a not-to-exceed dollar value, for example \$40,000, to the Blanket PO for the entire fiscal year, and draws against the \$40,000 as invoices are received and processed for payment.

## SCAG Procurement Policy & Procedures Manual

- D. Once the Blanket PO number has been established, the requester must have the vendor reference the PO number on the packing slip for all vendor shipments and invoices to ensure timely delivery and uninterrupted service. The expenditures should be tracked against the Blanket PO, which can be done through SCAG's Financial Management Information System (See SCAG's Financial Management Information System Manual for PO set up, updating and close out instructions.)
- E. For catering services (i.e., Regional Council and Policy Committee lunches...), only the requester or authorized persons listed on the PO is authorized to use it.
- F. A Blanket Purchase Requisition cannot be used to purchase fixed asset equipment.

### 5.2. Software License Agreement

- A. A software license agreement provides permission by the publisher (licensor) to the user (licensee) stating under what conditions the software may be used. Only one copy of the software may be used on one computer, unless a multiple user license is purchased for multiple users or a "site" license is purchased, which allows unlimited use of the software within an organization.
- B. The following minimum information must be stated on the software license agreement:
  - 1. Description of the software to be licensed, and conditions of use.
  - 2. Period of the agreement.
  - 3. Specifications of the software license agreement; such as, technical support, software updates, subscription, number of users, etc.
  - 4. Any Cost (use three years minimum to estimate life cycle costs).
- C. Software license agreements are contracts and are subject to review and approval by the Chief Financial Officer (or designee), and Chief Counsel (or designee) prior to executing the agreement.

### 5.3. Maintenance Agreement

- A. SCAG establishes a maintenance agreement with a vendor to provide uninterrupted preventative and/or remedial maintenance for all types of equipment. A maintenance agreement can be for a fixed price, time & material, or at a predetermined cost.
- E. A requisition is required to initiate all maintenance agreements. The location of the equipment must be specified on the requisition, in addition to the standard information requirements.
- B. The following minimum information must be stated on the maintenance agreement:
  - 1. List of equipment to be covered (include brand, model, and serial number)
  - 2. Quantity of the equipment to be covered
  - 3. Period of coverage

## SCAG Procurement Policy & Procedures Manual

4. What the maintenance agreement covers (parts, supplies, and/or labor)
- C. Maintenance agreements are contracts, and are subject to review and approval by the Chief Financial Officer (or designee), and Chief Counsel.

### 5.4. Equipment Lease or Rental Agreement

- A. When considering an equipment lease or rental agreement, it is imperative to do a lease versus buy analysis to determine the most cost-effective option. The factors to consider include, but are not limited to the following:
  1. Advantages of owning the equipment or personal property from the start.
  2. Options at the end of the lease (fair market value, \$1 buyout, etc.)
  3. The application of any lease/rental credits toward a purchase at the end of the agreement period.
  4. The right to cancel prior to the end of the term and any penalties.
  5. Insurance requirements during the term of the agreement.
  6. Whether maintenance and supplies are included in the lease, and if not, the associated costs.
  7. All the possible costs associated with the lease, such as property tax.
  8. Take into consideration future trends in technology to determine buy versus lease options.
- B. Leases and rental agreements are initiated from staff with a properly authorized Purchase Requisition in SCAG's Financial Management Information System.
- C. Staff leasing or renting equipment are responsible for ensuring that they have enough funds in their account to cover all the lease/rental payments for each fiscal year.
- D. Leases and rental agreements are contracts and are subject to review and approval by the Chief Financial Officer (or designee), and Chief Counsel prior to executing the agreement.

### 5.5. Real Property<sup>3</sup> Agreements

Only the Executive Director (or designee) is authorized to enter into and execute a real property agreement.

### 5.6. Legal Services Contracts Authorized by the Chief Counsel

- A. Pursuant to a Regional Council Policy adopted on October 7, 2004, the Chief Counsel is authorized to enter into contracts of less than \$25,000 for legal services in consultation with the Executive Director.

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<sup>3</sup> Real Property is defined as all land, structures, firmly attached and integrated and all "interests" in the property which may be the right to future ownership (remainder), right to occupy for a period of time (tenancy or life estate), the right to get the property back (a reversion) if it is no longer used for its current purpose or an easement across another's property. Real property should be thought of as a group of rights which can be divided. It is distinguished from the other type of property, personal property, which is made up of movable items.

## SCAG Procurement Policy & Procedures Manual

- B. All legal services contracts funded with consolidated planning grant funds must be competitively awarded or contain a sole source justification, in accordance with procurement procedures described herein for other types of consultant services. All legal services contracts \$25,000 and greater administered by the Chief Counsel must be approved by the Regional Council and competitively awarded or contain a sole source justification regardless of funding source. Such sole source justification may rely on authorization for non-competitive proposals for legal services, pursuant to the State Contracting Manual.

### 5.7. **Professional Service Consultant Agreement (Contract)**

SCAG uses outside consultants to help accomplish the Agency's overall mission and objectives. This includes but is not limited to consultants that provide Transportation Planning, Transportation Financing, Modeling, Information Technology, Real Brokerage, Human Resources Brokerage (Non PERS related) Catering...

In accordance with the Caltrans Local Assistance Procedures Manual, Section 10.2, *Determine Type of Contract*, SCAG shall use the types of agreements, or contracts, listed in Sections 5.7.1 to 5.7.4 below, depending on the scope of services to be performed (as determined by the CA) to procure the various goods and services that the Agency requires. Note - SCAG has no privity of contract (contractual relationship) with any subconsultant, and therefore should only conduct business through the prime consultant.

#### 5.7.1. **Cost Plus Fixed Fee (CPFF) Contract**

Cost Plus Fixed Fee (CPFF) - Note - the fee is negotiable depending on the consultant's risk involved in completing the project up to a maximum of 10%. The fee is only calculated using Direct Labor and Overhead/Fringe, does not vary with actual cost, and may be adjusted as a result of amendments that change the work to be performed under the contract. Specifically, if SCAG amends the contract to reallocate the budgets from one cost category to another (e.g., from Other Direct Costs to Direct Labor, subconsultant(s) to Direct Labor...), there will be no increase in the Fixed Fee without written justification from the SCAG PM, approved by the CA (the policy is to disallow applying fee to the revised Direct Labor, unless the circumstance justify it - and this should be rare). Also, see Section 8.2 for other policies associated with CPFF contracts.

#### 5.7.2. **Unit Rate (Cost Per Unit of Work) Contract**

The consultant is paid based on the work performed such as: per plan sheet, report, etc. This method is appropriate when the cost per unit of work can be determined with reasonable accuracy in advance; but the extent of the work is indefinite. Contract payment provisions must specify what is included in the price to be paid for each item.

## **SCAG Procurement Policy & Procedures Manual**

### **5.7.3. Time and Materials (Specific Rates of Compensation) Contract**

In accordance with 49 CFR part 18.36 (b) (10), or successors there to, SCAG shall only use time and material type contracts after the Contracts staff determines that no other contract is suitable (document in contract file). Further, if the contract includes a ceiling price, the contract shall stipulate that if the contractor exceeds the ceiling price they do so at their own risk.

### **5.7.4. Firm Fixed Price (Lump Sum)**

SCAG often uses Firm Fixed Price (FFP, also known as Lump Sum) contracts. This means that the consultant will receive payment for all allowable costs, whether at budget or below, with any profit/fee included in the overall bottom line contract price. Other contract types may be used, but these should be discussed with Contracts prior to use in order to determine the basis of risk associated with them.

## **5.8. Sub-recipient Agreements**

- A. Subrecipient means a non-Federal entity that expends Federal awards received from SCAG to carry out a Federal program or project, but does not include an individual that is a beneficiary of such a program/project. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency.
- B. The Budget and Grants Department is responsible for preparing, monitoring and retaining agreements between SCAG and Subrecipients (Subrecipient Agreement). However, a Continuing Cooperative Agreements (CCA), which is a type of Subrecipient Agreement (described below in Section 5.8.1) is prepared, monitored and retained by the Contracts Department.
- C. The Contracts Department shall coordinate with other SCAG Departments and Divisions (e.g., Budget and Grants, Legal and Internal Audit) to monitor and implement Subrecipient Agreements, and ensure that such agreements comply with applicable federal and state requirements or successors there to, including but not limited to 49 C.F.R Part 18 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), 2 CFR 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31, and with SCAG policies and procedures concerning subrecipient agreements.
- D. Subrecipient Agreements shall contain sufficient terms and conditions that:
  - 1. Clearly delineate the responsibilities of every party to the Agreement.
  - 2. Identify the project name and number; scope of work; match information; schedule and budget conforming to and consistent with the approved award application.
  - 3. Clearly describe requirements imposed on Subrecipients by federal and state laws, regulations, and grant agreements as well as any requirements imposed by SCAG.

## SCAG Procurement Policy & Procedures Manual

4. Require SCAG auditors to have access to and audit the records and financial statements as necessary to ensure compliance with applicable federal and state requirements.
  5. Reserve the right to withhold payments to the subrecipient in the event that an audit identifies disallowed costs.
  6. Adequately address and mitigate any risks to SCAG.
- E. If the Subrecipient Agreement requires the procurement of a third party consultant, Contracts staff shall determine if the sub-recipient has demonstrated and can document that they have the capacity and experience to conduct a competitive procurement process that complies with all applicable federal requirements and guidance. This includes the capacity and ability to conduct an audit that complies with applicable federal guidance, as determined by SCAG's Audit Division, of any subsequent third party consultant contract award.

### **5.8.1. Procedures for Processing a Continuing Cooperative Agreements (CCA)**

- A. The process for procurement of SCAG consultants for services on subregional projects in which subregional support and/or match is provided under a CCA, is generally the same as procurement for regular consulting contracts with the following exceptions:
1. The Subregional Coordinator assists the SCAG PM in developing the Scope of Work and the budget. The appropriate SCAG PM must approve the Scope of Work developed by the Subregions prior to requesting a RFP. SCAG's PM must approve any modifications to the Scope of Work in writing.
  2. The Subregional Coordinator is the lead in forming the Proposal Review Committee (PRC) which is responsible for evaluating the proposals and conducting consultant interviews. The Subregional Coordinator is required to invite the SCAG PM and a Caltrans representative to be a member of the PRC. The members of the PRC must have the technical expertise related to the project.
  3. If the Caltrans representative declines to participate, the Subregional Coordinator is required to provide SCAG written documentation, and the CA shall include it in the contract file (under Miscellaneous).
  4. The CA prepares the contract using the appropriate template. If applicable, any special provisions or flow-down provisions, which may be required by a Grant or the Legal Division, will be incorporated into the contract.
  5. The consultant reports regularly to the Subregional Coordinator and SCAG PM regarding the Scope of Work.
  6. The Subregional Coordinator is responsible for managing the project, providing the quarterly progress report, and reviewing and pre-approving invoices prior to the SCAG PM's approval.

## SCAG Procurement Policy & Procedures Manual

7. The SCAG PM is responsible for reviewing the progress reports, determining whether the consultant has satisfactorily completed all the requirements specified in the Scope of Work, and for final approval of all invoices.

### **6. Procurement Methods**

#### **6.1. Emergency Procurement**

- A. An emergency exists when life or property is in immediate danger of substantive damage or loss and normal competitive procurement procedures cannot be followed. Given the nature of SCAG's work, an emergency procurement should be extremely rare.
- B. The total cost of the purchase should be less than the Federal Micro Purchase threshold in effect at the time of the emergency procurement (currently \$3,500 - including tax, shipping/handling charge, or any other applicable charges), unless the Executive Director (or designee) or the CFO (or designee) authorizes a higher amount. Purchases below \$100 may also be made through Petty Cash.
- C. CPG Funds normally do not qualify to be used for emergencies.

#### **6.1.1. Procedures for an Emergency Procurement**

- A. The staff making the purchase must document (e-mail or memo) the specific reasons for the purchase.
- B. The staff making the purchase must obtain approval from the Executive Director or Chief Financial Officer (or their authorized designee).
- C. The use of the emergency purchase policy must not be considered a substitute for regular purchasing procedures or a method of circumventing established purchasing controls.
- D. Staff may request expenditure reimbursements by submitting an Expense Reimbursement Claim Form. Original receipts are required as proof of purchase and must be attached to the expense reimbursement claim form and submitted to Accounting.
- E. Emergency procurements shall be reported in accordance with Section 7.12.

#### **6.2. Noncompetitive Procurement (Sole Source)**

- A. A Noncompetitive Procurement (Sole Source) is defined as any procurement that has a requirement for competition because the purchase exceeds the federal micro purchase threshold, currently \$3,500, but was not competed because of at least one of the circumstances cited in part C. below exist.

## SCAG Procurement Policy & Procedures Manual

- B. In accordance with the Caltrans Local Assistance Procedures Manual, Section 10.9, *Noncompetitive Negotiated Contracts (Sole Source)*, and 49 CFR Part 18, Section 18.36 (d) (4), or successors there to, an award may be made without a formal solicitation when the good or service is available from only one source and/or the good or service does not lend itself to substitution.
- C. Sole-Source requests must clearly demonstrate one of the following and be processed in accordance with the Sole Source procedures in Section 6.2.1 below:
- The item is available only from a single source
  - The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation
  - The awarding agency authorizes noncompetitive proposals
  - After solicitation of a number of sources, competition is determined inadequate
  - The existence of limited rights in data, patent rights, copyrights or secret processes makes the supplies or services available from only one source
  - The purchase for a non-General Fund contract (CPG or TDA) contracts is less than the Federal Micro Purchase Threshold, currently \$3,500, or the purchase is less than \$200,000 for a General Fund contract authorized by the Executive Director.
  - Legal Services - All legal services contracts funded with consolidated planning grant funds must be competitively awarded or contain a sole source justification, in accordance with procurement procedures described herein for other types of consultant services. All legal services contracts \$25,000 and greater administered by the Chief Counsel must be approved by the Regional Council and competitively awarded or contain a sole source justification regardless of funding source. Such sole source justification may rely on authorization for non-competitive proposals for legal services, pursuant to the State Contracting Manual.
- D. The staff requesting the Sole Source shall address a written sole source justification to the Chief Financial Officer or Executive Director for approval using SCAG's Sole Source Justification Template. The determination as to whether sole-source procurement has been adequately justified by the requester shall be made by the Chief Financial Officer. SCAG shall approve sole source contracts in accordance with Section 3.4.

### **6.2.1. Procedures for a Sole Source Contract**

(Includes Commercial Items e.g. computers, hardware and off the shelf software, office supplies, food, promotional items...)

- A. The PM provides the Contracts Department the following:
1. Sole Source Justification Memo - For General Fund contracts, the justification for the purchase can be establish by the Executive Director making a determination that the purchase was in the best interest of the agency.
  2. A completed Purchase Requisition stating what is being purchased and why
  3. A detailed Specification or Scope of Work
  4. Cost Estimate
  5. Acquisition Schedule

## SCAG Procurement Policy & Procedures Manual

Note - PM may conduct market research and analysis to determine his/her individual needs and requirements (especially for commercial items). However, in order to maintain integrity of the procurement process, excluding confidential Human Resources and Legal matters, all official pricing quotes whether verbal or in writing/electronically must be verified by Contracts staff. Unless authorized by Contract's staff, vendors are not to give official pricing quotes, whether verbally or written/electronically to anyone other than Contracts staff.

- B. The CA obtains the consultant's cost proposal. To help expedite the procurement process, PM can provide Contracts staff their market research, the websites or catalogues containing the goods/services they wish to procure, as well as any vendor contact information for consideration. However, Contracts may choose to purchase from a source(s) other than the source(s) staff provides.
- C. The CA must conduct a cost or price analysis and Responsibility Determination to determine if the consultant's proposed price is fair and reasonable (see 6.6.3 N).

For Commercial Items – the CA working with the PM can establish fair and reasonableness using the following justification:

1. The consultant quoted SCAG an internet or paper copy catalogue price that they charge the public (catalog or market prices offered in substantial quantities to the general public);
  2. SCAG or another governmental entity has audited the consultant's rates in the past year, and another public entity accepted the rates;
  3. The consultant recently (within the last year) charged us a similar price/rate for similar goods and services on a contract that was competed; or
  4. The price is regulated by a governmental entity.
- D. The CA using the information obtained in the Cost/Price Analysis, with the PM negotiates (as necessary - see 6.6.3 N for negotiations) the final contract price, and document the negotiation results
  - E. The CA will create and route the contract for execution. Contract preparation includes incorporating the scope of work in the selected consultant proposal, with any changes the PM requests (after discussion with the consultant) into the contract.
  - F. If applicable, the CA obtains proof of insurance from the selected consultant and validates it with SCAG's Risk Manager.
  - G. The PM provides the CA the required information for Board Report (RC write up), if the contract price is \$25,000 or greater (in accordance with the May 5, 2005 Regional Council agenda item 6.1.4). Contracts requires this information prior to issuing the Notice-to-Proceed.

## **SCAG Procurement Policy & Procedures Manual**

- H. The CA issues Notice-to-Proceed with a Contract or PO (for Commercial Items). Contracts does not issue a Notice-to-Proceed for Commercial Items. The executed PO serves as the Notice-to-Proceed for Commercial Items
- I. The consultant provides the goods or services and the PM and CA monitors the work or receives the goods.
- J. PM should anticipate a 5 to 10-business day turnaround time for sole source contracts (from receipt of all items in 6.2.1 A to issuing Notice-to-Proceed or PO).
- K. Any amendment to a sole source contract is also a sole source contract, and must be processed in accordance with the procedures in this section (6.2 and 6.2.1).

### **6.3. Purchase Using a State and Local Intergovernmental Agreement (Master Service Agreement- MSA)**

- A. In accordance with 49 CFR Part 18, Section 18.36 (b) (5), or successors there to, to foster greater economy and efficiency, SCAG is authorized to procure goods and services by using an Intergovernmental Agreement (Master Service Agreements – MSA’s). The goods and services procured under an MSA were previously competitively procured by another governmental entity. SCAG is essentially “piggy backing” on the agreement. Some examples these agreements include, but are not limited to, the Western States Contract Alliance, Calnet, and US Communities.... Such purchases shall be processed in accordance with the applicable parts of Section 6.6 and approved in accordance with Section 3.4. An MSA only needs to be effective at the time SCAG executed its contract, and the MSA can end prior to the end date of SCAG’s contract. Contracts emanating from an MSA should be re-solicited after a total of thirty-six (36) consecutive months with the same consultant including any amendment to extend the contract’s term, unless SCAG’s Chief Financial Officer provides written authorization for a longer period for the initial contract or an amendment to an existing contract.
- B. Contracts must document the contract file:
  - 1. The validity of a MSA used in the procurement (i.e., ensure that the agreement is in fact an MSA;
  - 2. The fact that SCAG is eligible to use the MSA. This includes reviewing the MSA’s terms and conditions to determine if it has any requirements SCAG must adhere to; and
  - 3. The MSA’s duration.
- C. Goods and services valued at \$200,000 or greater procured via an MSA require Regional Council approval (must also adhere to the amendment policy described in Section 8.3), and are subject to SCAG’s Audit requirements if the purchase is \$250,000 or greater. Goods and services valued at \$25,000 but less than \$200,000 procured via MSA must be submitted by the SCAG PM to Contracts as an “information item” on the Regional Council agenda.

### **6.4. Purchases Using a Purchase Card**

## SCAG Procurement Policy & Procedures Manual

- A. SCAG uses a variety of methods for the purchase of goods and services, including petty cash, purchase orders, and emergency purchase orders. Processing purchase orders may not be cost effective for low dollar value goods, and occasionally suppliers refuse to accept a purchase order. Accordingly, in January 2011, the Finance Division implemented a procurement credit card program to streamline the procurement process and allow designated staff to quickly and easily make approved purchases typically under \$5,000.
- B. SCAG will use the State of California Department of General Services (DGS) Master Service Agreement (MSA) for a VISA purchase card program through U.S. Bank. This purchase card system is known as the CAL-Card Program. Authorized contracts staff can use the CAL-Card credit card to obtain the immediate or urgent need for supplies and services, which are not restricted or prohibited. **The card should only be used when the vendor will not take a SCAG purchase order or check – excluding purchasing lunch for Proposal Review Committee members.**
- C. Refer to Purchase Card Manual for further instructions (see [http://info/contracts/CAL\\_PurchaseCardManual.pdf](http://info/contracts/CAL_PurchaseCardManual.pdf)).

### 6.5. Request for Qualification (RFQ) 1 or 2-Step Process

In accordance with the Caltrans Local Assistance Procedures Manual, Section 10.5, *Consultant Selection Using The One-Step RFQ Method*, SCAG can elect to use the Request for Qualification process to establish a one year bench of consultants for contracting within that year. This method is normally for Architectural and Engineering projects (see Local Assistance Procedures Manual LAMP (July 2016) Section 10.3 (pg. 12)

- A. , of which SCAG as a Transportation Planning Organization, rarely if ever conducts.
- B. The Two-Step RFQ/RFP method may also be used to establish a bench of consultants to contract with when the scope of work is more complex or unusual (as determined by Contacts) than the One-Step method.
- C. All Task Orders (including on-call services) must be executed in writing and at a minimum specify the:
  - Scope of work
  - Deliverables (if any)
  - Start date
  - Delivery date (if any)
  - Budget (if applicable)
- D. Refer to the Caltrans Local Assistance Procedures Manual, Section 10.5 thru 10.7, for additional guidance on 1-Step and 2-Step procurement methods.

### 6.6. Informal Solicitations

## SCAG Procurement Policy & Procedures Manual

The informal solicitation method is mainly used for procurement of goods and services under \$50,000. In most cases, an informal solicitation may be solicited via fax or email and the respondent may submit their offer via fax or email. Informal solicitations shall be used when economies of scale can be achieved and when there are equal and competitive products or services. Note – Any purchase that was procured INFORMALLY (i.e., originally valued at less than \$50,000), can only be increased up to \$64,999.99 or 30% of the Contract's original value, whichever is less (e.g. if the original contract is \$49,999, it can on be increased up to 30% or \$15K, with the revised value totaling \$64,999). You cannot request the RC to amend such contracts any further. Such amendments must still be processed in accordance with this Policy Manual.

### **6.6.1. Steps in the Informal Solicitation Process for Purchase Orders (PO's) and Contracts:**

(Includes Commercial Items e.g. computers, hardware and off the shelf software, office supplies, food, promotional items... per 48 CFR Chapter 1)

A. The PM provides the Contracts Department the following:

1. A completed Purchase Requisition stating the funding source, what is being purchased and why, (if the RFP is being advertised via Planet Bids (see Section 6.6.3 F), include the Material Code, (i.e., what group of consultants to notify about the solicitation). For Commercial Items, include 3 - 5 potential vendors (must receive and evaluate a minimum of three offers - see 6.6.1 ,B below) to send the solicitation to.
2. A detailed Specification or Scope of Work – CA reviews the work scope to among other things ensure that no **unfair** competitive advantage exists. In accordance with Federal Acquisition Regulations (FAR) Subpart 9.505 General rules, generally an unfair competitive advantage exists where a consultant competing for award of a contract possesses:
  - Proprietary information that was obtained from a Government official without proper authorization; or
  - Source selection information (as defined in FAR Subpart [2.101](#)) that is relevant to the contract but is not available to all competitors, and such information would assist that contractor in obtaining the contract.

This means an unfair competitive advantage exist if:

- The work under Phase 1 has not been completed and all the report, data, related work materials are not available to all potential proposers.
  - If the work under Phase 1 has been completed, but the consultant made recommendation(s) in the Phase 1 report and if awarded Phase 2 would be implementing the recommendations they made in the Phase 1 report. Because in performing the work they could create products or services that work to their advantage.
3. Cost Estimate - In accordance with a March 5, 2009 Regional Council agenda item 3.1.3, staff cannot disclose the project's budget to anyone outside of the

## SCAG Procurement Policy & Procedures Manual

Proposal Evaluation Committee. For software purchase, consider 3 years as the minimum life cycle cost for the purchase.

4. Evaluation Criteria - For Commercial Items, awarding to the lowest offeror must be used as the Evaluation Criteria. The Contract Administrator is responsible for developing/approving the technical criteria, and their relative importance which are used to evaluate and rank the consultant proposals. The criteria and relative weights must be included in the RFP, and the same criteria and relative weights must be used in the evaluation sheets.
5. Proposal Review Committee (PRC) members - a minimum of 3, including Caltrans if CPG funds will be used. If Caltrans waives its participation, the PM must provide Contracts with file documentation and the CA shall include it in the contract file (under Miscellaneous e-mail is acceptable). If any PRC members is unable to independently score offers after the solicitation is issued, the Project Manger shall recommend and the CA shall approve another person (including the CA) to replace that person. The replacement must independently score offers. If no replacement is available the solicitation should be cancelled. A PRC is not required for purchase of Commercial Items.

Note - PM may conduct market research and analysis to determine his/her individual needs and requirements (especially for commercial items). However, in order to maintain integrity of the procurement process, excluding confidential Human Resources and Legal matters, all pricing quotes whether verbal or in writing/electronically must be verified by Contracts staff.

To help expedite the procurement process, PM can provide Contracts staff their market research, the websites or catalogues containing the goods/services they wish to procure, as well as any vendor contact information for consideration. However, Contracts may choose to purchase from a source(s) other than the source(s) staff provides.

- B. The CA contacts a minimum of three (3), but preferably five (5) vendors. In accordance with the Caltrans Local Assistance Procedures Manual, Section 10.5, *Consultant Selection Using The One-Step RFP Method*, the Contracts Department must receive and evaluate a minimum of three offers. If Contract receives 2 offers or less, a justification must be documented to proceed with the procurement. If Contracts only receives one offer, re-advertisement of the RFP should be considered as an option. Disadvantaged Business Enterprise (DBE) vendors should be included in the process. The CA will determine if there are any certified DBE vendors and will contact them to request a bid for the selected items or project.

To broaden exposure of the solicitation to a wider potential pool of vendors, the PM can request that CA post the solicitation in Planet Bids (see Section 6.6.3 F). However, this is not normally done. Also, SCAG shall not release information to external parties (excludes Proposal Review Committee – PRC members) about an incumbent contract/consultant once the new Bid/RFP to replace the existing contract is released.

## SCAG Procurement Policy & Procedures Manual

- C. Vendors/consultants must submit their proposal or quote in writing to the CA, prior to the date and time the quote/proposal is due (no exceptions). Vendors/consultants are given up to 28 calendar days (4 weeks), but typically 10-business days to respond. Vendors/consultants should be given at least 2-business days to respond, depending on how soon the goods or services are required. The CA reviews the Conflict of Interest Form if it was required (i.e., the purchase is estimated to be \$200,000 or greater). If the CA identifies a potential conflict of interest/ethics issue, the CA in consultation with Legal, shall address such issue in accordance with SCAG's Conflict of Interest Policy. ([http://www.scag.ca.gov/business/downloads/COI\\_policy.pdf](http://www.scag.ca.gov/business/downloads/COI_policy.pdf) - also see section 7.13).
- D. The PRC reviews and evaluates offers. The CA in consultation with the PM and the Legal Division, as necessary, reviews the Conflict of Interest Form that a proposer may be required to submit with their proposal. If Contracts identifies a potential conflict of interest/ethics issue, Contracts in consultation with Legal, shall address such issue in accordance with SCAG's Conflict of Interest Ethics Policy. ([http://www.scag.ca.gov/business/downloads/COI\\_policy.pdf](http://www.scag.ca.gov/business/downloads/COI_policy.pdf)).
- E. Interviews will be conducted if necessary, but are not required (as determined by Contracts). As a courtesy, Contracts may notify consultants who are not selected for interview. If interviews are required, each should not be scheduled for less than 45-minutes, preferably one hour, to allow sufficient time for questions and answers. Other than SCAG staff, only those persons (PRC members) scoring the proposals will be allowed in the proposal evaluation meetings, or any interview of firms or post interview discussions.

Consistent with FAR Subpart 15.206, the PRC can establish a shortlist (Competitive Range) and if necessary reduce the existing work scope (i.e., go from tasks 1 to 10, down to just task 1 to 4 – or reduce or increase the level of effort of an existing task); and only make this offer to those firms in the Competitive Range as follows:

1. When, either before or after receipt of proposals, if SCAG changes its requirements or terms and conditions, Contracts shall amend the solicitation.
2. Amendments issued before the established time and date for receipt of proposals shall be issued to all parties receiving the solicitation.
3. Amendments issued after the established time and date for receipt of proposals shall be issued to all offerors that have not been eliminated from the competition.
4. If a proposal of interest to SCAG involves a departure from the stated requirements, Contracts shall amend the solicitation, provided this can be done without revealing to the other offerors the alternate solution proposed or any other information that is entitled to protection (see FAR 15.207(b) and 15.306(e)).
5. If, in the judgment of Contracts, based on market research or otherwise, an amendment proposed for issuance after offers have been received is so

## SCAG Procurement Policy & Procedures Manual

substantial as to exceed what prospective offerors reasonably could have anticipated, so that additional sources likely would have submitted offers had the substance of the amendment been known to them, Contracts shall cancel the original solicitation and issue a new one, regardless of the stage of the acquisition.

6. Oral notices may be used when time is of the essence. Contracts shall document the contract file and formalize the notice with an amendment.
7. At a minimum, the following information should be included in each amendment:
  - (a) Name and address of issuing activity.
  - (b) Solicitation number and date.
  - (c) Amendment number and date.
  - (d) Number of pages.
  - (e) Description of the change being made.
- F. After any interview the CA tabulates scores from both the evaluation and interview (selection is based on the combined evaluation and interview scores). SCAG does not reimburse consultants for parking, travel, or any expenses associated with participation in the solicitation process. The PRC will document its consultant selection on the PRC Memorandum of Selection. The CA approves recommended consultant selection.
- G. The CA must conduct a cost or price analysis and Responsibility Determination to determine if the consultant's proposed price is fair and reasonable (see Section 6.6.3 N).

For Commercial Items – the CA working with the PM can establish fairness and reasonableness using the following justification:

1. The consultant quoted SCAG an internet or paper copy catalogue price that they charge the public (catalog or market prices offered in substantial quantities to the general public);
  2. SCAG or another governmental entity has audited the consultant's rates in the past year, and another public entity accepted the rates;
  3. The rates the consultant charges are similar to rates that other consultants in the market would charge or the consultant recently charged us a similar price/rate for similar goods and services on a contract that was competed; or
  4. The price is regulated by a governmental entity.
- H. The CA using the information obtained in the Cost/Price Analysis, with the PM negotiates as necessary a fair and reasonable final contract price, and documents the negotiation results (see Section 6.6.3.N for negotiations). Note - **SCAG does not allow the Prime Consultant a markup on any of its subconsultant costs.** Also, to help ensure SCAG pays a fair and reasonable price for its consultant services, Contracts should request the Internal Auditor review a consultant's Overhead and Fringe rate if either individually or combined exceeds 150%.

## SCAG Procurement Policy & Procedures Manual

- I. Within 24-48 hours after evaluations, the CA will typically post the Notice of Intent to Award. Consistent with the Public Utilities Code Section (PUC) 5103, and FTA Circular 4220.1E this allows unsuccessful consultants 5-days from the Notice's issuance (24-hours for Commercial Items) to protest the award (see Section 7.9, if applicable). The CA will only post the Notice on SCAG's website if the RFP was advertised via Planet Bids (see Section 6.6.3 F). This step can be done concurrently with Step H.
- J. If applicable, the CA obtains proof of insurance from the selected consultant and validates it with SCAG's Risk Manager.
- K. The CA will create and route the contract for execution. Contract preparation includes incorporating the scope of work in the selected consultant proposal, with any changes the PM requests (after discussion with the consultant) into the contract. The contract cannot be fully executed until after the 5-day protest period (24-hours for Commercial Items) expires or until any protest is resolved. In accordance with the Caltrans Local Assistance Procedures Manual In accordance with the Caltrans Local Assistance Procedures Manual, section 10.8 Completing The Project (pg36), the CA routes the contract to the consultant for signature first (i.e., the consultant signs before SCAG).
- L. The PM provides the CA the required information for Board Report (RC write up) within established timeframes, if the contract price is \$25,000 or greater (in accordance with the May 5, 2005 Regional Council agenda item 6.1.4.). Contract requires this information prior to issuing the Notice-to-Proceed.
- M. The CA issues Notice-to-Proceed with a Contract or PO (for Commercial Items) to the selected vendor after the protest period expires. Contracts staff do not issue a Notice-to-Proceed for Commercial Items. The executed PO serves as the Notice-to-Proceed for Commercial Items.
- N. The consultant begins work and the PM and CA monitor the work.
- O. The CA is also responsible for conducting post award administration (see Section 8).
- P. PO's for Commercial Items are typically issued within 5-business days of receipt of the **complete** documents identified in bullet 6.6.1, A1 to 5 above; and 10-business days if Contracts staff has to solicit quotes from vendors. For non-commercial items, a 2 – 7 week turn-around time is typical.

### **6.6.2. Formal Solicitations (Purchases)**

- A. In accordance with a March 6, 2008 Regional Council agenda item 5.2.2 a Formal Solicitation is required for procurements \$50,000 or greater. A Formal Solicitation is a written solicitation which must be submitted by the specified date and time by the offeror. Formal Solicitations are used when economies of scale can be achieved and when there are equal and competitive products or services.

## SCAG Procurement Policy & Procedures Manual

- B. Before a RFP is released, the CA and the PM may conduct a Pre-RFP meeting to review RFP documents and develop a contract timeline. Other attendees at this meeting may include a representative from the Budget & Grants Department, the Internal Auditor (for \$250,000 or greater), and others as necessary.
- C. The CA prepares the RFP for release only after the PM provides:
1. **Purchase Requisition**, including the funding source, and Material Code (i.e., what group of consultants to notify about the solicitation)
  2. **Scope of Work** (see <http://info.scag.ca.gov/contracts/default.htm> for samples).
  3. **Evaluation Criteria** The Contract Administrator is responsible for developing/approving the technical criteria, and their relative importance which are used to evaluate and rank the consultant proposals. The criteria and relative weights must be included in the RFP, and the same criteria and relative weights must be used in the evaluation sheets.
  4. **Proposal Evaluators** (a minimum of 3 - per Caltrans Local Assistance Procedures Manual, Section 10.5, Appoint Consultant Selection Committee). Staff must invite Caltrans to participate on any CPG funded project (including all project funded from Indirect Cost Budget). If Caltrans declines to participate, the PM (or CA) must receive written documentation from the Caltrans representative and the CA shall include it in the contract file (under Miscellaneous). Also, if any PRC member is unable to independently score offers after the solicitation is issued, the PM shall recommend and the CA shall approve another person (including the CA) to replace that person. The replacement must independently score offers. If no replacement is available the solicitation should be cancelled.
  5. **Acquisition Schedule**. Contracts requires a schedule in order to establish the timeline for releasing the RFP and awarding the contract. It represents the PM's forecast of when he/she prefer the different events to occur (e.g., RFP released 7/1/14, Pre-proposal Conference 7/15/14...). After the PM completes this document, Contracts assigns the RFP and if Contracts cannot accommodate the PM's requested schedule, Contracts works with the PM to finalize schedule prior to releasing the RFP.
  6. **Cost Estimate** - for the project (see <http://info/contracts/Cost Estimae.pdf>). For software purchase, consider 3 years as the minimum life cycle cost for the purchase. Also, In accordance with a March 5, 2009 Regional Council agenda item 3.1.3, staff cannot disclose the project's budget to anyone outside of the Proposal Evaluation Committee.
- D. In accordance with the March 5, 2009 Regional Council agenda item 3.1.3, Contracts shall **not** include the project's budget in the RFP (nor reveal this information to anyone outside of the PRC).
- E. The RFP is comprised of the following parts:
1. Proposal Information, Organization, and Content

## SCAG Procurement Policy & Procedures Manual

2. Scope of Work (**detailed** description of the work to be accomplished, including methodology, schedule, and deliverable(s), where appropriate)
3. Proposal Evaluation Form
4. Interview Evaluation Form
5. Contract Budget Explanatory Information and Sample Line Item Budget (For consultant projects)
6. Consultant Debarment and Suspension Certification (For consultant projects)
7. SCAG Conflict of Interest Form
8. Disadvantaged Business Enterprise (DBE) Availability Advisory
9. W-9 Form and Attachment to W-9 Form (SCAG Vendor/Consultant Application)

### 6.6.3. **Steps in the Formal Solicitation Process:**

- A. A Purchase Requisition along with detailed Specifications and/or Scope of Work is entered in SCAG's Financial Management Information System by the PM. In anticipation of future funding, a requisition may be entered into SCAG's Financial Management Information System to begin the RFP process. However, a contract will not be awarded until sufficient funding is secured.
- B. To help ensure the integrity of the procurement process the PM recommends staff for the Proposal Review Committee - PRC (including Caltrans for all CPG funded projects), and the CA approves the PRC team. The CA reviews the scope of work to ensure it is eligible for reimbursement in accordance with its funding source and to determine if any **unfair** competitive advantage exists. In accordance with Federal Acquisition Regulations (FAR) Subpart 9.505 General rules, generally an **unfair** competitive advantage exists where a consultant competing for award of a contract possesses:
  1. Proprietary information that was obtained from a Government official without proper authorization; or
  2. Source selection information (as defined in FAR Subpart [2.101](#)) that is relevant to the contract but is not available to all competitors, and such information would assist that contractor in obtaining the contract.

This means an **unfair** competitive advantage exist if:

- The work under Phase 1 has not been completed and all the report, data, related work materials are not available to all potential proposers.
- If the work under Phase 1 has been completed, but the consultant made recommendation(s) in the Phase 1 report and if awarded Phase 2 would be implementing the recommendations they made in the Phase 1 report. Because in performing the work they could create products or services that work to their advantage.

Also see, [https://acquisition.gov/far/current/html/Subpart%209\\_5.html](https://acquisition.gov/far/current/html/Subpart%209_5.html)

- C. In accordance with the Caltrans Local Assistance Procedures Manual, Section 10.5, Appoint Consultant Selection Committee, the PRC must consist of a minimum of 3 persons and may include the CA. If any PRC member is unable to independently score offers after the solicitation is issued, the Project Manger shall

## SCAG Procurement Policy & Procedures Manual

recommend and the CA shall approve another person (including the CA) to replace that person. The replacement must independently score offers. If no replacement is available the solicitation will be cancelled.

- D. In accordance with the Caltrans Local Assistance Procedures Manual, Section 10.5, *Prepare RFP*, a minimum of two to four weeks is usually allowed between the time the RFP is mailed and the time that proposals must be submitted. . If the contract does not require the Regional Council's approval, the Contracts Manager may authorize a shorter advertising period (depending on the complexity of the project's scope of work). SCAG shall not release information to external parties (excludes Proposal Review Committee – PRC members) about an incumbent contract/consultant once the new solicitation to replace the existing contract is released.
- E. A Pre-proposal/bid meeting is held (if applicable). SCAG does not reimburse consultants for parking, travel, or any expenses associated with participation in the solicitation process.
- F. The CA prepares RFP and an email notification is sent to selected consultants through SCAG's third party vendor (currently PlanetBids.com), and advertised in other professional trade publications as necessary announcing the release of the RFP. Vendors must register to download RFPs at: [http://www.planetbids.com/SCAG/vendor\\_registration.cfm](http://www.planetbids.com/SCAG/vendor_registration.cfm), (unless requesting a closed RFP – which Contracts can e-mail to each prospective offeror rather than to the broader distribution list).
- G. Consultants must submit their proposal in writing to the CA, prior to the date and time the proposal is due (no exceptions Unless CA documents SCAG had malfunction or otherwise prevented offerors from submitting offers on time, or natural disaster, and the time is to be determined by SCAG's time clock).
- Once the RFP is closed, the CA receives proposals and distributes copies of the proposals and Proposal Summary Memo to the PRC.
  - In accordance with the Caltrans Local Assistance Procedures Manual, Section 10.5, *Consultant Selection Using The One-Step RFP Method*, the Contracts department must receive and evaluate a minimum of three offers. If Contracts receives 2 offers or less, a justification must be documented to proceed with the procurement. If Contracts only receives one offer, re-advertisement of the RFP should be considered as an option.
  - The CA reviews the Conflict of Interest Form that each proposer must submit with their proposal. If the CA identifies a potential conflict of interest/ethics issue, the CA in consultation with Legal, shall address such issue in accordance with SCAG's Conflict of Interest Policy. ([http://www.scag.ca.gov/business/downloads/COI\\_policy.pdf](http://www.scag.ca.gov/business/downloads/COI_policy.pdf) also see sections 7.13)

## SCAG Procurement Policy & Procedures Manual

- H. Each PRC member must independently review and evaluate each proposal. The CA will confirm and arrange the PRC meeting to tabulate scoring of written proposals.
- I. The PRC determines which consultants are to be interviewed, and as a courtesy may notify firms not selected for interview (e-mail is acceptable).
- J. Consistent with FAR Subpart 15.206, the PRC can establish a shortlist (Competitive Range) and if necessary reduce the existing work scope (i.e., go from tasks 1 to 10, down to just task 1 to 4 – or reduce or increase the level of effort of an existing task); and only make this offer to those firms in the Competitive Range as follows:
1. When, either before or after receipt of proposals, if SCAG changes its requirements or terms and conditions, Contracts shall amend the solicitation.
  2. Amendments issued before the established time and date for receipt of proposals shall be issued to all parties receiving the solicitation.
  3. Amendments issued after the established time and date for receipt of proposals shall be issued to all offerors that have not been eliminated from the competition.
  4. If a proposal of interest to SCAG involves a departure from the stated requirements, Contracts shall amend the solicitation, provided this can be done without revealing to the other offerors the alternate solution proposed or any other information that is entitled to protection (see FAR 15.207(b) and 15.306(e)).
  5. If, in the judgment of Contracts, based on market research or otherwise, an amendment proposed for issuance after offers have been received is so substantial as to exceed what prospective offerors reasonably could have anticipated, so that additional sources likely would have submitted offers had the substance of the amendment been known to them, Contracts shall cancel the original solicitation and issue a new one, regardless of the stage of the acquisition.
  6. Oral notices may be used when time is of the essence. Contracts shall document the contract file and formalize the notice with an addendum.
  7. At a minimum, the following information should be included in each addendum:
    - Name and address of issuing activity.
    - Solicitation number and date.
    - Addendum number and date.
    - Number of pages.
    - Description of the change being made.
- K. The PRC conducts consultant interviews using the evaluation criteria stated in the RFP. Other than SCAG staff, only those persons scoring the proposals (PRC members) will be allowed in the proposal evaluation meetings, interview of firms or post interview discussions.

## SCAG Procurement Policy & Procedures Manual

- L. After the interviews are completed the CA tabulates scores from both the evaluation and interview (selection is based on the combined evaluation and interview scores), and selects the highest ranked firm for contract award recommendation. This is subject to reference checks, which the CA should conduct prior to the interview (preferably) - particularly for firms SCAG may have no prior business dealings with.
- M. The PRC documents its consultant selection on the PRC Memorandum of Selection. The CA approves the recommended selection.
- N. The CA uses the Cost Estimate (in 2.2 [C] [6] above) to prepare a Cost/Price Analysis and Responsibility Determination and arranges for an audit if consultant's proposal is \$250,000 or greater, and then uses this information to negotiate a fair and reasonable final contract price (under the budget). In addition to cost, typical items also negotiated include: profit (will be negotiated as a separate cost item), the work plan, the schedule, deadlines, products to be delivered, as well as terms and conditions (Caltrans Local Assistance Procedures Manual, Section 10.5, Negotiate Contract With Top-Ranked Consultant). To help ensure SCAG pays a fair and reasonable price for its consultant services, Contracts will request Audit to review a consultant's overhead and fringe rate if the overhead rate (by itself) is 150% or greater, or if the fringe rate (by itself) is 50% or greater .
- O. In accordance with 49 CFR Part 18, Section 18.36 (f) (2), or successors there to, the CA will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.
- P. At no time shall staff disclose the project's budget. Staff should ensure the consultant places the capital and human resources where SCAG requires each and that SCAG receives the maximum value for the contracted price (not just award the contract to the consultant because they are within budget).
- Q. The following provides general guidance on negotiating a fair and reasonable offer:
  - 1. The CA will request the PM to use the Cost Estimate and analyze the consultant's cost proposal to determine if the consultant's proposed rates, hours and labor mix are fair and reasonable. For Fixed Price contracts, it is important to highly scrutinize Other Direct Cost (ODC's), specifically travel, must conform to SCAG's guidelines.
  - 2. The CA will also use the Cost Estimate and analyze the consultant's cost proposal to determine if the consultant's proposed rates are fair and

## SCAG Procurement Policy & Procedures Manual

reasonable. **SCAG does not allow the Prime Consultant a markup on any of its subconsultant costs.** If the CA does not believe the rates are fair and reasonable, the CA must be able to validate/document why, and negotiate fair and reasonable rates or a final contract price.

3. If the consultant's cost proposal is already within budget, and is the lowest of the prices proposed, then the CA can establish fair/reasonableness of the cost on this basis. Negotiations are only required when the CA and or PM identify any costs that are not fair and reasonable. If so, the CA and or PM shall negotiate a fair and reasonable price for these specific costs.
4. If the consultant's cost proposal is:
  - neither within budget, nor is it the lowest offer;
  - within budget but not the lowest offer; or
  - not within the budget but the lowest offer;

Then the CA will lead efforts to negotiate a fair and reasonable price using the information obtained in section 6.6.3.N. above. If agreement cannot be reached, then negotiations proceed with the next most qualified (highest ranked) consultant, using the procedures described above, until all qualified proposers are exhausted or the solicitation is terminated.

Note –PM's are required to confirm sufficient budget for the final contract price via consultation with the Budget & Grants Department. Contracts cannot post Notice of Intent or award the contract without budget confirmation.

5. Further, if the highest ranked consultant's cost proposal is not the lowest offer, the PM must document how and why the awarding the contract to the selected consultant represents the best value to SCAG, and is fair and reasonable.
  6. The CA documents the negotiation results.
- R. Typically no sooner than 24-hours after concluding any evaluation/interview or negotiation the CA issues (mail or e-mail) the Notice of Intent to Award and posts it on SCAG's website via Planet Bids (see Section 6.6.3 F). Consistent with the Public Utilities Code Section (PUC) 5103, and FTA Circular 4220.1E this allows unsuccessful consultants 5-days from the Notice's issuance to protest the award (see Section 7.9, Protests, if applicable).

The CA may request the consultant to provide a Microsoft Word redlined version or PDF, or plain text version of the consultant's proposal. The CA will remove any marketing material the consultant may have included as part of their RFP. With the PM's assistance the CA will only include minor adjustments to clarify the scope of work that resulted from interviews or any negotiations/discussions.

- S. In accordance with the Caltrans Local Assistance Procedures Manual, section 10.8 Completing The Project (pg36), the CA prepares and routes the contract to the consultant for signature first (i.e., the consultant signs before SCAG). Contract preparation includes incorporating the scope of work in the selected

## SCAG Procurement Policy & Procedures Manual

consultant's proposal, with any changes the PM requests (after discussions with the consultant) into the contract. The contract cannot be fully executed until after the 5-day protest period expires or until any protest is resolved. No new scope can be added.

- T. The CA obtains proof of insurance from the selected consultant and validates it with SCAG's Risk Manager.
- U. Prior to issuing the Notice-to-Proceed, the PM provides the CA the required information for RC Board Report within established timeframes (see RC write up), if the contract price is \$25,000 or greater (in accordance with RC Policy Manual Article VIII Section 1.1 and the May 5, 2005 SCAG Regional Council agenda item 6.1.4). The Board Report is a joint responsibility that is led by the PM. The CA is responsible for coordinating with the PM to ensure deadlines are met. The PM is responsible for completing all required information within established timeframes. If the selected consultant did not propose the lowest price, the Board Report must justify why the PRC made the selection. The larger the variance, the greater the justification required.
- V. The CA issues Notice-to-Proceed with the executed contract to the selected consultant after the protest period expires. Caltrans will not reimburse any expense incurred by the consultant prior to receiving a Notice-to-Proceed from SCAG.
- W. The consultant begins work and the PM and CA monitor the work.
- X. The CA is also responsible for conducting Post Award Administration (see Section 8), and maintaining the official contract file (see Section 4.2,C).
- Y. **Project Managers should anticipate an 11-week turn-around time on average to process Formal Solicitations, and 15-weeks if the Formal Solicitation is \$200,000 or greater** (after Contracts receives the items in 6.6.1 A).
- Z. Contracts staff will use the RFP/Contract Processing Checklist to ensure all the required procedures are accomplished in a timely manner.

### **7. Other Informal/Formal Solicitation Process Requirements**

#### **7.1. Documenting the Rationale for the Procurement Method**

To comply with 49CFR part 18.36 (b) (9), the CA for each solicitation must indicate his/her rationale for the procurement method, as well as the type of professional service consultant contract used (see RFP Routing Form).

#### **7.2. Assigning Request for Proposal (RFP) Numbers**

A. The Contracts Manager shall assign and RFP number to all projects specifically identified in OWP, regardless of dollar value and funding source (including I/C projects), as well as

## SCAG Procurement Policy & Procedures Manual

all sole source contracts using CPG funds regardless of dollar value. If Contracts assigns the solicitation an RFP number, then Contracts will typically use a full contract agreement, not a PO, unless the purchase is for goods (in which case a PO is typically used). If the acquisition is a service, and the standard PO Terms and Conditions don't adequately mitigate **all** risks to SCAG (as determined by the CA in consultation with Legal and the Risk Manager), then Contracts should use a full contract agreement regardless of the contract's value.

- B. All Formal Procurements (any acquisition greater than the SCAG's Simplified Acquisition Threshold, currently \$50K) will be assigned an RFP number. This includes any acquisitions that procure goods and services through a Master Service Agreement (MSA – see Section 6.3). MSA acquisitions are not subject to SCAG's competitive RFP process, because they have already undergone another competitive process. MSA purchases can be made using:
1. A PO with its terms and conditions, and/or any terms and conditions from the MSA.
  2. A formal boilerplate contract if the standard PO Terms and Conditions don't adequately mitigate **all** risks to SCAG (as determined by the CA in consultation with Legal and the Risk Manager). Any terms and conditions from the MSA can also be attached.
- C. Lastly, acquisitions made with Indirect Funds (I/C) estimated to be less than \$50K will be assigned an RFP number if the required contract terms and conditions in SCAG's standard PO are insufficient to cover the risks associated with that acquisition (i.e., in instances where the terms and conditions in SCAG's formal boilerplate contract are required - there should be very few instance of these). If the terms and conditions in SCAG's standard PO are sufficient (as determined by the CA in consultation with Legal and the Risk Manager), only the PO will be required for this acquisition and no RFP number will be assigned.

### 7.2.1. RFP Naming Convention - Legend

FY-@@@-?! Or for example 10-001-C1 ("C1" only added when the RFP becomes a contract)

FY = Fiscal Year (FY 14, 15, 16...)

@ = Sequential RFP number (1, 2, 3...)

? = Funding Source:

B: Compass Blue Print/Sustainability

C: CPG

G: General Fund (whole or in part – if Sole Source use "GS")

I: Indirect (I/C)

N: Non Competitive - There was **no** requirement for competition because the purchase is less than the federal micro purchase threshold, currently \$3,500, or the purchase supports SCAG overhead operations:

- Repairs that can only be made by the Original Manufacturer (OEM – mailing machines...);
- Invoices related to SCAG overhead costs (i.e., employee retirement, health and welfare payments, dental...);

## SCAG Procurement Policy & Procedures Manual

- Hotel invoices/reservations for SCAG functions (but can use catalogue pricing);
- Subscriptions (but can use catalogue pricing); and
- Training/Seminar invoices (fair and reasonable determination can be substantiated via catalogue pricing).

R: Tenant Improvement Funds

S: Sole Source Contracts (if funded from CPG/IC only) - There was a requirement for competition because the purchase exceeds the federal micro purchase threshold, currently \$3,500.

T: TDA (must be 100% - If sole Source use "TS")

X: Other

! = Sequential Number of sub projects (if any) (1, 2, 3...)

### 7.2.2. Electronic Contract File Library - Naming Convention

A. As of 3/3/08, Contracts maintains an electronic library of all of its consultant contract files (formal and informal) on the SCAG "M" drive, in a folder named "**!Contracts**". There are separate folders for each fiscal year (i.e., FY07 and FY08 Contracts). The naming convention for each subfolder within the FY08 folder is:

RFP # (Brief Title 60 characters including spaces max) Contract Staff's initials in all CAPS.

For Example: [13-001 \(Tri-cities Corridor Project\) LGM](#). Once a file is created, if the RFP is cancelled, put the letter "X" in front of the file name.

B. Only Contracts, Accounting staff and Caltrans District 7 staff have access to this library, as it may contain confidential or proprietary information. SCAG staff requiring any documents from the library must request the document from Contracts staff, who will only release documents that shall be made available (depending on where in the procurement process they are and/or which staff is making the request). SCAG shall not release information to external parties (excludes Proposal Review Committee – PRC members) about an incumbent contract/consultant once the new RFP to replace the existing contract is released.

### 7.3. Solicitation Cancellation

If a solicitation needs to be cancelled, it is the Project Manager's responsibility to inform the respective CA in writing as soon as possible. The CA will create and post an addendum to the RFP on SCAG's website. This will notify all prospective vendors of the cancellation of the RFP.

## SCAG Procurement Policy & Procedures Manual

### 7.4. Proposal Review Committee (PRC)

- A. The PRC should be approved by the CA prior to the release of the RFP. The PRC must be composed of 3 people, typically SCAG staff, Caltrans person(s), and an external person(s), with the expertise needed to objectively evaluate any offers SCAG receives (external person is not mandatory). Contracts normally does not allow a Regional Council member to participate on a PRC unless the project is funded from the General Fund and participation is pre-approved by the Executive Director or his designee. Similarly, Contracts typically does not allow SCAG executive management at the director level and above to participate on a PRC. The CFO shall make the final determination, if required.
- B. The PRC members must be comprised of the same individuals for both the proposal evaluation and the consultant interviews. See bullets D & E below for exceptions.
- C. Regarding evaluating consultant proposals, a PRC member shall participate either in person or by phone, video or web conference.
- D. With respect to interviewing consultants, PRC members should participate in person. However, if a PRC member is unavailable in person (especially if it is known far enough in advance), the CA can offer the PRC member video or web conferencing, if any is available at the interview location. The CA can also authorize the PRC member to participate by phone, but this should normally only be allowed in an emergency (i.e., PRC member's car malfunctions or public transportation is unavailable on the way to the interview, illness...).
- E. If a PRC member that scores the written proposal is unavailable to score the interview, the CA will either have to reschedule the interview when the PRC member is available, or not consider his/her proposal score in the selection process (a 3-person panel is still required and if it cannot be maintained the procurement will be cancelled).
- F. Other than SCAG staff, only those persons scoring the proposals (PRC members) will be allowed in the proposal evaluation meetings, interview of firms or post interview discussions.
- G. If the Caltrans representative declines to participate, it is necessary for the PM (or CA) to receive written documentation from the Caltrans representative and include it in the contract file (under Miscellaneous).
- H. Each panel member shall independently score each proposal based on the evaluation criteria set forth in the RFP (see Proposal Evaluation Requirements and the Non-Disclosure form for PRC Members).
- I. For Subregional projects, the Subregional Coordinator is the lead for forming the PRC. The Subregional Coordinator is required to invite the PM and a Caltrans representative to be a member of the PRC. The PRC members must have specific expertise related to the project.

## SCAG Procurement Policy & Procedures Manual

- J. In most cases, consultant interviews are held at SCAG. However, for Subregional projects, the consultant interviews may be held at a different location.
- K. The CA (or the CA's designee) is responsible for the following:
- Approving the PRC members.
  - Notifying the PRC of the date and time of the proposal evaluations and consultant interview meetings.
  - Contacting the qualified vendors to schedule their interviews.
  - Determining if a Pre-proposal conference and or interviews are necessary, as well as, approving the location(s) used.
- L. If the PRC contains at least one external party the CA may arrange for and provide lunch to PRC members. This is typically limited to \$11 per person. Further, SCAG will validate external PRC member's parking at SCAG headquarters if requested.

### 7.5. Pre-Bid/Pre-Proposal Conference

- A. A pre-bid/proposal conference is held to brief prospective vendors of certain aspects of the RFP, such as specifications of the Scope of Work. This meeting also allows prospective vendors to ask questions regarding the RFP documents. While the conference is not mandatory, it is highly recommended for solicitations of a complex nature, regardless of the dollar amount. The meeting is held after the RFP has been released and before the proposals are due. The RFP will state the date, time and location of the conference. Attendance by the prospective vendors is not mandatory, unless stated in the RFP. SCAG does not reimburse consultants for parking, travel, or any expenses associated with participation in the solicitation process.
- B. If prospective vendors have any questions regarding the RFP prior to the conference, the CA will take note of the question(s) and either address the question(s) at the conference or in the Questions and Answers posted on the SCAG website. All questions must be directed to the CA throughout the RFP process. **The PM is not to respond directly to prospective vendors during the procurement process.** The deadline for submitting questions is specified in the RFP and must be adhered to.
- C. During the conference, it is the PM's responsibility to:
- Provide answers to technical questions and submit them to the CA for posting on SCAG's website
  - Request an addendum to the RFP, if necessary
- D. During and after the conference, it is the CA's responsibility to:
1. Create a sign-in sheet
  2. Conduct and lead the conference
  3. Answer any administrative/contractual questions regarding the RFP
  4. Coordinate answers to technical questions with the PM
  5. Post questions and answers from the conference on SCAG's website and Planet Bids.

## SCAG Procurement Policy & Procedures Manual

6. Ensure that all procedures are followed to allow for fair and impartial procurement
7. Prepare an addendum to the RFP, if necessary.
8. Contracts may audio/video record the pre-proposal conference and transmit/post it to SCAG's Bid management system to be electronically transmitted and shared with prospective proposers.

### 7.6. Proposal Submission

The successful consultant will be required to sign SCAG's standard consultant agreement in order to receive the contract award. **Proposer must identify in the proposal itself any concerns or objections to any of the contract terms and conditions in SCAG's consultant agreement.** SCAG will publish its Terms and Conditions on SCAG's website. If selected for contract award, consultant may propose alternative language for consideration. If SCAG is unable to negotiate final contract Terms and Conditions that are acceptable to SCAG, SCAG reserves the right to award the contract to another proposer.

### 7.7. Pre-Award Audit

- A. In accordance with Caltrans Local Assistance Procedures Manual, Section 10.3, *Audit and Review Process*, all contracts \$250,000 or greater (including sole source contracts and Master Service Agreement – MSA contacts) must be audited by SCAG's internal auditor to determine the adequacy of the consultant's (prime and any sub-consultant) financial accounting and record system, and the accuracy of the costs the consultant identified in its RFP proposal response (Line Item Budget or cost data). The CA can also request an audit of contracts that are less than \$250,000 if the CA has reason to question the consultant's financial accounting and record system. If Contracts is amending a contract to add a sub-consultant that was not previously audited, Contracts shall request the Auditor to review this sub-consultant's costs in order to help Contracts assess the fairness and reasonableness of these costs.
- B. The CA will initiate the request prior to contract execution. In the event that SCAG's internal auditor is unavailable to perform the pre-award audit, SCAG may use an independent CPA firm to perform the audit or refer the request to Caltrans Audits and Investigations.
- C. To help ensure SCAG pays a fair and reasonable price for its consultant services, Contracts will request Audit to review a consultants Overhead and fringe rate if the overhead rate (by itself) is 150% or greater, or if the fringe rate (by itself) is 50% or greater.

### 7.8. Debriefing

- A. In accordance with the Caltrans Local Assistance Procedures Manual, Section 10.5, *Develop Final Ranking and Notify Consultants of the Results*, the CA with the assistance of the PM may debrief consultants either not selected for interview or not selected for contract award. The purpose of a debriefing is to explain to the respondent why their proposal was not selected. The CA arranges and conducts the debriefing.

## SCAG Procurement Policy & Procedures Manual

- B. Contract will debrief consultants after issuing the Notice to Proceed.
- C. Upon reasonable request, SCAG will make a copy of the winning proposal available to the requestor, after the contract resulting from the solicitation has been issued. For additional guidance, refer to the Caltrans Local Assistance Procedures Manual, Section 10.5, *Develop Final Ranking and Notify Consultants of the Results*.

### 7.9. Protests

In accordance with 49 CFR Part 18, Section 18.36 (b) (12), or successors there to, prospective vendors have the right to protest in accordance with SCAG's Policy on Contract Award Protests, which can be viewed online at [www.scag.ca.gov](http://www.scag.ca.gov) under "Opportunities" then, "Doing Business with SCAG." In order to maintain the integrity of the procurement process and maximize SCAG's negotiating position, SCAG shall not release any public record related to an active solicitation, including but not limited to, records regarding bid proposals, score sheets, evaluation information, and cost/price analysis until after SCAG has issued the Notice-to-Proceed for the subject solicitation or the procurement is cancelled.

### 7.10. Contract Specifications

- A. SCAG consultant contracts must contain the following minimum information:
  - 1. General terms and conditions
  - 2. Scope of Work
  - 3. Schedule
  - 4. Line Item Budget/Price Sheet
  - 5. Funding/Expenditure Summary
  - 6. Copy of the Grant Agreement (if applicable)
- B. In accordance with 49 CFR Part 18, Section 18.36 (c), or successors there to, in order to promote full and open competition, staff cannot contract for work in phases in such a manner that the successful consultant awarded a contract for any given phase of the work, has a competitive advantage in competing for any subsequent phase of the work. If Contracts in consultation with the PM and the Legal Division determines that such a consultant has an unfair competitive advantage, Contracts will reject the consultant's proposal. Contracts shall return the consultants proposal (preferably unopened), without considering it.
- C. In accordance with Federal Acquisition Regulations (FAR) Subpart 9.505 General rules, generally an **unfair** competitive advantage exists where a consultant competing for award of a contract possesses:
  - 1. Proprietary information that was obtained from a Government official without proper authorization; or
  - 2. Source selection information (as defined in FAR Subpart [2.101](#)) that is relevant to the contract but is not available to all competitors, and such information would assist that contractor in obtaining the contract.

## SCAG Procurement Policy & Procedures Manual

This means an unfair competitive advantage exist if:

- The work under Phase 1 has not been completed and all the report, data, related work materials are not available to all potential proposers.
- If the work under Phase 1 has been completed, but the consultant made recommendation(s) in the Phase 1 report and if awarded Phase 2 would be implementing the recommendations they made in the Phase 1 report. Because in performing the work they could create products or services that work to their advantage.

Note, incumbency in and of itself doesn't create an unfair competitive advantage. There needs to be something more in the facts to demonstrate any unfairness.

The CA in consultation with Legal has the final authority to determine if an unfair competitive advantage exists (also see section 7.13).

- D. In accordance with the Caltrans Local Assistance Procedures Manual, Section 10.2, *Identifying & Defining a Need for Consultants*, no consultant performing design, investigation or environmental service, nor any firm affiliated with the consultants, shall propose on a contract to provide subsequent work resulting from the consultant's contract.
- E. Contracts will add the appropriate clause(s) to any solicitation involving phasing of work to inform consultants about SCAG's policy in this regard. PM's are encouraged to consult with Contracts to develop strategies to assist them with facilitating these types of projects.
- F. Contracts that extend beyond a fiscal year are considered multi-year contracts. The PM must establish the project's Scope of Work for each fiscal year in accordance with the anticipated available budget for that year.
- G. **SGAG does not reimburse consultants for work until the contract is executed.**

### 7.11. Contract Term

Each consultant agreement should be re-solicited after a total of thirty-six (36) months consecutive with the same consultant including any amendment to extend the contract's term, unless SCAG's Chief Financial Officer provides written authorization for a longer period for the initial contract or an amendment to an existing contract.

### 7.12. Reporting Requirements

- A. In accordance Regional Council Policy Manual Article VIII Section 1.1, as well as with the May 5, 2005 Regional Council agenda item 6.1.4, all contracts \$25,000 or greater require a Board Report (RC Write-up) submitted for the Executive Administration Committee and Regional Council meeting agendas. Agreements (contract, PO's...) between \$5,000 and \$199,999 are placed on the RC Agenda as "Information Only" items. The Board Report is written by the PM. The CA is responsible for coordinating with the

## SCAG Procurement Policy & Procedures Manual

PM to ensure deadlines are met. The PM is responsible for completing all required information within established timeframes.

- B. In accordance with the April 2, 2009 Regional Council agenda item 6.2.3, all agreements (Purchase Orders, contracts...) \$200,000 or greater require Regional Council (RC) approval.

### 7.13. Ethics (Standards of Conduct - also see sections 6.6.1 C, 6.6.3 G and 7.10)

- A. SCAG contracting activity shall be conducted in a manner above reproach and, except as authorized by law, with complete impartiality and without preferential treatment.
- B. All staff shall comply with both SCAG's Conflict of Interest Policy ([http://info/policies/docs/COI\\_Policy\\_Approved070600.DOC](http://info/policies/docs/COI_Policy_Approved070600.DOC)) and SCAG's Ethics Policy (<http://info/policies/pdfs/scagEthicsPolicy062811.pdf>).
- C. Any violation of these standards may be cause for disciplinary action, including dismissal, if appropriate.

## 8. Post Award Administration

### 8.1. Post Award Administration Requirements

- A. In accordance with the Caltrans Local Assistance Procedures Manual, Section 10.8, *Administer the Contract*, the CA is responsible for conducting post award administration. This includes but is not limited to attending the kick-off meeting and other meetings, monitoring the project's progress, receiving, reviewing reports, and reviewing and approving invoices.
- B. In accordance with the Caltrans Local Assistance Procedures Manual, Section 10.8, *Project Records*, the CA is responsible for maintaining the following file documents after a contract is executed (electronic copies are permitted):
- Copies of RFPs and RFQs
  - Documentation of DBE participation
  - Solicitation/advertisement records
  - Identification of selection committee members
  - Evaluation and ranking records
  - Independent cost estimate
  - Record of negotiations
  - Pre-award audit when applicable
  - Executed consultant contracts and amendments
  - Construction oversight/progress meetings
  - Progress and final payments
  - Performance evaluation (if applicable)
  - Consultant contract checklists(if applicable)
  - Accounting records documenting compliance with state and federal administrative requirements

# SCAG Procurement Policy & Procedures Manual

## 8.2. Contract Invoicing

- A. All Cost Plus Fixed Fee contracts require consultants to invoice SCAG using the format specified in the contract and in accordance with the following policy:
1. There shall be no change in the budget allocated for the Direct Labor, Overhead & Fringe, Fee, subconsultants (subs individually or collectively) and Other Direct Costs categories, or the contracts overall value, without first obtaining a contract amendment executed by the SCAG Chief Financial Officer.
  2. Invoices not received by SCAG within thirty (30) calendar days of the Invoice Due Date may be assessed a \$1,000 penalty per invoice (in accordance with a 02/04/10 Regional Council Agenda Item 6.1.5)
  3. SCAG PM's have authority to approve, consultant budget reallocations for existing Direct Labor position **classifications** (e.g., reallocate budget from Sr. Planner to Midlevel Planner, Principal to Sr. Planner, Jr. Planner to Technician... - budget can be reallocated from any position classification listed in the Line Item Budget, not just within the classifications), provided the reallocation ***does not exceed the total budget*** for the Direct Labor cost category. The consultant must still produce the required deliverables to the SCAG PM's satisfaction/schedule. The consultant staff specifically identified in the contract under Key Personnel **cannot** be replaced without a contract amendment.
  4. After an executed Contract Amendment, consultants may add additional Direct Labor position classifications not included on the original Line Item Budget if it does not cause the original contract price to increase.
  5. In each Direct Labor position **classification** the consultant shall identify the highest rate each position will be paid during the life of the contract, inclusive of any type of increase (merit, cost-of-living raise, bonus, etc.)
  6. The consultant's Overhead & Fringe rates shall be the highest rates the consultant will receive during the life of the contract.
  7. There shall be no change of any subconsultant identified in the Line Item Budget without first obtaining a contract amendment. SCAG does not allow the Prime Consultant a markup on any of its subconsultant costs.
  8. The SCAG PM's has the authority to approve a consultant reallocation in the budget amounts for Other Direct Costs (ODCs). For example, consultants may reallocate budget from Travel<sup>4</sup> to Printing or Parking or any combination of any item that would be classified as an ODC), provided the reallocation does not exceed the total budget for the ODC category. The consultant must still produce the required deliverables to

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<sup>4</sup> Any travel and costs must be reasonable and are limited to those rates paid to non-represented/excluded State employees under California's State Department of Personnel Administration rules, subject to changes posted at: <http://www.dot.ca.gov/hq/asc/travel/ch12/1consultant.htm>

## SCAG Procurement Policy & Procedures Manual

the SCAG PM's satisfaction/schedule. Consultants will be reimbursed for all reasonable and allowable ODCs that are directly allocable to a project, even if there is no specific ODC sub-category for the item(s) in the Line Item Budget (e.g., Print and Postage are not on the Line Item Budget, but the consultant charges for these items, and the CA after consulting with the SCAG PM determines that each is reasonable and directly allocable to the project - then in this example, SCAG shall allow the charges). Reallocations of budget from ODCs to Direct Labor or to Subconsultants (or any combination thereof) requires a contract amendment prior to reallocating the budget.

9. If SCAG amends the contract to reallocate the budget from one cost category to another (e.g., from Other Direct Costs to Direct Labor, subconsultant(s) to Direct Labor...), there will be no increase in the Fixed Fee without written justification from the SCAG PM, approved by the CA. This policy is intended to disallow applying fees to the revised Direct Labor, unless the circumstance justify it - and this should be rare.
10. If a contract specifically prohibits a consultant from exceeding the Task Budget (i.e., applies to projects that in practice are managed by task), then Section 1.4.6 (A) applies by task. In summary, with the PM's approval, consultants may reallocate budget from one Direct Labor classification within a task, to another Direct Labor classification within the same task, or reallocate budget from one ODC within a task to another ODC within the same task, provided they do not exceed the budget for that task. Reallocating budget from one Direct Labor classification within a task to another within the same task, or reallocating budget from one ODC within a task to another within the same task does not require an amendment prior to doing so.
11. In order to maximize the SCAG PM's control and accounting of the project's budget/costs (so the consultants invoice can be properly paid), the SCAG PM must devise a means of tracking planned versus actual expenditures (the SCAG PM may choose to use the Cost Estimate Template). Tracking planned versus actual expenditures enables the PM to control the consultant's ability to reallocate budget within Direct Labor or ODCs, but only as directed by the PM.
12. Reallocating budget from one task to another task requires an amendment prior to doing so.
13. For the projects that have a Subtask Budget written into the contract, with the PM's approval, consultants may reallocate budget from one Direct Labor classification in the subtask to another Direct Labor classification within the subtask or that specific task, or reallocate budget from one ODC in the subtask to another ODC within the subtask or that specific task, provided they do not exceed the budget for that specific task. Reallocating budget from one Direct Labor classification subtask to another Direct Labor classification within the subtask or that specific task, as well as reallocating budget from one ODC in a subtask to another within the subtask or that specific task does not require an amendment prior to making the change.

## SCAG Procurement Policy & Procedures Manual

14. Regarding all other contract types other than the Cost Plus Fixed Fee (i.e., Fixed Price, Unit Rate, T&M, Retainer, etc.), consultants shall invoice SCAG in accordance with the payment schedule that SCAG and the consultant agree to in the contract.
15. SCAG may disallow the cost associated with invoices that do not conform with this Section (i.e., any unauthorized changes to the Line Item Budget).

### 8.3. Amendments

#### 8.3.1. Contract or Purchase Order (PO) Amendments

- A. In accordance with the Caltrans Local Assistance Procedures Manual, Section 10.8, *Contract Amendments*, an amendment is any change(s) that may be required to an executed agreement (contract or PO). Amendments must be within the original scope of work (i.e., no new scope should be added) for example:
  - If the original contract's scope of work required traffic counts and the amended scope required additional traffic counts, this is acceptable. However, if the amended scope of work required a corridor analysis, then this new/unrelated work could not be amended into the contract; or for PO's
  - If the original PO's scope required purchasing computer servers and the amended scope required additional servers, this is acceptable. However, if the amended scope required printers, then this new/unrelated work could not be amended into the PO.
- B. Contract amendments are often required for refining the Scope of Work, scheduling delays or accelerations, change of subconsultant(s), changes to the cost of the project resulting from a revised Line Item Budget, or contract termination. PO amendments are often required to changes the price, quantity ordered, items, terms and conditions, delivery schedule, additions, deletions, and/or for cancellations.
- C. Amendments are usually made to a contract or PO by mutual, written agreement (i.e. a bilaterally executed amendment), but there may be circumstances in which minor modifications to the contract may be made without requiring a full, written amendment if such circumstances are clearly provided for in the original contract (e.g., minor direct labor budget changes that do not affect the total allocations in each budget category, for Contracts to correct minor typos, or to add fiscal year funding).
- D. The following administrative actions require a contract or PO amendment (this is not an all-inclusive list):
  1. Increasing or decreasing the contract's or PO's overall value.
  2. Reallocating budget from one contract cost category to another without changing the total contract amount (i.e., reallocating budget from Direct Labor

## SCAG Procurement Policy & Procedures Manual

- to Other Direct Cost or Subconsultants, and vice versa, on Cost Plus Fixed Fee contracts).
3. Changing any of the contract's or PO's terms and conditions.
  4. Time extensions. Each contract or PO should be re-solicited after a total of thirty-six (36) months consecutive with the same consultant including any amendment to extend the contract's term, unless SCAG's Chief Financial Officer provides written authorization for a longer period for the initial contract or an amendment to an existing contract.
  5. Changing incremental funding (on the Funding Exhibit).
- E. Contract or PO amendments may also be necessary at the beginning of each fiscal year, upon approval of the new fiscal year budget, to advise the consultant of the following:
1. To continue work
  2. Project Number
  3. Term of the contract
  4. Document any funding change
  5. Any other contractual change
- F. Contract or PO amendments are limited to **no more than thirty (30) percent** of the original total amount of the contract (consistent with the State of California Contract Manual Section 5.80 [2] [D]). An amendment in excess of the 30% of the contract's original value, requires the Regional Council's Approval prior to executing the amendment. Note – Any purchase that was procured INFORMALLY (i.e., originally valued at less than \$50,000), can only be increased up to \$64,999.99 or 30% of the Contract's original value, whichever is less (e.g. if the original contract is \$49,999, it can on be increased up to 30% or \$15K, with the revised value totaling \$64,999). The Regional Council must approve amend such a contract beyond \$64,999. Such amendments must still be processed in accordance with this Policy Manual.
- G. In accordance with a June 14, 2006 Regional Council agenda item 3.1.17, and the Regional Council Policy Manual, Article VIII, Section 1.3 (updated September 2009, pg. 26) any amendment to incorporate additional (similar) scope with an individual or aggregate amount of \$75,000 or greater requires Regional Council approval, before the amendment can be executed. This excludes fiscal year funding amendments. Once the aggregate value of an amendment is \$75,000 or greater or 30% of the contract's original value, whichever is less, any further amendment to the contract's value requires Regional Council approval before it can be executed. Contracts will require the consultant to complete a new Conflict of Interest (COI) Form if the contract is more than 1 year old (as of the date the RC/EAC first went to the Regional Council for Approval or Information) and include this new COI in the Reginal Council report. Further, amendments valued between \$5,000 and \$74,999 must be submitted as an "**information item**" on the Regional Council agenda.

## SCAG Procurement Policy & Procedures Manual

- H. Notwithstanding C and D above, in accordance with a June 14, 2006 Regional Council agenda item 3.1.17, any amendment for additional (similar) scope that increases the contract's value to \$200,000 or greater require the Regional Council's approval before Contracts can authorize the consultant to perform the additional scope of work. For example, if the contract's original value is \$190,000 and it is amended by \$15,000 (for a total of \$205,000), this amendment must be approved by the Regional Council before it can be executed, even though the amendment is less than \$75,000 or 30% of the contract's original value. Further, if this contract is amended again and the second (or 3<sup>rd</sup> or 4<sup>th</sup> ...) amendment in aggregate with any previous amendment is \$75,000 or greater or 30% of the contract's original value, whichever is less, then such an amendment(s) requires the Regional Council's approval before it can be executed. For example, if the contract's original value is \$190,000 and the 2<sup>nd</sup> contract amendment increased the contract to \$205,000, then \$247,000 is the most the 3<sup>rd</sup> or any subsequent amendment can increase the contract value to, without requiring Regional Council approval (because 30% of the original \$190,000 contract is \$57,000, for a maximum total of \$247,000). If the amendment increased the contract's value over \$247,000 it (and any subsequent amendment increasing its value) would require Regional Council approval before it could be executed.
- I. Any amendment(s) that increases the contract's value to \$250,000 or greater, will necessitate Audit requirements as well. For these amendment the audit must be conducted before forwarding the amendment to the RC for approval, unless otherwise approved by SCAG's Chief Financial Officer. If Contracts is amending a contract to add a sub-consultant that was not previously audited, Contracts shall request the auditor to review this sub-consultant's costs in order to help Contracts assess the fairness and reasonableness of these costs.
- J. While all the following administrative actions require proper written justification from the PM before Contracts can process the amendment, each does **NOT** require Regional Council approval:
- Changes to the Line Item Budget without changing the total contract amount;
  - Reallocating budget between different cost categories (Direct Labor to ODCs or Subs, and vice versa on Cost Plus Fixed Fee contracts);
  - Changes to the terms and conditions, time extensions, or incremental funding.
- Nor does each need to be included on the agenda as an information item. Note – Subconsultants cannot be changed without prior written justification (Caltrans Local Assistance Procedures Manual, Section 10.8, Contract Amendments – Substitution of Consultant Personnel and Subcontractors).
- K. Once the term of the contract has expired, no further amendments can be made (i.e., an amendment must be fully executed before the ending date of the contract – Caltrans Local Assistance Procedures Manual section 10.8, Contract Amendments).

### 8.3.2. Amendment Processing

## SCAG Procurement Policy & Procedures Manual

- A. Contracts staff will use the Contract Amendment Checklist to ensure all the required amendment procedures are accomplished in a timely manner. The SCAG PM (nor any other staff) cannot ask the consultant to do work that is not in the contract and the PM cannot amend work into a contract without first obtaining the CA's authorization.
- B. The amendment process starts with the PM contacting the CA, not the consultant, regarding the desired change. The PM must use the Contract Amendment Request Form which the CA shall save in the contract's electronic file. The PM will prepare a Specification or Scope of Work (including the items added and or deleted) and a Cost Estimate for the amended work and forward both to the CA who shall save these documents in the contract's electronic file. The cost estimate is an internal document that the PM and CA will use to perform a cost analysis of the consultant's amendment offer. Contracts in turn will forward the Scope of Work to the Consultant for the consultant to propose a price on the scope and reply back to the CA, which the CA shall save in the contract's electronic file. Concurrently, the SCAG PM must also forward (e-mail is acceptable) the following to Contracts:
1. Identification of current year funding via the Budget & Grants Department's approval (if increasing or decreasing the contract's value)
  2. A completed requisition
  3. Justification for the change (i.e., justify why the new work is within scope and/or cannot be competed)
  4. The amended schedule (if applicable)
  5. Sign-off from Risk Manager if insurance is impacted (Contracts will make this determination).
  6. Requested completion timeline. If Contracts cannot accommodate the PM's requested timeline, Contracts works with the PM to finalize schedule.
- C. After receiving the consultant's amendment offer which the CA shall save in the contract's electronic file, the SCAG PM and the CA will conduct a cost analysis [mandated by 49CFR Part 18, Section 18.36 (f) (1)] and negotiate (as necessary) a fair and reasonable price for the amended work. The CA shall save both these documents in the contract's electronic file.
- D. The fee is negotiable (but must be negotiated as a separate cost item) depending on the consultant's risk involved in completing the project up to a maximum of 10%. The fee is only calculated using Direct Labor and Overhead/Fringe, does not vary with actual cost. There should be no increase in the Fixed Fee without written justification from the SCAG PM, approved by the CA (the policy is to disallow applying fee to the revised Direct Labor, unless the circumstance justifies it - and this should be rare).
- E. The Amendment's effective date should be no earlier than the date SCAG was notified about the amendment via the Amendment Request Form.

# SCAG Procurement Policy & Procedures Manual

- F. Staff should plan for at least 10-business days to process amendments (after Contracts receives the items in 8.3.2. B).

## 8.4. Contract Close-Outs

- A. A contract is considered ready for close-out after certification from the PM is received, stating 100% completion and acceptance of the final deliverable, and release of the final payment. The PM must submit the Project & Contract Close-Out Form, to the OWP Coordinator section after the project is complete.
- B. The PM is responsible for providing copies of the final deliverable to the Budget & Grants Department for distribution as follows:
  - 1. PM 1 Copy
  - 2. Central Files 1 Copy
  - 3. Contracts funded from other than CPG See Grant

## 9. Other Requirements

### 9.1. Insurance

- A. Prior to an issuance of a Purchase Order or Contract execution, evidence of proper insurance coverage is required for any procurement involving services that put SCAG at risk. (See current version of Contract Template on SCAG website.) The Risk Manager (Chief Financial Officer) in consultation with legal counsel may recommend to the Deputy Executive Director, Administration to waive certain insurance requirements, depending upon the Risk Manager's assessment of the risks and liabilities posed to SCAG. Only the Deputy Executive Director, Administration (or designee) is authorized to waive Insurance Requirements.
- B. SCAG posts its insurance requirements on the SCAG internet website <http://scag.ca.gov/business/> in order to communicate the requirements to potential offerors prior to receiving proposals so that the offeror can determine if he/she will be able to comply with the terms.
- C. If consultants request SCAG to waive or alter any of its insurance requirements, the Risk Manager will make a determination on whether to waive insurance requirements or not. Only the Risk Manager is authorized to recommend to the Deputy Executive Director of Administration to waive certain insurance requirements, depending upon the Risk Manager's assessment of the risks and liabilities posed to SCAG.

### 9.2. Disadvantaged Business Enterprise (DBE)

- A. As required by 49 Code of Federal Regulations (CFR) Part 26, it is SCAG's responsibility to comply with DBE requirements. SCAG is required to provide to the Caltrans District Local Assistance Engineer (DLAE) a completed DBE Annual Submittal Form by June 1 of each year for the following Federal Fiscal Year (FFY). This form

## SCAG Procurement Policy & Procedures Manual

includes an Annual Anticipated DBE Participation Level (AADPL) and the methodology used for establishing the AADPL.

- B. SCAG also is required to assist Caltrans in achieving its Overall Statewide DBE Goal through race-neutral means. This includes establishing a DBE Availability Advisory (Advisory) for individual contracts, as applicable, to assist bidders in ascertaining what a reasonable level of DBE participation would be for any given contract, and semiannually reporting to Caltrans on the attainment of goals. The Advisory is a level of DBE participation expressed as a percentage of the total contract amount that bidders could reasonably be expected to achieve, by using certified DBE firms. The Advisory is not an enforceable goal and compliance with it is not a condition of contract award.

### 9.3. W-9 Form

- A. SCAG shall only enter into contracts with vendors who possess a valid business license. In order for vendors to receive payment, all vendors and consultants doing business with SCAG must have an account created in SCAG's vendor and consultant database. To ensure that there is an account for each vendor/consultant in SCAG's Financial Management Information System, the W-9 Form must be completed and returned to SCAG.
- B. The W-9 Form may be obtained online at [www.scag.ca.gov](http://www.scag.ca.gov) under "Doing Business with SCAG".
- C. The Contracts Department will update the vendor/consultant database as necessary.

### 9.4. 9.4 Public Records Request

- A. SCAG shall disclose documents requested by any person in accordance with the Public Records Act, California Government Code 6253 et seq and SCAG records request policies and procedures. The procedures for responding to public records requests of documents retained in the Contracts Department are as follows:
  - 1. Requestors must address a written public records request to the Legal Division, specifying the desired information. E-mail is acceptable.
  - 2. In order to maintain the integrity of the procurement process and maximize SCAG's negotiating position, SCAG shall not release any record related to an active solicitation, including but not limited to, records regarding bid proposals, score sheets, evaluation information, and cost/price analysis until after SCAG has issued the Notice-to-Proceed for the subject solicitation or the procurement is cancelled. As a courtesy SCAG may provide copies of public records regarding closed RFPs to governmental agencies without a formal public records request.
  - 3. Contracts shall only release records subject to disclosure under the California Public Records Act. Generally, Contracts shall release the following information after coordinating with SCAG legal counsel (for any other documents see Chief Counsel or Deputy Legal Counsel):

## SCAG Procurement Policy & Procedures Manual

- Proposal(s) received
- Executed contract
- Summary of scores (not the individual scoring sheets)

Note, while requestors do not have to make a public records request to obtain an **active** or closed solicitation itself (RFP or Request for Quote), Contracts shall only release an active or closed solicitation in accordance with Section 6.6.3 F.

4. Each request must reasonably describe the records being sought. This means that a request must be specific enough to permit a professional employee of the agency who is familiar with the subject matter to locate the record in a reasonable period of time.
5. SCAG shall provide a response to the requester within 10 business days after the receipt of a request. Electronic Transmission is permitted if the underlying data is available electronically.
6. SCAG may assess the requestor a fee to recover the cost of reproducing and transmitting documents (contact Chief Counsel and/or the IT Services Division to determine the fee - typically 10 cents per page). SCAG may also assess a fee if SCAG incurred costs to convert a hard copy of a document to an electronic version.

### 9.4.1. **Procedure:**

- A. After forwarding the written request to the legal counsel (or receiving the request from the Legal Division) the CA shall obtain direction from legal counsel on how to process the request. This includes identifying or clarifying what if any information is subject to disclosure and or what redactions to make.
- B. In most instances the CA will simply review the hard copy of the requested document(s) and redact (cover the text/information with a marker so that it is not legible) any information marked as proprietary or confidential, assess and collect any applicable fee, - which would be forwarded to Accounting (checks must be made out to the “Southern California Association of Governments”), and mail or e-mail the document(s) to the requestor.
- C. If Contracts assesses a fee, Contracts shall inform (e-mail is acceptable) the requestor how much the charge will be, before making and providing him or her with copies of the requested documents
- D. Generally, an offeror’s private information including but not limited to, social security number, home address and non-business phone number are not subject to disclosure.