

<b>ID #</b>	BRD-012
<b>Rev</b>	04
<b>Date</b>	12/12/24
<b>Reso</b>	24-58

## **Contract Approval Policy**

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The Santa Clara Valley Open Space Authority’s enabling act authorizes the Board to contract with any person or public agency for any services, supplies, equipment or materials, or for the construction, completion, maintenance, or repair of any building, structure, or improvement. (Public Resources Code § 35159). This Policy provides guidance on the implementation of section 35159.

### **A. PREPARATION OF DOCUMENTS**

Prior to presentation to the Board of contracts requiring Board approval, the General Manager is authorized to prepare requests for proposals, proposed contracts, specifications or other descriptions of work and to obtain required competitive bids or negotiated agreements for any project, improvement, or consultant service. Authority counsel shall review all written contracts for form and legality. The Board shall approve all contracts exceeding \$50,000. The General Manager is authorized to bind the Authority for contracts for any services, supplies, equipment, or materials, or for the construction, completion, maintenance, or repair of any building, structure, or improvement, not exceeding \$50,000, subject to any applicable bidding requirements. At the next regular meeting of the Board that will occur after full execution of a contract by the General Manager not exceeding \$50,000, the General Manager shall report in writing the name of the contractor, the amount, and the services, supplies, equipment, materials, construction, completion, maintenance, or repair provided by said contract.

### **B. CONTRACT PROCEDURES**

#### **1. General Competitive Bidding Requirements**

a. Construction, Completion, Maintenance or Repair: Contracts for the construction, completion, maintenance, or repair of any building, structure, or improvement exceeding \$25,000 shall be contracted for and let to the lowest responsible bidder. Such contracts greater than \$25,000 but not exceeding \$75,000 shall be let by informal bidding procedures, and contracts for greater than \$75,000 shall be let by formal bidding procedures.

b. Services, Supplies, Equipment or Materials: Subject to the exceptions enumerated in this Policy, contracts for services, supplies, equipment or

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materials exceeding \$50,000 shall be contracted for and let to the lowest responsible bidder and approved by the Board. Such contracts greater than \$50,000 but not exceeding \$100,000 shall be let by informal bidding procedures, and contracts for greater than \$100,000 shall be let by formal bidding procedures.

c. Competing Bids of the Same Price: If two or more bids for a contract described in paragraph a or b are the same and the lowest, the governing board may accept the one it chooses.

d. Bidding Procedures:

i) Formal Bidding Procedures: a notice inviting bids shall be published at least twice, at least five days apart, in a newspaper of general circulation within the Authority's jurisdiction. The first publication shall be published at least 10 days before the date of opening of bids. The notice shall also be posted on the Authority's official website and at the Authority's Administration Office. The notice shall state the following: (1) the date of the opening of bids; (2) the nature of the contract; (3) the specifications and requirements that must be contained in any submitted proposal in order to be considered responsive to the Request for Proposals; and, (4) that the bid packet, including the Request for Proposals, may be obtained by prospective bidders from the Authority's offices or on the Authority's official website. All bids received shall be opened by a supervising employee on the date stated in the notice. After the bids are opened, the General Manager shall make a recommendation to the Board for approval of a bid that is consistent with Public Resources Code § 35159 and this Policy.

ii) Informal Bidding Procedures: a notice inviting bids shall be posted on the Authority's official website and at the Authority's Administration Office. The notice shall state the deadline by which bids must be submitted. The General Manager may provide notice to any potential bidders that it knows provides the supplies, equipment or materials sought. The General Manager must attempt to solicit at least three written bids, or an explanation of why three bids were not submitted. The General Manager shall make a recommendation to the Board for approval of a bid that is consistent with Public Resources Code § 35159 and this Policy.

e. Rejection of Bids: The Board may reject all bids. If the Board rejects all bids, it may either readvertise for proposals, or adopt a resolution by four-fifths vote, declaring that the contract can be performed more economically by the employees of the Authority or obtained at a lower price on the open market.

f. No Bids Submitted in Response to Notice Inviting Bids: If the Authority does not receive any bids, the Board may undertake the project without complying with the requirements of this section B.1.

g. Emergencies: In the case of an emergency, the governing board may adopt a resolution by a two-thirds vote of all the members of the governing board declaring that the public interest and necessity demand immediate expenditure of public money to safeguard life, health, or property. The governing board may expend any sum required in the emergency without submitting the expenditure to bid. An “emergency” is a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services. “Emergency” includes a fire, a flood, an earthquake, or other soil or geologic movements, as a riot, an accident, or sabotage.

### **2. Special Procedures for Procurement of Services**

Notwithstanding section B.2, contracts for services exceeding \$50,000 are not required to be contracted for or let to the lowest responsible bidder if the Board awards the contract to the most “responsible and qualified bidder.”

a) Determination of the “Most Responsible and Qualified Bidder.”

i) “Most responsible and qualified bidder” means the bidder deemed by the Board that best fits the needs of the service contract, or the Board finds using the following criteria, including but not limited to:

- (1) Experience of the bidder as a firm, including past performance of the firm on contracts of similar size and scope;
- (2) Experience and qualifications of personnel employed by the bidder;
- (3) Demonstrated understanding of the scope of the service, including schedule and plan to accomplish the service;
- (4) Best overall financial return to the governing board on the contract; and,
- (5) A responsible bidder who has demonstrated the attribute of trustworthiness, as well as quality, fitness, and experience to satisfactorily perform the work or provide the goods required.

b) Additional Procedures for Specific Services. The General Manager shall follow these additional procedures for contracts exceeding \$50,000 for architectural, landscape architectural, engineering, environmental, land surveying, and construction project management services.

- i) Definitions.
  - (1) "Architectural, landscape architectural, engineering, environmental, and land surveying services" includes those professional services of an architectural, landscape architectural, engineering, environmental, or land surveying nature as well as incidental services that members of these professions and those in their employ may logically or justifiably perform.
  - (2) "Construction project management" means those services provided by a licensed architect, registered engineer, or licensed general contractor which meet the requirements of Government Code § 4529.5 for management and supervision of work performed on state construction projects.
  - (3) "Environmental services" means those services performed in connection with project development and permit processing in order to comply with federal and state environmental laws.
- ii) The General Manager shall post a Request for Qualifications to perform the required services for a proposed project on the Authority's official website and at the Authority's Administration Office. The General Manager may inform any potential contractors of the notice, and may contact any of the contractors the General Manager has prequalified as provided in section 2.c) of this Policy. Any individual or firm proposing to provide construction project management services shall provide evidence that the individual or firm and its personnel carrying out onsite responsibilities have expertise and experience in construction project design review and evaluation, construction mobilization and supervision, bid evaluation, project scheduling, cost-benefit analysis, claims review and negotiation, and general management and administration of a construction project.
- iii) For each proposed project, the General Manager shall evaluate current statements of qualifications and performance data of prequalified contractors, if any, on file with the Authority, together with those that may be submitted by other contractors regarding the proposed project, and shall conduct discussions with no less than three contractors regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services and then shall select therefrom, in order of preference, based upon criteria established and published by him or her, no less than three of the contractors deemed to be the most responsible and qualified to provide the services required.

- iv) The General Manager shall negotiate a contract with the most responsible and qualified contractor at compensation which the General Manager determines is fair and reasonable to the Authority. The contractor shall be informed that the contract is subject to final approval by the Board. Should the General Manager be unable to negotiate a satisfactory contract with the contractor considered to be the most responsible and qualified, at a price the General Manager determines to be fair and reasonable to the Authority, negotiations with that contractor shall be formally terminated. The General Manager shall then undertake negotiations with the second most responsible and qualified contractor. Failing accord with the second most responsible and qualified contractor, the General Manager shall terminate negotiations. The General Manager shall then undertake negotiations with the third most qualified contractor. Should the General Manager be unable to negotiate a satisfactory contract with any of the selected contractors, the General Manager shall select additional contractors in order of their competence and qualification and continue negotiations in accordance with this chapter until an agreement is reached.
- v) The contract must be finally approved by the Board in accordance with section 2.a).

c) Prequalification of Contractors

The General Manager may prequalify contractors to maintain a list of qualified contractors for future proposals. If the General Manager chooses to prequalify contractors, the General Manager shall establish and publish on the Authority's website a list of relevant general criteria which will form the basis for adding such contractors to a list of pre-qualified contractors maintained by the Authority. The general criteria shall include such factors as professional excellence, demonstrated competence, specialized experience of the contractor, education and experience of key personnel to be assigned, staff capability, workload, ability to meet schedules, nature and quality of completed work, reliability and continuity of the contractor, familiarity with pertinent regulatory processes, previous experience with a specific type of project, and other considerations deemed relevant by the General Manager.

d) Conflict of Interest/Unlawful Activity Prohibited

Any practice which might result in unlawful activity, including, but not limited to, rebates, kickbacks, or other unlawful consideration, is strictly prohibited, and each Authority employee is specifically prohibited from participating in the negotiation or selection process when that employee has an interest in, or has a personal or business relationship with a person affiliated with, any person or business entity seeking a contract with the Authority or solicited by the Authority for such a contract which would

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subject that employee to the prohibition of Section 87100 of the Government Code.

### **C. CONTRACT CHANGE ORDERS**

The General Manager may approve change orders to contracts, provided that the net aggregate of all change orders to that contract, exclusive of additional authorization by the Board, does not exceed 15 percent of the original contract price up to a maximum of \$20,000.

### Appendix I: California Public Resources Code, Section 35159

#### **35159.**

(a) The governing board may contract with any person or public agency for any services, supplies, equipment, or materials, or for the construction, completion, maintenance, or repair of any building, structure, or improvement. The governing board may appoint a general manager to be the chief administrative officer of the authority, and the governing board may authorize the general manager to bind the authority, in accordance with governing board policy that has been adopted in an open meeting and without advertising, for contracts for any services, supplies, equipment, or materials, or for the construction, completion, maintenance, or repair of any building, structure, or improvement, not exceeding fifty thousand dollars (\$50,000). All expenditures related to contracts for any services, supplies, equipment, or materials, or for the construction, completion, maintenance, or repair of any building, structure, or improvement, approved by a general manager shall be reported to the governing board at its next regular meeting.

(b) (1) Notwithstanding any other law, a contract for any services, supplies, equipment, or materials that exceeds fifty thousand dollars (\$50,000) shall be contracted for and let to the lowest responsible bidder. A contract for any services, supplies, equipment, or materials of one hundred thousand dollars (\$100,000) or less may be let by informal bidding procedures, but a contract for any services, supplies, equipment, or materials of more than one hundred thousand dollars (\$100,000) shall be let by formal bidding procedures.

(2) A contract for the construction, completion, maintenance, or repair of any building, structure, or improvement that exceeds twenty-five thousand dollars (\$25,000) shall be contracted for and let to the lowest responsible bidder. A contract for the construction, completion, maintenance, or repair of any building, structure, or improvement of seventy-five thousand dollars (\$75,000) or less may be let by informal bidding procedures, but a contract for the construction, completion, maintenance, or repair of any building, structure, or improvement of more than seventy-five thousand dollars (\$75,000) shall be let by formal bidding procedures.

(3) If two or more bids, for a contract described in paragraph (1) or (2), are the same and the lowest, the governing board may accept the one it chooses.

(4) If the governing board delegates authority in the manner specified in subdivision (a) for a contract for the construction, completion, maintenance, or repair of any building, structure, or improvement, the decision by the chief administrative officer of the authority shall be binding on the authority, and all existing protest and grievance procedures regarding that decision remain valid.

(5) (A) Notwithstanding paragraph (1), contracts for services, including, but not limited to, planning, consulting, legal, or appraisal services, or to contracts for services authorized to be procured pursuant to Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code, are not required to be contracted for or let to the lowest responsible bidder, if the governing board awards the contract to the most responsible and qualified bidder.

(B) For purposes of this subdivision, "most responsible and qualified bidder" means the bidder deemed by the governing board that best fits the needs of the service contract or meets the criteria prescribed in subparagraph (C).

(C) In determining the most responsible and qualified bidder, the governing board may use criteria, including, but not limited to, all of the following:

(i) Experience of the bidder as a firm, including past performance of the firm on contracts of similar size and scope.

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- (ii) Experience and qualifications of personnel employed by the bidder.
  - (iii) Demonstrated understanding of the scope of the service, including schedule and plan to accomplish the service.
  - (iv) Best overall financial return to the governing board on the contract.
  - (v) In addition, for purposes of this paragraph, a responsible bidder who has demonstrated the attribute of trustworthiness, as well as quality, fitness, and experience to satisfactorily perform the work or provide the goods required.
- (c) The notice inviting bids shall set a date for the opening of bids. The first publication or posting of the notice shall be at least 10 days before the date of opening the bids. For purposes of contracts requiring formal bidding, notice shall be published at least twice, at least five days apart, in a newspaper of general circulation in the authority, or if there is none, it shall be posted in at least three public places in the authority. The notice shall distinctly state the nature of the contract.
- (d) The governing board may reject any bids. If the governing board rejects all bids, it may either readvertise or adopt a resolution, by four-fifths vote, declaring that the contract can be performed more economically by the employees of the authority or obtained at a lower price on the open market. Upon adoption of the resolution, the governing board may undertake the project without further complying with subdivisions (b) and (c).
- (e) If bids are not received, the governing board may undertake the project without further complying with subdivisions (b) to (d), inclusive.
- (f) (1) In the case of an emergency, the governing board may adopt a resolution by a two-thirds vote of all the members of the governing board declaring that the public interest and necessity demand immediate expenditure of public money to safeguard life, health, or property. The governing board may expend any sum required in the emergency without submitting the expenditure to bid.
- (2) For purposes of this subdivision, “emergency” means a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services. Emergency includes a fire, a flood, an earthquake, or other soil or geologic movements, as well as a riot, an accident, or sabotage.