

BOARD MEETING DATE: September 4, 2015

AGENDA NO. 13

PROPOSAL: Revise Procurement Policy and Procedure

SYNOPSIS: This action is to revise SCAQMD's Procurement Policy and Procedure to incorporate "most favored customer" preference into the procurement process.

COMMITTEE: Administrative, July 17, 2015; Less than a quorum was present; the Committee Members concurred that this item be approved by the Board.

**RECOMMENDED ACTION:**

Adopt the revised Procurement Policy and Procedure.

Barry R. Wallerstein, D.Env.  
Executive Officer

MBO:lg

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**Background**

SCAQMD's Procurement Policy and Procedure, adopted January 9, 1998 and last amended May 2012, establishes the policies and procedures which govern contracting and/or purchasing of services, materials, equipment, supplies, and fixed assets by SCAQMD. The Administrative Committee recommended that the Policy be updated to incorporate "most favored customer" preference into the procurement process to ensure SCAQMD is receiving the best pricing and terms from vendors and contractors.

**Proposal**

It is recommended that SCAQMD's Procurement Policy and Procedure be amended to:

1. define "most favored customer" status,
2. require procurement processes, including bidding procedures, sole source awards, and RFP/RFQ processes to include a certification for "most favored customer" status to indicate if the vendor is willing to offer such status, and
3. give preference to vendors who agree to offer "most favored customer" status, including providing preference points through the proposal evaluation process.

The purpose of these amendments is to ensure SCAQMD receives the best pricing and terms from vendors and contractors providing goods and/or services to the SCAQMD.

**Resource Impacts**

Staff anticipates receiving “most favored customer” status from vendors and contractors, resulting in possible cost savings and/or cost containment.

**Attachment**

Revised Procurement Policy and Procedure (proposed changes are shown as underlined or strikethrough.)

# SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT

## PROCUREMENT POLICY AND PROCEDURE

### SECTION I: PURPOSE

- A. It is the policy of the South Coast Air Quality Management District (SCAQMD) to make available to all its offices and employees those services, supplies, equipment, materials, and fixed assets which are essential to the operation of the SCAQMD.
- B. The execution of this policy is the function of the responsible officer as set forth herein.
- C. The procedures set forth in this policy govern contracting and/or purchasing of services, materials, equipment, supplies, and fixed assets by the SCAQMD.
- D. The SCAQMD Board may contract for services, materials, equipment, supplies, and fixed assets as may be necessary or convenient for the exercise of duties imposed upon the SCAQMD.

### SECTION II: GOVERNING BODY AND APPLICABLE LAWS

- A. The SCAQMD is organized pursuant to Chapter 5.5, Part 3, Division 26 of the Health and Safety Code.
- B. The governing body of the SCAQMD is a Board of Directors composed in accordance with Health and Safety Code Section 40420 ("SCAQMD Board").
- C. The SCAQMD is required to adopt a purchasing policy pursuant to Government Code Section 54202.

### SECTION III: PARTICIPATION IN THE PROCUREMENT PROCESS

#### A. General

It is the policy of the SCAQMD to ensure that all businesses including minority business enterprises, women business enterprises, disabled veteran business enterprises and small businesses have a fair and equitable opportunity to compete for and participate in SCAQMD contracts.

#### B. Definitions

The definition of minority, women and disadvantaged business enterprises set forth below is included for purposes of determining compliance with the affirmative steps requirement described in paragraph (F) below on procurements funded in whole or in part with federal funds which involve the use of subcontractors. The definitions provided for disabled veteran

business enterprise, local business, small business enterprise, low-emission vehicle business, off-peak hours delivery business and benefits incentive business are provided for purposes of determining eligibility for point or cost considerations in the evaluation process.

1. "-Women business enterprise" (/WBE) as used in this policy means a business enterprise that meets all of the following criteria:
  - a. a business that is at least 51 percent owned by one or more women, or in the case of any business whose stock is publicly held, at least 51 percent of the stock is owned by one or more or women.
  - b. a business whose management and daily business operations are controlled by one or more women.
  - c. a business which is a sole proprietorship, corporation, or partnership with its primary headquarters office located in the United States, which is not a branch or subsidiary of a foreign corporation, foreign firm, or other foreign-based business.

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2. "Disabled veteran" as used in this policy is a United States military, naval, or air service veteran with at least 10 percent service-connected disability who is a resident of California.
3. "Disabled veteran business enterprise" (DVBE) as used in this policy means a business enterprise that meets all of the following criteria:
  - a. is a sole proprietorship or partnership of which at least 51 percent is owned by one or more disabled veterans or, in the case of a publicly owned business, at least 51 percent of its stock is owned by one or more disabled veterans; a subsidiary which is wholly owned by a parent corporation but only if at least 51 percent of the voting stock of the parent corporation is owned by one or more disabled veterans; or a joint venture in which at least 51 percent of the joint venture's management and control and earnings are held by one or more disabled veterans.
  - b. the management and control of the daily business operations are by one or more disabled veterans. The disabled veterans who exercise management and control are not required to be the same disabled veterans as the owners of the business.
  - c. is a sole proprietorship, corporation, or partnership with its primary headquarters office located in the United States, which is not a branch or subsidiary of a foreign corporation, firm, or other foreign-based business.
4. "Local business" as used in this policy means a company that has an ongoing business within the South Coast AQMD at the time of bid or proposal submittal and performs 90% of the work related to the contract within the South Coast AQMD and satisfies the requirements of subparagraph H below.

5. "Small business" as used in this policy means a business that meets the following criteria:
  - a. 1) an independently owned and operated business; 2) not dominant in its field of operation; 3) together with affiliates is either:
    - A service, construction, or non-manufacturer with 100 or fewer employees, and average annual gross receipts of ten million dollars (\$10,000,000) or less over the previous three years, or
    - A manufacturer with 100 or fewer employees.
  - b. Manufacturer means a business that is both of the following:
    - 1) Primarily engaged in the chemical or mechanical transformation of raw materials or processed substances into new products.
    - 2) Classified between Codes 311000 and 339000, inclusive, of the North American Industrial Classification System (NAICS) Manual published by the United States Office of Management and Budget, 2007 edition.
6. "Joint ventures" as defined in this policy pertaining to certification means that one party to the joint venture is a DVBE or small business and owns at least 51 percent of the joint venture.
7. "Low-Emission Vehicle Business" as used in this policy means a company or contractor that uses low-emission vehicles in conducting deliveries to the [SCAQMD](#). Low-emission vehicles include vehicles powered by electric, compressed natural gas (CNG), liquefied natural gas (LNG), liquefied petroleum gas (LPG), ethanol, methanol, hydrogen and diesel retrofitted with particulate matter (PM) traps.
8. "Off-Peak Hours Delivery Business" as used in this policy means a company or contractor that commits to conducting deliveries to the [SCAQMD](#) during off-peak traffic hours defined as between 10:00 a.m. and 3:00 p.m.
9. "Benefits Incentive Business" as used in this policy means a company or contractor that provides janitorial, security guard or landscaping services to the [SCAQMD](#) and commits to providing employee health benefits (as defined below in Section VIII.D.2.d) for full time workers with affordable deductible and co-payment terms.
10. "Minority Business Enterprise" as used in this policy means a business that is at least 51 percent owned by one or more minority person(s), or in the case of any business whose stock is publicly held, at least 51 percent of the stock is owned by one or more or minority persons.
  - a. a business whose management and daily business operations are controlled by one or more minority persons.

- b. a business which is a sole proprietorship, corporation, or partnership with its primary headquarters office located in the United States, which is not a branch or subsidiary of a foreign corporation, foreign firm, or other foreign-based business.
  - c. "Minority person" for purposes of this policy, means a Black American, Hispanic American, Native-American (including American Indian, Eskimo, Aleut, and Native Hawaiian), Asian-Indian (including a person whose origins are from India, Pakistan, and Bangladesh), Asian-Pacific-American (including a person whose origins are from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the United States Trust Territories of the Pacific, Northern Marianas, Laos, Cambodia, and Taiwan).
- e. 11. "Most Favored Customer" as used in this policy means that the SCAQMD will receive at least as favorable pricing, warranties, conditions, benefits and terms as other customers or clients making similar purchases or receiving similar services.
142. Disadvantaged Business Enterprise" as used in this policy means a business that is an entity owned and/or controlled by a socially and economically disadvantaged individual(s) as described by Title X of the Clean Air Act Amendments of 1990 (42 U.S.C. 7601 note) (10% statute), and Public Law 102-389 (42 U.S.C. 4370d)(8% statute), respectively;
- a Small Business Enterprise (SBE);
  - a Small Business in a Rural Area (SBRA);
  - a Labor Surplus Area Firm (LSAF); or
  - a Historically Underutilized Business (HUB) Zone Small Business Concern, or a concern under a successor program.
- C. Under Request for Quotations (RFQ), DVBEs, DVBE business joint ventures, small businesses, and small business joint ventures shall be granted a preference in an amount equal to 5 percent of the lowest cost responsive bid. Low-Emission Vehicle Businesses shall be granted a preference in an amount equal to 5 percent of the lowest cost responsive bid. Off-Peak Hours Delivery Businesses shall be granted a preference in an amount equal to 2 percent of the lowest cost responsive bid. Local businesses (if the procurement is not funded in whole or in part by EPA grant funds) shall be granted a preference in an amount equal to 2 percent of the lowest cost responsive bid. Businesses offering Most Favored Customer status shall be granted a preference in an amount equal to 2 percent of the lowest cost responsive bid.
- D. Under Request for Proposals (RFP), DVBEs, DVBE joint ventures, small businesses, small business joint ventures and benefits incentive businesses shall be awarded ten (10) points in the evaluation process. A non-DVBE or large business shall receive seven (7) points for subcontracting at least 25 percent of the total contract value to a DVBE or small business. Low-Emission Vehicle Businesses shall be awarded five (5) points in the evaluation process. On procurements that are not funded in whole or in part by EPA grant funds local businesses shall receive five (5) points. Off-Peak Hours Delivery Businesses shall be awarded two (2) points in the evaluation process. Businesses offering Most Favored Customer status shall be awarded two (2) points in the evaluation process.

- E. The SCAQMD will ensure that discrimination in the award and performance of contracts does not occur on the basis of race, color, sex, national origin, marital status, sexual preference, creed, ancestry, medical condition, or retaliation for having filed a discrimination complaint in the performance of SCAQMD contractual obligations.
- F. When contracts are funded in whole or in part by federal funds, and if subcontracts are to be let, the Contractor must comply with the following, evidencing a good faith effort to solicit disadvantaged businesses. Contractor shall submit a certification signed by an authorized official affirming its status as a MBE or WBE, as applicable, at the time of contract execution. The SCAQMD reserves the right to request documentation demonstrating compliance with the following good faith efforts -prior to contract execution.
1. ~~;~~ Ensure Disadvantaged Business Enterprises (DBEs) are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local Government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.
  2. Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.
  3. Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and Local Government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.
  4. Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.
  5. Using the services and assistance of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.
  6. If the prime contractor awards subcontracts, require the prime contractor to take the above steps.
- G. To the extent that any conflict exists between this policy and any requirements imposed by federal and state law relating to participation in a contract by a MBE, WBE, and/or DVBE as a condition of receipt of federal or state funds, the federal or state requirements shall prevail.
- H. When contracts are not funded in whole or in part by federal funds, a local business preference will be awarded. For such contracts that involve the purchase of commercial off-the-shelf products, local business preference will be given to suppliers or distributors of commercial off-the-shelf products who maintain an ongoing business within the geographical boundaries of the SCAQMD. However, if the subject matter of the RFP or RFQ calls for the fabrication or manufacture of custom products, only companies performing 90% of the manufacturing or fabrication effort within the geographical boundaries of the SCAQMD shall be entitled to the local business preference.

I. For federally funded procurements, the SCAQMD shall comply, where applicable, with federal fair share requirements set forth in 40 CFR 33, or equivalent federal regulations.

J. It is the policy of the SCAQMD to receive at least as favorable pricing, warranties, conditions, benefits and terms as other customers or clients making similar purchases or receiving similar services. To this purpose, formal bidding procedures, sole source awards, and RFP/RFQ processes will include a certification for “most favored customer” status. SCAQMD will give preference, where appropriate, to vendors who certify that they will provide “most favored customer” status to the SCAQMD.

JK. Responsibilities of SCAQMD Personnel:

1. The Manager of the Procurement Section shall be responsible for:
  - a. Developing and maintaining SCAQMD procedures to ensure proper implementation of this policy.
  - b. Reviewing solicitations to ensure compliance with this policy prior to public release.
  - c. Preparing a monthly report to the SCAQMD Board on solicitations scheduled to be released within the next month and preparing a semi-annual report to the SCAQMD Board on contract activity.
  - d. Reviewing contracts and purchase orders to ensure compliance with this policy and applicable laws and regulations.
  - e. Providing periodic training to SCAQMD personnel on contracting and purchasing policies and procedures.
  - f. Developing and maintaining a database of vendors seeking to do business with the SCAQMD.
  - g. Participating at trade fairs and other procurement outreach programs.
  - h. Publication of Notices Inviting Bids or Proposals.
  - i. Maintaining records sufficient to detail the significant elements of the procurement, including, but not limited to: authorizing Board Letter or memorandum to authorizing contract signatory; the Contract Request Authorization Memorandum from the originating organization; the Request for Proposal, if applicable; the contractor’s final proposal; and any miscellaneous SCAQMD internal correspondence concerning the terms of the contract.
2. SCAQMD Legal Counsel shall be responsible for:
  - a. Representing the SCAQMD in all litigation actions involving implementation of this policy.
  - b. Providing legal opinions regarding the interpretation of bid specifications, proposal requirements, and contract provisions.



3. **SCAQMD** staff is responsible for:
  - a. Taking all necessary and reasonable steps in accordance with applicable **SCAQMD** requirements to execute this policy and to ensure that all businesses including MBEs, WBEs, DVBEs and small businesses have fair and equitable participation in the solicitation process.
  - b. Screening the **SCAQMD**'s vendor database to obtain names of companies which have expressed an interest in doing business with the **SCAQMD**.
  - c. Ensuring that relevant business enterprises listed in the database will receive copies of solicitations.
  - d. Coordinating the advertising of solicitations with the Manager of the Procurement Section or his or her designee in conformance with the policies and procedures of this policy.
  - e. Providing the Manager of the Procurement Section with a draft of the solicitation for review prior to public release and issuance of an RFQ or RFP number by the procurement staff.
  - f. For contracts funded in whole or in part with federal funds, performing and documenting a cost or price analysis as appropriate, including a lease versus purchase analysis, as set forth in 40 CFR 31.36(f) and 31.36(b)(4). Appropriate staff shall also maintain records sufficient to ~~–~~detail the significant history of a procurement, including the method of procurement, selection of the contract type, contractor selection or rejection, and the basis for the contract price.
  - g. Providing the Manager of the Procurement Section with all documents showing the history of the procurement as set forth in Section III(J)(1)(i).

#### **SECTION IV: PURCHASING OF SUPPLIES, SERVICES AND EQUIPMENT**

##### **A. Manager of the Procurement Section Authority and Responsibilities**

1. The Manager of the Procurement Section may purchase, upon appropriate authorization, services, materials, equipment, supplies, and fixed assets.
2. The Manager of the Procurement Section shall designate those persons who will have authority to make purchases.
3. The Manager of the Procurement Section shall act in the best interests of the **SCAQMD** in negotiating the best price on all goods and services, cost and other factors considered; and in accordance with all rules, regulations, and policies herein set forth, and all applicable provisions of law.
4. For non-consultant services and supplies which can reasonably be expected to exceed \$50,000 on an annual basis, the Manager of the Procurement Section may use a competitive prequalification process. As used in this policy, the term "prequalified vendors" shall be defined as the list of vendors whom the **SCAQMD** has determined to be qualified to provide particular services or supplies. As requirements become

identified, competitive bids will be sought only from those vendors on the prequalified vendor list.

5. Whenever possible, to effect economies of scale purchasing, the Manager of the Procurement Section shall pursue the policy of cooperative purchasing, provided that the quality of the available items meets SCAQMD requirements. Cooperative purchasing is the policy of allowing the Manager of the Procurement Section to place the SCAQMD's name on other governmental agencies' bid lists for items the SCAQMD is interested in purchasing. This allows the SCAQMD to enjoy the same terms, discounts, prices, and availability of items that would not be possible in all cases under small-scale purchasing.
6. The Manager of the Procurement Section shall advertise for public bidding, as set forth in Section VII hereof, any item directed by the SCAQMD Board or Executive Officer. In any event, the procedure described in Section VI must be followed for purchases in excess of \$25,000.
7. Subject to the supervision and direction of the Executive Officer, it shall be the duty of the Manager of the Procurement Section to purchase from time to time such quantities of supplies as may be required for official use and keep same in such storeroom or rooms as the SCAQMD shall provide. Such supplies shall be disbursed upon receipt of regular requisitions presented to the Manager of the Procurement Section or his or her designee.

**B. Purchasing Methods:**

The following purchasing methods shall be utilized, as applicable:

1. Formal Bid - A written bid solicited through public advertising and submitted under sealed bid procedures and which is opened and read on a specified date and time. This method is primarily used for equipment or services costing \$25,000 or more.
2. Informal bid – For procurements above \$2,500 and below \$25,000 an unadvertised written bid from a vendor may be utilized when the cost of the equipment or supplies is so low as to not justify the costs of the formal bidding procedure.
3. Telephone Bid – For procurements not to exceed \$2,500, telephone bids may be utilized by the Manager of the Procurement Section or his or her designee when the best interests of the SCAQMD may be served due to the need for immediate delivery or for other valid reasons.
4. Sole or Single Source – For procurements in excess of \$10,000, the Executive Officer may approve that the award may be made without a formal bid when the item or service to be purchased may be obtained from only one source and the item or service is one which does not lend itself to substitution. Said bids must be confirmed in writing and justified in accordance with the provisions of Section VIII(B).
5. Prior Bid, Last Price - After confirming the validity of a prior price, an award may be made on the basis of a prior bid or on the basis of a last price, if the conditions of a previous purchase are similar.

6. Request for Quotation - A written request describing materials, equipment, fixed assets, supplies or services sought which may contain certain plans and specifications. Quotations may be solicited through either formal or informal bid procedures.
  7. Formal bidding shall be used when economies of scale can be achieved, when there are equal and competitive products, or when discounts are applicable.
- C. Fixed Assets purchases shall be defined as purchases of assets that have a life of at least three years and a total acquisition cost of \$5,000 or more. Purchases of fixed assets are governed by the following:
1. The Manager of the Procurement Section shall be the responsible officer authorized to approve the purchase of budgeted fixed assets up to the amount of \$10,000 upon the request of the appropriate Deputy or Assistant Deputy Executive Officer.
  2. The Executive Officer may approve purchases of budgeted fixed assets from \$10,000 to \$75,000 and unbudgeted fixed assets up to \$10,000, or in case of an emergency or interruption of SCAQMD operations, up to \$50,000.
  3. Purchases of budgeted fixed assets over \$75,000 and unbudgeted fixed assets over \$10,000, except as provided in paragraph two above, require Board approval.
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  4. The Manager of the Procurement Section may, by direct sales or otherwise, sell or dispose of any fixed assets belonging to the SCAQMD and found by the SCAQMD Board not to be required for public use. Fixed assets procured with federal funds may require prior approval from the awarding federal agency, which if required, shall be secured by SCAQMD staff prior to requesting the SCAQMD Board to approve disposal of the applicable asset(s).
    - a. All moneys collected from the proceeds of sales are to be deposited in the SCAQMD's bank account.
    - b. No member of the SCAQMD Board or family member and no SCAQMD employee or family member shall be permitted to purchase any assets or supplies of the SCAQMD, except those items disposed of in an open public auction.
    - c. Upon finding that it is in the best interests of the SCAQMD, the SCAQMD Board may authorize transfer of equipment, supplies, and materials for nominal monetary consideration to public agencies, nonprofit organizations that meet the requirements of Section 501(c) of the Internal Revenue Code, or educational institutions for use in air quality improvement or other activities in the public interest.
  5. The Manager of the Procurement Section may upon written approval of the Executive Officer or his or her designee purchase unbudgeted fixed asset items having a total unit cost not exceeding \$10,000, (including freight and taxes). The purchase of unbudgeted fixed assets having a total unit cost in excess of \$10,000 shall be made by the Manager of the Procurement Section only after approval of such purchase by the SCAQMD Board.

## **SECTION V: CONSTRUCTION, ALTERATION, OR IMPROVEMENT OF SCAQMD FACILITIES**

### **A. Executive Officer approval required:**

1. The Executive Officer may contract for the construction, alteration, or improvement of SCAQMD facilities when the total cost of the proposed, budgeted construction, alteration, or improvement does not exceed \$75,000. The Executive Officer may approve up to an additional \$75,000 in costs in each subsequent fiscal year.
2. Depending on the nature of the work to be performed, detailed plans and specifications are not required. However, any change or alteration of such plans and specifications shall be in writing.
3. The contracting methods utilized by the Executive Officer under these provisions shall be in accordance with Section IV.B.
- 4.

### **B. Governing Board approval required:**

1. The SCAQMD Board may contract for the construction, alteration, or improvement of SCAQMD facilities.
2. The SCAQMD Board shall adopt detailed plans and specifications for the work.
3. All bidders shall be afforded the opportunity to examine the plans and specifications. Any changes or alterations of the plans and specifications shall be in writing.
4. The bidding procedures set forth in Section VI of this policy shall be followed for idle projects when the cost of proposed construction alteration or improvement is estimated to exceed \$75,000.
5. The SCAQMD Board shall, to the greatest extent practicable, award the contract to the lowest cost responsive bidder, except as provided in Section VI(B). The person to whom the contract is awarded shall perform the work in accordance with the plans and specifications.
6. The person to whom the contract is awarded shall execute a completion and performance bond, to be approved by the Executive Officer, for the faithful performance of the contract.
7. If the cost of work is reduced by reason of any modification of the plans and specifications, such reduced cost shall be credited to the SCAQMD.
8. If the cost of the work increases for any reason, the Executive Officer may authorize the additional work up to an amount not to exceed \$75,000 in any one fiscal year. The Executive Officer may approve up to an additional \$75,000 in costs in each subsequent

fiscal year. If the cost exceeds the original contract by over \$75,000 in any one fiscal year, Board approval will be required.

- C. All solicitations for construction, alteration, or improvement of **SCAQMD** facilities shall require contractors to comply with applicable federal laws including but not limited to the Copeland Anti-Kickback Act, the Davis Bacon Act, the Contract Work Hours and Safety Standards Act, Occupational Safety and Health Act and applicable state laws governing health and safety, workers compensation prevailing wage rates, and labor hours.

## **SECTION VI: BIDDING PROCEDURES**

### **A. Request for Quotations or Proposals**

1. When the term "Request for Quotations" (RFQ) or "Request for Proposal" (RFP) is used in this policy, the following is meant: The responsible staff person shall, in writing, solicit quotations from qualified bidders. The prospective bidders shall be sent an RFQ or RFP which specifies the materials, equipment, fixed assets, supplies, or services sought and the date by which bids are required, which date shall be at least 30 days from the date and time the RFQ or RFP is mailed. For RFQs or RFPs approved by the Executive Officer, waiver of the 30-day period may be approved by the Executive Officer. For any RFP or RFQ, the Executive Officer may extend the response period.
2. In all cases in which written specifications are prepared and submitted for public bid and a trade name is specified, the specifications shall contain the phrase "or equal" and a bidder shall be allowed to bid upon a specific trade name product or its equivalent in quality and performance.
3. Subject to other provisions of this policy, a bid will be awarded to the lowest responsive, qualified bidder whose bid is in accordance with prescribed requirements and/or specifications.
4. The preparation of detailed specifications or obtaining of bids may be waived by the Executive Officer or his or her designee if proper justification has been provided that:
  - a. The items are available from only one source;
  - b. Public health or property may be endangered by delay;
  - c. An emergency or interruption of **SCAQMD** operations has occurred;
  - d. Required construction, repair, or project completion dates cannot be met;
  - e. Used or surplus equipment or supplies cannot be covered by specifications or plans;  
or
  - f. Other circumstances exist which, in the determination of the Executive Officer, require waiver in the best interests of the **SCAQMD**.

### **B. Acceptance or Rejection of Bids**

1. The SCAQMD Board or appropriate officer may accept or reject all or any bids and quotations or may accept or reject a part of any bid and to waive technical defects if to do so best serves the interests of the SCAQMD. Preference will be given, however, to the lowest cost responsive bidder.
2. In the event all bids or quotations are rejected, the SCAQMD Board or appropriate officer, may take any of the following actions:
  - a. Solicit new bids or quotations. In the event that a "Notice Inviting Bids/Proposals" was required, the notice must be re-advertised.
  - b. Proceed to purchase equipment, materials, services, fixed assets or supplies through the State General Services Agency pursuant to Government Code Section 54205, if feasible.
3. The Executive Officer and/or Governing Board may award the contract to a bidder, other than the bidder determined to be the lowest bidder, in the event the Executive Officer and/or the Governing Board determine that another bidder would provide the best value to the SCAQMD. In such case, the supporting rationale for such a determination must be provided. The determination shall be on the bids or quotations and on evidence provided in the quotation and/or any other evidence provided during the bid review process. Evidence provided during the bid review process is limited to clarification by the bidder of information presented in his/her proposal/quotation.
4. In the event that no bids were received after a written solicitation or advertising, the SCAQMD Board or Executive Officer, may reissue the solicitations, or contract for the equipment, fixed assets supplies, materials, or services on a sole-source basis.

## **SECTION VII: PUBLICATION REQUIREMENTS FOR ADVERTISED PROCUREMENTS**

- A. For any purchase of alterations or improvements to SCAQMD facilities, services, materials, equipment, or fixed assets estimated to exceed \$25,000, the following procedures apply unless a written determination has been made by the Executive Officer or his or her designee that the estimated cost of the procurement does not justify the cost of advertising:
  1. A "Notice Inviting Bids/Proposals" shall be published in a newspaper of general circulation at least once a week for two successive weeks. Two publications in a newspaper published once a week or more often, with at least five days intervening between the respective publication dates are sufficient. The period of notice commences on the first day of publication and terminates at the close of business on the fourteenth day.
  2. One or more "Notices Inviting Bids/Proposals" shall be published in one or more of the following, whichever would allow the notice to be distributed to the largest number of persons or firms qualified to do the work:
    - a. Newspapers of general circulation (mandatory)

- b. California State Contracts Register
  - c. Journal of the Air & Waste Management Association
  - d. ARB Computer Bulletin Board
  - e. Professional journals and trade publications including small, minority, women, and veteran business publications, and
  - f. [SCAQMD Website on the Internet](#)
3. The "Notice Inviting Bids/Proposals" shall contain a brief description of the equipment, materials, supplies, or services sought, the address where the plans and/or specifications may be inspected or where additional information may be obtained, and time and place of delivery of the Bid or Proposal.
  4. A listing of open RFQs and RFPs will be made available to various legislative caucuses, community groups, trade organizations, chambers of commerce and other interested parties at the time the Notice Inviting Bids/Proposals is submitted for publication. Parties desiring copies of any of the RFQs or RFPs will be advised that a complete copy can be obtained by downloading it from the [SCAQMD](#) website or requesting a hard copy from the designated [SCAQMD](#) contact.

**SECTION VIII: CONTRACTING FOR CONSULTING AND PROFESSIONAL SERVICES**

**A. General**

1. It is the policy of the [SCAQMD](#) to utilize the most highly qualified professional services to carry out the responsibilities of the [SCAQMD](#).
2. Due to the nature of the work to be performed or the staffing level required, it may, from time to time, be necessary to utilize the services of outside contractors/consultants who are not employees of the [SCAQMD](#).

**B. Contracting Methods**

1. Proposals subject to this Section shall be advertised pursuant to the provisions of Section VII unless the Executive Officer waives the bidding requirements of this Section based upon a written documentation justifying a sole-source award, as described below
2. Except for contracts funded in whole or in part with federal funds, written justification for a sole-source award must be provided documenting that:
  - a. The cost of labor for preparation of the described documents exceeds the possible savings that could be derived from such detailed documents; or
  - b. Public health or property may be endangered by delay; or

- c. The desired services are available from only the sole-source based upon one or more of the following reasons:
    - (1) The unique experience and capabilities of the proposed contractor or contractor team;
    - (2) The project involves the use of proprietary technology;
    - (3) The contractor has ownership of key assets required for project performance; or
  - d. Other circumstances exist which in the determination of the Executive Officer require such waiver in the best interests of the SCAQMD. Such circumstances may include but are not limited to:
    - (1) Projects involving cost sharing by multiple sponsors
    - (2) Time extension of an existing contract;
    - (3) Projects involving a commitment to multiple project phases;
    - (4) Level-of-effort expert consultation services;
    - (5) Performance of SCAQMD work concurrent with local government official duties;
    - (6) Projects requiring compatibility with existing specialized equipment;
    - (7) Cooperative internship programs with accredited colleges and universities;
    - (8) Research and development efforts with educational institutions or nonprofit organizations.
3. For contracts funded in whole or in part with federal funds, written justification for sole-source award must be provided documenting that awarding a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and that one of the following circumstances applies:
- a. The item is available only from a single source;
  - b. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
  - c. The awarding federal agency authorizes noncompetitive proposals; or
  - d. After solicitation of a number of sources, competition is determined inadequate.

### C. Selecting the Appropriate Contracting Method



1. Prior to the letting of a contract for consulting or professional services, SCAQMD staff shall prepare the following:
  - a. A written assessment of the objectives of the project or study in which previous work, if any, on the same subject shall be reviewed, including an assessment of current and future SCAQMD needs for the project and an estimate of the project cost;
  - b. A statement of work to be performed in carrying out the project or study;
  - c. A statement of the qualifications of persons necessary to perform the work including a description of experience, education, and training, and related work in general and specific fields; and
  - d. An assessment of the resources needed to carry out the project or study including, facilities, laboratory, equipment, and computer hardware and software.
2. Based upon an evaluation of the documentation prepared pursuant to Paragraph C1 and any other information deemed necessary, the Executive Officer or his or her designee shall:
  - a. Evaluate the ability of SCAQMD staff to perform all or part of the work, taking into consideration SCAQMD staff resources and other work being performed by SCAQMD staff; or
  - b. If it is determined that all or part of the work should be done pursuant to a contract for professional consulting services, the Executive Officer shall determine if the services shall be procured on a sole-source basis in accordance with the criteria set forth in Paragraph B2 above or a competitive basis. On federally funded procurements, the requirements of Paragraph B3 above shall be applicable in accordance with 40 CFR 31.36 or applicable federal regulation. On contracts for budgeted items over \$75,000 or unbudgeted items over \$10,000, the Executive Officer shall recommend to the SCAQMD Board that a sole-source contract be awarded. If a sole-source contract is approved by the SCAQMD Board, it may designate who is authorized to execute the contract.
3. If it is determined that the services should be procured competitively, the SCAQMD staff member responsible for originating the requirement shall prepare an RFP using the most current version of the sample RFP contained on the SCAQMD computer network and prepare a Bidders Mailing List. At a minimum, the RFP should contain the following areas specifically tailored to the requirement:
  - a. Background/Schedule of Events
  - b. Section III of the SCAQMD Procurement Policy
  - c. Work Statement/Schedule of Deliverables
  - d. Required Qualifications
  - e. Proposal Submittal Requirements
  - f. Proposal Evaluation Criteria

g. Draft Contract

h. Certifications and Representations

4. All RFPs must be reviewed by the Manager of the Procurement Section prior to assignment of an RFP number by Procurement staff. RFPs for budgeted items over \$75,000 that deviate from approved SCAQMD RFP evaluation criteria and RFPs for unbudgeted items over \$10,000 must be approved by the SCAQMD Board prior to release. RFPs for budgeted items up to \$75,000 and unbudgeted items under \$10,000 that comply with SCAQMD RFP evaluation criteria shall be approved by the Executive Officer or his or her designee.
5. RFPs estimated to exceed \$25,000 will be advertised in accordance with the procedures set forth in Section VII. The Notice Inviting Proposals shall specify the services sought and the date by which proposals are required, which date shall be at least 30 days from the date and time the RFP is mailed. Waiver of the 30-day period may be approved by the Executive Officer.

D. Proposal Evaluation and Contract Award

1. Sole-source proposals or a competitive proposal which is the sole response to an RFP should be evaluated by the originator of the requirement to ensure that the proposal is technically acceptable and that the proposed amount is reasonable based on previous proposals for similar work, knowledge of the marketplace, and SCAQMD's independent cost estimate. Documentation regarding the reasonableness of the proposed cost must be provided along with the sole-source justification.
2. Competitive proposals will be evaluated by a panel of three-to-five SCAQMD staff familiar with the subject matter of the project. The panel shall be appointed by the Executive Officer or his or her designee to evaluate the submitted proposals. In addition, the evaluation panel may include such outside public sector or academic community expertise as deemed desirable by the Executive Officer. The Executive Officer or his or her designee shall appoint a chairman from this group.

a. Evaluation of Proposals.

Each member of the evaluation panel shall be accorded equal weight in his or her rating of the proposals. The evaluation panel members shall evaluate the proposals according to specified criteria and shall assign a numerical score to each evaluation factor. Suggested guidelines for technical criteria and weightings are set forth below, but may be modified by the RFP originator based upon the specific project requirements and approval by the responsible Deputy Executive Officer.

b. Sample Proposal Evaluation Criteria

(1) Standardized Services	<u>Points</u>
Understanding of Requirement	20
Contractor Qualification	20
Past Experience	10

Cost		<u>50</u>
	TOTAL:	100

(2) R&D Projects Requiring Technical or Scientific Expertise, or Special Projects Requiring Unique Knowledge or Abilities

Understanding the Problem		20
Technical/Management Approach		20
Contractor Qualifications		20
Previous Experience on Similar Projects		10
Cost		<u>30</u>

TOTAL 100

(3) Additional Points

Small Business or Small Business Joint Venture		10
DVBE or DVBE Joint Venture		10
Benefits Incentive Business		10
Use of DVBE or Small Business Subcontractors		7
Low-Emission Vehicle Business		5
Local Business (Non-Federal Funded Projects)		5
Off-Peak Hours Delivery Business		2
<b>Most Favored Customer</b>		<b><u>2</u></b>

To receive additional points in the evaluation process for the categories of Small Business or Small Business Joint Venture, DVBE or DVBE Joint Venture or Local Business (for non-federal funded projects), the proposer must submit a self-certification or certification from the State of California Office of Small Business Certification and Resources at the time of proposal submission certifying that the proposer meets the requirements set forth in Section III. To receive points for the use of DVBE and/or Small Business subcontractors, at least 25 percent of the total contract value must be subcontracted to DVBEs and/or Small Businesses. To receive points as a Low-Emission Vehicle Business, the proposer must demonstrate to the Executive Officer, or designee, that supplies and materials delivered to the **SCAQMD** are delivered in vehicles that operate on either clean-fuels or if powered by diesel fuel, that the vehicles have particulate traps installed. To receive points as an Off-Peak Hours Delivery Business, the proposer must submit, at proposal submission, certification of its commitment to delivering supplies and materials to **SCAQMD** between the hours of 10:00 a.m. and 3:00 p.m. **To receive points for Most Favored Customer status, the proposer must submit, at proposal submission, certification of its commitment to provide most favored customer status to the SCAQMD.** To receive points as a Benefits Incentive Business, the proposer must provide, at a minimum, health insurance at one of the levels identified in Paragraph d below. Documentation showing proof of such insurance coverage must be submitted with the proposal. The cumulative points awarded for Small Business, DVBE, use of Small Business or DVBE Subcontractors, Benefits Incentive Business, Local Business, Low-Emission Vehicle Business and Off-Peak Hour Delivery Business shall not exceed 15 points.

- c. The Procurement Section will be responsible for monitoring compliance of suppliers awarded purchase orders based upon use of low-emission vehicles or off-peak traffic hour delivery commitments through the use of vendor logs which will identify the contractor awarded the incentive. The purchase order shall incorporate terms which obligate the supplier to deliver materials in low-emission vehicles or deliver during off-peak traffic hours. The Receiving department will monitor those qualified supplier deliveries to ensure compliance to the purchase order requirements. Suppliers in non-compliance will be subject to a two percent of total purchase order value penalty. The Procurement Manager will adjudicate any disputes regarding either low-emission vehicle or off-peak hour deliveries.
- d. Benefits Incentive Businesses, in order to receive 10 additional points, must provide affordable health insurance to full-time employees, which are defined as employees who work 30 hours or more per week. Affordable health insurance is defined to mean meeting or exceeding the following minimum levels of coverage:

**Employee Deductibles/Fees**

**PPO Plan Design**

- In-Network Deductible \$500 single
- In-Network Out-of-Pocket Maximum \$2,500
- Out-of-Network Co-pay 30%
- Office Visit Co-pay \$20 per visit
- Retail Drug Co-pay \$11 (generic)/\$24(premium)/\$44(nonformulary)
- Mail Order Drug Co-pay \$14 (generic) /\$32 (premium)/\$57 (nonformulary)
- Single Contribution 10% or less of premium

**HMO Plan Design**

- Office Visit Co-pay \$20
- Inpatient Hospitalization \$250 deductible
- Emergency Room Co-pay \$50 per visit
- Retail Drug Co-pay \$11 (generic)/\$24(premium)/\$44(nonformulary)
- Mail Order Drug Co-pay \$14 (generic) /\$32 (premium)/\$57 (nonformulary)
- Single Contribution 10% or less of premium

Documentation to prove insurance coverage may include quotes from health insurance providers or a copy of the most recent health insurance invoice, with an attached Plan Summary. Documentation must not include medical information, employee names, or any personal employee information. An officer of the bidding company must certify in writing that the health insurance information provided is true and accurate and that, if selected, the company will provide health insurance to its full-time employees for the duration of the contract term at the same levels shown above or better. The selected Contractor will be required to update the proof of health insurance on an annual basis and to provide a certified copy of payroll if requested.

- e. For procurement of standardized services, technical factors including past experience shall be weighted at 50 points and cost shall be weighted at 50 points. For procurement of Research and Development (R & D) projects or projects requiring

technical or scientific expertise or special projects requiring unique knowledge and abilities, technical factors including past experience shall be weighted at 70 points and cost shall be weighted at 30 points. A proposal must receive at least 56 out of 70 points on R & D projects and projects for unique technical expertise in order to be deemed qualified for award.

- f. The responsible staff person shall prepare a summary of the proposal evaluations and a recommendation for the award to his or her responsible Deputy Executive Officer.
- g. The Executive Officer and/or Governing Board may award the contract to a proposer other than the proposer receiving the highest rating. In the event the Executive Officer and/or Governing Board determine that another proposer from among those technically qualified would provide the best value to the SCAQMD considering cost and technical factors, supporting rationale for such a determination must be provided. The determination shall be based solely on the Evaluation Criteria contained in the RFP, on evidence provided in the proposal and on any other evidence provided during the proposal review process. Evidence provided during the proposal review process is limited to clarification by the proposer of information presented in proposal.
- h. Contracts for budgeted items over \$75,000 and for unbudgeted items over \$10,000 must be approved by the SCAQMD Board. The Executive Officer may approve up to an additional \$75,000 in costs in each subsequent fiscal year. Contracts for budgeted items of \$75,000 or less and contracts for unbudgeted items of \$10,000 or less shall be approved by the Executive Officer and the Executive Officer may approve up to an additional \$75,000 in costs in each subsequent fiscal year. After approval by the Executive Officer or SCAQMD Board, the responsible staff person shall prepare a Contract Request Approval Memorandum, Scope Statement, Work Statement, and Cost or Payment Schedule and forward these documents to the Contracts Unit.
- i. The Contracts Unit will prepare the contract and forward all documents to the responsible staff person for final approvals by the ~~¶~~ DEO, or ADEO as applicable, Manager of the Procurement Section, SCAQMD Counsel and the Executive Officer. If the contract is funded in whole or in part with federal funds, the contract shall incorporate the awarding federal agency's applicable contract provisions as specified in the awarding agency's regulations (e.g. 40 CFR Part 31.36(i) for EPA grants, and 10 CFR Part 600.148 for DOE grants).
- j. Once approved, the Executive Officer or his or her designee or the Chair of the SCAQMD Board, and the successful proposer's authorized official will execute the contract.

## **SECTION IX: BID PROTEST PROCEDURE**

- A. It is the policy of the SCAQMD to consider protests from bidders or prospective bidders regarding SCAQMD's procurement actions. SCAQMD will respond to valid and timely protests. If SCAQMD determines that the protest is frivolous, the protester may be deemed ineligible for future contract awards.

## B. Procedure

1. General – The procedure set forth in this subsection is mandatory. Failure by a protester to comply with this subsection will constitute a waiver of any right to further pursue the protest, including the filing of a claim under the relevant Government Code section or initiating legal proceedings. In no event will a protest be considered if all proposals are rejected.
2. Submission of Protests – Protests must be submitted in writing to the SCAQMD Procurement Manager, 21865 Copley Drive, Diamond Bar, CA, 91765. A valid protest must include at a minimum:
  - a. Name, address and telephone number of the protester or its representative;
  - b. The procurement action being protested;
  - c. Detailed description of the specific legal and factual grounds of the protest, which include identifying the specific provisions of the solicitation, rules, regulations or laws upon which the protest is based;
  - d. Copies of all (or any) documentation supporting the allegations in the protest; and
  - e. The specific relief requested.
3. Types of Protests and Deadlines to File – SCAQMD will recognize the following types of protests:
  - a. Protest Regarding Solicitation – An interested party that is an actual or prospective bidder with a direct economic interest in the procurement may file a protest based on unduly restrictive or defective specifications or other apparent improprieties in the solicitation process affecting the interested party’s ability to submit a proposal and/or qualifications statements. Such protests must be received no later than ten (10) days prior to the deadline to submit proposals.
  - b. Protest Regarding Award of Contract – An actual bidder may file a protest regarding the award of a contract, based on SCAQMD’s determination of the responsiveness of the proposals, errors in calculation, or other apparent improprieties in the evaluation of proposals affecting the ranking/scoring of the proposals. In addition, a protest may be made on the grounds that the party awarded the contract fraudulently represented itself as a responsible bidder or that SCAQMD violated any local, State or federal laws in awarding the contract. Such protests must be received no later than ten (10) days after the contract has been awarded by the Governing Board. If the contract is not required to be awarded by the Governing Board and is awarded by the Executive Officer, or designee, in accordance with the Procurement Policy and Procedures, such protests must be received no later than ten (10) days after the contract is signed and executed by the Executive Officer, or designee.

4. SCAQMD's Response to Protests – Upon receipt of a valid and timely protest, the Executive Officer, or designee, will investigate the protest and will provide a written response to the protester within a reasonable time. If necessary, the Executive Officer, or designee, may extend the deadline to submit proposals to allow for a reasonable time to review the protest. The Executive Officer, or designee, at his or her sole discretion, may elect to withhold the contract award until the protest is resolved or denied or proceed with the award and implementation of the contract.
  
5. Protest Remedies – If the protest is upheld, the Executive officer, or designee, will consider all circumstances surrounding the procurement in his or her decision for a fair and reasonable remedy, including the degree of prejudice to the protester or to the integrity of the competitive procurement process, the urgency of the procurement, the extent of performance if the contract has already been executed and implemented, the cost to SCAQMD, and the impact of the proposed remedy. The remedy may include, but is not limited to, reissuance of the solicitation, revised evaluation of the proposals, or termination of the contract.

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