



STAFF REPORT

DATE: September 27, 2021
TO: Sacramento Regional Transit Board of Directors
FROM: Olga Sanchez-Ochoa, General Counsel
SUBJ: WAIVE THE FIRST READING OF THE AMENDED AND RESTATED PROCUREMENT ORDINANCE

RECOMMENDATION

Motion: Waive the First Reading of Ordinance 21-10-01, Amending and Restating Title I, "Procurement Ordinance" of SacRT's Administrative Code.

RESULT OF RECOMMENDED ACTION

Would provide for the revised Ordinance to be considered for adoption at the October 25, 2021, Board meeting.

FISCAL IMPACT

None

DISCUSSION

In 2018, by Ordinance 18-08-01, the Board amended and restated the Procurement Ordinance to make a number of significant edits to streamline and improve business processes. After having the revised Procurement Ordinance in place for three years, Staff has identified several additional areas for streamlining and improvement.

The following are the significant changes that would be made in the Amended and Restated Procurement Ordinance:

Delegating Authority to the General Manager/CEO to Approve Sole Source Procurements and Execute Litigation-Related Contracts

In 2018, the Board provided authority for the Chief Counsel to approve sole source procurements (without competition) for litigation-related services, including expert witnesses and outside counsel. However, this authority, in Section 1.405.B.3 of the current Procurement Ordinance, did not provide any corresponding authority for the General Manager/CEO or Chief Counsel to approve contracts in excess of \$150,000, which authority is reserved to the Board of Directors under Section 1.503 of the Ordinance, in the absence of a specific delegation.

Consequently, expert witness and outside counsel contracts in excess of \$150,000 must be approved by the Board. This requirement can result in premature disclosure to a plaintiff of SacRT's experts and litigation strategy.

In addition, since 2018, the personal injury tort litigation function has been moved to the Risk Department, under the General Manager/CEO and CFO, making it inappropriate for the General Counsel to approve sole source determinations for personal injury tort litigation-related contracts.

To improve SacRT's ability to quickly engage experts and outside counsel and successfully litigate claims, Staff is requesting that authority be delegated to the General Manager/CEO to both: (a) approve sole source procurements for litigation-related contracts; and (b) approve all litigation-related contracts, regardless of value.

Changes to Requirements for Ratification

In the 2018 Ordinance update, the Board added language permitting "ratification" of unauthorized procurements in specified circumstances. This language allows a contractor that proceeded in good faith to perform work or provide supplies to SacRT at a reasonable price to receive payment even in the absence of a properly-executed contract.

The current language specifies that, in order to be eligible for ratification, there must be a "written agreement" that is not valid solely because either: (a) the SacRT representative who made it lacked the authority to enter into that agreement on behalf of SacRT, or (2) it was not reviewed and approved by the General Counsel.

Since adoption of this language, there have been a number of situations where there was written documentation supporting the existence of an agreement between SacRT staff and a contractor, but it did not meet the requirement of a bilateral "written agreement." In other instances, there was a verbal agreement regarding the work to be performed, but no written documentation in advance of performance of work (e.g., the only evidence of the agreement is a written invoice submitted after completion of work).

While Procurement Staff is continuing to provide training and assistance to Staff regarding the appropriate procurement procedures to avoid the need for ratification, there is a desire to provide additional flexibility in the ratification language to enable contractors to be paid for work performed or services provided. The proposed revision would substitute "documented in writing" for "written agreement" and provide a definition of what constitutes adequate written documentation. For unauthorized procurements over \$3,000, the language would provide that at least one of the parties must have provided a written offer, which could have been accepted verbally. For unauthorized procurements up to \$3,000, the SacRT employee ordering the supplies or services would be able to provide a written attestation, executed under penalty of discipline, documenting the terms of the agreement as an alternative to a written offer.

The ratification language does not provide an exception to any otherwise-applicable competition requirements or requirements to determine that the price is fair and reasonable. Ratification is a discretionary action by the Board or General Manager/CEO,

as applicable and will not be done when there is evidence of abuse of the process, either by SacRT Staff or the contractor.

Authority to Approve Amendments to Supply and Service Contracts

Two changes are proposed to Section 1.505, which sets out the General Manager/CEO's authority to approve amendments to Contracts. Currently, if the Board approves a Contract, the General Manager's authority to approve amendments to that Contract is limited to an aggregate amount of the lesser of: (a) \$150,000; or (b) 15% of the initial Contract value (for instance, if a Contract is approved for \$300,000, the General Manager/CEO can only approve amendments totaling \$45,000). Setting the amendment limit at \$150,000, regardless of the initial Contract value, is more consistent with the General Manager/CEO's overall contracting authority and provides more flexibility to adapt to necessary Contract changes that have a minor fiscal impact.

For Contracts awarded after an informal solicitation (less than \$150,000), the General Manager/CEO cannot currently approve an amendment that would increase the value of the Contract, considering all previously-approved amendments, to an amount above \$150,000. The proposed changes would create an exception to that general rule to permit the General Manager/CEO to approve an amendment to such Contracts if the amendment is needed to prevent a disruption in the delivery of supplies or provision of services until the next regularly-scheduled Board meeting, where such disruption would result in substantial harm to SacRT's continued operations. This is similar to the exception that exists for execution of Contract Change Orders related to public works projects.

Delegation of Authority

A clarifying change to Section 1.507, related to specific delegations of authority from the Board to the General Manager/CEO, would expressly specify that a delegation of authority from the Board to award a contract or contracts also includes authority to approve a non-competitive and sole source procurement.

As a minor change, the term "Chief Counsel" will be updated throughout the document to "General Counsel" to reflect the change in title for this position.

The proposed changes to the current Title I are shown in Attachment 1. Staff is requesting that the Board waive the First Reading of Ordinance No. 21-10-01. If the Board waives the First Reading, the Ordinance will be brought back for approval at the October 25, 2021 Board meeting.

ORDINANCE NO. 21-10-01

Adopted by the Board of Directors of the Sacramento Regional Transit District on this date:

October 25, 2021

**AMENDING AND RESTATING CHAPTERS
1 AND 2 OF TITLE I, PROCUREMENT ORDINANCE,
OF THE SACRT ADMINISTRATIVE CODE**

THE BOARD OF DIRECTORS OF THE SACRAMENTO REGIONAL TRANSIT DISTRICT DO ORDAIN AS FOLLOWS:

SECTION 1:

This Ordinance is adopted pursuant to the authority set forth in Public Utilities Code Section 102121(d). This Section authorizes the SacRT Board of Directors to adopt an Administrative Code prescribing the powers and duties of District officers. Public Utilities Code Section 102107 provides, in part, that: No ordinance shall be passed by the board on the day of its introduction, nor within three days thereafter, nor at any time other than at a regular or adjourned regular meeting.

SECTION 2:

Ordinance 18-08-01 (Chapters 1 and 2 of Title I of the Sacramento Regional Transit District Administrative Code) is hereby repealed.

SECTION 3:

Chapters 1 and 2 are hereby added to Title I of the Sacramento Regional Transit District Administrative Code to read as follows:

TITLE I - PROCUREMENT ORDINANCE

CHAPTER 1

SOLICITATION AND AWARD OF CONTRACTS

Article I General Requirements

- §1.101 Purpose
- §1.102 Definitions
- §1.103 Procurements not Requiring a Solicitation or Contract
- §1.104 Administrative Procedures
- §1.105 Ratification of Unauthorized Procurement
- §1.106 Splitting Procurement Prohibited
- §1.107 Collusion with Bidder or Proposer
- §1.108 Collusion between Bidders or Proposers
- §1.109 Compliance with Federal Law
- §1.110 Execution of Contracts
- §1.111 Severance

Article II Contents of Solicitation Documents

- §1.201 Bid Forms
- §1.202 Bid Security on Public Works Contracts

Article III Solicitation Procedures

- §1.301 Approval of Solicitations
- §1.302 Advertising Requirements for IFBs
- §1.303 Advertising Requirements for RFPs
- §1.304 Submittal of Sealed Bids and Proposals
- §1.305 Opening of Bids

Article IV Evaluation of Bids and Proposals

- §1.401 Responsibility Factors
- §1.402 Responsiveness
- §1.403 Application of Responsibility Factors
- §1.404 Evaluation of Proposals Submitted in Response to an RFP
- §1.405 Noncompetitive and Sole Source Procurement
- §1.406 Best Value Procurement for Supplies
- §1.407 Cooperative Purchase Agreements **and Use of Government Schedule**

Article V Awarding Procurements and Issuing Change Orders

- §1.501 Award to Lowest Responsible Bidder
- §1.502 Award to Best Value or Most Qualified Proposer
- §1.503 Authority to Award Procurements Exceeding \$150,000
- §1.504 Authority to Award Procurements of \$150,000 or Less

- §1.505 Authority to Approve Amendments to SUPPLY and SERVICE CONTRACTS
- §1.506 Authority to Issue Change Orders for Public Works Contracts
- §1.507 Delegation of Authority
- §1.508 Award in Case of Identical Bids
- §1.509 Rejection of Bids/Proposals; Waiver of Minor Irregularities
- §1.510 Alternative Award; Failure to Enter into Contract

Article VI
Debarment

- §1.601 Scope of Debarment Procedure
- §1.602 Violations Subject to Debarment
- §1.603 Debarment Procedures
- §1.604 General Manager's/Board of Directors' Decision
- §1.605 Effect of Debarment on Submittal of Bids or Proposals

CHAPTER 2

DISPOSAL OF SURPLUS PROPERTY

- §2.101 Authority for Disposal of Surplus Personal Property
- §2.102 Procedure for Disposal of Surplus Personal Property
- §2.103 Incidental Sale of Certain Items
- §2.104 Sale to Another Public Entity
- §2.105 Limitation Upon Employees of RT

CHAPTER 1

SOLICITATION AND AWARD OF CONTRACTS

Article I General Requirements

§1.101 Purpose

The purpose of this Ordinance is to promote competition in SacRT procurements and to ensure all vendors have an equal opportunity to participate in the procurement process in a fair manner, with the view towards ensuring judicious use of the funds entrusted to SacRT and to facilitate the transit services SacRT is charged with providing. A non-exhaustive list of laws and regulations applicable to SacRT as it strives to achieve these objectives is attached as Attachment 1 to this Title.

§1.102 Definitions

The following capitalized words and phrases whenever used in this Chapter must be construed as defined below:

- A. ARCHITECT AND ENGINEERING SERVICES (A&E SERVICES) means 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 (*Government Code* §4525, FTA Circular 4220.1f, Ch. IV(2)(h).
- B. BEST VALUE means the overall combination of quality, price, and other elements of a PROPOSAL that, when considered together, provide the greatest overall benefit in response to the requirements described in the SOLICITATION DOCUMENTS.
- C. BID means a written or oral offer of a BIDDER to provide goods, services or work in response to a SOLICITATION where award will be made to the lowest responsive and responsible BIDDER.
- D. BIDDER means any individual, firm, partnership, corporation or combination thereof submitting an offer to provide goods, services or work in response to a SOLICITATION where award will be made to the lowest responsive and responsible bidder.
- E. BOARD means the Board of Directors of the Sacramento Regional Transit District.
- F. ~~CHIEF COUNSEL means the Chief Counsel of SACRT or his or her designee acting pursuant to a delegation.~~
- F. CONTRACT means a written agreement executed by an authorized representative of SACRT that binds SACRT to a course of action, including, without limitation, letter of agreement, memorandum of understanding, contract, contract change order, purchase order, work

order, or an amendment or supplemental agreement to any of the foregoing.

- G. CONTRACTOR means an individual or entity that enters into a CONTRACT with SACRT.
- H. DAYS mean calendar days unless preceded by “working.” When “working days” is used, it refers to Monday through Friday, excluding State-recognized holidays.
- I. FORMAL SOLICITATION means a SOLICITATION that requires issuance of a SOLICITATION DOCUMENT, full and open competition, advertisement, and a sealed response.
- J. FTA means the United States Department of Transportation, Federal Transit Administration.
- K. **GENERAL COUNSEL means the GENERAL COUNSEL of SACRT or their designee acting pursuant to a delegation.**
- L. GENERAL MANAGER means the General Manager/CEO of SACRT or his/her designee acting pursuant to a delegation.
- M. INFORMAL SOLICITATION means a SOLICITATION that does not require advertisement, full and open competition, nor a sealed response. An INFORMAL SOLICITATION may include oral requests for BIDs or PROPOSALS.
- N. INVITATION FOR BID (IFB) means a SOLICITATION for submittal of sealed BIDs for SUPPLIES, NONPROFESSIONAL SERVICES or a PUBLIC WORKS project to be awarded to the lowest responsive and responsible BIDDER.
- O. LETTER OF SOLICITATION means a type of INFORMAL SOLICITATION in which potential offerors are provided with a written scope of work and invited to submit written responses/offers.
- P. NONPROFESSIONAL SERVICES means and includes all services that are not PROFESSIONAL SERVICES.
- Q. PERSONAL PROPERTY means a movable or intangible thing, not real property or a fixture to real property, that is owned by SACRT.
- R. PROCUREMENT means a SOLICITATION for an initial CONTRACT for SUPPLIES, SERVICES and PUBLIC WORKS and modifications for existing CONTRACTS, including amendments, Contract Change Orders, Work Orders, and the exercising of CONTRACT options.
- S. PROFESSIONAL SERVICES means and includes services that involve labor and skills that are predominantly mental or intellectual rather than physical or manual, where the providers of the service are members of disciplines requiring special knowledge or the attainment of a high level of learning or skill, including, without limitation, services rendered by

accountants, actuaries, appraisers, architects, attorneys, consultants, doctors, and engineers.

- T. PROPOSAL means a written or oral offer to provide goods, services or work in response to a SOLICITATION where award will be based on a determination of the response that offers the BEST VALUE to SACRT.
- U. PROPOSER means any individual, firm, partnership, corporation or combination thereof submitting a PROPOSAL in response to a SOLICITATION where award will be based on a determination of the response that offers the BEST VALUE to SACRT.
- V. PUBLIC WORKS means a project for the erection, construction, alteration, repair or improvement of any public structure, building or other public improvement of any kind. (*Public Contract Code* §1101).
- W. PURCHASE means the acquisition, renting, or leasing of SUPPLIES.
- X. RATIFICATION means the act of approving an UNAUTHORIZED PROCUREMENT by an official who has the authority to do so.
- Y. REQUEST FOR PROPOSAL (RFP) means a written SOLICITATION DOCUMENT by which PROPOSALS are solicited and a CONTRACT is awarded based on a determination of the PROPOSAL that offers the BEST VALUE.
- Z. REQUEST FOR INFORMATION AND QUALIFICATIONS (RFIQ) is a term used to describe the competitive selection process when selection is based primarily on the qualifications set forth in the proposal, such as Architectural/Engineering Services and artist selections.
- AA. REQUEST FOR QUOTE (RFQ) is an INFORMAL SOLICITATION document used to request offers for SERVICES or SUPPLIES when formal advertising is not required.
- BB. SACRT means the Sacramento Regional Transit District as established and operated under Part 14, Division 10 of the *California Public Utilities Code*.
- CC. SOLICITATION means the process used to communicate PROCUREMENT requirements and request responses from interested vendors. A SOLICITATION may be, but is not limited to, an INVITATION FOR BID, REQUEST FOR PROPOSAL, REQUEST FOR QUOTE, LETTER OF SOLICITATION or oral requests for BIDS or PROPOSALS.
- DD. SOLICITATION DOCUMENT means documents used to request BIDS, PROPOSALS or quotations (offers) from suppliers for the goods, works or SERVICES required. Types of SOLICITATION DOCUMENTS include IFB, RFP, RFQ, REQUEST FOR QUOTE, and LETTER OF SOLICITATION.
- EE. SERVICES mean PROFESSIONAL AND/OR NON-PROFESSIONAL SERVICES, or both, in accordance with the context.

FF. SUPPLIES means and includes personal property, goods, equipment and materials, including, without limitation, materials required for the maintenance or repair of any property of SACRT or of any other person or agency for which it is the duty of SACRT to maintain or repair.

GG. UNAUTHORIZED PROCUREMENT is ~~a written~~ **an agreement to acquire goods or services on behalf of SACRT that is documented in writing and** that is not binding solely because (1) the SACRT representative who made it lacked the authority to enter into that agreement on behalf of SACRT, or (2) the CONTRACT was not executed in accordance with Section 1.109. The only individuals who can bind SACRT are the Board Chair, the General Manager/CEO, their authorized delegates, and purchase cardholders acting within the limits of their delegated authority. **For purposes of this definition only, “documented in writing” includes: (1) written offers that are accepted either verbally or in writing by either SacRT staff or the provider of goods or services prior to performance; and (2) for PURCHASES up to \$3,000 only, a written attestation by the SacRT employee ordering the SUPPLIES or SERVICES, executed under penalty of discipline, documenting the terms of the agreement. A vendor invoice submitted after the SUPPLIES are provided or SERVICES are performed does not constitute the required written documentation.**

§1.103

Expenditures Not Requiring a Solicitation or a Contract

The following types of EXPENDITURES do not require a SOLICITATION or a CONTRACT:

1. Public utility charges based on an adopted rate and service structure;
2. Permits and fees imposed by public agencies or public or private utilities for SERVICES;
3. Subscriptions for periodicals and books related to SACRT operations;
4. Advertisements in newspapers, magazines or professional journals or on radio or television when the advertisement is targeted to specific types of subscribers or viewers;
5. Travel expenses, including without limitation airline, car rental and hotel charges;
6. Conference registration fees;
7. Membership dues and fees of professional and nonprofit organizations related to SACRT operations;
8. Deposition fees, arbitration fees, **mediation fees**, appraisal fees, jury fees, photocopies, and witness fees;
9. SERVICES and SUPPLIES, below the federal micro-purchase threshold, purchased under the Procurement Credit Card Program authorized in a BOARD-adopted resolution;
10. SERVICES and SUPPLIES costing, in the aggregate, for a single purchase, up to and including \$200.

Other than the exceptions set forth above, all PROCUREMENTs of SUPPLIES and SERVICES costing in excess of \$200 require use of a CONTRACT.

The ~~CHIEF COUNSEL~~**GENERAL COUNSEL** may issue a written determination that a CONTRACT is not required for a specific SERVICE or SUPPLY. The GENERAL MANAGER shall establish control procedures for PROCUREMENTs not requiring a SOLICITATION or CONTRACT.

§1.104 **Administrative Procedures**

The GENERAL MANAGER may prepare administrative procedures to carry out the intent of this Chapter. The procedures must establish a system for INFORMAL SOLICITATIONS. The system for INFORMAL SOLICITATIONS must incorporate the responsibility and responsiveness factors identified in Section 1.401 and 1.402 of this Ordinance. In addition, to ensure compliance with *Public Utilities Code* Section 102222, for PROCUREMENTS for SUPPLIES, the administrative procedures must require that, “to the extent practicable, when the expected procurement required exceeds \$3,000 but does not exceed \$100,000, a minimum of three quotations shall be obtained, either written or oral, which permit prices and other terms to be compared.” This dollar threshold excludes sales and use tax but includes, postage, handling, shipping and freight charges in determining the procurement requirements.

§1.105 **Ratification of Unauthorized Procurement**

A. SACRT is not bound by UNAUTHORIZED PROCUREMENTS unless they are ratified. Ratification may be authorized by the GENERAL MANAGER or BOARD, as applicable, only under the following conditions:

1. SACRT must take positive action to preclude, to the maximum extent possible, the need for RATIFICATION actions. Although procedures are provided in this section for use in those cases where the RATIFICATION of an UNAUTHORIZED PROCUREMENT is necessary, these procedures may not be used in a manner that encourages such commitments being made by SACRT personnel.
2. Subject to the limitations in paragraph (B) of this subsection, the GENERAL MANAGER or BOARD, as applicable, may ratify an UNAUTHORIZED PROCUREMENT.
3. The RATIFICATION authority in subparagraph (A)(2) of this subsection may be delegated in accordance with SACRT procedures.

B. Limitations. The authority specified above may be exercised only when:

1. Supplies or services have been provided to and accepted by SACRT, or SACRT otherwise has obtained or will obtain a benefit resulting from performance of the UNAUTHORIZED PROCUREMENT;
2. The ratifying official has the authority to enter into a contractual commitment;
3. The resulting contract would otherwise have been proper if made by an appropriate contracting officer;
4. The contracting officer reviewing the UNAUTHORIZED PROCUREMENT determines the price to be fair and reasonable; and

5. Sufficient funds are available.

The GENERAL MANAGER must institute procedures for the initiation of a ratification request, documentation required, review and approval or denial of the request. All requests for ratification must be reviewed by the ~~CHIEF COUNSEL~~**GENERAL COUNSEL** for legality before being presented to the GENERAL MANAGER or BOARD, as applicable.

Request for ratification of an UNAUTHORIZED PROCUREMENT by the GENERAL MANAGER must be approved by the BOARD, even if the CONTRACT is otherwise within the GENERAL MANAGER's authority.

§1.106 **Splitting Procurement Prohibited**

Splitting or separating SACRT requirements into smaller units for the purpose or with the effect of evading the provisions of this Chapter or any other requirements for full and open competition is prohibited. Splitting or separating a PROCUREMENT means and includes buying a SUPPLY or SERVICE repetitively, at frequent intervals, when there is no good business or program reason not to consolidate requirements and solicit bids or proposals for a length of time and for such quantities as to maximize price competition.

§1.107 **Collusion With Bidder or Proposer**

BIDDERS and PROPOSERS are prohibited from colluding with SACRT employees and officers. Collusion includes, without limitation, knowingly doing any of the following:

- A. Aiding or assisting a BIDDER or PROPOSER in securing a CONTRACT at a higher price than that proposed by any other BIDDER or PROPOSER; or
- B. Favoring one BIDDER or PROPOSER over another by giving or withholding information; or
- C. Willfully misleading any BIDDER or PROPOSER as to the character of the work or service to be performed or product to be supplied; or
- D. Accepting SUPPLIES, SERVICES, or PUBLIC WORKS that are inferior to that called for in the CONTRACT for reasons unrelated to the best interests of SACRT; or
- E. Falsely reporting the receipt of a greater amount or a different kind of SUPPLIES, SERVICES, or PUBLIC WORKS than has been actually received; or
- F. Intentionally acting or failing to act in relation to a BID/BIDDER or PROPOSAL/PROPOSER by wrongfully favoring a BIDDER's or PROPOSER's interest over SACRT's interests.

Any BID or PROPOSAL received or CONTRACT awarded where there was a violation of this section is null and void. SACRT will dispose of the matter

in the same manner as if the BIDDER or PROPOSER involved had failed to enter the CONTRACT after award.

§1.108 **Collusion Between Bidders or Proposers**

It is prohibited for a BIDDER or PROPOSER to:

- A. Propose or bid prices that have not been arrived at independently without consultation, communication, or agreement with any other BIDDER, offeror or competitor for the purpose of restricting competition as to any matter relating to the prices bid or proposed; or
- B. Knowingly disclose any price bid or proposed to any other BIDDER, offeror or to any competitor prior to opening of the bids or PROPOSALS, unless otherwise required by law; or
- C. Make any attempt to induce any other person, firm or other entity or association to submit or not to submit a BID or PROPOSAL for the purpose of restricting competition; or
- D. Knowingly be interested in more than one BID as the principal BIDDER; provided, however, subcontract bids to the principal BIDDERS or PROPOSERS are excluded from this paragraph D.

In case of joint venture bids or PROPOSALS, the joint venture itself and each and every member of the joint venture must, for the purposes of the foregoing, be construed to be the person submitting the BID or PROPOSAL.

Any BID or PROPOSAL received or CONTRACT awarded where there was a violation of this section is null and void. SACRT will dispose of the matter in the same manner as if the BIDDER or PROPOSER involved had failed to enter the CONTRACT after award.

§1.109 **Compliance with Federal Law**

Pursuant to *California Government Code* Section 53702, a PROCUREMENT funded in full or in part pursuant to the terms of a federal grant or loan must be advertised, prepared, awarded, performed, and administered in compliance with all applicable requirements of federal laws, regulations and orders whenever compliance with those laws, regulations and orders is a prerequisite of federal financial assistance.

§1.110 **Execution of Contracts**

The GENERAL MANAGER must institute procedures for the execution of CONTRACTS as required in **this Ordinance**. The **GENERAL COUNSEL** must approve the legality of all CONTRACTS prior to the execution thereof, with the exception of those CONTRACTS that the **GENERAL COUNSEL** has authorized to be executed on a standard form reviewed and approved by the **GENERAL COUNSEL**, including but not limited to purchase orders for SUPPLIES. If the GENERAL MANAGER will be unavailable to sign a CONTRACT, s/he or the BOARD may delegate such authority in writing to a named SACRT employee who will be authorized to sign CONTRACTS on

behalf of the GENERAL MANAGER. A copy of such authorization must be filed with the Clerk to the BOARD.

§1.111

Severance

If any provision or part of this Ordinance conflicts with state or federal laws, regulations, or grant conditions applicable to SACRT PROCUREMENTS, or decisional law binding upon SACRT, the provision or part in conflict shall be deemed severed from this Ordinance and the remainder shall stay in full force and effect.

Article II
Contents of Solicitation Documents

§1.201 **Bid Forms**

All BIDS for FORMAL SOLICITATIONS must be made on forms provided by SACRT. The execution of the forms by BIDDERS will be subject to procedures formulated by the GENERAL MANAGER, which must include controls over erasures, corrections, and interlineations.

§1.202 **Bid Security on Public Works Contracts**

For any PUBLIC WORKS CONTRACT, the SOLICITATION DOCUMENTS must require the BIDDER to submit with the BID as security one of the following:

- A. Cash; or
- B. Cashier's check or certified check made payable to SACRT; or
- C. Bidder's bond executed by an admitted surety insurer and made payable to SACRT.

The security must be in an amount determined by SACRT to be sufficient but must not exceed 10% of the total bid amount.

If the successful BIDDER fails to execute and return the CONTRACT or, if applicable, provide all required insurance certificates and bonds within 20 days after the CONTRACT is provided for execution by SACRT, the BID security must be forfeited in favor of SACRT. Upon good cause being shown, the GENERAL MANAGER in his or her discretion, may extend the time for the BIDDER to enter the CONTRACT for a period not to exceed an additional 30 days.

Upon award to the lowest responsible BIDDER, SACRT must return the security of an unsuccessful BIDDER no later than 60 days after CONTRACT award. However, if a BID protest is timely filed, the security of unsuccessful BIDDERS will not be returned until the expiration of the BID validity period. The BID security of the successful BIDDER must be returned after execution of the CONTRACT and receipt of the applicable insurance certificate and performance, payment and service disruption bonds (*Public Contract Code § 20322*).

Article III Solicitation Procedures

§1.301 Approval of Solicitations

For a PROCUREMENT expected to be awarded for an amount in excess of the amounts set out in Section 1.302 and Section 1.303 for a CONTRACT for PUBLIC WORKS, SUPPLIES, NONPROFESSIONAL SERVICES or PROFESSIONAL SERVICES, respectively, a written IFB or RFP must be prepared and thereafter approved by the GENERAL MANAGER and the **GENERAL COUNSEL** prior to its release.

§1.302 Advertising Requirements for IFBs

IFBs for CONTRACTS expected to be awarded for an amount in excess of \$5,000 for PUBLIC WORKS, \$100,000 for SUPPLIES, and \$150,000 for NONPROFESSIONAL SERVICES must:

- A. Be publicly advertised not less than 10 days prior to the date established for the BID submittal. Advertising may be accomplished through posting on SacRT's website or through an e-Procurement portal.
- B. If time permits, IFBs may be advertised once in local minority newspapers.

§1.303 Advertising Requirements for RFPs

RFPs for SUPPLY CONTRACTS expected to be awarded for an amount in excess of \$100,000 or for PROFESSIONAL OR NONPROFESSIONAL SERVICES CONTRACTS expected to be awarded for an amount in excess of \$150,000 must:

- A. Be publicly advertised not less than 10 calendar days prior to the date established for the PROPOSAL submittal. Advertising may be accomplished through posting on SacRT's website or through an e-Procurement portal.
- B. If time permits, RFPs may be advertised once in local minority newspapers, and for PROFESSIONAL SERVICES, in professional trade publications at least 10 calendar days before the PROPOSAL submittal date.

Advertising is not required when an RFP is released to firms or persons on an approved listing generated in response to a Request for Qualifications (RFIQ), if the RFP is limited to the category of work or service for which the listing was approved.

§1.304 Submittal of Sealed Bids and Proposals

All BIDS/PROPOSALS for CONTRACTS expected to be awarded for an amount in excess of \$5,000 for PUBLIC WORKS, \$100,000 for SUPPLIES, and \$150,000 for both NONPROFESSIONAL SERVICES and PROFESSIONAL SERVICES must be submitted to the GENERAL

MANAGER at the place and time, and in the manner specified in the public notice inviting BIDs/PROPOSALS. The time specified in the public notice may be extended and notice of the extension may be given by addendum to the SOLICITATION DOCUMENTS. Submittals received after the specified time will not be accepted.

§1.305 Opening of Sealed Bids

Sealed Bids will be opened by the GENERAL MANAGER, in public, or online through the eProcurement system, at the time and place designated in the notice inviting BIDs. The time specified in the public notice may be extended and notice of the extension may be given by addendum to the SOLICITATION DOCUMENTS.

§1.306 Failure to Adhere to Solicitation Procedure – Services Contracts

A CONTRACT for PROFESSIONAL or NONPROFESSIONAL SERVICES approved by the BOARD or GENERAL MANAGER, as applicable, in accordance with the authority set out in the Ordinance is not void or voidable by either party to the CONTRACT or any third party due to failure to adhere to any solicitation procedure set forth in Article III.

Article IV Evaluation of Bids and Proposals

§1.401 Responsibility Factors

In determining whether a BIDDER or PROPOSER is responsible, consideration must be given to each of the following factors:

- A. The ability, capacity, trustworthiness, and skill of the BIDDER or PROPOSER to satisfactorily perform the CONTRACT;
- B. The ability of the BIDDER or PROPOSER to perform the CONTRACT within the time specified, without delay;
- C. The character, integrity, reputation, judgment, experience and efficiency of the BIDDER or PROPOSER;
- D. The quality of BIDDER's or PROPOSER's performance on previous CONTRACTS with SACRT.

§1.402 Responsiveness

- A. A BID/PROPOSAL is responsive if it materially conforms with the information and documents required by the IFB, RFP, or RFQ in the form and at the time required by the IFB, RFP, or RFQ, and the BIDDER/PROPOSER is offering to perform pursuant to the IFB, RFP, or RFQ requirements.
- B. If good faith efforts are required to comply with a BOARD-adopted program or procedure to promote the participation and use of minority-owned business enterprises, women-owned business enterprises, disadvantaged business enterprises, local business enterprises and/or small business enterprises, the BIDDER/PROPOSER must demonstrate such efforts to be deemed responsive.
- C. BID/PROPOSAL Irregularities: Material vs. Non-Material - Factors to consider in determining whether a BID/PROPOSAL may be accepted though not strictly responsive are whether the deviation: could be a vehicle for favoritism, affect amount of bid, influence potential bidders to refrain from bidding, or affect ability to make bid comparisons.

§1.403 Application of Responsibility Factors to IFBs

CONTRACTS for PUBLIC WORKS, SUPPLIES, or NONPROFESSIONAL SERVICES for which BIDs were solicited using an IFB must be awarded to the lowest BIDDER submitting a responsive BID as provided by Section 1.501, unless the BOARD or GENERAL MANAGER makes a finding that such BIDDER is not responsible based upon its failure to satisfy one or more of the criteria set forth in Section 1.401.

§1.404 Evaluation of Proposals Submitted in Response to an RFP

Proposals submitted in response to an RFP will be evaluated based upon the criteria set out in the RFP. Evaluation of Architectural and Engineering

(A&E) CONTRACTS must follow the Brooks Act and California *Government Code* Section 4525 and following. SACRT may reject any PROPOSER that is not responsible or any PROPOSAL that is nonresponsive, it may waive any required information for all PROPOSERS, and it may waive minor irregularities in any PROPOSAL as provided in Section 1.509.

The evaluation process for non-A&E CONTRACTs will be based on one of two alternative methods:

- (1) A tradeoff process, where other factors are weighed against price and award may be made to other than the lowest-priced offeror or other than the highest-technically-rated offeror; or
- (2) The lowest-price technically acceptable source selection process, where award will be made to the lowest-priced PROPOSER that satisfies the technical requirements.

§1.405 Noncompetitive and Sole Source Procurement

A. Federally-Funded Procurements

The federal Common Grant Rules (49 C.F.R. Part 18) require recipients to use PROCUREMENT procedures that provide full and open competition unless the PURCHASE is below the micro-purchase threshold. The procedures developed by the GENERAL MANAGER under Section 1.103 must provide for full and open competition to the extent required by federal law and guidance.

Noncompetitive PROCUREMENTs may be used only when the PROCUREMENT is inappropriate for small purchase procedures, sealed BIDs, or competitive PROPOSALS, and at least one of the following circumstances are present:

1. The SUPPLIES or SERVICES are available from only one source due to the following conditions:
 - a Unique or Innovative Concept. The offeror demonstrates a unique or innovative concept or capability not available from another source. Unique or innovative concept means a new, novel, or changed concept, approach, or method that is the product of original thinking, the details of which are kept confidential or are patented or copyrighted, and is available to the recipient only from one source and has not in the past been available to the recipient from another source.
 - b Patents or Restricted Data Rights. Patent or data rights restrictions preclude competition.
 - c Substantial Duplication Costs. In the case of a follow-on CONTRACT for the continued development or production of highly specialized equipment and major components thereof, when it is likely that award to another contractor would result in substantial

duplication of costs that are not expected to be recovered through competition.

- d Unacceptable Delay. In the case of a follow-on CONTRACT for the continued development or production of a highly specialized equipment and major components thereof, when it is likely that award to another contractor would result in unacceptable delays in fulfilling the recipient's needs.
2. For SUPPLIES or PUBLIC WORKS upon a declaration of emergency (unusual or urgent need) supported by a 4/5ths vote of the BOARD.
3. Noncompetitive PROCUREMENT is otherwise authorized by the FTA, as set out in federal law, rules, regulations or circulars and also under state statutes and/or case law.

In addition to the foregoing, with the exception of circumstances that meet Section 1.405.A.2, for federally-funded PUBLIC WORKS CONTRACTS over \$5,000 or SUPPLY CONTRACTS over \$100,000, the BOARD or GENERAL MANAGER, as applicable, must determine that efforts to seek competition would be futile.

The BOARD or GENERAL MANAGER, as applicable, is responsible for approving noncompetitive PROCUREMENTS. The GENERAL MANAGER may not make a standing delegation of such approval authority. However, if the GENERAL MANAGER is unavailable and has delegated authority for execution of CONTRACTS, such delegation may also include his/her authority under this paragraph.

B. Non-Federally-Funded Procurements

For CONTRACTs that are not federally-funded, and where permitted by applicable grant requirements, a noncompetitive PROCUREMENT is permitted if one of the following circumstances exists:

1. The BOARD or GENERAL MANAGER, as applicable, has determined that the PUBLIC WORKS, SUPPLIES, or SERVICES can be provided only by one firm and that efforts to seek competition would be futile.
2. For PROFESSIONAL and NONPROFESSIONAL SERVICE CONTRACTS, **including SERVICES related to litigation against or by SACRT**, when the BOARD or GENERAL MANAGER, as applicable, determines that it is in the best interests of SACRT to solicit only one consultant or to amend an existing SERVICE CONTRACT without compliance with the competitive solicitation procedures set forth in Article III.
- ~~3. For SERVICES related to litigation against or by SACRT, including but not limited to expert witnesses and outside counsel, when the CHIEF COUNSEL determines that it is in the best interests of SACRT to solicit only one consultant or to amend an existing SERVICE Contract without compliance with the competitive solicitation procedures set forth in Article III.~~

3. For cleaning and maintenance NONPROFESSIONAL SERVICES to be provided by a Property and Business Improvement District (“PBID”) that includes SacRT property or facilities within its boundaries, when the BOARD or GENERAL MANAGER, as applicable, determines that the SERVICES can be more efficiently provided by the PBID than by soliciting another vendor.
4. For SUPPLIES or PUBLIC WORKS upon a declaration of emergency supported by a 4/5ths vote of the BOARD.

The BOARD or GENERAL MANAGER, as applicable, is responsible for approving noncompetitive PROCUREMENTS. The GENERAL MANAGER may not make a standing delegation of such approval authority. However, if the GENERAL MANAGER is unavailable and has delegated authority for execution of CONTRACTS, such delegation may also include his/her authority under this paragraph.

§1.406 Best Value Procurement for Supplies

As set out in *Public Utilities Code* Section 102222, prior to beginning a SOLICITATION for the PURCHASE of SUPPLIES in excess of \$100,000, SACRT must determine whether it is in the best interest of SACRT to award to the lowest responsible BIDDER, or, in SACRT’s discretion, to the responsible PROPOSER submitting a PROPOSAL that provides the BEST VALUE, as defined in Section 1.101, to SACRT. If SACRT determines that the BEST VALUE approach is most appropriate for a specific PROCUREMENT, an RFP will be issued, rather than an IFB.

§1.407 Cooperative Purchase Agreements and Use of Government Schedule

A. Use of Cooperative Agreement by Public Entity

SACRT may enter into cooperative purchasing agreements for SUPPLIES or SERVICES through contracts of other public entities without competitive bidding by SACRT if the bidding procedures followed by a public entity for any such contract satisfies the bidding requirements set out in this Procurement Ordinance and if the CONTRACT does not violate any federal or state requirements applicable to SACRT.

B. Use of Cooperative Agreement by Other Than a Public Entity

For non-federally funded procurements, as an alternative to the competitive bidding process, SACRT may consider using a Cooperative Purchasing Agreement from a cooperative such as, but not limited to, U.S. Communities Government Purchasing Alliance Agreements, National Intergovernmental Purchasing Alliance Company (National IPA), and Sourcewell (formerly National Joint Powers Authority). Cooperative Agreements are created after the products or services have undergone a formal competitive solicitation process, often by a lead public agency, and offer reduced pricing due to economies of scale with volume discount pricing. No competitive bidding will be required by SACRT when using a Cooperative Agreement if the bidding procedures followed to solicit any such contract satisfy the bidding requirements set out in this Procurement Ordinance and if the

CONTRACT does not violate any federal or state requirements applicable to SACRT.

C. Purchase of Government Property

SACRT may negotiate the PURCHASE of PERSONAL PROPERTY from any federal, state, or local public agency without compliance with competitive solicitation procedures (*Public Contract Code* § 20209).

Article V
Awarding Procurements and Issuing Change Orders

§1.501 Award to Lowest Responsive and Responsible Bidder

Any CONTRACT awarded pursuant to an IFB must be awarded to the responsible BIDDER submitting the lowest responsive BID, after applying any applicable price preferences. When only one BID is received for a federally-funded CONTRACT, a determination must be made that the competition was adequate (unless a noncompetitive PROCUREMENT was authorized) and a cost or price analysis must be performed to determine that the BID is fair and reasonable before the CONTRACT may be awarded.

§1.502 Award to Best Value or Most Qualified Proposer

Any CONTRACT awarded pursuant to an RFP must be awarded to the highest scoring responsive PROPOSAL or the lowest-priced technically-acceptable PROPOSAL, based on the evaluation criteria set out in the RFP and incorporating any point preferences, submitted by a responsible PROPOSER. When only one PROPOSAL is received for a federally-funded CONTRACT, a determination must be made that the competition was adequate (unless a noncompetitive PROCUREMENT was authorized) and a cost or price analysis must be performed to determine that the PROPOSAL is fair and reasonable before the CONTRACT may be awarded.

§1.503 Authority to Award Procurements Exceeding \$150,000

Unless otherwise provided ~~herein~~ **in this Ordinance**, all CONTRACTS involving an expenditure exceeding \$150,000 must be awarded and/or approved by the BOARD. Such CONTRACTS must be executed by the BOARD Chair and/or the GENERAL MANAGER on behalf of SACRT as set out in the authorizing resolution. When only one PROPOSAL is received for a federally-funded CONTRACT, a determination must be made that the competition was adequate and a cost or price analysis must be performed to determine that the proposal is fair and reasonable before the CONTRACT may be awarded.

Notwithstanding the foregoing, the GENERAL MANAGER is authorized to execute all CONTRACTS related to litigation against or by SACRT, including but not limited to expert witnesses and outside counsel, without limitation on the amounts expended. Such CONTRACTS are not subject to the provisions of 1.505.

§1.504 Authority to Award Procurements of \$150,000 or Less

Subject to the availability of funds and the procedures set forth in this Chapter and any implementing procedures adopted under Section 1.103, the GENERAL MANAGER is authorized to award and bind SACRT to PROCUREMENTS involving a total expenditure of \$150,000 or less.

§1.505

Authority to Approve Amendments to SUPPLY and SERVICE CONTRACTS

The GENERAL MANAGER is authorized to bind SACRT to amendments to BOARD-approved SUPPLY or SERVICE CONTRACTS if the sum of all such amendments for any single CONTRACT does not exceed the lesser of \$150,000 or 15% of the initial CONTRACT price.

The GENERAL MANAGER is authorized to bind SACRT to amendments to GENERAL MANAGER-approved CONTRACTs if the sum of the initial CONTRACT and all prior GENERAL MANAGER-approved amendments is less than \$150,000. **Notwithstanding the foregoing, the GENERAL MANAGER is authorized to approve amendments to GENERAL MANAGER-approved CONTRACTs for SUPPLIES and SERVICES to add funds necessary to prevent a disruption in the delivery of SUPPLIES or provision of SERVICES until the next regularly-scheduled BOARD meeting, where such disruption would result in substantial harm to SacRT's continued operations. The GENERAL MANAGER must report such action to the BOARD as soon as reasonably possible but in no event more than 30 days after the action is taken. If further amendments are needed to provide SUPPLIES or SERVICES after the next regularly-scheduled BOARD meeting, those amendments must be approved by the BOARD.**

Amendments that are BOARD-approved or are initially executed by the GENERAL MANAGER and subsequently ratified by the BOARD are not counted toward the foregoing \$150,000 limitation.

If a CONTRACT was initially awarded using an INFORMAL SOLICITATION and the aggregate total of the initial CONTRACT, prior amendments and the proposed new amendment would exceed the threshold for FORMAL SOLICITATION, then, prior to approving the amendment, the GENERAL MANAGER (for contracts valued at \$150,000 or less) or the Board **BOARD, as applicable** (for contracts in excess of \$150,000) must determine that:

- (1) there was not improper procurement splitting; and either
- (2) That the amendment is required solely to increase the total consideration due to an unforeseeable change in the estimated quantities, without a change in the scope of work, and the unit price remains fair and reasonable even for the increased quantity; or
- (3) If the amendment would change the scope of the CONTRACT, that the work is not severable from the initial scope of work or, if it is severable, that conducting a new procurement for the goods or services is unlikely to yield greater competition or lower prices.

If the above findings cannot be made, then the amendment may only be approved if the criteria for a sole source procurement are met or a new SOLICITATION is conducted and the current vendor is deemed the lowest responsive and responsible bidder or most qualified proposer, as applicable.

§1.506**Authority to Issue Change Orders for Public Works Contracts**

Subject to the availability of funds, the GENERAL MANAGER is authorized to bind SACRT to change orders for work being performed under a PUBLIC WORKS CONTRACT if the change order meets all of the following requirements:

- A. For CONTRACTS originally awarded for a price of \$150,000 or less, the GENERAL MANAGER has authority to issue change orders if the sum of original CONTRACT price and all such change orders does not exceed \$150,000. For CONTRACTS originally awarded for a price of greater than \$150,000 but less than \$1,000,000, the GENERAL MANAGER has authority to issue change orders if the sum of all such change orders for any single CONTRACT does not exceed 10% of the original CONTRACT price.
- B. For CONTRACTS originally awarded for a price of less than \$10,000,000, but more than \$1,000,000, the GENERAL MANAGER has authority to issue change orders if the sum of all such change orders for any single CONTRACT does not exceed the following percentages of the original CONTRACT amount: 10% of the first \$1,000,000, plus 8% of the balance.
- C. For CONTRACTS originally awarded for a price of \$10,000,000 or more, the GENERAL MANAGER has authority to issue change orders if the sum of all such change orders for any single CONTRACT does not exceed the following percentages of the original CONTRACT amount: 10% of the first \$1,000,000, plus 8% of the next \$9,000,000, plus 6% of the balance.
- D. Notwithstanding the foregoing, any single change order that exceeds (\$150,000) require BOARD approval.
- E. Change orders approved or ratified by the BOARD are not counted in calculating the monetary limitations set forth in A through C above.
- F. Notwithstanding the foregoing, the GENERAL MANAGER has authority to issue change orders in such sums as may reasonably be necessary if the GENERAL MANAGER determines, in writing, that a change order is required to:
 - 1. Prevent interruption of the work which would result in a substantial increase in cost to SACRT; or
 - 2. Protect the work, or equipment or materials to be used in the work, human safety, or the environment at or near the site of the work from substantial and immediate danger or injury; or
 - 3. Protect the work, or equipment or materials to be used in the work, or human safety or the environment at or near the work site where damage or injury has occurred from further or additional damage or injury or deterioration caused by man, nature or other source.

The GENERAL MANAGER must report such action to the BOARD as soon as reasonably possible but in no event more than 30 days after the action is taken.

§1.507 **Delegation of Authority**

- A. Notwithstanding anything to the contrary ~~herein~~ **in this Ordinance**, the BOARD may by resolution delegate authority to the GENERAL MANAGER to bind SACRT to a CONTRACT for any amount under the terms and conditions set forth in the resolution delegating such authority. **Unless expressly excluded by the resolution, any such delegation will include the authority to approve a non-competitive and sole source procurement under Section 1.405.**

- B. The GENERAL MANAGER may delegate his or her power under Sections 1.504, 1.505, 1.506 and 1.507.A. to bind SACRT to a CONTRACT. The delegation must be made in writing and must specifically designate the SACRT employee(s) who may act for the GENERAL MANAGER. A copy of the written delegation must be given to the Clerk to the BOARD, who must retain it with SACRT's corporate files. Upon request, the Clerk to the BOARD must certify the continuing validity of a written delegation made pursuant to this Section.

§1.508 **Award in Case of Identical Bids**

The GENERAL MANAGER or the BOARD must determine by lot which BID must be accepted when 2 or more responsible BIDDERS submit responsive BIDs in the same amount. (*Government Code* § 53064).

§1.509 **Rejection of Bids/Proposals; Waiver of Minor Irregularities**

The GENERAL MANAGER may reject any and all BIDs or PROPOSALS and may waive minor irregularities in the BIDs or PROPOSALS. An irregularity in a BID or PROPOSAL may be waived if such waiver does not give the BIDDER/PROPOSER an unfair advantage. If the GENERAL MANAGER rejects all BIDs or PROPOSALS due to cost, the GENERAL MANAGER must re-evaluate the cost estimates for the project. The project must then either be abandoned, a new SOLICITATION issued in the manner prescribed in Article III, or the GENERAL MANAGER or BOARD may proceed with a noncompetitive SOLICITATION if authorized pursuant to Section 1.405. If the GENERAL MANAGER rejects all BIDs or PROPOSALS for a SOLICITATION initially authorized by the BOARD, the GENERAL MANAGER may re-issue the SOLICITATION DOCUMENTS on the terms and conditions set out in the original authorization without the need for additional BOARD approval.

§1.510 **Alternative Award; Failure to Enter Into Contract**

If the BIDDER or PROPOSER to whom the CONTRACT is awarded fails to enter into the CONTRACT as required, the GENERAL MANAGER or BOARD, as appropriate, may declare the award to that BIDDER or PROPOSER a nullity and: (1) award the CONTRACT to the next-lowest responsible and responsive BIDDER or next-highest-ranked PROPOSER,

(2) re-advertise, or (3) award a noncompetitive CONTRACT if permitted by Section 1.405.

CHAPTER 2

DISPOSAL OF SURPLUS PERSONAL PROPERTY

§2.101 Authority for Disposal of Surplus Property

All SACRT surplus PERSONAL PROPERTY, including any lost or unclaimed property, must be disposed of according to the provisions of this Article.

§2.102 Procedure for Disposal of Surplus Property

The GENERAL MANAGER may declare as surplus any PERSONAL PROPERTY that is no longer necessary or useful to SACRT's operations or activities. In disposing of surplus PERSONAL PROPERTY, the GENERAL MANAGER must comply with all applicable state and federal laws, regulations and guidance. The GENERAL MANAGER may dispose of surplus property to the highest bidder by: (1) sale at a public auction, including a public on-line auction, (2) sealed bids, or (3) incidental sale. Notice of public auction or sealed bid submittal must be given by publication once in a newspaper of general circulation or on SACRT's web-site no later than 10 calendar days prior to such auction or bid submittal date. Notice is not required for sale by on-line auction; however, the bid period for any on-line auction must provide for a bid period of at least 10 calendar days.

Said notices must specify the time, place and purpose of such auction or bid submittal and must specify the following, where appropriate:

- A. The percentage of the bid price that the successful bidder must deposit at the time of the auction or bid submittal;
- B. The time by which the remainder of the bid price must be paid;
- C. The time by which the successful bidder must remove the PURCHASED item(s) from the premises;
- D. The minimum bid price;
- E. Reservation of SACRT's right to reject any and all bids received for any item or to withdraw any or all items offered for sale prior to bid opening.

If the GENERAL MANAGER rejects any and all such bids so received, he/she must not thereafter sell such property at a price less than the highest bid received until the property is first offered at the highest bid price to the person who submitted the highest bid. If such person refuses to purchase the item, the GENERAL MANAGER may sell such property at a lesser price.

§2.103 Incidental Sale of Certain Items

When it is determined by the GENERAL MANAGER that any item of surplus property is scrap or salvage material, is perishable, or has been offered for public sale by auction or sealed bids and no offer to purchase has been received, or the property has no market value, the GENERAL MANAGER may sell the item by incidental sale. Prior to such sale, the GENERAL

MANAGER must inform the BOARD. For the purposes of this Section, the term "incidental sale" means the sale of any item at a price, time and place to be determined by the GENERAL MANAGER, to any buyer who is willing to pay the price requested, without first advertising such sale or calling for the receipt of bids.

When the item declared to be salvage or scrap material still has a value as reflected on SACRT books, that value must be the minimum sale price, unless a lower price is authorized by the BOARD.

When the GENERAL MANAGER has complied with Sections 2.102 or 2.103, and the item remains unsold, the GENERAL MANAGER must again comply with Section 2.102, unless the item is scrap, salvageable material, is perishable, or has no market value.

§2.104 Sale to Another Public Entity

Notwithstanding anything to the contrary in this Chapter, the BOARD or the GENERAL MANAGER may dispose of surplus property by sale to another public entity on such terms and conditions as are agreed upon by SACRT and the public entity. (*Public Contract Code § 20209*). The GENERAL MANAGER's authority under this Section is limited to surplus property with an aggregate value of \$25,000 or less.

§2.105 Limitation Upon Employees of SACRT

No employee, officer, or their agent, or member of their family is permitted to PURCHASE any SACRT property by incidental sale. Nothing herein **in this Ordinance**, however, prevents such employee, officer, or their agent or members of their family from purchasing SACRT property through public auction or sealed bids.

ATTACHMENT 1 – Applicable Laws, Regulations and Guidance

Federal Statutes, Regulations, Policies, and Agreements	Subject
49 U.S.C. Chapter 53	Mass Transportation
Federal Acquisition Streamlining Act of 1994, Public Law 103-355, as amended	
Executive Order 12612 "Federalism" dated 10-26-87	
FTA Circular 4220.1F	Third Party Contracting Requirements
FTA Circular 5010.1C	Grant Management Guidelines
FTA Circular 9030.1B Chapter III	Eligible Grant Activities
2 C.F.R. Part 200	Uniform Administrative Requirements, Cost Principles and Audit Requirement for Federal Awards
49 C.F.R. Part 31	Program Fraud Civil Remedies
49 C.F.R. Part 37	Transportation Services for Individuals with Disabilities
36 C.F.R. Part 1192 49 C.F.R. Part 38	Architectural and Transportation Barriers Compliance Board (ATBCB)/DOT regulations, "Americans With Disabilities Act (ADA) Accessibility Specifications for Transportation Vehicles"
49 C.F.R. Part 41	Seismic Safety
29 C.F.R. Part 5	Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction
29 C.F.R. Part 1630	Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act
41 C.F.R. Part 60-1	Obligations of Contractors and Subcontractors
FTA Master Agreement	Annual Terms and Conditions of FTA funded projects
Relevant decisions of the courts having jurisdiction over RT and the Comptroller General of the United States	

State Codes*	Section(s)	Subject
Civil Code	9550 et seq.	Payment Bond Requirements for Construction Projects
Civil Code	3320	Payments to Prime Design Professionals
Code of Civil Procedure	995.311	Bond Issuer Requirements
Government Code	901 et seq.	Claims (Service Contracts)
Government Code	4450	Accessibility Requirements
Government Code	4525 et seq.	Architect & Engineering Services
Government Code	5956 et seq.	Infrastructure Projects
Government Code	6250 - 6270	California Public Records Act
Government Code	53702	Federal Grant Compliance

State Codes*	Section(s)	Subject
Labor Code	1720, 1720.2, 1720.2, and 117	Prevailing Wage (Regulations at 8 CCR 16000)
Labor Code	1777.1	Debarment by California Labor Commissioner
Labor Code	1776	Payroll records, retention, inspection, noncompliance penalties, rules and regulations
Labor Code	1777.5	Employment of registered apprentices, wages, standards, number, apprentice-able craft or trade, exemptions, contributions
Public Contract Code	1103	Responsibility on Public Works Contracts
Public Contract Code	1104	Plans and Specifications
Public Contract Code	3300	Contractor's License
Public Contract Code	3400	Brand Specification
Public Contract Code	4100 – 4114	Subletting and Subcontracting
Public Contract Code	5100 – 5110	Relief of Bidders
Public Contract Code	6100 – 6610	Awarding of Contracts
Public Contract Code	7100 – 7200	Contract Clauses
Public Contract Code	9201 – 9203	Claims and Disputes
Public Contract Code	20101	Prequalification
Public Contract Code	20103.5	Contractor License
Public Contract Code	20103.8	Award of Contracts
Public Contract Code	20104 et seq.	Resolution of Construction Claims
Public Contract Code	20104.50	Progress Payments on Public Works
Public Contract Code	20209	Purchase & Sale Contracts
Public Contract Code	20320	Competitive Bidding
Public Contract Code	20323	Competitive Negotiation for Products and Materials that undergo Rapid Technological Changes or for New Technologies
Public Contract Code	22160 et seq.	Local Agency Design-Build Projects
Public Contract Code	22300	Performance Retention Escrow Agreement
Public Utilities Code	102000 et seq.	RT Enabling Act

Section 4: Severability

This Ordinance shall be liberally construed to effectuate its purposes. The provisions of this Ordinance are severable. If any of the provisions, clauses, sentences, sections, subsections, words or portions thereof is held illegal, invalid, unconstitutional, or inapplicable to any person or circumstance, such portion shall be deemed, to the maximum extent possible, a separate, distinct, and independent provision, so that such illegality, invalidity, unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, clauses, sentences, sections, subsections, words or portions of this Ordinance or their application to other persons or circumstances. If any section, subsection, clause, phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, the invalidity shall not affect the remaining portions of this Ordinance.

Section 5: Effective Date

This Ordinance will become effective 30 days after the date of its passage.

Section 6: Ordinance Publication

Within 15 calendar days after adoption, the Secretary is hereby directed to publish this Ordinance in full in a newspaper of general circulation published within SacRT's activated boundaries.

Passed and adopted at a regular meeting of the Sacramento Regional Transit District on this 25th day of October, 2021 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

STEVE MILLER, Chair

A T T E S T:

HENRY LI, Secretary

By:

Tabetha L. Smith, Assistant Secretary