



## **PROCUREMENT AND CONTRACTING – CONSTRUCTION**

### **Purpose**

To establish a method for administering SANDAG construction contracts.

### **Background**

Public Utilities Code section 132352.4 states that if the estimated total cost of any construction project or public works project will exceed fifty thousand dollars (\$50,000), SANDAG must solicit bids in writing and award the work to the lowest responsible bidder or reject all bids.

Section 132352.4 further mandates that SANDAG establish rules for procurement of construction of public works projects. Additionally, Government Code section 14085 *et seq.* requires that any public entity receiving state funds for a guideway project adopt policies and procedures for contract administration. Code of Federal Regulations, Volume 2, Part 200, Federal Transit Administration Circular 4220.1F, and the Caltrans Local Assistance Procedures Manual also establish procedures that SANDAG must follow when administering contracts using federal funds. All references to the Executive Director in this policy also apply to the Executive Director's designees.

### **Policy**

#### **1. Bidding Process**

A competitive bidding process shall be utilized to the greatest extent possible for all construction contracts.

##### **1.1. Bid Procedure for Small Contracts**

1.1.1 For purposes of this policy, the term "micro purchase amount" shall mean an amount that will not exceed the ceiling amount for micro purchases set by the applicable funding agency(ies) for the procurement. For construction contracts estimated to cost an amount equal to or less than the micro purchase amount, the work may be awarded without competition so long as the price is determined to be fair and reasonable. Otherwise, staff shall seek a minimum of three bids which may be either written or oral to permit prices and other terms to be compared.

1.1.2 For construction contracts estimated to cost in excess of the micro purchase amount, but not more than \$50,000, the following procedures shall be followed:

1.1.2.1 An Invitation for Bids (IFBs) will be sent to a minimum of three qualified bidders by mail or email on the same date. The bid period will be a minimum of three calendar days. When possible, IFBs should be sent to at least two certified Disadvantaged Business Enterprise (DBE) firms. The IFB will contain the time and location for receiving and opening bids.

1.1.2.2 The contract will be awarded to the lowest responsive and responsible bidder after a Notice of Intent to Award has been issued to all bidders and a protest period of five working days has expired.

1.1.2.3 Bid bonds will only be required on bids that are \$50,000 or less when requested by the applicable Director or his or her designee.

## 1.2. Bid Procedure for Contracts in Excess of \$50,000

1.2.1 Public notice of a construction contract estimated to cost more than \$50,000 shall be given by publication once a week for at least two consecutive weeks, with the first publication occurring at least three weeks before the day set for receiving bids, as follows:

1.2.1.1 In a newspaper of general circulation, published in San Diego County;

1.2.1.2 In a trade paper of general circulation published in Southern California devoted primarily to the dissemination of contract and building news among contractors and building materials supply firms (optional for projects estimated to cost less than \$100,000); and

1.2.1.3 In at least one minority or community newspapers as appropriate to best meet SANDAG's DBE goals.

1.2.2 Advertisements may also be placed in other minority and community newspapers, as appropriate. Appropriate DBEs listed in the current SANDAG vendor database will be notified of any work advertised under this policy.

1.2.3 The notice shall state the time and place for receiving and opening sealed bids and shall describe, in general terms, the work to be done.

## 1.3. Contractor's Prequalifications

1.3.1 SANDAG may, for prospective contractors whose bid could exceed \$500,000, adopt and apply a uniform prequalification system for rating bidders, on the basis of a standard experience questionnaire and financial statement verified under oath in respect to the contracts upon which each bidder is qualified to bid. A contractor may request to be prequalified for a predetermined contract amount prior to bidding.

1.3.2 In no event shall any bidder be awarded a contract if such contract award would result in the bidder having under contract(s), work cumulatively in excess of that authorized by its qualification rating.

## 1.4. Form of Bids

1.4.1 SANDAG shall furnish each bidder with a standard proposal form, to be filled out, executed, and submitted as its bid.

1.4.2 All bids shall be submitted as a sealed bid, which shall mean either submission in a sealed envelope or electronically through the use of SANDAG's web-based solicitation system. All bids shall be accompanied by one of the following forms of bidder's security: cash, a cashier's check, certified check, or a bidder's bond executed

by an admitted surety insurer and made payable to SANDAG. A bid shall not be considered unless accompanied by one of the forms of bidder's security, which may be in either hard copy or electronic format. Bidder's security shall be at least 10 percent of the amount bid. Bidder's bonds must be issued by bonding companies registered in the State of California.

1.4.3 Late bids shall not be accepted after the time and date designated in the notice.

1.4.4 Any bid may be withdrawn any time prior to the time fixed in the notice for bid opening only by written request to the SANDAG Executive Director. The request shall be executed by the bidder or its designated representative. Bids shall not be withdrawn after the time fixed for public opening.

1.4.5 On the day specified in the notice, staff shall immediately post the bid results on the SANDAG electronic vendor portal.

## 1.5. Review of Bids

1.5.1 After the bids are opened, the applicable Director or designee (hereinafter "Director"), shall review all bids in order to determine which bidder is the lowest responsive and responsible bidder. The term "lowest responsive and responsible bidder" shall mean the lowest monetary bidder (excluding taxes) whose bid is responsive and who is responsible to perform the work required by the solicitation and contract documents.

1.5.2 SANDAG may investigate the responsibility and qualifications of all bidders to whom the award is contemplated for a period not to exceed 90 days after the bid opening. The 90-day review period may be extended upon the written request by the Director and written approval by the affected bidders.

1.5.3 SANDAG reserves the right to reject any or all bids and to waive any immaterial irregularity. No bid shall be binding upon SANDAG until after the contract is signed by both the contractor and SANDAG.

1.5.4 The lowest monetary bidder's bid will be evaluated by the Director in order to determine whether or not that bid is responsive. The term "responsive" generally means that the bid has been prepared and submitted in accordance with the requirements of the solicitation and bid documents. These requirements shall generally include, but will not be limited to, the following:

1.5.4.1 Bid Booklet - with all bid amounts filled in

1.5.4.2 Designation of Suppliers and Subcontractors - including dollar amounts

1.5.4.3 Acknowledgment of Addenda

1.5.4.4 Contractor's License Requirements

1.5.4.5 Ability to Meet Minimum Insurance Requirements

1.5.4.6 Public Contract Code 10162 Questionnaire

1.5.4.7 Bidder's Bond

1.5.4.8 Noncollusion Affidavit

1.5.4.9 Certification of Restrictions on Lobbying

1.5.4.10 Disclosure of Lobbying Activities

1.5.4.11 Certification Regarding Debarment

1.5.5 If the lowest monetary bidder's bid is responsive, then the bidder's qualifications will be evaluated by the Director to determine whether or not the bidder is responsible to perform the work required by the contract documents. The term "responsible" generally means that the bidder is able to demonstrate that it possesses: (1) the capacity to perform the work required by the contract documents with respect to financial strength, resources available, and experience; and (2) the integrity and trustworthiness to complete performance of the work in accordance with the contract documents. The Director shall review "responsibility" of bidders based upon factors set forth below.

1.5.6 For all contracts in excess of \$500,000, the following uniform system of determining whether or not a bidder is "responsible" shall be applied. The Director will consider the following non-exclusive list of factors in relation to the work to be performed for the project:

1.5.6.1 Financial Requirements:

1.5.6.1.1 Bidders shall have evidence of the availability of sufficient working capital;

1.5.6.1.2 For design-bid-build projects, the largest value of all work any bidding contractor has had under contract over a previous similar time frame as the subject contract shall meet or exceed the total amount of the bid; or in the case of a Job Order Contract, the value of the maximum amount of the Job Order Contract; and

1.5.6.1.3 For design-bid-build projects, the dollar value of at least one of the previous individual contracts listed shall be at least 50 percent of the dollar value bid on the SANDAG contract, or in the case of a Job Order Contract, at least 50 percent of the maximum amount of the Job Order Contract; and

1.5.6.1.4 For design-bid-build projects, the bidder shall have successfully completed contracts during the previous five years that together exceed five times the annual value of the SANDAG contract.

1.5.6.2 Experience Requirements:

1.5.6.2.1 The bidder must demonstrate organization experience on work similar to the SANDAG contract by submitting a list, covering at least the previous five years, of all projects of any type that have been completed or are under construction that the bidder

provides to be considered in determining its requisite experience. The list shall contain a name, title, email address, and phone number for staff to contact to verify the contract details;

- 1.5.6.2.2 The bidder shall demonstrate individual experience by submitting a list of all key personnel, including project managers, who will be involved in the SANDAG contract. These key personnel shall have at least three years of experience on contracts where the work is similar to the SANDAG contract. The individuals listed shall have been involved at the same level of responsibility on successfully completed contracts during the previous five years that together exceeds the value of the SANDAG contract. For each individual listed, the bidder shall include the name, title, address, and phone number of an individual or organization who can verify the individual's experience;
- 1.5.6.2.3 The bidder shall submit a summary of all claims made in the last five years arising out of previous contracts listed (this summary shall include all claims by owner against bidder or bidder against owner, and the final status of each claim);
- 1.5.6.2.4 The bidder shall state whether or not it has defaulted on a construction project within the last two years;
- 1.5.6.2.5 The bidder shall list any violation of the Apprenticeship Requirements under the State Business and Professions Code or Labor Code found by an appropriate authority within the last two years;
- 1.5.6.2.6 The bidder shall state whether it has been found guilty of failure to pay required prevailing wages on a public contract within the last two years;
- 1.5.6.2.7 The bidder shall state whether it has been formally found to be a nonresponsible bidder, for reason other than being nonresponsive, by a public agency within the last two years;
- 1.5.6.2.8 The bidder shall list how many construction projects it will be working on concurrently with the SANDAG project;
- 1.5.6.2.9 The bidder shall state whether it has ever been terminated by an owner or client, or rejected from bidding in a public works project in the last five years;
- 1.5.6.2.10 The bidder shall state whether a surety ever completed any portion of the work of its projects within the last five years;
- 1.5.6.2.11 The bidder shall state whether it, any of its officers, or any of its employees who has a proprietary interest in it, has ever been disqualified, removed, or otherwise prevented from

bidding on, or completing a federal, state, or local government project because of a violation of a law or safety regulation, and if so, explain the circumstances; and

1.5.6.2.12 For all items identified under 1.5.6.2.1 through 1.5.6.2.11 above, the bidder shall provide name of owner, title of project, contract amount, location of project, date of contract, and name of the bonding company.

1.5.6.3 Reporting Forms: In order to demonstrate that the SANDAG financial and experience requirements are met, the bidder shall submit, when requested by SANDAG, a standard experience questionnaire and financial statement verified under oath that shall meet the requirements adopted herein.

1.5.6.4 Failure to provide accurate information relative to its financial status or experience may result in the debarment of the bidder from future SANDAG work.

1.5.6.5 Questionnaires and financial statements shall not be considered public records nor open for public inspection.

1.5.7 SANDAG will make its determination of responsibility based upon information submitted by bidders, and, if necessary, interviews with previous owners, clients, design professionals, or subcontractors with whom the bidder has worked. If a bidder is determined to be nonresponsive, it shall be afforded an administrative hearing upon the submission of a timely protest of such issue. Any additional evidence submitted in the course of the protest procedure shall be considered in making the recommendation to the Executive Director regarding determination of the lowest responsive and responsible bidder and award of the contract.

## 1.6. Award or Rejection of Bids

1.6.1 If the Director finds that the lowest monetary bidder submitted a responsive bid and that the bidder is responsible, then that bidder shall be deemed the apparent lowest responsive and responsible bidder, and the Director shall report the findings as recommendation to the Executive Director.

1.6.2 If the Director finds that the lowest monetary bidder's bid is not responsive or that the lowest monetary bidder is not responsible, then the Director may review the responsiveness and responsibility of the next low monetary bidder. If the Director finds that the next low monetary bidder is responsive and responsible, then that next low bidder shall be deemed the apparent lowest responsive and responsible bidder, and the Director shall report the findings as recommendations to the Executive Director. The Director may continue to review the responsiveness and responsibility of the next low monetary bidders until he/she finds the lowest monetary bidder that is also responsive and responsible, and deemed lowest responsive and responsible bidder. In the event that one or more low monetary bidders are found by the Director to be nonresponsive or nonresponsible, those bidders will be given notice and a reasonable opportunity to present additional evidence to the Director within five working days after the bidder receives the notice.

- 1.6.3 The Executive Director may authorize a Limited Notice to Proceed (LNTP) to the apparent lowest responsive and responsible bidder for an amount not to exceed \$250,000 prior to the award of the construction contract if the Executive Director determines that the award of an LNTP is justified.
- 1.6.4 If it is for the best interest of SANDAG, the Executive Director may, on refusal or failure of the successful bidder to execute the contract, award it to the second-lowest responsive and responsible bidder.
- 1.6.5 If the second-lowest responsive and responsible bidder fails to execute the contract, the Executive Director may likewise award it to the third-lowest responsible bidder.
- 1.6.6 On the failure or refusal of any bidder to execute the contract, its bidder's security shall be forfeited to SANDAG.
- 1.6.7 For all contract awards in excess of \$25,000, the successful bidder must furnish a performance bond equal to at least one-half of the contract price and a payment bond equal to one hundred percent of the contract price. Federally funded contract awards shall require a performance bond equal to one hundred percent of the contract price. Notwithstanding the foregoing, depending upon authorization from the funding source(s), the performance and payment bond requirements may be modified within the Invitation for Bids with prior approval of the Director.
- 1.6.8 Failure to furnish the required bonds shall constitute failure to execute the contract.
- 1.7. Return of Bidder's Security
  - 1.7.1 SANDAG may withhold the bidder's security of the second- and third-lowest responsive and responsible bidders until the contract has been finally executed. SANDAG shall, upon request, return cash, cashier's checks, and certified checks submitted by all other unsuccessful bidders within 30 days after the bid opening, and the bidder's bonds shall be of no further effect.
- 1.8. Protests to Solicitation, Responsibility, Bid, or Award
  - 1.8.1 SANDAG shall include in all procurements a procedure to be followed by interested parties who wish to protest a specification, procedure, or finding of nonresponsibility. The procedure shall include the following:
    - 1.8.1.1 A requirement that protest submittals shall be in writing, be specific to the specification or procedure being protested, state the grounds for protest, and include all documentation needed to enable SANDAG to reach a decision.
    - 1.8.1.2 A statement that the protest shall be submitted within clearly defined time limits prior to receiving proposals or opening bids or prior to award of contracts.

1.8.1.3 A statement specifying the review and determination process by SANDAG, including time limits for response.

1.8.1.4 Requirements for submittal of a protest reconsideration.

1.8.1.5 A statement regarding review of the initial protest by a protest review committee, or in the case of a protest regarding a finding of nonresponsibility by an administrative hearing officer or panel, and review of protest reconsiderations by the Executive Director, as appropriate.

1.8.1.6 A statement that protests will be rejected if they are not complete.

#### 1.9. Procedure for Subcontractor Substitution Protest

1.9.1 Subcontractor substitutions shall be made only pursuant to the provisions of the Subletting and Subcontracting Fair Practices Act, Public Contract Code section 4100 et seq., as it may be amended from time to time. Notwithstanding the foregoing, nothing in this policy is intended to require SANDAG to strictly comply with the Subcontracting Fair Practices Act. The Executive Director is hereby designated to carry out all functions of the awarding authority under Section 4100 et seq.

#### 1.10. Procedure for Contractors with Claims Against SANDAG on Construction Contracts

1.10.1 On all SANDAG construction contracts estimated to cost more than \$25,000, a section shall be included in the contract provisions that specifies how a contractor should file a "Notice of Potential Claim" and the procedures for review and disposition thereof.

1.10.2 Federal Transit Administration review and concurrence is required for claim settlements that exceed \$1 million if FTA funds are involved.

1.10.3 A list of all outstanding claims exceeding \$100,000 which involve the use of federal funds shall be included in the federal grants quarterly report.

#### 1.11. Debarment Procedures for Procurement and Construction Contracts

1.11.1 In addition to all other remedies permitted by law, SANDAG may, upon advice of the Executive Director and Office of General Counsel, by resolution declare a bidder or contractor ineligible to bid on SANDAG procurement and construction contracts for a period not to exceed three years for any of the following grounds:

1.11.1.1 two or more claims of computational, clerical, or other error in bid submission within a two-year period;

1.11.1.2 unjustified failure or refusal to timely provide or properly execute contract documents;

1.11.1.3 unsatisfactory performance of contract;

1.11.1.4 false, excessive and/or unreasonable claims while performing work for SANDAG;



- 1.11.1.5 two or more occasions within a two-year period of failure to submit bond or insurance documents acceptable to SANDAG in the time periods required;
  - 1.11.1.6 unjustified refusal to properly perform or complete contract work or warranty performance;
  - 1.11.1.7 unjustified failure to honor or observe contractual obligations or legal requirements pertaining to the contract;
  - 1.11.1.8 conviction under a state or federal statute or municipal ordinance for fraud, bribery, theft, falsification or destruction of records, receiving stolen property or of any other similar crime;
  - 1.11.1.9 any offense or action which indicates a lack of business integrity and which could directly affect the reliability and credibility of performance of the contractor on future contracts with SANDAG;
  - 1.11.1.10 any debarment of the contractor by another governmental agency; and
  - 1.11.1.11 false statements or certifications in documents submitted as part of a bid or any supplementary documentation thereto.
- 1.11.2 SANDAG may permanently debar such bidder or contractor for a conviction under federal or state antitrust statutes involving public contracts or the submission of bid proposals, for any corrupt practices involving the administration or award of a contract with SANDAG, or permanent debarment of the bidder or contractor by another governmental agency.
- 1.11.3 The bidder or contractor shall be provided notice and an opportunity to present evidence and show cause before the Board why such ineligibility shall not be declared after the Executive Director has established a factual basis for debarment.
- 1.11.4 A contractor's debarment shall be effective amongst SANDAG and any subsidiary entity. Debarment prohibits SANDAG and any subsidiary entity from executing contracts with the debarred contractor.
- 1.11.5 Debarment constitutes debarment of all divisions or other organizational elements of the contractor, unless the debarment decision is limited by its terms to specific divisions, organizational elements, or commodities. The debarment decision may be extended to include any affiliate of the contractor if the affiliate is (1) specifically named, and (2) given written notice of the proposed debarment and an opportunity to respond.
- 1.11.6 Notwithstanding the debarment of the contractor, the Board may continue contracts in existence at the time the contractor is debarred, unless the Board directs otherwise, after receiving advice from the Executive Director as to the effects of termination of an existing agreement.

## 2. Contract Administration and Contractor Assurances

- 2.1 SANDAG contractors must meet all applicable laws concerning labor law, labor rates, EEO and licenses. SANDAG shall ensure that the following requirements are carried out:
  - 2.1.1 All bidders and contractors shall be licensed in accordance with the laws of California. Additionally, contractor requirements shall be guided by the provisions of Chapter 9 of Division 3 of the Business and Professions Code concerning the licensing of contractors.
  - 2.1.2 The contractor may not, in any case, pay workers less than the stipulated prevailing rates paid for such work or craft in the San Diego area by the contractor or any of its subcontractors, unless it is otherwise authorized by law.
  - 2.1.3 The contractor will be responsible for complying with the provisions of the Fair Labor Standards Act of 1938 as amended.
  - 2.1.4 SANDAG contractors shall be required to provide Workers' Compensation Insurance to their employees in accordance with the provisions of Section 3700 of the Labor Code. Prior to commencement of work, the contractor shall sign and file with SANDAG a certification of compliance.
  - 2.1.5 Labor compliance requirements on SANDAG contracts shall be consistent with the California Labor Code.
  - 2.1.6 Contracts including construction services in excess of \$1 million shall include a provision requiring the entity contracting with SANDAG to commit that the entity and its subcontractors at every tier will use a skilled and trained workforce to perform all construction work on the project consistent with Public Utilities Code Section 132354.7 unless one of the exceptions in Section 132354.7(a) are met.
  - 2.1.7 The contractor shall comply with the EEO requirements set forth by Title VI of the 1964 Civil Rights Act on any project where Federal funds are included.
  - 2.1.8 The contractor shall also comply with Section 1735 of the Labor Code and all other California laws prohibiting discrimination based on protected class status.
  - 2.1.9 The Board's Equal Employment Opportunity Program and adequate audit provisions to allow the SANDAG independent performance auditor access to the contracted entity's records needed to verify compliance with the terms specified in the contract will be incorporated by reference in all SANDAG construction contract templates.

## 3. Construction Contract Change Orders

- 3.1 All construction and procurement contracts may be amended by a suitable change order. The contract change orders shall be processed in accordance with SANDAG procurement and construction manual(s).
- 3.2 Construction contract change orders shall be approved by the Executive Director in accordance with SANDAG Board policies, administrative policies, and procedural manuals.

3.3 Except in an emergency, or in the case of a justifiable sole source procurement, a change order shall not be awarded without competitive bidding where the amount of such change order exceeds 25 percent of the price of the original or altered contract, or the change order is out of the original contract scope.

3.3.1 For purposes of this section, an emergency is defined as a sudden or unforeseen situation in which, in the Executive Director's opinion, injury to persons, or significant injury to property or interruption of a public service will occur if immediate action is not taken.

3.4 All change orders that conflict or potentially conflict with Board-adopted policies shall be brought before the Board for decision.

3.5 All change orders which utilize federal funds shall conform to the Code of Federal Regulations, Volume 2, Part 200 and Federal Transit Administration Circular 4220.1F and any successors thereof, that are applicable by law.

#### 4. Other Than Full and Open Competition

Normally, SANDAG will utilize a full and open competition when soliciting bids or proposals for procurements in excess of \$50,000. Under certain circumstances, however, a procurement may be justified that does not utilize full and open competition. These procurements are known as limited competition procurements. When less than full and open competition is used, SANDAG shall solicit offers from as many potential sources as is practicable under the circumstances. Noncompetitive procurement is known as sole source procurement. Noncompetitive and limited competition procurements shall only be permitted when the conditions below are met.

4.1 When the project will be paid for in whole or in part by federal funds one of the conditions allowing a limited competition or sole source procurement set forth in the latest version of FTA Circular 4220.1, or the equivalent from other federal funding agencies, must be met.

4.2 When there are no federal funds involved, additional factors may be used to justify a limited competition or sole source procurement as being within the best interest of SANDAG. For these types of procurements one of the conditions in this section (4.2) or section 4.1 must be met:

4.2.1 There is only one contractor capable of providing the work because the work is unique or highly specialized.

4.2.2 The work should be carried out by a particular contractor in the interest of economy or efficiency as a logical follow-on to work already in progress under a competitively awarded contract.

4.2.3 The cost to prepare for a competitive procurement exceeds the cost of the work.

5. Relief from Maintenance and Responsibility and Acceptance of Work

5.1 SANDAG will, upon written application by the contractor, consider granting relief from maintenance and responsibility on major elements of each major construction project as permitted in the contract specifications. The Executive Director is hereby delegated authority to grant said relief in writing to the contractor and shall report actions on contracts over \$25,000 to the Board.

5.2 SANDAG will, upon written application by the contractor, accept the entire work on major construction contracts, provided that the work has been completed, in all respects, in accordance with the contract plans and specifications. The Executive Director is hereby delegated the authority to accept such work on behalf of the Board and shall report to the Board all acceptances over \$25,000.

5.2.1 In determining whether to accept the entire work on major construction projects, these procedures should be followed:

5.2.1.1 The contractor shall request acceptance in writing.

5.2.1.2 Concurrence with the request by the SANDAG Resident Engineer shall be in writing to the Executive Director and include these findings: (1) that the contract has been completed in accordance with the plans and specifications, (2) a statement as to the financial condition of the contract, and (3) a statement as to whether the contract was completed on time or with an apparent overrun.

5.2.1.3 The Executive Director shall accept the action and report the findings to the Board.

6. Conflict of Interest

6.1 A contractor is eligible for award of service contracts by SANDAG so long as the contract in question does not create an actual, potential, or apparent conflict of interest. A prohibited conflict of interest exists when, because of other activities, relationships, or contracts, a firm is or may be unable to render impartial, objective assistance or advice to SANDAG; or a firm's objectivity in performing the contract work is or might be otherwise impaired; or where a firm would receive an unfair competitive advantage. Prohibited conflicts of interest include, but are not limited to, the following situations unless otherwise authorized by applicable federal or state law:

6.1.1 Except in the case of design-build or other authorized alternative delivery method contracting, any firm that provides design services or project management services to SANDAG will be ineligible for award of a construction contract to construct the improvements, which are the subject of the design services.

6.1.2 Any firm that provides design services to SANDAG will be ineligible for award of any contract to provide construction management services resulting from the specific project for which design services were provided.

- 6.1.3 Any firm that provides construction management services to SANDAG will be ineligible for award of a construction contract for which construction management services were or will be provided.
- 6.1.4 Any firm that assists SANDAG or any of its member or affiliated agencies in the preparation of a construction procurement document will not be allowed to participate as a bidder/offeror or join a team submitting a bid/offer in response to that procurement document except under the provisions in Section 7.1.4 of Board Policy No. 016.
- 6.2 SANDAG shall not contract with, and will reject any bid or proposal submitted by, the following persons or entities, unless the Executive Director finds that special circumstances exist which justify the approval of such contract:
  - 6.2.1 Persons employed by SANDAG;
  - 6.2.2 Profit-making firms or businesses in which SANDAG employees serve as officers, principals, partners, or major shareholders; Persons who, within the immediately preceding twelve (12) months, were employed by SANDAG and (1) were employed in positions of substantial responsibility in the area of service to be performed by the contract, or (2) participated in any way in developing the contract or its service specifications; or
  - 6.2.3 Profit-making firms or businesses in which the former employees described in subsection 6.2.2 serve as officers, principals, partners or major shareholders.
- 6.3 SANDAG staff and third parties with whom SANDAG does business shall comply with SANDAG administrative policies concerning Standard of Conduct and all relevant Board Policies.
- 6.4 A Notice of Potential for Conflict of Interest shall be included when relevant in any procurement issued by SANDAG. The Notice shall be the policy of the Board as listed herein. Any agreement issued in accordance with this policy shall include or make reference to the policy listed herein.
- 6.5 A "firm" shall be defined as any company or family of companies where there is a single parent board of directors or staff of officers who can influence the policies and actions of the design company, construction management company, and the construction company.
- 6.6 "Ineligible" firms shall include the prime consultant for the services, subcontractors for portions of the services, and affiliates of either. An affiliate is a firm that is subject to the control of the same persons through joint ownership or otherwise.
- 6.7 If there is any doubt by a firm regarding a potential conflict of interest for a specific project or function, the appropriate member of management staff, depending on type of project, will, upon written request, provide a written ruling. This procedure is encouraged prior to submittal of proposals or bids. In the event a conflict of interest is determined to exist, a written appeal may be made by the affected firm to the Executive Director within five calendar days of notice from SANDAG the conflict. The Executive Director shall determine the adequacy of the appeal and make a subsequent final decision. No further appeal shall be considered.

## 7. Job Order Contracting

A Job Order Contract (JOC) is a competitively bid, firm fixed price, indefinite quantity contract that is based upon specific unit pricing contained in a unit price book (prepared by the public agency or by independent commercial sources) setting forth detailed repair and construction items of work, including descriptions, specifications, units of measurement and individual unit prices for each item of work. The JOC includes unit pricing for work at time of award, but not the specified quantity and location of the work to be performed. At the time a Job Order is issued, the scope of work will identify the quantity and specific location of the work to be performed. A JOC may be used when it will result in a cost savings through economies of scale or expedite the delivery of work.

### 7.1 General Requirements

7.1.1 JOCs shall be awarded under written agreement subject to the following limitations:

7.1.1.1 The specifications were advertised in accordance with Board Policy No. 024, Section 1, "Bidding Process" based on the maximum potential value of the JOC.

7.1.1.2 The specifications provided for sealed competitive bidding on unit-cost terms for all labor, material, and equipment necessary to perform all work contemplated for individual Job Orders.

7.1.1.3 The JOC does not exceed a term of three years in duration.

7.1.1.4 The JOC shall only be used for the performance of minor routine or recurring construction, or for the renovation, alteration, or repair of existing public facilities.

7.1.2 JOC may not contain any provision which would guarantee the contractor cumulative Job Orders in excess of \$50,000.

### 7.2 Issuance of Job Orders

7.2.1 Following award of a JOC, Job Orders may be issued by the Executive Director in accordance with SANDAG Board Policies, administrative policies, and procedural manuals upon certification by that individual that it is not in conflict with other Board Policies and it is the best interest of SANDAG to use the JOC procurement process because one or more of the following criteria have been met:

7.2.1.1. Use of the JOC process will result in a cost savings through economies of scale or expedite the delivery of work; or

7.2.1.2. Compliance with the traditional competitive bidding requirements will not produce an advantage to SANDAG; or

7.2.1.3. Advertising for bids is undesirable because it will be practically impossible to obtain what is needed or required by an unforeseen deadline if the traditional competitive bidding method is used; or

7.2.1.4. The entity or entities providing funds for the project have authorized use of the JOC process.

7.2.2 An individual Job Order may not exceed the sum of \$2,000,000, except in the case of an emergency as defined in Section 3.3.1 of this Policy, or as specifically authorized by the Executive Director, whose authorization shall not be delegated.

7.2.3 No public work that logically should be performed as a single contractual transaction requiring the expenditure of more than \$2,000,000 shall be separated into separate Job Orders for purposes of avoiding this limitation.

7.2.4 Non-prepriced items of work may be included in Job Orders provided that the non-prepriced items are within the scope and intent of the JOC and are priced reasonably and in conformity all applicable laws, regulations and policies.

### 7.3 Job Order Contract Intergovernmental Agreements

7.3.1 The SANDAG Executive Director may permit, subject to requirements of this section and subject to such terms and conditions that the Executive Director may prescribe, any public entity, including the California Department of Transportation, or any municipal corporation, school or other special district within San Diego County, to participate via the Service Bureau in JOCs entered into by SANDAG, and may enter into any agreements necessary to do so.

## 8. Design-Build Contracting

"Design-build" contracting is a project delivery method in which both the design and construction of a project are procured from a single entity. Notwithstanding Section 1 of this Policy, SANDAG is permitted to use the design-build contracting method on transit projects. in accordance with Public Contracts Code section 22160 et seq. A competitive negotiation process similar to the process described in Board Policy No. 016 for the procurement of services will be used to procure design build services. Selection criteria for design-build procurements shall be subject to Board approval.

## 9. Construction Manager/General Contractor Contracting

Construction Manager/General Contractor (CM/GC) contracting is a project delivery method using a best value procurement process in which a construction manager is procured to provide pre-construction services during the design phase of the project and construction services during the construction phase of the project. Notwithstanding Section 1 of this Policy, SANDAG is permitted to use the CM/GC contracting method on transit projects in accordance with Public Contracts Code §§6950-6958. A competitive negotiation process similar to the process described in Board Policy No. 016 for the procurement of services will be used to procure CM/GC services. Selection criteria for CM/GC procurements shall be subject to Board approval.

## 10. Design Sequencing Contracting

"Design sequencing" contracting is a method of project delivery that enables the sequencing of design activities to permit each construction phase to commence when the design for that phase is complete, instead of requiring design for the entire project to be completed before

commencing construction. This is a variation of the design-bid-build project delivery method. SANDAG is permitted to use the design sequencing contracting method on transit projects in accordance with Public Contracts Code §§6950-6958.

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