



Pomona Valley
Transportation
Authority

A partnership of the cities of Claremont, La Verne, Pomona and San Dimas

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November 10, 2021

**AGENDA
ITEM # 2G**

MEMORANDUM

To: Pomona Valley Transportation Authority

From: George L. Sparks, *GLS* PVT Administrator

Subject: **Updated Procurement Policies**

Recommended Action: *Approve PVT's Updated Procurement Policies, Dated November 10, 2021.*

Background

PVTA procurement policies were developed based on the policies of member cities and are designed to comply with the requirements for Federal Transit Administration (FTA). FTA has extensive requirements for any procurement in which federal funds are used. We conduct our transit service procurements in accordance with FTA requirements.

The FTA requires specific procurement processes based on the level of expenditure. FTA has three categories of procurement, each with its own specific requirements. Processes requirements become more extensive as the level of expenditure increases. FTA outlines three procurement levels. Purchases under \$10,000 are subject to the federal micro purchase procedure. Procurements under \$250,000 are subject to the federal small purchase procedure. Procurements over \$250,000 in value are subject to the federal sealed bid or competitive proposal procedure.

The attached policies make the limits consistent with federal guidance.



POMONA VALLEY TRANSPORTATION AUTHORITY PROCUREMENT POLICIES

November 10, 2021

General Policy: All purchases of supplies, equipment, vehicles, maintenance and public works projects, and professional services are governed by this policy. This policy applies to all purchases, projects and services approved by the Board of Directors through the annual budget process. Staff shall make reasonable efforts to contact qualified vendors.

Third Party Contracting Requirements

This policy sets forth the requirements the Pomona Valley Transportation Authority (PVTA) must adhere to in the solicitation, award and administration of its third-party contracts. These requirements are based on the common grant rules, Federal statutes, Executive orders and their implementing regulations, FTA policy, State of California Public Contract Code, State of California Labor Code and all other local, State and Federal requirements relating to procurement and applicable to PVTA as a public agency.

Procurements Using Federal Funds

These policies are intended to ensure PVTA's compliance with FTA Circular 4220.1F, which establishes the standards and guidelines for the procurement of supplies, equipment, construction, and services for all programs. It is the policy of PVTA to adopt these procurement policies and procedures for both federally funded and non-federally funded procurements as a uniform methodology. Federal provisions shall be used as appropriate to the particular procurement and Grantor requirements.

All bid documents and contract agreements for projects or services purchased with federal grants as a full or partial funding mechanism will include all federal requirements and stipulations as mandated by the funding organization. This includes, but is not limited to transportation projects or services funded by the Federal Transit Administration (FTA). The FTA requirements are outlined in the "Required Third-Party Contract Clauses" procurement document and specific contract language and detailed information regarding each requirement is included in the "Best Practices Procurement Manual".

Conformance with State and Local Law

PVTA shall use procurement procedures that reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law, including the requirements and standards identified in FTA Circular 4220.1F.

Contract Administration System

PVTA shall maintain a contract administration system that ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

Written Standard of Conduct

Goals and Objectives

All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The PVRTA shall be alert to organizational conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. Awards shall be made to the bidder whose offer is responsive to the solicitation and is most advantageous to PVRTA, where price, quality and other factors considered. Solicitations shall clearly set forth all requirements that the bidder shall fulfill in order for the bid or offer to be evaluated by the PVRTA. Any and all bids or offers may be rejected when it is in the PVRTA's interest to do so.

General Principles

Employees are to implement the policies and decisions of the PVRTA in an impartial manner. In particular, employees shall comply with all applicable laws regarding conflicts of interest, including but not limited to the California Political Reform Act, and the provisions of the California Government Code regarding Prohibited Interests in Contracts, as these laws may be amended from time to time.

Employees are to promote confidence in the integrity of the PVRTA and always act in the public interest and not in their private interest. Employees should protect the reputation of the PVRTA.

Conflict of Interest

In addition to the provisions of the Political Reform Act, as enforced by the Fair Political Practices Commission, Conflict of Interest exists when it is likely that an employee could be influenced, or could be perceived to be influenced, by a personal interest in carrying out their duties of employment.

Conflict of Interest that leads to biased decision-making may constitute corrupt conduct. No employee shall participate in the selection or in the award or administration of a contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

1. The employee;
2. Any member of his or her immediate family;
3. His or her partner; or
4. An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award.

In all purchases for the PVRTA, any practices which might result in unlawful activity are prohibited including, but not limited to, rebates, kickbacks or other unlawful considerations.

The officers, employees, and agents of the Pomona Valley Transportation Authority (PVRTA) shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to subagreements.

All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The PVTa shall be alert to organizational conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals shall be excluded from competing for such procurements. Awards shall be made to the bidder whose offer is responsive to the solicitation and is most advantageous to the PVTa, where price, quality and other factors considered. Solicitations shall clearly set forth all requirements that the bidder shall fulfill in order for the bid or offer to be evaluated by PVTa. Any and all bids or offers may be rejected when it is in the PVTa's interest to do so.

Award of Contracts

Purchases of projects, services, vehicles, equipment, and supplies between \$10,000 and \$250,000 are awarded by the PVTa Administrator. These procurements may be subject to the small purchase procedure. If appropriate, these procurements may also make use of **Sealed Bid or Competitive Proposal Procurement** procedures.

Purchases of projects, services, vehicles, equipment, and supplies over \$250,000 are subject to the formal purchasing procedures and awarded by the Board of Directors unless award authorization is specifically delegated to the PVTa Administrator.

Factors Considered When Awarding a Bid: Factors that may be considered when awarding bids shall include but not be limited to:

1. Clarity and understanding of project scope and ability to meet bid specifications.
2. Familiarity with the type of project being undertaken.
3. Vendor experience providing this type of service, equipment, product or vehicle.
4. List of references and past record of performance, including quality of work, ability to meet timelines, and cost control.
5. Capacity of vendor to meet timelines of project or product delivery.
6. Cost of service or product to be provided relative to the time frame proposed.
7. In accordance with state law, the primary factor for consideration when awarding a bid for professional services is qualifications.

Methods of Procurement

I. Micro & Emergency Purchases: pursuant to C 4220.1F, the PVTa may make micro-purchases which do not exceed \$10,000 without competitive procurement quotations if PVTa believes that the price is fair and reasonable. In addition, emergency situations which require immediate repairs which are reasonably believed to be under \$10,000 may be authorized without competitive quotations.

II. Small Purchase Procurement: for supplies, materials and services which shall not cost more than \$250,000 in the aggregate. Such procurement shall be made in the following manner:

1. A **minimum** of two written price or rate quotations shall be obtained from qualified sources. Sound business practice shall dictate the quantity of quotations sought from qualified bidders.
2. If the procurement involves FTA funding it shall include all FTA Third-Party contract clauses.
3. The procurement will be made from the lowest priced qualified bid.

III. Sealed Bid Procurement: for supplies, materials and services over \$250,000 in the aggregate or when sealed bid procurement will provide for the best competitive pricing for those procurements under \$250,000 in the aggregate. Such procurements shall be made if the following is available:

1. A complete, adequate, concise specification or description is available.
2. Two or more responsible bidders are willing and able to compete effectively for the business.
3. The procurement lends itself to a firm fixed price contract and the selection of a successful bidder can be made principally on the basis of price.

Sealed bids will be performed in the following manner:

1. The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, with sufficient time prior to the date set for bid opening.
2. The invitation for bids will include any and all specifications and pertinent attachments, including any required FTA Third-Party contract clauses, and shall define the items or services sought in order that the bidders may properly respond.
3. Any contract to acquire rolling stock must include provisions for compliance with applicable requirements of 49 U.S.C. Section 5323(m) and those provisions of FTA regulations, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases," 49 CFR Part 663, that do not conflict with 49 U.S.C. Section 5323(m).
4. All bids will be publicly opened at the time and place prescribed in the invitation for bids.
5. A fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in the bidding documents, factors such as discounts, transportation costs, and life cycle costs shall be

considered in determination of the lowest bid. Payment discounts will only be used to determine the low bid when prior experience indicates such discounts are usually taken advantage of;

6. Any or all bids may be rejected if there is a sound documented business reason, and as otherwise necessary in the best interest of the PVTA.

IV. Competitive Proposal Procurement: for supplies, materials, services, or professional services with more than one source submitting a proposal, and either a fixed price or cost reimbursement type contract is to be awarded. This will generally be used when conditions are not appropriate for the use of sealed bids.

Competitive Proposal shall be performed in the following manner:

1. Requests for Proposals (RFP) or Notice Inviting Bid (NIB) will be publicized and shall identify all evaluation factors and their relative importance, including any required FTA Third-Party contract clauses.
2. Proposals will be solicited from an adequate number of qualified sources;
3. PVTA will have a procedure for conducting a technical evaluation of the proposals received and for selecting awardees. PVTA will normally make the evaluation and selection without negotiation with any bidder. However, if it decides to conduct negotiations, PVTA will negotiate with all bidders in a competitive range, i.e., all bidders that PVTA determines have a reasonable chance of selection for award based on cost or price and other specified factors of the solicitation;
4. The award will be made to the responsible firm whose proposal is most advantageous to PVTA's program with price and other factors considered;
5. PVTA will use competitive proposal procedures for qualifications based procurement of architectural and engineering services *40 U.S.C. Chapter 11 ("Brooks Act" procedures)*, related services such as program management, construction management, feasibility studies, preliminary engineering, design, surveying, mapping, or related service, and for professional services.

V. Sole Source Procurement (*Applies to all procurements using FTA funds*): may be used through solicitation or acceptance of a proposal from only one source, or after solicitation of a number of sources; competition is determined inadequate; or, it is difficult to compare offers due to questions of quality of integral parts of the items for procurement. A contract amendment or change order that is not within the scope of an original contract is a sole source procurement and, therefore, must comply with the following:

Sole Source Procurement may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposal and at least one of the following circumstances apply;

1. The item is available only from a single source;

2. A public emergency for the requirement will not permit a delay resulting from competitive solicitation;
3. FTA authorized noncompetitive negotiations;
4. After solicitation of a number of sources, competition is inadequate;
5. The item is an associated capital maintenance item as defined in Section 9(j) of the Federal Transit Act that is procured directly from the original manufacturer or supplier of the item to be replaced.

PVTA must first certify in writing (a) that such manufacturer or supplier is the only source for such item; and (b) that the price of such item is no higher than the price paid for such item by like customers. Cost analysis of the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profit are completed as required under FTA C 4220.1F. The procurement shall include all FTA Third-Party contract clauses.

VI. Single Bid (FTA funded procurements): When multiple sources are solicited and only one bid or proposal is received, PVTA must make a determination of whether competition was "adequate" or "inadequate," based upon criteria in FTA C 4220. This determination will require PVTA to contact vendors who were solicited and chose not to bid in order to determine their reasons for not bidding.

If the reasons were a restrictive specification or restrictive delivery date that none save the single bidder could meet, then competition was inadequate, and a new solicitation should be issued removing the restriction, or a sole source justification must be approved explaining why the restrictions are essential. If, however, the reasons given by the vendors for their no-bid decisions were of a business nature, and not related to restrictive specifications, etc., then a determination of adequate competition may be made and the contract awarded as a competitive procurement.

A cost analysis and explanation as to why a single bid was determined are mandatory.

VII. Procurement by Noncompetitive Proposals (Sole Source for Non-FTA Procurements): Sole Source procurements are accomplished through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate. Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals and at least one of the following circumstances applies:

1. The item is available only from a single source;
2. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
3. After solicitation of a number of sources, competition is determined inadequate.

VII. Authority to Waive Any Step of Selection Process: When the PVTA Administrator determines that it is in the best interest of the PVTA to shorten the selection process to begin work immediately on PVTA's project or retain a consultant who is already familiar with the PVTA's project, the Administrator has the authority to waive any step of the selection process. In the event the Administrator determines that it is necessary to omit any phase of

the selection process, the Administrator shall notify the PVTA Technical Committee of the action. A written statement of the Administrator's determination shall be retained in the project file.

VIII. Competitive Bidding Completed by Another Agency: Prices quoted through a competitive bidding process by another public agency, where the price to PVTA is equal to or better than the price to the public agency that completed the competitive bid process, may be used for purchasing supplies, vehicles, equipment, and services for use in PVTA

IX. Funding Source Regulations: All purchases made under this policy shall be subject to the procurement and contract regulations relating to the source of funding.

Protests

All prospective contractors shall be accorded fair and equal consideration in the solicitation and award of contracts. To that end, any interested party shall have the right to protest alleged inequities in the procurement process and to have its issues heard, evaluated and resolved administratively. "Interested party" is defined as an actual or prospective offeror whose direct economic interest would be affected by the award of a contract or by failure to award a contract.

Each solicitation above the small purchase threshold as defined herein shall contain, as part of the instructions to bidders/offerors, the following notice:

PVTA's policy and procedure for the administrative resolution of protests is set forth in PVTA's Procurement Policies. The Procurement Policies contain rules for the filing and administration of protests. The Project Manager shall furnish a copy of the Procurement Policy upon request. Chapter VII, Sec. 1.b. of Federal Transit Administration (FTA) Circular 4220.1 F addresses protests where federal funds are involved. FTA will only review protests regarding matters that are primarily of Federal concern.

Submittal Procedures

An interested party wishing to protest a matter involving a proposed procurement or contract award shall file a written submission with the Project Manager by certified mail or other delivery method by which receipt can be verified. Electronic submission of protests is not acceptable unless an original signed copy of the protest is received by the Project Manager within 24 hours (not including weekends and holidays) after receipt of the electronic copy. The Project Manager may, however, permit the electronic provision of supplemental information after the initial protest submittal. The protest shall include, at a minimum:

- (a) The name and address of the protesting party and its relationship to the procurement sufficient to establish that the protest is being filed by an interested party;
- (b) Identity of the contact person for the protestor, including name, title, address, telephone, fax and e-mail addresses. If the contact point is a third party representing the protester, the same information must be provided, plus a statement defining the relationship between the protester and the third party;

- (c) Identification of the procurement;
- (d) A description of the nature of the protest, referencing the portion(s) of the solicitation involved;
- (e) Identification of the provision(s) of any law, regulation, or other governance upon which the protest is based;
- (f) A complete discussion of the basis for the protest, including all supporting facts, documents or data;
- (g) A statement of the specific relief requested; and
- (h) A notarized affirmation by the protestor (if an individual) or by an owner or officer of the protestor (if not an individual) as to the truth and accuracy of the statements made in the protest submittal.

The protestor is solely responsible for the completeness and validity of the information provided. Any documents relevant to the protest should be attached to the written submission. Documents which are readily available on the Internet may be referenced with an appropriate link.

Protests shall be submitted in accordance with the requirements of this section and any directions included in the solicitation, and shall be addressed to the Project Manager. Unless otherwise specified in the solicitation, the written protest shall be accompanied by an electronic copy (CD) in PDF format. In case of a variance in the content of the written and CD submittals, the written version shall prevail.

Project Manager or an assigned alternate manager in cases where the conduct of the Project Manager for the procurement is called into question, shall conduct the administrative processing of protests filed with PVTa, and shall be responsible for the processing, documenting a protest, and recommending a decision to the Administrator. The Administrator shall request legal counsel to review and advise concerning any legal issues involved in a protest.

The Administrator shall be responsible for overseeing the decision process and for the content of the decision. The Administrator shall ensure that all relevant parties within PVTa have been involved in the decision-making process and shall, as circumstances require, obtain the concurrence of the PVTa Board Chair in a decision prior to its issuance.

PVTa may decide a protest solely upon the written submission. The protest submission should, therefore, include all materials necessary to support the protester's position. Additional or supplemental materials may only be submitted at the request of, or with the permission of, the Administrator.

If the procurement uses federal funds, a notice of receipt of a protest must be given to the appropriate regional office of the Federal Transit Administration (FTA). The form of notice may be specified by the regional office.

Protests of the Solicitation Process

A protest related to the technical scope or specification, terms, conditions, or form of a solicitation must be received no later than ten (10) working days prior to the date

established for opening of bids or receipt of proposals; if the protest addresses an amendment to the solicitation, it must be received no later than ten (10) working days prior to the date established for opening bids or receipt of proposals or five (5) working days after the date of issuance of the amendment, whichever is later; in no event, however, may a protest of this nature be submitted after bids or proposals are received. The protest must conform in all respects to the requirements set forth above.

Upon receipt of such a protest, the Project Manager shall notify all prospective offerors and other known interested parties of the receipt and nature of the protest, and shall post a notice of the protest on PVTA's web page. Unless the Project Manager determines that delay will be prejudicial to the interest of PVTA or that the protest patently lacks substantial merit, the solicitation process will be extended pending resolution of the protest.

Protests will be considered and either denied or sustained, in part or in whole, by the Project Manager in writing. A written decision specifying the grounds for sustaining all or part of or denying the protest will be transmitted to the protestor prior to the receipt of bids or proposals in a manner that provides verification of receipt.

A notice of the decision shall be provided to all parties given notice of the protest, and posted to PVTA's web page.

Should the protest be upheld in whole or in substantial part, the Project Manager may either (1) amend the solicitation to correct the document or process accordingly; or (2) cancel the solicitation in its entirety. If the solicitation is amended, the time for receipt of bids or proposals shall be equitably extended to permit all participants to revise their bids or proposals to reflect the decision. If the protest is denied, the solicitation shall proceed as if the protest had not been filed, unless the protester pursues the protest with the Federal Transit Administration (FTA).

Protests received by PVTA after the time periods specified above shall be considered untimely and may be denied on that basis unless the Project Manager concludes that the issue(s) raised by the protest involves substantial prejudice to the integrity of the procurement process.

Protests of the Evaluation Process

All bidders/proposers will be notified of the recommended award, upon a determination by Project Management staff of a recommendation to be made to the PVTA Administrator, or the PVTA Board or Directors, as appropriate. This notice will be transmitted to each proposer at the address contained in its proposal form, and shall be posted on the PVTA website. Transmittal may be by electronic means or by hard copy. Any proposer whose proposal is valid at the time of the staff determination may protest the recommended award on one or more of the following grounds:

- (a) That the recommended awardee does not meet the requirements of the solicitation;
- (b) That the bid or proposal recommended for acceptance does not meet the criteria of the solicitation or award; and
- (c) That the evaluation process conducted by PVTA is improper, illegal, or the decision to recommend award is arbitrary and capricious.

The protest must conform in all respects to the requirements set forth above. The protest must be received by PVTa at the address specified in the solicitation, no later than five (5) calendar days after the date such notification is publicly posted or sent to the bidder or proposer, whichever is earlier. A written decision stating the grounds for allowing or denying the protest will be transmitted to the protestor and the proposer recommended for award in a manner that provides verification of receipt. Such decision shall be final, except as provided in the Appeals section below or by applicable law or regulation.

Evaluation of Protests

A protest decision should ordinarily be written and published within ten (10) working days of receipt of the protest. The PVTa Administrator may extend the response period if additional time is required to gather and evaluate information necessary for the decision or for other good cause.

Upon receipt of a protest, the Project Manager shall notify parties involved in the procurement as identified above, and such PVTa personnel or others as may be appropriate or necessary to determine the validity of the protest. Copies of the protest submittal, or portions thereof, may be provided to the notified parties as appropriate.

The Project Manager may request additional written information from the protestor or other parties, as necessary to determine the validity of the protest. A formal or informal hearing may be held. If a formal hearing is held, testimony shall be given under oath and a transcript or electronic recording of the proceeding shall be made; the transcript or recording shall be provided to the protestor and made part of the protest record.

The Project Manager shall redact from any submission under the protest process information which has been identified as proprietary, and which, in his/her judgment, is protected from disclosure under the State Public Records Act prior to furnishing such submission to any other party, unless the person furnishing the information consents, in writing, to distribution of the information to other interested parties.

Decision

Upon receipt and evaluation of all relevant information, including any pertinent law or regulations, the Project Manager shall prepare a decision. The decision will contain four parts:

- I. SUMMARY – Describes briefly the protesting party, the solicitation involved, the issues(s) raised, and the decision.
- II. BACKGROUND – Describes in more detail the history of the solicitation and the procurement events leading to the protest, the date the protest was received, and the process by which it was evaluated.
- III. DISCUSSION - Identifies the issue or issues raised by the protestor, and the factors considered in reaching a decision, and the rationale for the decision.
- IV. DETERMINATION - States the decision and any remedy or subsequent action, e.g. cancellation of the procurement, resulting from it.

Ordinarily, each issue raised in the protest will be discussed separately in Parts III and IV.

Decisions shall be signed and issued by the AUTHORITY Project Manager. The decision shall be issued to the protestor; other interested parties shall receive either a copy of the decision or a notice of decision, as appropriate. Where appropriate, transmittal may be electronic, followed by hard copy. The protest document, the decision, and all other documentation related to the decision shall be public record except as otherwise provided by the State Public Records Act or AUTHORITY's regulations and policies.

Appeals

Decisions of the Project Manager may be appealed to the PVT Administrator by the protestor within five (5) working days after the decision is issued to the protestor. The appeal shall be in writing, addressed to the PVT Administrator, and shall state with specificity the basis for the appeal. The PVT Administrator shall review the written record of the protest and may conduct such further investigation as is deemed necessary or appropriate to reach a decision. The decision of the PVT Administrator will ordinarily be issued within fifteen (15) working days of receipt of the appeal; this time period may be extended if necessary to complete an investigation. The decision of the PVT Administrator shall be final and conclusive, except for such remedies as state or federal law or regulation may provide.

Record of Protest

Upon receipt of a protest, the Project Manager shall establish a separate file in which a complete record of the protest shall be maintained. The file shall constitute a separate portion of the overall procurement file.

The procurement protest file shall include reasonable and adequate documentation of the protest and outcome of the protest. Protest file documentation should be proportional to the size and complexity of the protest.

The protest file should, at a minimum, include the following:

- I. The protest, including supporting documentation
- II. Record of determination of protest timeliness
- III. Record of internal distribution of protest
- IV. Record of internal responses to protest
- V. Record of legal review
- VI. Determination and findings, including supporting documentation
- VII. Protester response/appeal
- VIII. Result of appeal
- IX. Notice of cancellation of solicitation, if applicable