

Chapter 4.00
Real Property

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Section 4.00.010 **General Authorization**

(a) Acquisition of real property necessary or convenient for Authority purposes is governed by the provisions of this chapter.

(b) The General Manager may acquire real property necessary or convenient for an approved Authority project in accordance with the procedures established by this chapter whenever the acquisition is consistent with any approved budget and funds have been appropriated. Inclusion of a capital project in an adopted budget constitutes authorization for the General Manager to acquire all real property necessary or convenient to implement the project and the fair market value of the property is \$250,000 or less or the fair rental value of the property is \$250,000 or less. All other acquisitions of real property shall be approved by the Board. A project subject to the California Environmental Quality Act or National Environmental Policy Act will not be deemed approved for the purposes of this subdivision until after completion of applicable environmental review.

(c) Acquisition of real property includes, without limitation, purchase, lease, license, easement, acceptance of gift, dedication, or bequest, or any other lawful means of conveyance of any estate or interest in real property.

(d) Prior to acquiring any real property, the General Manager shall comply with applicable state or federal laws governing the acquisition of real property, including the relocation assistance act (California Government Code section 7260 et seq.). The General Manager shall not acquire property contaminated with hazardous materials or hazardous waste unless a remediation plan has been approved by federal, state or local agencies with jurisdiction and the remediation plan will be implemented at the cost and liability of the person conveying the property, or unless the acquisition has otherwise been authorized by the Board.

(e) Acquisition of water or water rights, other than water of the Metropolitan Water District of Southern California, is subject to approval by the Board.

(f) When the Board has adopted a resolution of necessity for acquisition of property by eminent domain, the General Manager and General Counsel are authorized to take all actions necessary to accomplish the acquisition, subject to budgetary limitations and the provisions of section 4.00.020.

Section 4.00.020 **Execution of Documents**

(a) The General Manager may execute any contract, lease, easement, deed, license or other document necessary to accomplish the transfer to the Authority of any estate, interest, or right in land when the consideration to be paid by the Authority for the estate, interest or rights is \$250,000 or less and the transfer otherwise complies with this chapter.

(b) The General Manager may execute any contract, lease, deeds, easement, license or other document necessary to accomplish an exchange of property for the purpose of correcting Authority right of way alignments or otherwise where the properties exchanged have substantially the same estimated value.

(c) When not otherwise authorized by subdivisions (a) and (b), the General Manager may execute any contract, lease, deed, easement, license or other document necessary to accomplish the transfer to the Authority of any estate, interest, or right in land whenever the acquisition has been approved by the Board.

(d) If a proposed acquisition will create an uneconomic remnant that may be corrected by acquiring a larger or smaller parcel that will still serve the Authority's interest, the General Manager may execute documents necessary to acquire the greater or lesser property interest that best meets the Authority's needs.

(e) The General Manager shall not execute any contract, lease, easement, deed, license or other document necessary to accomplish the transfer to the Authority of any estate, interest, or right in land unless it has first been approved as to form and legality by the General Counsel.

(f) The General Manager may accept any deed conveying any property or property interest in connection with any conveyance transaction approved pursuant to this chapter.

(g) The General Manager may accept or reject any gift, bequest, donation, dedication, or offer of dedication of property or any interest in property whenever in the best interests of the Authority.

Section 4.00.030 **Requirements for Acquisition**

(a) Before acquiring property by purchase or lease the General Manager shall obtain an estimate of its fair market value or fair market rent. The estimate of fair market value or fair market rent shall be made by a qualified independent appraiser, except that appraisals may be performed by qualified Authority employees if the expected value of the property is less than \$25,000 or the expected rental value is less than \$2,000 per month. Appraisals shall conform to the requirements of state law and industry standards applicable to real estate appraisals as well as the requirement of the California Eminent Domain Law.

(b) Before acquiring property the General Manager shall obtain an assessment of hazardous materials or other environmental, geological or other conditions of the property.

(c) Before acquiring property the General Manager shall determine that the project is exempt from environmental review or that all environmental review required for the project has been completed in accordance with applicable state or federal law.

Section 4.00.040 Approval of Appraisals

The Director of Engineering, General Counsel and Right of Way Manager, are jointly authorized to approve appraisals on behalf of the Authority.

Section 4.00.050 Purchase Procedures

(a) Following approval of the appraisal and before commencing any eminent domain proceeding, the General Manager shall make an offer to purchase the property in accordance with the Relocation Assistance Act (Government Code Section 7260 et seq.), any implementing regulations (Title 25 of the California Code of Regulations), and if federal funding is involved, applicable federal law.

(b) The General Manager shall make every reasonable effort to expeditiously acquire the real property through negotiation prior to the institution of any action in eminent domain. If the property owner agrees to sell, the acquisition agreement and deed may be processed according to the requirements of this chapter.

(c) If real property is acquired by purchase, the Authority shall pay all reasonable expenses incident to transfer including but not limited to recording fees, transfer fees and similar expenses incident to the conveyance of real property.

(d) Whenever the Authority has formally communicated a notice of decision to appraise or has made a firm offer to purchase and subsequently decides not to acquire the property, the Authority shall serve a notice in writing on the owner, all persons occupying the property and all other persons potentially eligible for relocation payments and assistance. This notice shall state that the Authority has decided not to acquire the property. It shall be served not later than 30 days following the date of the Authority's decision not to acquire, unless an earlier notice is required by law.

(e) After all property acquisitions for a project have been completed, the General Manager shall provide a report to the Board listing the cost of the acquisitions.

Section 4.00.060 Supplemental Regulations

The General Manager may issue written supplemental regulations for the acquisition of real property. Such supplemental regulations shall be approved by the General Counsel and shall not be inconsistent with the provisions of this chapter.

Section 4.00.070 Conveyances for Project Implementation

The General Manager may execute easement deeds, licenses, leases or other documents

granting easements or other interests in Authority property to public utilities or public agencies necessary to provide service to or implement construction, operation, or maintenance of an Authority facility or approved project, or to satisfy mitigation requirements. For purposes of this section, a project is approved when it has been included in an approved budget and a determination to proceed with the project has been made in accordance with the California Environmental Quality Act.

Chapter 4.04
Goods and Services

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Section 4.04.010	General Provisions

(a) The General Manager may procure goods and services as provided in this chapter. Acquisitions shall be consistent with the budget approved by the Board. When used in this chapter the term General Manager includes General Counsel for procurements by the office of the General Counsel. This chapter is adopted for the benefit of the Authority in order that it may obtain goods and services of suitable quality to meet the Authority’s needs at the highest reasonable value and at least available cost.

(b) In furtherance of the Authority’s Small Contractors Outreach and Opportunities Program (SCOOP) and as provided in sections 4.04.080 and 4.04.180, the General Manager may utilize a Sheltered Market Program which provides that selected procurement opportunities are designated, before solicitation, for competition among registered, certified, small businesses only. There must be at least three registered, certified, small businesses that can provide the needed services or goods for a Sheltered Market procurement process. Except as provided

herein, the Sheltered Market Program shall comply with the requirements of this chapter, including procedures for formal and informal bidding.

(c) **Environmentally Preferable Procurement:** The Authority seeks to maximize the environmental benefits of its activities by encouraging the procurement of services and products that minimize environmental impacts, reduce waste, and maximize recyclability and recycled content. Whenever feasible, products made from recycled material, containing environmentally preferable materials, having demonstrated water, energy or resource savings shall be specified in Authority procurements. Bidders able to supply recycled products and products containing recycled and environmentally preferable materials that meet performance requirements are encouraged to offer them in bids and proposals. The General Manager may establish policies and procedures to promote environmentally preferable procurement, including incentives for products with demonstrated energy, water, or other resource savings.

(d) "Duly authorized employee" means an Authority employee authorized by the administrative policy to approve expenditures and bind the Authority by contract within certain monetary limits.

(e) "Goods" means materials, equipment, supplies, furnishings, consumer products, motor vehicles and other tangible personal property. Procurement of goods may include incidental services of the vendor necessary or convenient for the delivery, installation, set-up, testing or use of goods acquired from the vendor.

(f) "Services" means a service or services provided by an independent contractor.

(g) The value or amount of a contract or contract change or revision is the price in dollars to be paid by the Authority for the goods or services provided under the contract. For purposes of this chapter, when determining the value of contracts for services of professionals such as appraisers, attorneys, accountants, auditors, economists, financial advisors, litigation experts, lobbyists and similar consultants compensated based on an hourly or fixed rate for professional services, costs of reimbursement for actual and necessary costs and expenses customarily excluded from the fee for services need not be considered unless otherwise provided in the contract.

(h) The General Manager shall report to the Board not later than three months after the end of each fiscal year listing all contracts and contract amendments greater than \$10,000 made or awarded by the General Manager during the preceding fiscal year. The report will identify how each contract was procured. Reports of contract amendments will identify the original amount and term of the contract, the total number of amendments, the cumulative dollar value of the contract and the extension to the term of the contract.

(i) "Published" or "publication" means publication once in a newspaper designated under section 1.08.050, or posting in a conspicuous location on the Authority's website, or posting on an Internet site commonly used for the posting of procurement announcements for public agencies in California.

Section 4.04.020 **Award and Execution of Contracts - Generally**

(a) The Board is the awarding authority for contracts in an amount of more than \$150,000, except as provided in this chapter. Unless otherwise determined by the Board at the time of award, a contract awarded by the Board may be executed by the Chair or Vice-Chair in the absence of the Chair or may be executed by the General Manager in the absence of the Chair and Vice-Chair. The signature of the Chair or Vice-Chair may be attested by the Secretary. The signature of any Authority officer or authorized employee may be attested by the Clerk of the Board. Unless required by law, other than this paragraph, the lack of attestation shall not affect the validity of a duly executed contract.

(b) The General Manager is the awarding authority for contracts in an amount of \$150,000 or less, and may execute such contracts.

(c) In furtherance of the Authority's pipeline inspection program and to maintain system reliability, the General Manager may award and execute contracts without regard to the limits of subdivisions (a) or (b) for either (1) work during the period of a pipeline shutdown to repair or correct a condition discovered during the shutdown, or (2) repair or relining work to an area of pipeline at which the Authority's electronic pipeline monitoring systems indicates a condition requiring an urgent response. The General Manager shall report to the Board not later than seven (7) days after the discovery of the condition requiring repair or correction or at its next regularly scheduled meeting, if that meeting will occur not later than fourteen (14) days after the action, the details of the condition and of the repair or corrective action. Any contract in excess of \$250,000 issued pursuant to this subsection (c) is subject to ratification by the Board at its first regular meeting following the discovery of the condition.

(d) The General Manager may execute any contract for utility service or work performed by a utility for the installation or relocation of utilities consistent with any approved budget or appropriation of funds.

Section 4.04.030 **Award and Execution of Contracts - Emergencies**

In an emergency the General Manager may award and execute contracts without regard to the limits of section 4.04.020 provided that the goods and services are of an urgent nature, directly and immediately required by the emergency. The General Manager shall report to the Board not later than seven days after the emergency action or at its next regularly scheduled meeting, if that meeting will occur not later than 14 days after the action, the details of the emergency and reasons justifying the actions taken. Any contract having a value more than \$250,000 shall be subject to ratification by the Board at its first regular meeting following the onset of the emergency. As defined in section 2.04.050(e) of this Code an emergency is a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent and mitigate the loss or impairment of life, health, property or essential public services. An emergency also includes a material interruption of the Authority's ability to operate due to acts that disable the Authority's computer-based information systems such as cyber terrorism, virus attacks, network security breaches, or other impairment of the computer system.

Section 4.04.040 **Amendments to Contracts**

The General Manager is authorized to issue amendments to contracts as follows:

(a) When the original contract amount is more than \$150,000, amendments may be issued up to a cumulative total of \$150,000 or 10 percent of the original contract amount, whichever is greater. The cumulative sum of all amendments that have not been previously approved by the Board may not exceed \$250,000.

(b) When the cumulative sum of amendments to a contract would exceed the limits in (a) above, a report of such amendments will be presented to the Board at its next meeting. Upon acceptance of the amendments by the Board, the General Manager shall have additional authorization to issue amendments as if the original contract amount were the total of the original amount and all accepted amendments.

(c) Amendment means any amendment, change, modification, revision, or novation of a contract.

Section 4.04.050 **Contract Documents**

(a) Contracts of the Authority shall be made only by a duly authorized officer or employee of the Authority.

(b) Contracts for sale to the Authority of goods over \$500 shall be in writing. A duly authorized and issued Authority purchase order may be used to satisfy the requirements of this section provided that the purchase order contains all the requirements of a contract under California law. The Authority shall not be bound by any contract that is not first executed by a duly authorized officer or employee of the Authority.

(c) Contracts for services having a contract value of greater than \$10,000 shall be in writing. The Authority shall not be bound by any contract that is not first executed by a duly authorized officer or employee of the Authority.

(d) All changes, modifications, amendments or novations of written contracts shall be in writing. Any change, modification, amendment or novation of an oral contract that causes the total contract value to exceed the limit of subdivision (a) or subdivision (b) shall be in writing. The Authority shall not be bound by any change order, modification, amendment or novation that is not first executed by a duly authorized officer or employee of the Authority.

(e) When permitted by state or federal statute and authorized by the Authority, computer or electronic communication technology may be used whenever a written document is required by this chapter, provided, however, that the communication is capable of being translated into a written or other record of the Authority capable of being retained, accessed and reproduced in accordance with the Authority's policies governing records of the Authority. The General Manager may develop policies and procedures for use of computer or electronic

communication technology for procurement purposes. The policies and procedures shall be subject to approval by the General Counsel for consistency with this chapter and applicable law.

(f) This subsection authorizing the use of electronic signatures is adopted pursuant to the provisions of the Uniform Electronic Transactions Act, Title 2.5 commencing with Section 16333.2 of Part 2, Division 3 of the Civil Code and as may be amended by the California Legislature from time to time.

Section 4.04.060 **Exemptions and Exceptions**

(a) This chapter shall not apply to goods and services provided pursuant to a contract that is subject to the provisions of chapter 4.08 relating to public works.

(b) The provisions of sections 4.04.080, 4.04.090 and 4.04.100 of this chapter requiring competitive bidding shall not apply to the following transactions, purchases or contracts:

1. Purchase of used equipment, which in the opinion of the General Manager is satisfactory for the work of the Authority;
2. Contracts for governmental or proprietary services provided by any government agency;
3. Public service announcements, advertisements notices, airtime or official publications;
4. Membership in professional organizations or associations;
5. Acquisition of water or water related service;
6. Goods or services required to respond to an emergency as described in section 4.04.030, or a pipeline condition described in subdivision (c) of section 4.04.020;
7. Work performed by a utility for the installation, maintenance, operation, or relocation of utility facilities or components to provide service to the Authority;
8. Acquisitions where due to special circumstances of an acquisition the General Manager in consultation with the General Counsel determines, in writing, that implementation of the informal or formal competitive acquisition process is infeasible, impractical or otherwise not in the best interest of the Authority. The authority of this paragraph is non-delegable.

(c) The provisions of Sections 4.04.070 through 4.04.190, inclusive, shall not apply to contracts for professional and specialized services such as, but not limited to, services rendered by appraisers, attorneys, accountants, auditors, economists, financial advisors, lobbyists

and other specialized or professional services whenever the General Manager or General Counsel determines the contract is in the best interests of the Authority.

Section 4.04.070 Open Market Acquisitions

The General Manager may acquire goods and consumer services in the open market without a requirement for informal or formal competitive bidding as follows:

- (a) Purchases of consumer goods and services having a price of \$10,000 or less, excluding applicable taxes;
- (b) Purchases of books, periodicals, newspapers, trade journals and other publications, including individual purchases and subscriptions;
- (c) Purchases of fuel, oil, or other products in connection with the immediate use or emergency repair of Authority vehicles;
- (d) Telephone, cable television, Internet, telecommunication, gas, electric, water, sewer and refuse collection and other utility services;
- (e) Subscriptions to social media, job recruitment, public bid notification, software, news, and other Internet provided consumer services;
- (f) Airline tickets, train tickets, hotels and other travel expenses according to the travel policy;
- (g) Training, including related instruction, materials and classroom or venue services.

Section 4.04.080 Sheltered Market Program Solicitation for Bids or Proposals for Purchases of Goods and Services Other than Professional Services Valued at Greater Than \$10,000 and Up to \$150,000

(a) Goods and Services shall comply with the advertising, proposal, and award procedures under this chapter. In addition, in furtherance of the SCOOP Program and as provided herein, the General Manager may utilize a Sheltered Market Program for the purchase of goods and services (other than professional services) having a value of greater than \$10,000 and up to \$150,000 which provides that selected procurement opportunities are designated, before solicitation, for competition among registered, certified, small businesses only. There must be at least three registered, certified, small businesses that can provide the needed services or goods for a Sheltered Market procurement process.

(b) Goods and Services Other than Professional Services, having a value of greater than \$10,000 and up to \$150,000 may be awarded through a competitive bid process open only to registered, certified, small businesses. If no responsible or responsive bids are received, these purchases will be opened to all bidders under this chapter.

Section 4.04.090 **Informal Bids**

(a) The General Manager may acquire a good having a unit price, excluding applicable taxes, of more than \$10,000 and up to \$50,000 or may contract for the acquisition of goods having a contract price, excluding applicable taxes of more than \$10,000 and up to \$50,000 in compliance with the informal competitive bids process of this subdivision. Informal bids may be solicited by publication or by soliciting bids from not fewer than three qualified vendors. Where appropriate, the General Manager may request sealed, written informal bids. The notice inviting informal bids and the bids shall be in writing. Bids may be transmittable to the Authority by facsimile, mail, courier, electronic mail (e-mail), or any other means of delivery. A qualified vendor is a vendor capable of delivering the good or goods meeting the Authority's specifications and requirements at the time specified by the General Manager. During the process of soliciting price quotations, a vendor's or prospective vendor's price quotations shall be kept confidential except for internal use by Authority personnel for purposes of the pending acquisition.

(b) When soliciting price quotations or informal bids under paragraph (a), the Authority shall (1) describe to the vendor in general terms the goods; (2) advise vendors how to obtain additional information about the goods; (3) state the date, time and place for the submission of bids; (4) state whether the selection of the successful bidder will be based on price alone or whether vendor reliability, experience, availability, expertise or designation by Authority as a Small Business will be considered; (5) include a description of additional items such as insurance, bonding, and warranties to be included in the price; (6) include any other information required by law.

(c) If the acquisition specified in the bid is of a generic quality and a vendor with particular attributes is not required to meet the needs of the Authority and the purposes of this chapter, then the General Manager shall select the vendor whose responsive bid offers to sell the goods at the lowest price.

(d) If vendor reliability, experience, availability, expertise or designation by Authority as a Small Business are a component in meeting the needs of the Authority and the purposes of this chapter, then the General Manager need not necessarily purchase from the vendor proposing the lowest price but may select a vendor that best meets the Authority's requirements including price.

(e) The respective department responsible for an acquisition subject to paragraph (a) shall keep a record of requests for quotations or bids and all responses submitted for the acquisition in compliance with the Authority's Record Retention Program.

Section 4.04.100 **Formal Bids**

(a) Except as otherwise provided in this chapter or where the General Manager determines that competitive bidding is infeasible or impractical, when a contract has a value of more than \$50,000, it will be awarded to the lowest responsible and responsive bidder after a formal competitive process.

(b) The notice inviting bids shall include a general description of the goods to be purchased and bond requirements, if any, and shall state where bid blanks and specifications may be secured, and the time and place for opening bids. It shall incorporate by reference all other bid documents.

(c) The notice inviting bids shall be published not less than 14 days before the date of opening of the bids.

(d) The notice inviting bids shall also be mailed by first class mail or transmitted via courier, e-mail or facsimile, or any combination of mailing, e-mail and facsimile, to prospective suppliers known to the Authority or who have requested their names be considered and from lists of small contractors under the Authority's Small Contractor Outreach and Opportunity Program (SCOOP), and any other source that will ensure the maximum participation by qualified vendors in the formal bid competition. The notices shall be mailed or sent not less than 14 days before the date of opening of the bids.

(e) When deemed necessary by the General Manager, bidder's security may be prescribed in the public notices inviting bids. Bidders shall be entitled to return of bid security provided that a successful bidder shall forfeit his bid security upon refusal or failure to execute the contract within 15 days after the notice of award of contract has been mailed, unless the Authority is responsible for the delay. On refusal or failure of the successful bidder to execute the contract, it may be awarded to the next lowest bidder; the amount of the lowest bidder's security may be applied by the Authority to the difference between the low bid and the second lowest bid, and the surplus, if any, shall be returned to the lowest bidder.

(f) Sealed bids shall be submitted to the Authority's addressee identified in the notice inviting bids and shall be identified as bids on the envelope.

(g) Bids shall be opened in public at the time and place stated in the public notices. A tabulation of all bids received shall be open to public inspection during regular business hours for a reasonable period of time. No bidder may withdraw his bid for a period of at least 90 days after the date set for the opening thereof. Bids received after the time set for the opening of bids shall be returned unopened to the bidder.

(h) At its sole discretion, the awarding authority may reject any and all bids presented and re-advertise for bids or exclude any item or items from the award of bid or waive any informalities in a bid.

(i) If two or more bids are received for the same total amount or unit price, quality and service being equal, the awarding authority may accept the one it chooses or accept the lowest bid made by negotiations with the bidders after the bid opening.

(j) The awarding authority may require a performance bond before entering a contract in such amount as it shall find reasonably necessary to protect the best interest of the Authority. If a performance bond is required, the form and amount of the bond shall be described in the notice inviting bids.

(k) If no bids are received in response to an invitation for competitive bids, a contract may be negotiated with any qualified person.

(l) If the apparent successful bidder fails to meet deadlines for submitting documents required by the notice inviting bids or instructions to bidders, the awarding authority may award a contract to the next lowest bidder meeting all requirements.

(m) If a contract let pursuant to the provisions of this chapter is terminated because of breach by the contractor, the awarding authority may complete the project by negotiated contract with any qualified individual or firm.

Section 4.04.110 **Withdrawal or Correction of Formal Bid**

(a) Prior to bid opening date and time, bids submitted may be withdrawn by written or electronic request received by the designated Authority officer or employee before the hour set for opening. After such hour it may not be withdrawn.

(b) After bid opening date and time, any bidder who seeks to withdraw or modify a bid because of inadvertent computational error shall notify the Authority department responsible for the bid no later than three working days following the bid opening. The bidder shall provide worksheets and other such information as may be appropriate or required by the department to substantiate the claim of inadvertent error. Failure to do so may bar such relief and allow recourse from the bid surety if applicable. The burden shall be upon the bidder to prove such error.

Section 4.04.120 **Inspection of Supplies and Equipment**

The General Manager shall inspect goods delivered and contractual services performed to determine their conformance with the specifications set forth in the order or contract. The General Manager shall have authority to require chemical and physical tests of samples submitted with bids and samples of deliveries which are necessary to determine their quality and conformance with specifications.

Section 4.04.130 **Use of Brand Name in Specifications; Offers of “Or Equal”; Testing**

(a) Any reference to a specific Brand Name in specifications is illustrative only. A reference to a Brand Name describes a component best meeting the specific operational, design, performance, maintenance, quality, and reliability requirements of the Authority.

(b) A bidder may offer an equivalent (“or equal”) in response to a Brand Name reference. When an “or equal” is offered, the Authority may test and evaluate the product prior to award of the contract.

(c) At bidder’s expense, bidder bears sole responsibility for providing any information, test data, or document required by the Authority to fully evaluate the acceptability

of the “or equal”. At bidder’s expense, this full evaluation may require independent testing, including destructive testing, at qualified test facilities.

- (d) The Authority reserves the right to reject a bid containing any “or equal” offered.

Section 4.04.140 Sole Source Procurement

When requirements are so critical or call for such specialized expertise that only one source is capable of satisfying those requirements, the awarding authority may waive the competitive procurement procedures. Sole source means that only one vendor possesses the unique and singularly available capability to meet the requirement of the solicitation, such as technical qualifications, matching to currently owned equipment or supplies or the ability to deliver at a particular time. Purchasing from a sole source shall be permitted after written justification from the requesting department explaining why a sole source has been specified, and a factual finding by the awarding authority that it is in the best interest of the Authority to purchase without competitive purchasing.

Section 4.04.150 Cooperative Procurement

(a) Purchases of goods and services by contract arrangement and agreement for cooperative purchasing programs with the federal, state, the county, any public or municipal corporation of the state, or intergovernmental cooperative purchasing agreement, may be made by the Authority when the administering or lead agency has based its contract on competitive pricing procedures and the purchase is determined to be in the best interest of the Authority. The purchase agreement utilized must specifically include the item or service to be purchased by the Authority.

(b) The General Manager is authorized to enter into contracts greater than \$150,000 for the purchase of goods and services available through a cooperative purchasing agreement provided: (1) goods and services to be purchased were approved in the applicable budget, and (2) the cooperative purchasing agreement being utilized was awarded as a result of a competitive pricing procedure containing a public agency clause.

Section 4.04.160 Contracts for Goods and Services with Government Agencies, Nonprofits and Others

(a) The General Manager may enter into contracts for goods and services with any federal, state or local agency, any nonprofit agency qualified under Section 501(c)(3) of the Internal Revenue Code, any public educational institution, including program services established and supervised by any federal, state or local agency, without observing the competitive bidding provisions of this chapter provided that all of the following conditions are met:

1. The contract does not exceed \$250,000 per year, except that any contract having an expenditure of greater than \$150,000 shall be awarded by the Board;

2. The agency agrees to direct supervision of the workers or employees;
3. The agency agrees to provide workers' compensation insurance for the workers or employees;
4. The agency agrees to indemnify, protect, defend and hold the Authority harmless against any and all claims alleged to be caused or caused by any act or omission of the agency's worker or employee.

(b) Many governmental, non-profit and educational institutions provide job training, work furlough, educational and similar human service programs that make goods and services available at a competitive cost while also furthering the public welfare. This section is intended to provide an expedient method for Authority participation in such programs and is not intended to limit the exemption of Section 4.04.060, subdivision (b), 2, for services provided directly by a government agency.

Section 4.04.170 **Procedures for Professional and Technical Services**

(a) Unless otherwise provided in this Chapter, the Authority's selection of the architects, landscape architects, professional engineers, environmental consultants, land surveyors, and construction managers shall be in accordance with the provisions of this Section and on the basis of professional qualifications and competence to perform the particular services required and at fair and reasonable prices to the Authority.

(b) Any department may establish a list or lists of pre-qualified service providers for award of contracts on a rotational, as-needed basis. A list shall be established after public advertisement of solicitation of statements of qualification; once established a list shall be valid for a period not to exceed five years. The department head may remove from a list any service provider that no longer meets the qualifications or has violated the Authority's procurement or contract requirements.

(c) When a service contract has a value of \$10,000 or less, the General Manager may award a contract to a provider selected from a rotational as-needed list established pursuant to subdivision (b), or from the open market. The solicitation of proposals and responses may be made by any commercially acceptable form of communication. The General Manager may negotiate prior to award of a contract in the best interest of the Authority.

(d) When a service contract has a value greater than \$10,000 and not more than \$50,000, the General Manager may award a contract to a provider selected from a rotational as-needed list established pursuant to subdivision (b), or by soliciting no fewer than three qualified vendors from the open market. The solicitation of proposal may be made by any commercially acceptable form of communication, including publication, but responses shall be in writing. Unless the General Manager selects a provider from an established rotational as-needed list, the General Manager will determine the selected provider based on responses to a solicitation, however, the General Manager may reject all proposals. If all proposals are rejected, the General

Manager will follow the procedures of this subdivision for any subsequent selection. The General Manager may negotiate prior to award of a contract in the best interests of the Authority.

(e) When a professional service contract has a value greater than \$50,000, the awarding authority may award a contract to a qualified provider that has submitted a written proposal in response to a request for written proposals. Proposals shall be solicited through public advertisement. Alternatively, the General Manager may solicit proposals from a short list of pre-qualified providers. The short list of pre-qualified providers may be developed based upon responses to requests for qualifications solicited through public advertisement; provided, however, in determining selected providers invited to submit a proposal the General Manager shall endeavor to assure participation opportunities among all similarly qualified providers, including providers without previous Water Authority service history. The method for evaluating, ranking and selecting proposals, or for establishing the short list of pre-qualified providers shall be stated in the request for proposals or request for qualifications. The General Manager may negotiate with the top ranked firm and recommend award of a contract to the Board for the most qualified firm or individual to perform the service and which best meets the needs of the Authority.

(f) If no proposals are received in response to a solicitation, the General Manager may negotiate a contract with any qualified service provider.

(g) If a contract let pursuant to the provisions of this chapter is terminated because of breach, the Authority may complete the work by negotiated contract with any qualified service provider.

Section 4.04.180 **Sheltered Market Program Solicitation for Proposals and Award of Contracts for Professional and Technical Services Valued at Greater Than \$10,000 and Up to \$150,000**

(a) Professional and Technical Services shall comply with advertising, proposal, and award procedures under this chapter. In addition, in furtherance of the SCOOP Program and as provided herein, the General Manager may utilize a Sheltered Market Program for services valued at greater than \$10,000 and up to \$150,000 which provides that selected procurement opportunities are designated, before solicitation, for competition among registered, certified, small businesses only. There must be at least three registered, certified, small businesses that can provide the needed services or goods for a Sheltered Market procurement process.

(b) Professional or technical services with a value of greater than \$10,000 and up to \$150,000 may be awarded through a competitive negotiated process open only to registered, certified, small businesses which are licensed and qualified to perform the work in accordance with Section 4.04.170.

(c) If there are no proposals which meet the necessary qualifications and experience, the competitive negotiated process shall follow the advertising, bid and award procedures under Section 4.04.170.

(d) Nothing in this Section shall limit the General Manager's right to reject all proposals if it is in the best interest of the Authority. If all proposals are rejected the process shall be reopened to all and bid in accordance with this chapter.

(e) As long as the original value of the contract is \$150,000 or less as determined at the time of contract award, any future amendments increasing the value of that contract will not render the award or contract invalid.

Section 4.04.190 **Procedures for Other Services**

Maintenance services not covered under chapter 4.08 and services not covered under section 4.04.170 and 4.04.180 of this chapter shall be procured either by informal or formal bidding procedures as set forth in sections 4.04.080, 4.04.090 and 4.04.100 of this chapter.

Section 4.04.200 **Procedures for Bid Protests**

(a) Protests by unsuccessful proposers or bidders shall be submitted to the Authority department where bids or proposals were submitted and to the protested bidder setting forth in detail the grounds for such protest.

(b) Protests shall be submitted to the Authority and the protested bidder no later than 10 calendar days after the date of the announcement of selection.

(c) All protests shall be in writing and must include the following information:

1. The name, address and telephone number of the protestor;
2. The signature of the protestor or protestor's representative;
3. The solicitation, bid or contract number;
4. A detailed statement of all legal and factual grounds for the protest;
5. All documentation supporting the protestor's grounds for the protest;
6. The form of relief requested and the legal basis for such relief.

(d) If a valid protest is timely filed, the Authority shall investigate or cause to be investigated the bid protest.

(e) The protested bidder shall have five calendar days to respond to the protesting bidder and to the Authority and to provide any information requested by the Authority.

(f) The awarding authority will rule on the bid protest. The decision of the awarding authority is final, except for the possibility of judicial review. The awarding authority may hold a hearing among interested parties prior to the determination of the protest. If the Board is the

awarding authority, the General Manager may make a recommendation to the Board regarding the bid protest.

Section 4.04.210 **Collusion with Bidder**

Any employee of the Authority shall be deemed guilty of malfeasance and shall be disciplined in accordance with Authority personnel rules and regulations for engaging in any of the following activities:

- (a) Aiding or assisting a bidder in securing a contract to furnish supplies, materials, equipment or contractual services at a higher price than that proposed by any other bidder;
- (b) Favoring one bidder over another by giving or withholding information;
- (c) Willfully misleading any bidder in regard to any matter relevant to the competitive bidding process or the character of the materials or supplies called for by the contract;
- (d) Knowingly accepting commodities of a quality inferior to those called for by the contract contrary to the best interest of the Authority;
- (e) Knowingly certifying to a greater amount of service or work performed than has actually been performed;
- (f) Knowingly certifying to the receipt of an amount or different kind of materials, supplies or equipment than have actually been received.

Section 4.04.220 **Supplemental Regulations**

The General Manager may issue written supplemental regulations for the making and administration of contracts. Such supplemental regulations shall be approved by the General Counsel and shall not be inconsistent with the provisions of this chapter.

Chapter 4.08
Public Works

Section 4.08.010	General Authorization
Section 4.08.020	Procedures
Section 4.08.030	Sheltered Market Program Solicitation of Bids and Award of Public Works Contracts Valued at Greater Than \$10,000 and Up To \$150,000
Section 4.08.040	Authority to Contract
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Section 4.08.090	Design-Build Contracts
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Section 4.08.010 **General Authorization**

(a) The Authority may construct, reconstruct or erect works, facilities and improvements necessary or convenient for the purposes of the Authority by contract or by its own forces.

(b) The Authority may keep, operate or maintain its works, facilities and improvements by contract or by its own forces.

(c) The Authority may landscape its property and grounds by contract or by its own forces.

(d) The Authority may acquire works, facilities and improvements necessary or convenient for the purposes of the Authority.

(e) The Authority may determine to contract for one or more items or units of work or may contract for all items and units of work under a single contract. Such a determination shall be made before publication of a notice inviting bids.

(f) In furtherance of the Authority's Small Contractor Outreach and Opportunities Program and as provided in section 4.08.030, the General Manager may utilize a Sheltered Market Program which provides that selected public works procurement opportunities are designated, before solicitation, for competition among registered, certified, small businesses only. There must be at least three registered, certified, small businesses that can provide the needed services for a Sheltered Market procurement process. Except as provided herein, the Sheltered Market Program shall comply with the requirements of this chapter.

(g) "Published" or "publication" means publication once in a newspaper designated under section 1.08.050, or posting in a conspicuous location on the Authority's website, or

posting on an Internet site commonly used for the posting of procurement announcements for public agencies in California.

Section 4.08.020 **Procedures**

(a) Contracts for construction, reconstruction or erection of works, facilities and improvements, in excess of fifty thousand dollars as estimated by the General Manager shall be awarded to the lowest responsible bidder submitting a timely, responsive bid after competitive bidding, except in an emergency declared by Board. When the estimated contract exceeds ten thousand dollars and does not exceed fifty thousand dollars, the General Manager may award a contract after seeking a minimum of three quotations, either written or oral, which permit prices and other terms to be compared. When the estimated contract does not exceed ten thousand dollars, the General Manager may award a contract after such negotiation as the General Manager deems appropriate.

(b) Contracts for maintenance of works, facilities and improvements, in excess of fifty thousand dollars as estimated by the General Manager shall be awarded to the lowest responsible bidder submitting a timely, responsive bid after competitive bidding, except in an emergency declared by Board. When the estimated contract exceeds ten thousand dollars and does not exceed fifty thousand dollars, the General Manager may award a contract after seeking a minimum of three quotations, either written or oral, which permit prices and other terms to be compared. When the estimated contract does not exceed ten thousand dollars, the General Manager may award a contract after such negotiation as the General Manager deems appropriate. Maintenance includes, without limitation, repairs that are expected at intervals of five or fewer years. Maintenance does not include refuse removal.

(c) Contracts for landscaping of Authority property or grounds may be awarded after competitive negotiations following the solicitation of requests for proposals, when not included as a part of a construction or maintenance contract. Landscaping contracts for the abatement of weeds from Authority rights-of-way in excess of fifty thousand dollars as estimated by the General Manager shall be awarded to the lowest responsible bidder submitting a timely, responsive bid after competitive bidding.

(d) The Authority may acquire works, facilities and improvements, necessary and convenient to the purposes of the Authority upon such terms and conditions as the Board deems appropriate.

(e) If no bids or quotations are received in response to an invitation for competitive bids or quotations, a contract may be negotiated with any qualified person.

(f) If a contract let pursuant to the provisions of this Chapter is terminated because of breach by the contractor, the Authority may complete the project by negotiated contract with any qualified person.

(g) If two or more bids of responsive responsible bidders are the same and lowest, the Authority may accept the one it chooses or may negotiate a contract with any of the low bidders.

(h) If the apparent successful bidder fails to meet deadlines for submitting required bond and insurance documents, or other documents required by the notice inviting bids or instructions to bidders, the Authority may award a contract to the next lowest bidder meeting all requirements.

(i) Nothing in this section shall be construed to limit the power of the Authority to perform work by its own forces.

Section 4.08.030 Sheltered Market Program Solicitation of Bids and Award of Public Works Contracts Valued at Greater Than \$10,000 and Up To \$150,000

(a) All public works contracts shall be advertised, bid, and awarded in accordance with this chapter. In addition, in furtherance of the SCOOP Program and in accordance with this section, the General Manager may utilize a Sheltered Market Program for public works projects valued at \$150,000 or less which provides that selected procurement opportunities are designated, before solicitation, for competition among registered, certified, small businesses only. There must be at least three registered, certified, small businesses that can provide the needed services or goods for a Sheltered Market procurement process.

(b) Public works contracts valued at greater than \$10,000 and up to \$150,000 may be awarded through a competitive bid process open only to registered, certified, small businesses which are licensed and qualified to perform the work, unless there are no registered, certified, small businesses which have the requisite licenses or qualifications for the contract, in which case the competitive bid process will be open to all and advertised, bid, and awarded under this chapter.

(c) The lowest responsible and responsive bidder shall be awarded the public works contract. If there are no responsible bids, the competitive bid process shall follow the advertising, bid and award procedures under this chapter.

(d) Nothing in this Section shall limit the General Manager's right to reject all bids if all bids received for a particular project exceed the Engineer's estimate for that project. If all bids are rejected the process shall be reopened to all and bid in accordance with this chapter.

(e) As long as the original value of a Sheltered Market Program public works contract as determined at bid opening is \$150,000 or less, any future amendments increasing the value of that contract will not render the bidding or award invalid.

Section 4.08.040 Authority to Contract

(a) The Board is the awarding authority for contracts in an amount in excess of \$150,000, except as otherwise provided in this chapter. Unless otherwise determined by the Board at the time of award, a contract awarded by the Board may be executed by the Chair or Vice-Chair in the absence of the Chair or may be executed by the General Manager. The signature of the Chair or Vice-Chair may be attested by the Secretary. The signature of any officer or authorized

employee may be attested by the Clerk of the Board. Unless otherwise required by law other than this paragraph, the lack of attestation shall not affect the validity of a duly executed contract.

(b) The General Manager is the awarding authority for contracts in an amount of \$150,000 or less, and may execute such contracts.

(c) In an emergency, the General Manager may award and execute contracts without regard to the limits of this section or of sections 4.08.020 or 4.08.030 provided that the work, facility or improvement is of an urgent nature, directly and immediately required by the emergency. The General Manager shall report to the Board not later than seven (7) days after the emergency action or at its next regularly scheduled meeting, if that meeting will occur not later than fourteen (14) days after the action, the details of the emergency and reasons justifying the actions taken. Any contract in excess of \$500,000 issued pursuant to this subsection (c) is subject to ratification by the Board at its first regular meeting following the onset of the emergency. An emergency is defined as a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent and mitigate the loss or impairment of life, health, property or essential public services.

(d) In furtherance of the Authority's pipeline inspection program and to maintain system reliability, the General Manager may award and execute contracts without regard to the limits of this section or of sections 4.08.020 or 4.08.030 for work either: (1) during the period a pipeline shutdown to repair or correct a condition discovered during the shutdown, or (2) repair or relining work to an area of pipeline at which the Authority's electronic pipeline monitoring system indicates a condition requiring an urgent response. The General Manager shall report to the Board not later than seven (7) days after the discovery of the condition requiring repair or correction or at its next regularly scheduled meeting, if that meeting will occur not later than fourteen (14) days after the action, the details of the condition and of the repair or corrective action. Any contract in excess of \$500,000 issued pursuant to this subsection (d) is subject to ratification by the Board at its first regular meeting following the discovery of the condition.

(e) The General Manager is authorized to issue changes, modifications or amendments to contracts, as follows:

1. When the original contract amount is more than \$150,000, modifications may be issued up to a cumulative total of \$150,000 or 10% of the original contract amount, whichever is greater, except that the cumulative sum of all modifications which have not been previously approved by the Board may not exceed \$500,000.
2. When the cumulative sum of modifications to a contract would exceed the limits in paragraph 1 above, a report of such modifications will be presented to the Board at its next meeting. Upon acceptance of the modifications by the Board, the General Manager shall have additional authorization to issue modifications as if the original contract amount were the total of the original amount and all accepted modifications.

3. When the accumulated contract amount is \$150,000 and above, a report will be presented to the Board documenting all modifications to the contract as part of the project acceptance, prior to the filing of a notice of completion.

Section 4.08.050 **Bid and Contract Requirements**

(a) Nothing in this chapter shall be construed to relieve bidders, contractors and the Authority from compliance with provisions of the California Public Contract Code applicable to public entities including the Authority and to public works contracts generally, including public works contracts of the Authority.

(b) Notices inviting bids shall be published at least 14 calendar days before the date set for opening of bids. The General Manager may provide additional notice as may be appropriate. Notices shall comply with the Small Contractor Outreach and Opportunities Program established pursuant to this Code.

(c) To be eligible for consideration, bids must comply with the following requirements:

1. Bids shall be presented under sealed cover.
2. Bids shall be submitted to the Authority, at the specified location, at or before the closing deadline stated in the notice inviting bids. Bids received after the closing deadline shall be returned unopened to the sender if a return address is stated on the cover, otherwise the bid shall be discarded.
3. Bids shall be accompanied by a bidder's security as required by Section 4.08.060.
4. Bids shall conform to the requirements stated in the notice inviting bids, the instructions to bidders and any supplemental instructions or addenda issued by the Authority. However, the Authority may waive immaterial defects and irregularities when it determines that such a waiver is in the best interests of the Authority.

(d) Bids will be opened and made public at the time and place specified in the notice inviting bids.

(e) All contracts shall be in writing. All changes, modifications, amendments or novations of contracts shall be in writing. The Authority shall not be bound by any contract, change order, modification, amendment or novation that is not first executed by a duly authorized officer or employee of the Authority.

(f) Protests of a bid shall be made according to the following procedures:

1. Protests by unsuccessful bidders shall be delivered to the Authority department designated for receipt of the bids and to the protested bidder no later than 10 calendar days after the date of the bid opening.
2. Protests shall be in writing signed by the protestor or the protestor's authorized representative and include the following information:
 - (A) The name, address and telephone number of the protestor;
 - (B) The solicitation, bid or contract number;
 - (C) A detailed statement of all legal and factual grounds for the protest; all documentation supporting the protestor's grounds for the protest; the form of relief requested and the legal basis for such relief.
3. A protest that is not timely filed or that does not contain the required information may be summarily rejected. Upon timely filing of a protest that contains the required information, the Authority shall notify the protested bidder and may investigate the bid protest.
4. The protested bidder shall have five calendar days from the date the Authority delivers notice of the filing of the protest to respond to the protest. The response shall be in writing, signed by the bidder or the bidder's designated representative, and delivered to the Authority. The bidder shall also mail or otherwise deliver a copy of the response to the protestor within the five-day period.
5. Unless requested by the Authority, neither the protestor nor the bidder shall submit additional written material. If additional information is requested, the party from whom it is requested shall deliver the information to the Authority and the other party by the date specified by the Authority.
6. The awarding authority will rule on the bid protest. The decision of the awarding authority is final, except for the possibility of judicial review. If the General Manager is the awarding authority, the manager may hold a hearing among interested parties prior to the determination of the protest, or may determine the protest based on the written submissions. If the Board is the awarding authority, the bid protest will be determined at a public meeting. The General Manager or General Counsel, or both, may make a recommendation regarding the bid protest. The Engineering and Operations Committee may consider the protest based on the written information provided by the parties, the recommendations of the General Manager and General Counsel, and oral presentations at the meeting at which the protest is considered. The Engineering and Operations Committee may, upon advance request by a party, permit submission of further written information or argument, provided however, that if submission of additional written information or argument is permitted, the committee shall permit the other party to file a response. The meeting to consider a protest may be continued to

permit the submission of additional written information or as deemed appropriate by the presiding officer or the committee. The protest shall be decided by the Board upon recommendation of the Engineering and Operations Committee and the evidence presented to the committee.

Section 4.08.060 Required Security for Performance and Payment

(a) All bids exceeding \$50,000 shall be secured in an amount of ten percent of the bid amount by one of the following: cash, a cashier's check made payable to the Authority, a certified check made payable to the Authority, a bidder's bond made payable to the Authority and executed by an admitted surety insurer authorized to do business in California, unless otherwise specified by statute.

(b) Every original contractor on a contract equal to or exceeding \$25,000 shall provide a payment bond in the amount of 100% approved by the Authority. In order to be approved, the payment bond must comply with the requirements of this subsection and applicable law, including the provisions of the California Civil Code relating to payment bonds for public works. The payment bond shall be in the form of a bond and not a deposit in lieu of a bond. The bond shall be executed by an admitted surety insurer authorized to do business in California, unless otherwise specified by statute. The bond shall be in a sum equal to 100% of the total amount payable by the contract.

(c) Except as provided herein, every contract equal to or exceeding \$25,000 shall be accompanied by a performance bond approved by the Authority. The performance bond shall be executed by an admitted surety insurer authorized to do business in California, meet other requirements of the Authority as set forth in the contract, and comply with the requirements of this subsection, unless otherwise required by statute. Where in the best interest of the Authority, the performance bond amount may be set by the Authority based upon adjustable scale, but shall not exceed 100% of the total amount payable by the contract.

(d) The General Manager is delegated the authority to make estimates and approve progress payments, but such payments shall not be made in excess of 95 percent of the portion of actual work completed, plus a like percentage of a value of any material under Authority control and unused. If a finding is made that the project is complex and retention of greater than five percent must be withheld, then payments shall not be made in excess of 90 percent of the portion of the actual work completed plus a like percentage of a value of any material under Authority control and unused.

(e) The General Manager may require payment and performance bond for maintenance or other contracts, not otherwise subject to the provisions of this section, in such amounts as is reasonably necessary to protect the best interests of the Authority. The bond forms and amounts shall be described in the notice inviting bids. Bonds shall be executed by an admitted surety insurer authorized to do business in California.

Section 4.08.070 **Project Labor Agreements**

A contract subject to this chapter in an amount of \$1 million or greater may include a requirement for a project labor agreement. Before issuing procurement documents for a contract in an amount of \$1 million or greater, the General Manager shall obtain a determination by the Board whether a project labor agreement is a requirement of the contract. If the Board determines that a project labor agreement is a requirement of the contract, the requirement shall be included in the procurement documents and contract.

Section 4.08.080 **General Requirements Contracts**

(a) General Requirements Contracts are contracts for the construction, reconstruction, erection, maintenance or landscaping of Authority works, facilities, improvements, property or grounds that contain a unit price book of detailed specifications and unit prices for typical tasks or items of work. Specific construction projects are not contemplated or authorized at the time of contract award. Instead, work is authorized by separate job orders specifying and directing the performance of work under the General Requirements Contract. A contractor under a General Requirements Contract is not guaranteed any particular amount of work under the contract.

(b) The General Manager may authorize use of General Requirements Contracts not to exceed an annual amount of five hundred thousand dollars each and one million dollars cumulatively. General Requirements Contracts may be let according to the procedures of subsection (c) or subsection (d).

(c) General Requirements Contracts may be let to lowest responsive responsible bidder under procedures established by Section 4.08.050 and on specifications that provide for unit-cost terms for all labor, material, and equipment necessary to perform all work contemplated for individual job orders. General Requirements Contracts let under this subsection shall not exceed a term of two years in duration. If a General Requirements Contract is awarded for a term less than two years, one or more extensions may be awarded but the entire term of the contract, including extensions, may not exceed two years.

(d) General Requirements Contracts may be let to more than one contractor that is either a small local contractor or a contractor that has not previously performed work for the Authority. The specifications for such contracts provide for unit-cost terms for all labor, material, and equipment necessary to perform all work contemplated for individual job orders and the cost for each unit shall be determined according to the lowest responses for units or items of work submitted pursuant to a notice inviting proposals published according to the procedures established by Section 4.08.050. Following the submission of responses, the General Manager shall establish the terms of a General Requirements Contract and may enter into the contract with more than one qualified contractor. Job orders under a General Requirements Contract made under this subsection shall be issued to contractors by rotation or other fair and equitable system developed by the General Manager. General Requirements Contracts let under this subsection shall not exceed a term of three years in duration. If a General Requirements Contract is

awarded for a term less than three years, one or more extensions may be awarded but the entire term of the contract, including extensions, may not exceed three years.

(e) General Requirements Contracts shall be awarded by the Board or General Manager as provided in Section 4.08.040.

(f) Following award of a General Requirements Contract, the General Manager may thereafter identify and issue job orders under the General Requirements Contract. An individual job order may not exceed the sum of \$50,000, except in the case of an emergency.

(g) General Requirements Contracts shall be subject to the provisions of Sections 4.08.050 and 4.08.060, except that bidder's bonds may be waived on contracts let according to subsection (d) of this section.

Section 4.08.090 **Design-Build Contracts**

(a) For the purposes of this Section, the following definitions apply:

“Design-Build” means a public works contract procurement method in which both the design and construction of a project are procured from a single entity.

“Design-Build Entity” means a partnership, corporation, or other legal entity that is able to provide appropriately licensed contracting, architectural, and engineering services as needed.

“Design-Build Entity Member” includes any person who provides licensed contracting, architectural, or engineering services.

(b) The Authority may enter into Design-Build contracts according to the provisions of this Section.

(c) Before procuring a Design-Build contract, the General Manager shall prepare a request for proposal setting forth the scope of the project that may include, but is not limited to, the size, type, and desired design character of the works, improvements, facilities, buildings and site, and performance specifications. The performance specifications shall describe the quality of construction materials, assemblies, and other information deemed necessary to adequately describe the Authority's needs. The performance specifications shall be prepared under the direction of the Director of Engineering or Director of Operations and Maintenance, as appropriate.

(d) The Authority may establish a competitive prequalification and selection process for Design-Build Entities that specifies the prequalification criteria, as well as recommends the manner in which the winning entity will be selected. Nothing in this Section precludes a Design-Build contract from being awarded to a sole source, if, in advance of the contract, the General Manager certifies in writing the sole source status of the provider.

(e) Prequalification may be limited to consideration of all or any of the following criteria supplied by a Design-Build Entity:

1. Possession of all required licenses, registration, and credentials in good standing that are required to design and construct the project.
2. Submission of documentation establishing that the Design-Build Entity Members have completed, or demonstrated the capability to complete projects of similar size, scope, building type, or complexity, and that proposed key personnel have sufficient experience and training to competently manage and complete the design and construction of the project.
3. Submission of a proposed project management plan establishing that the Design-Build Entity has the experience, competence, and capacity needed to effectively complete the project.
4. Submission of evidence establishing that the Design-Build Entity has the capacity to obtain all required payment and performance bonding, liability insurance, and errors and omissions insurance, as well as a financial statement assuring the Authority that the Design-Build Entity has the capacity to complete the project.
5. Provision of a declaration that the applying members of the Design-Build Entity have not had a surety company finish work on any project within the past five years.
6. Provision of a declaration providing detail for the past five years concerning all of the following:
 - (A) Civil or criminal violations of the Occupational Safety and Health Act against any member of the Design-Build Entity.
 - (B) Civil or criminal violations of the Contractors' State License Law against any member of the Design-Build Entity.
 - (C) Any conviction of any member of the Design-Build Entity of submitting a false or fraudulent claim to a public agency.
 - (D) Civil or criminal violations of federal or state law governing the payment of wages, benefits, or personal income tax withholding, or of Federal Insurance Contributions Act (FICA) withholding requirements, state disability insurance withholding, or unemployment insurance payment requirements against any member of the Design-Build Entity. For purposes of Section 22.3305(f)(4), only violations by a Design-Build Entity Member as an employer shall be deemed applicable, unless it is shown that the Design-Build Entity Member, in his or her capacity as an employer, had knowledge of a subcontractor's violations or failed

to comply with the conditions set forth in Section 1775(b) of the State Labor Code.

(E) Civil or criminal violations of federal or state law against any Design-Build Entity Member governing equal opportunity employment, contracting or subcontracting.

7. Provision of a declaration that the Design-Build Entity will comply with all other provisions of law applicable to the project. The declaration shall state that reasonable diligence has been used in its preparation and that it is true and complete to the best of the signer's knowledge.

(f) The Design-Build Entity shall provide documentation of its subcontractor and employment outreach program to all subcontractors in the required disciplines of the project.

(g) The Authority shall select one of the following methods as the process to be used for the selection of the winning entity:

1. A Design-Build competition based on performance, specifications, and criteria set forth by the Authority in the request for proposals. Criteria used in this form of evaluation of proposals may include, but not be limited to, items such as proposed design approach, initial and/or life-cycle costs, project features, financing, quality, capacity, schedule, and operational and functional performance of the facility. However, any criteria and methods used to evaluate proposals shall be limited to those contained in the request for Design-Build proposals. Any architectural firms, engineering firms, specialty consultants, or individuals retained by the Authority to assist in the development of criteria or preparation of the request for proposals shall not be eligible to participate in the competition with any Design-Build Entity. Award shall be made to the Design-Build Entity whose proposal is judged as providing best value meeting the interests of the Authority and meeting the objectives of the project.
2. A competition based on program requirements, performance specifications, and a preliminary design or combination thereof set forth by the Authority in the request for proposals. Limited drawings and specifications detailing the requirements of the project may accompany the request for proposals. The Authority shall establish technical criteria and methodology, including price, to evaluate proposals and shall describe the criteria and methodology of evaluation and selection in the request for Design-Build proposals. Any architectural firms, engineering firms, specialty consultants, or individuals retained by the Authority to assist in the preparation of the preliminary design or request for proposals shall not be eligible to participate in the competition with any Design-Build Entity. Award shall be made to the Design-Build Entity on the basis of the technical criteria and methodology, including price, whose proposal is judged as providing best value in meeting the interests of the Authority and meeting the objectives of the project.

3. A Design-Build competition based on program requirements and a detailed scope of work, including any preliminary design drawings and specifications set forth by the Authority in the request for proposals. Any architectural firms, engineering firms, specialty consultants, or individuals retained by the Authority to assist in the preparation of the preliminary design or request for proposals shall not be eligible to participate in the competition with any Design-Build Entity. Award shall be made on the basis of the lowest responsible and reliable bid.
4. A sole source award if a Design-Build Entity Member is also the owner of real property that will be acquired by the Authority as a part of the project.

(h) The Authority recognizes that the Design-Build Entity is charged with performing both design and construction. Because a Design-Build contract may be awarded prior to the completion of the design, it is often impracticable for the Design-Build Entity to list all subcontractors at the time of the award. It is the intent of the Authority to establish a clear process for the selection and award of subcontracts entered into pursuant to this Section in a manner that retains protection for subcontractors while enabling Design-Build project to be administered in an efficient fashion. All of the following requirements shall apply to subcontractors, licensed by the state, that are employed on Design-Build projects undertaken pursuant to this Section.

1. The Design-Build Entity in each Design-Build proposal shall specify the construction trades or types of subcontractors that may be named as members of the Design-Build Entity at the time of award. In selecting the trades that may be identified as members of the Design-Build Entity, the Design-Build Entity shall identify the trades deemed essential in the design considerations of the project. All subcontractors that are listed at the time of award shall be afforded the protection of all applicable laws.
2. All subcontracts that were not listed by the Design-Build Entity at the time of award in accordance with paragraph 1 shall be performed and awarded by the Design-Build Entity, in accordance with a bidding process set forth in the Design-Build package.

(i) Notwithstanding anything in this section to the contrary, the Authority may enter into a Design-Build contract with a person or entity with whom the Water Authority has or will enter into a long term Water Purchase Agreement for facilitating the production, transmission or delivery of water.

Section 4.08.100 **Supplemental Regulations**

The General Manager may issue written supplemental regulations for the making and administration of contracts. Such supplemental regulations shall be subject to approval by the General Counsel for consistency with the provisions of this Chapter and applicable law.

Section 4.08.110 **Exemptions**

(a) The procedures and requirements of this chapter shall extend only to contracts of the type enumerated in this chapter.

(b) Notwithstanding anything in this chapter to the contrary, the General Manager may enter into contracts with a federal, state or local agency, including public educational institutions, for the performance of landscaping, refuse removal, and surface maintenance of Authority rights-of-way through labor provided by inmates, community service workers, students and other persons under work programs established and supervised by the federal, state or local agency provided that:

1. The contract does not exceed \$250,000 per year;
2. The agency agrees to permit supervision of the workers by Authority personnel;
3. The agency agrees to defend, indemnify and hold harmless the Authority against all claims caused or alleged to be caused by any act or omission of the agency or of any worker provided by the agency;
4. The agency agrees to provide workers' compensation coverage for the workers; and
5. The General Manager determines that the cost to the Authority is not estimated to exceed the cost of similar work obtained by a contract made in accordance with the provisions of this chapter.

Chapter 4.12
Contractors and Bidders

Section 4.12.010 **Prequalification**

Section 4.12.020 **Debarment**

Section 4.12.010 **Prequalification**

(a) The General Manager may authorize the Contract Administrator to establish in the contracting procedure for a contract requiring competitive bidding under Chapters 4.04 or 4.08 a process for prequalification of potential bidders or subcontractors, or both bidders and subcontractors. When authorized, the process shall conform to the requirements of this Section. As used in this Section, the terms “applicant” and “applicants” include prospective bidders and subcontractors for contracts to be performed for the Authority. For the purposes of this Section the term Contract Administrator means the Director of the Department with primary responsibility for the project or a contract implementing the project.

(b) The prequalification process may include a notice inviting prequalification information or a notice inviting technical proposals, or both such notices.

(c) The notice inviting prequalification information shall invite each applicant to submit information that will permit the Contract Administrator to determine in advance of advertising of a Notice Inviting Bids that a prospective bidder is responsible to perform a proposed contract or that a prospective subcontractor is responsible to perform specified kinds of work.

(d) The notice inviting technical proposals shall invite each applicant to submit a technical proposal to the Authority and the responsiveness of such proposal to the specifications shall be determined by the Contract Administrator in advance of receipt of bids and bidding shall be restricted to bidders determined by the Contract Administrator to have furnished a technical proposal determined by the Contract Administrator to be responsive. A notice inviting technical proposals shall not be included in the contract documents unless the Contract Administrator determines all of the following:

1. There are not sufficiently definite or complete specifications or purchase descriptions available to permit free competition without engineering evaluation and discussion of the technical aspects of the procurement;
2. Criteria do exist for evaluating technical proposals, such as design, manufacturing, testing, and performance requirements; and special requirements for operational suitability and ease of maintenance; and
3. It is expected that more than one technically qualified source will be available, both initially and after technical evaluation.

(e) Based upon the notice inviting prequalification information or notice inviting technical proposals, the Contract Administrator shall determine the responsibility of applicants in

advance of receipt of bids and that bidding shall be restricted to bidders determined by the Contract Administrator to be responsible or that the performance of subcontracts shall be restricted to subcontractors determined by the Contract Administrator to be responsible. In determining responsibility, the Contract Administrator may consider:

1. An applicant's experience in the design, construction, fabrication, assembly, or manufacture of works or materials similar to what will be called for under the contract documents;
2. The experience of others with the applicant in the construction, fabrication, assembly, or operation of similar works or materials designed, constructed, fabricated, or assembled by the applicant;
3. The physical plant, facilities, and equipment the applicant proposes to employ in the performance of a proposed contract or subcontract;
4. The experience and expertise of an applicant's responsible managing personnel, key staff members, and other employees who would be assigned to the work if the applicant were awarded the contract or subcontract;
5. As to prospective bidders, the extent to which any part of the contract is to be performed by subcontractors or suppliers;
6. The financial capability, capability to procure appropriate insurance and bonding, and resources of the applicant to perform the proposed contract or subcontract;
7. Any other factor bearing on the responsibility of an applicant that is specified in the notice inviting prequalification information.

(f) As a condition to submitting a bid or performing a specified portion of the proposed contract, an applicant shall comply with any and all conditions precedent determined by the Contract Administrator to be necessary to enable the applicant to submit a bid to the Authority or any other applicant, as the case may be, which takes into account all factors affecting performance of the work or portion of the work to be performed by the applicant.

(g) The Contract Administrator may determine that an applicant is responsible to perform more than one contract for which notices inviting bids are to be posted and advertised after the date of the Contract Administrator's determination. In the event of such prior determination, the Contract Administrator may, at any time thereafter determine that an applicant is no longer responsible, or advertise and post additional notices inviting prequalification information and determine that additional applicants are responsible to perform contracts subsequent to the contract for which prequalification information is initially requested.

(h) In the event any applicant is determined by the Contract Administrator not to be responsible, or no longer responsible after previously having been determined to be responsible, or a prospective bidder's proposal is determined by the Contract Administrator not to be technically

responsive to the contract documents, or the Contract Administrator determines that a bidder or an applicant has failed to comply with a condition precedent, the Contract Administrator shall state the determination in writing together with the reasons therefor and shall deliver a copy of such determination and reasons on the bidder or applicant. The bidder or applicant may appeal the Contract Administrator's decision, by filing with the General Manager a written notice of protest and demand for hearing not later than 5:00 p.m. of the fifth business day following delivery of the decision. The General Manager shall conduct a hearing under procedures prescribed by the General Manager, and shall make a determination whether to approve or reverse the determination of the Contract Administrator. Hearing procedures shall, at a minimum: provide the bidder or applicant not less than five business days notice of the time and date of the hearing; provide the bidder or applicant the opportunity to present oral and/or documentary evidence rebutting the determination and reasons of the Contract Administrator; and permit the bidder or applicant to be represented by an attorney or other designated representative. The hearing shall not be conducted according to the technical rules relating to evidence and witnesses applicable to judicial proceedings. Any relevant evidence, including hearsay, shall be admitted if it is the sort of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs. The determination of the General Manager shall be made in writing, shall include findings of fact which support the determination, and shall be served personally upon the bidder or applicant, or by registered or certified mail. The General Manager's determination shall be final. The General Manager may delegate responsibility for conducting the hearing to the Deputy General Manager. If a decision on a bidder's or applicant's protest is made less than 20 days before a date set for the opening of proposals, such opening shall be postponed to a date not less than 20 days after the date of decision. Notwithstanding any provision to the contrary in this Section, there shall be no right to a hearing on a bidder's or applicant's protest when the General Manager is acting under emergency authority granted by this Code.

(i) A notice inviting prequalification information or a notice inviting technical information shall be posted and advertised in the manner prescribed by Chapter 4.04 or 4.08 for the proposed contract; provided, however, that a notice inviting technical proposals need not be posted or advertised where bidding is restricted to bidders previously determined to be prequalified under the procedure set forth in this Section. When bids will be considered only from bidders determined to be prequalified or whose technical proposal is determined to be responsive to the Authority's specifications under the procedure set forth in this Section the notice inviting bids may or notice requesting proposals will be provided to the prequalified or technically responsive applicants.

Section 4.12.020 **Debarment**

(a) Debarment is an administrative sanction to be imposed only in the public interest for the Authority's protection and not for purposes of punishment. Debarment is designed to protect the Authority by ensuring full and open competition by granting awards only to responsible contractors. This section establishes debarment and the procedure for imposition of debarment.

(b) Unless from the context a different interpretation is plainly indicated, the definitions contained in this subsection govern the interpretation of this Section. The definitions shall apply regardless of whether the term is capitalized.

1. Affiliate means business entities, organizations, or individuals that either directly or indirectly, control one another or have the power to control one another, or are controlled by a third party or are subject to control by a third party.
2. Affiliates include chief executive officers and members of boards of directors or their equivalents.
3. Bidder means any individual, organization, legal entity, company or affiliate submitting a bid or proposal in response to a solicitation or other request by the Authority for bids or proposals.
4. Claim includes any request or demand for money or damages submitted or made, pursuant to a contract, statute or law, to the Authority, or an officer, employee or agent of the Authority.
5. Contractor means any individual or other legal entity that either (i) directly or indirectly, for example, through an affiliate, submits offers for or is awarded, or reasonably may be expected to submit offers for or be awarded, an Authority contract for works, supplies or services; or (ii) conducts business or reasonably may be expected to conduct business with the Authority as an agent or representative of another contractor. Contractor includes bidder.
6. Debarment means action taken by the hearing committee to exclude a contractor from contracting with the Authority for a reasonable, specified period.
7. Hearing committee means a subcommittee of the Board composed of not less than three members, including the Chair or Vice-Chair of the Engineering and Operations Committee who shall be the presiding officer of the hearing committee. The members of the hearing committee shall be Directors as appointed by the Chair of the Board.
8. Knowing or knowingly means that with respect to information, a person has actual knowledge of the information, acts in deliberate ignorance of the truth or falsity of the information, or acts in reckless disregard of the truth or falsity of the information.
9. General Manager means the Authority General Manager as specified in Section 3.1 of this Administrative Code, or any employee or other person to whom the General Manager has delegated responsibility for the administration of a contract.
10. Person includes a natural person, corporation, firm association, organization, partnership, limited liability partnership, limited liability company, business, trust or affiliate.

(c) Grounds for debarment. In addition to all other remedies permitted by law, upon a finding of grounds as set forth in this section, the hearing committee, or the Board of Directors upon appeal, may declare by resolution that a contractor is ineligible to bid on, submit a proposal for, or

be awarded an Authority service, procurement, public works or other contract for a period not to exceed three years for any of the following reasons:

1. Two or more claims of computational or other error in bid submission within a two-year period;
2. Unjustified failure or refusal to timely provide or properly execute contract documents;
3. Unsatisfactory performance of contract;
4. Two or more occasions within a two-year period of failure to submit bond or insurance documents acceptable to the Authority in the time periods required;
5. Unjustified refusal to properly perform or complete contract work or warranty performance;
6. Unjustified failure to honor or observe contractual obligations or legal requirements pertaining to an Authority contract;
7. 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;
8. 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 the Authority;
9. Any debarment of the contractor by another governmental agency on grounds justifying debarment under this section, during the period of such debarment;
10. Submission to the Authority of a false or fraudulent claim;
11. Violation with respect to the bidding upon, award of, or performance of, an Authority contract, of any state statute relating or pertaining to public contracts;
12. Any serious safety violation, whether or not resulting in a citation by OSHA or CalOSHA.

(d) Additional grounds for debarment. In addition to the reasons set forth in subsection (c), any of the following acts by a person is reason for debarment of that person:

1. Knowingly presenting or causing presentation of a false claim for payment or approval to any Authority officer or employee;

2. Knowingly making or using, or causing to be made or used, a false record or statement to support a false claim;
3. Conspiring with any other person to defraud the Authority by seeking to obtain payment or approval of a false claim.

(e) Collusion / permanent debarment. If at any time it shall be found that any party or parties to whom a contract has been awarded has, in presenting any bid or bids, been guilty of collusion with any party or parties in the submission of any bid or for the purpose of preventing any other bid being made, then the contracts so awarded may be declared null and void by the Authority's Board of Directors and the Authority's Board of Directors shall thereupon re-advertise for new bids for said work or the incomplete portion thereof. The hearing committee shall debar from future bidding all persons or firms found to be in violation of this subdivision, or any future firm in which such person has a financial interest of twenty-five percent or more, or holds a management position.

(f) Permanent debarment/additional ground. The hearing committee may permanently debar any contractor that has been permanently debarred by another governmental agency.

(g) Scope of Debarment.

1. The fraudulent, criminal, or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individuals associated with a contractor may be imputed to the contractor when the conduct occurred in connection with the individual's performance of duties for, or on behalf of, the contractor, or with the contractor's knowledge, approval, or acquiescence. The contractor's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.
2. The fraudulent, criminal, or other seriously improper conduct of a contractor may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the contractor who participated in, knew of, or had reason to know of the contractor's conduct.
3. The fraudulent, criminal, or other seriously improper conduct of one contractor participating in a joint venture or similar arrangement may be imputed to other participating contractors if the conduct occurred for, on approval of, or acquiescence of these contractors. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

(h) Procedure. The administrative procedure for debarment is as follows:

1. Proceedings may be commenced upon the issuance by the General Manager of a Notice of Intent to Debar stating the grounds and factual basis for proposed debarment.

2. The Notice of Intent to Debar shall be given in the manner specified by state law for the service of process. The Contractor shall have ten days following service of the notice to file with the General Manager a written request for hearing on the proposed debarment. If no such request is timely filed, the Notice of Intent to Debar shall be deemed a final order for debarment. Such final order shall not be subject to appeal.
3. Upon receipt of a timely request for hearing, the General Manager shall set the time and date for an administrative hearing by the hearing committee. The Contractor shall be given not less than 30 days written notice of the time and date set for hearing. Such notice may be given in the manner specified by state law for the service of process.
4. In proceedings under this section, an individual contractor may appear in person, or be represented by an agent with written authorization, a contractor that is not an individual person may be represented by an authorized officer, employee, member or agent. The General Manager may also designate a representative. In addition, any party may be represented by a member in good standing the State Bar of California.
5. No later than 5:00 p.m., six days prior to the date set for hearing, the contractor and the General Manager shall file with the Board Secretary a list of all witnesses to be presented by such party and fifteen copies of each written or graphic item such party intends to offer into evidence during the hearing, and shall exchange one copy of such list and written or graphic items. The written recommendation of the General Manager described in paragraph (1) above, shall be admitted into evidence and copies of the recommendation need not be filed or exchanged as provided in this paragraph. Any contract, document incorporated by reference into a contract, notice inviting bids, request for proposals, bid, or response to request for proposals, referenced in the written recommendation of the General Manager shall be admitted into evidence and copies of such documents need not be filed or exchanged as provided in this paragraph. Only the contractor, the General Manager, the designated representative of the contractor or of the General Manager, or a person whose name appears on a witness list filed with the Board Secretary shall be permitted to present oral evidence. Only those documents and graphic items filed with the Board Secretary, or otherwise required by this paragraph to be admitted, shall be considered for admission into evidence.
6. Oral evidence shall be taken only under oath or affirmation. The hearing shall not be conducted according to technical rules relating to evidence and witnesses applicable to judicial proceedings. Subject to the limitation of paragraph (5), above, any relevant evidence, including hearsay, shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs; provided, however, that a determination of debarment shall not be based solely on hearsay evidence. The presiding officer of the hearing committee may set reasonable limitations on the time for presentation of evidence.

7. Continuances or extensions of time may be granted by the hearing committee for good cause or upon agreement of the Contractor and General Manager.
8. The order of the hearing shall be as set forth in this paragraph unless the contractor and General Manager agree to some other order, with the consent of the hearing committee. First, the General Manager and contractor shall each have an opportunity to make a brief opening statement. Second, the General Manager shall present the grounds and evidence for debarment. Third, the contractor may present evidence in explanation or rebuttal. Fourth, the General Manager may present evidence in rebuttal. Fifth, the contractor may present evidence in rebuttal. Sixth, the contractor may make any a closing argument. Seventh, the General Manager may make a closing argument. During the presentation of evidence each party may cross-examine the witnesses for the other party, subject to reasonable limitation imposed by the presiding officer of the hearing committee, including a limitation to cross-examination conducted through the presiding officer. Members of the hearing committee may also ask questions of any witness during the presentation of evidence. Arguments of representatives of the contractor or the General Manager shall not be considered evidence.
9. The hearing committee shall announce its final decision by resolution. The hearing committee may direct the preparation of a proposed decision and proposed findings prior to announcing its final decision.
10. The contractor may appeal an adverse decision to the entire Board of Directors by filing a written appeal stating with particularity the exceptions to the decision or the findings of the hearing committee. The written appeal shall be filed with the Board Secretary within ten days following the final decision of the hearing committee. Within ten days following the submission of the written appeal the General Manager may file a response with the Board Secretary. The Board of Directors shall consider the appeal based upon the written appeal, the written response of the General Manager and the record of the proceedings before the hearing committee. The Board of Directors by resolution may affirm, modify or reverse the decision of the hearing committee.

(i) Effect of Debarment. Debarment prohibits Authority officers and employees from executing contracts with a debarred contractor. 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. Authority officers, employees and agents shall not solicit offers from or award contracts to debarred contractors. Debarred contractors are also excluded from conducting business with the Authority as agents or representatives of other contractors. The Authority may extend the debarment decision to include any affiliate of the contractor if the affiliate is both specifically named and given written notice of the proposed debarment and an opportunity to respond.

(j) List of Debarred Contractors. The General Manager shall compile and maintain a current, consolidated list of all debarred contractors. The list shall indicate the names and addresses

of all debarred contractors, the ground(s) for debarment, and the termination date for each listing. After the opening of bids or receipt of proposals, the contracting officer shall review the list of debarred contractors. Bids received from any listed contractor in response to an invitation for bids shall be recorded as received, and then rejected by reason of debarment. Proposals, quotations, or offers received from any listed contractor shall not be evaluated for award or included in the competitive process during the period the contractor is on the list. Immediately prior to award of a contract, the General Manager shall again review the debarred contractors' list to ensure that no award is made to a listed contractor.

(k) Continuation of Existing Contracts. Debarment shall be deemed a material breach of any other contract between the Authority and the contractor, and any existing contracts between the Authority and the contractor shall be terminated immediately upon debarment. However, notwithstanding the foregoing, the Authority may continue contracts in existence at the time the contractor is debarred, upon a determination by the Authority's Board of Directors, after receiving advice from the General Manager and General Counsel as to the effects of termination of an existing agreement.