

Amador Water Agency

Procurement Policy

Reviewed and Adopted

10-08-20

Table of Contents

100.00 Purpose of the Policy

200.00 General Policy Statements

300.00 Procurement Authority, Responsibilities and Procedures

400.00 Competitive Procurement Processes

500.00 Construction

600.00 Ethics and Conflicts of Interest

100.00 Purpose of the Policy. The purpose of this Policy is to define the practices and policies governing the procurement of supplies, materials, equipment, and services, including construction and capital improvements, for Agency use. This Policy is the written rule and regulation required by California Government Code § 54202 and serves as the Agency’s administrative policies and procedures governing procurement activities. This Procurement Policy complies with Title 2 of the Code of Federal Regulations Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

By adopting this Policy, the Board is empowering the General Manager (GM) with certain duties and responsibilities that are essential for the day-to-day operation of the Agency. The GM

delegates and shares the function of procurement of goods, materials and services with the Financial Services Manager (FSM) and those staff members given specific authority under this Policy. Throughout this Policy, “General Manager” or “GM” includes the GM’s temporary designee during the GM’s absence.

200.00 General Policy Statements.

200.10 The Amador Water Agency Board of Directors desires to purchase supplies, equipment and materials locally when possible and prudent to do so. The Agency shall strive to purchase supplies, equipment, and materials within Amador County for items that do not exceed 105% of the costs to purchase items outside the County of Amador (including taxes, shipping, and handling).

200.20 All purchases, agreements, and contracts for materials, supplies, equipment, and services shall be made in accordance with this Policy. Procurement practices shall comply with laws, regulations and guidelines of the State of California and the provisions of grant or funding agreements, if applicable. Any employee affecting any procurement action outside of the requirements of this Policy and without Board authorization, may be subject to disciplinary action, up to and including termination. Splitting or separating of material, supply, equipment, or service orders or projects for the express purpose of evading the requirements of this Policy is strictly prohibited.

200.21 Purchasing authority for the acquisition of materials, supplies, equipment and services, except public works construction, shall be centralized under the Purchasing Agent (PA) and in such persons who are officially designated within this Policy. The PA will ensure compliance with the guidelines prescribed by law and applicable Agency policies and procedures.

200.22 The Operations & Engineering Manager will be responsible for all specifications, bidding, and contracts for public works projects and will ensure compliance with the guidelines prescribed by law and applicable Agency policies and procedures. See section 500 of this Policy.

200.30 Purchase Orders (POs) shall be issued prior to ordering supplies, equipment, and service and not after work is done or materials ordered. Except for emergencies or other authorized exemptions stated in this Policy, no purchase of supplies, services, or equipment shall be made without an authorized PO. Otherwise:

- Such purchases are void and not considered an obligation of the Agency;
- Invoices without an authorized PO may be returned to the vendor unpaid; and
- The person ordering the unauthorized purchase may be held personally liable for the costs of the purchase or contract and may be subject to discipline, up to and including termination.

200.40 Use of Agency credit cards, proper management of travel expenses and reimbursement, and acquisition of real property interests are addressed in other Agency policies.

300.00 Procurement Authority, Responsibilities and Procedures.

300.10 Subject to approval of the GM and available budgeted funds, Department Managers and PA are authorized to:

- Enter into contractual obligations on behalf of the Agency for the acquisition of supplies, materials, equipment, and services necessary to support the Agency’s functions in accordance with this Policy;
- Obtain full and open competition in accordance with prescribed policies and procedures in a manner that obtains the best overall value to the Agency;
- Provide for the uniform, fair, and courteous treatment of vendors, suppliers, and contractors;
- Prepare and recommend revisions and amendments to procurement policies and requirements governing the purchase of materials, supplies, equipment, and services when required or recommended, and submit them to the GM to seek Board approval;
- Supervise the receipt and inspection of all materials, supplies, equipment, and services purchased to ensure conformance with specifications;
- Recommend the disposition of surplus or unused supplies, materials, equipment, and scrap through sale or other means; and
- Maintain necessary records for the efficient operation of the Agency’s procurement system.

320.00 Warehouse and Inventory Management. The PA shall operate a centralized warehouse to efficiently manage commonly used supplies and materials as required to support Agency functions. Inventory management is addressed in AWA PL FIN 016.

330.00 Procurement Approval Levels.

| | |
|----------|------------------------|
| \$5,000 | Department Supervisors |
| \$25,000 | Department Managers |
| \$50,000 | GM |

If there is an immediate need to make a procurement and the designated staff member authorized under this Policy to make the procurement is absent, authorization for the procurement must be obtained from the next higher authority in accordance with the above “Procurement Authorization Table”.

340.00 Purchasing Procedures.**340.10 Purchase Requisitions.**

340.11 Purchase Requisitions (Requisitions) communicate to the PA, in clear and explicit terms, the needs of the requestor. The requisitioning process also provides a mechanism for obtaining the approvals necessary to authorize the PA to proceed with the acquisition.

340.12 A completed Requisition will be submitted electronically by the requestor to the PA. For purchases up to \$5,000, informal quotes must be obtained, per section 410 below. If the requestor has received quotes, they are to be attached to the Requisition electronically or emailed to the PA to evaluate and move forward with the procurement of the goods or service. If no quotes are provided, the PA will obtain quotes, but this may delay the processing of the Requisition.

340.13 For purchases greater than \$5,000, requisitions should be prepared and submitted to the PA prior to attempting to obtain any materials, supplies, equipment, or services. Requisitions must be submitted far enough in advance to enable the PA to meet the competition requirements specified in this Policy and to properly prepare the contract documents.

340.14 Based on one or more requisitions, the PA will create a PO.

340.15 Procurements that require approval by the Board do not require electronic requisitions. The PA will create the PO after the Board of Directors has approved and signed the contract or delegated authority to the GM. The PO will then be delivered to the related Department.

350.00 PO Accounting.

350.10 In general, POs will be closed at the end of each fiscal year. Purchases are expensed from the fiscal year budget in which materials, supplies, equipment, or services are received, not the fiscal year in which POs are issued.

350.20 POs representing multiple year contracts will remain open until projects are completed and Finance is notified to close the PO.

400.00 Competitive Procurement Processes. All procurements for materials, supplies, equipment, or services shall employ an appropriate competitive selection process as set forth below unless an exception in this Policy applies.

| Purchase Amount Requirements | |
|------------------------------|-----------------|
| \$ 0 - \$5,000 | Informal Quotes |
| \$ 5,001 - \$50,000 | Formal Quotes |
| \$ 50,001 + | RFP/Sealed Bids |

410.00 Informal Quotes. For purchases of materials, supplies, equipment, or services of less than \$5,000, quotes may be obtained through an informal process (e.g. web browsing or phone calls) and documentation of the bids is recommended but not required. Notes and other documents related to informal bids may be appended to the Requisition and PO if the staff member making the purchase wishes to do so.

420.00 Formal Quotes. For all procurement of materials, supplies, equipment, or services of \$5,000 up to \$50,000, at least three vendors must be contacted for price quotations and the purchase shall be made from the lowest satisfactory quote. Quotes may be solicited from prospective bidders by written request, telephone, legal advertising or public notice (including Agency website). Regardless of solicitation method, all vendors must receive the same information about specifications and requirements of the product or service, and all quotes submitted shall not be shared with any other vendor until the purchase is made. Vendors may be advised that they will be notified only if the purchase is made from them. All quotes received must be documented and scanned into the Laserfiche Document Repository by the requesting department.

430.00 Professional Services: Request for Proposal/Qualifications. Professional Services include architectural, landscape architectural, engineering, environmental, land surveying, construction project management, and planning services, and other services requiring special training or certification, including but not limited to finance, accounting, law, economics, translation, and technical writing. Non-professional services do not require a high degree of professional certification or specialized skill, such as janitorial services, landscape maintenance services, and non-public works construction, and may be procured through the standard procurement procedures in this Policy.

430.10 The selection of professional services shall be based upon the experience of the provider, knowledge of the subject matter, demonstrated ability to perform similar services within budget and the time allowed, any other factors identified in the solicitation, and the total estimated cost to the Agency. These criteria are intended to ensure that a competitive environment is created to ensure the Agency achieves the best value.

430.20 For budgeted work, the Agency may issue an RFP or RFQ without specific Board action. The Board may approve the issuance of an RFP or RFQ in advance of budgeting or appropriating funds for the proposed work.

430.30 The GM may execute contracts for consultant services up to \$50,000 when funds have been approved in the budget for such services and up to \$10,000 without prior Board authorization if the work is not specifically itemized in the approved budget. For work estimated to cost more than \$50,000, Board approval is required for award. Staff will make reasonable efforts to obtain at least three proposals or statements of qualification to evaluate. All proposals and statements of qualifications shall be submitted in writing, including electronically. The Agency may require in the RFP or RFQ that submittals be electronic.

430.40 The evaluation and a subsequent recommendation to the GM for consultant services shall be conducted by the staff member requesting the services. Before a recommendation is made to the Board, if the services are estimated to cost in excess of \$50,000, the fee for the services shall be negotiated. If a mutually satisfactory fee cannot be agreed upon, negotiations shall be terminated; thereupon another consultant shall be selected, and fee negotiations undertaken.

430.50 Award of a contract to a consultant shall be made only when sufficient funds have been appropriated for the work, except where the services relate to the processing of development plans that will be paid for by a developer.

430.60 If authorized by the Board or approved in the budget, the Agency may issue an RFP or RFQ stating that is for on-call services of specified types and that one or more proposals may be accepted. If multiple consultants are selected, the total award is subject to the approval limits stated above for the amount budgeted for the work, not divided among the awardees. Contracts will be executed with all awardees. When specific work is needed, the GM will execute an agreement with one of the awardees for the specific work. The GM may select among the contracted consultants based on applicable skill and experience, or may call for abbreviated proposals from multiple contracted consultants and evaluate them competitively. Individual agreements to perform specific work will not require Board action regardless of amount, but the GM may not exceed the approved budget for all such work.

440.00 Federal Procurement Requirements. For contracts funded with federal awards, the Agency must comply with the procurement requirements provided in the Uniform Guidance, Title 2 U.S. Code of Federal Regulations (CFR) § 200.318. These requirements, such as records retention and required documentation, are detailed in **Appendix A** and include, but are not limited to:

440.10 Verification that procurement provides for full and open competition.

440.20 Documentation for the cost or price analysis resulting in contractor selection.

440.30 Grantee and subgrantee procedures will provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items.

440.40 Proof that the Agency has verified, via the Federal EPLS website (www.sam.gov), that each contractor has not been suspended or debarred from bidding on federally funded projects.

440.50 Certification from the contractor that subcontractors used by the approved contractor have not been suspended or debarred.

440.60 Justification for lack of competition when competitive bids are not obtained.

450.00 Exceptions to Competitive Solicitation Requirements.

The competitive solicitation/bid process will not be required for the acquisition of goods and services under the following circumstances.

450.10 Non-Discretionary Payments. These payments are not readily adaptable to the open market and competitive selection process. Non-discretionary payments do not require the issuance of a PO, and are typically paid upon claim or invoice alone. Payments for budgeted or recurring items do not require Board approval for each item even in excess of the GM authorization limit. Examples of non-discretionary payments include, but are not limited to:

- Bank charges and fees
- One-time fees and permits
- Debt Service payments
- Pension and OPEB payments
- Employee expense reimbursements
- Utilities
- Insurance claims and premiums
- Advertisements and Legal Notices
- Payroll related tax liabilities
- Medical reimbursement payments
- Water purchases
- Budgeted memberships, dues, and subscriptions

450.20 Cooperative Procurement. The Agency may participate in purchases and contracts established by other political jurisdictions, provided the cooperative agreement is established following a sufficient competitive process. The cooperative purchase may be authorized according to the amounts stated in the Procurement Authorization Table in section 330.00 of this Policy.

450.30 Inventory Replenishment. Purchases by the PA consistent with PL FIN 016 to replenish the Agency's warehouse inventory within established inventory re-order levels require no prior authorization, provided that the vendor being utilized has been selected within the last twenty-four months as the designated vendor for the items, or class of items, to be purchased.

450.40 Sole Source. Materials, supplies, equipment, or services which can be obtained from only one vendor are exempt from competitive bidding. Sole source purchases may include, for example, proprietary items sold directly from the manufacturer, equipment which has been standardized by the Agency, items which have only one distributor authorized to sell in the local area, agreements for maintenance of computer software the Agency owns, or a certain product that has been proven to be the only product acceptable. The requestor must provide documentation justifying the sole source exception to the approval authority, and the documentation will be retained on file.

450.45 Professional Services. Professional services may be acquired without competition where the approving authority finds that the provider possesses such unique advantages in knowledge or experience to perform the desired work efficiently that an RFQ or RFP process would be unfair to other possible proposers.

450.50 Emergency Purchases. Emergency purchases may be made without competitive processes when a sudden, unexpected occurrence presents an immediate risk of:

- harm or hazard to life, public health, safety, or welfare;
- damage to Agency property; or
- serious interruption of Agency essential services.

450.51 In an emergency, the GM may acquire materials, supplies, or services (not construction) without competitive process and up to \$100,000, per AWA PL BOD 008.

450.51 Since emergency purchases do not normally provide the Agency an opportunity to obtain competitive quotes, sound judgment shall be used in keeping such orders to an absolute minimum. In addition, the following requirements shall apply:

- The Finance Department shall be contacted as soon as possible to obtain a PO number;
- A completed purchase Requisition shall be submitted within two working days, or as soon as the information is available;
- Documentation explaining the circumstances and nature of the purchase shall be maintained by the applicable department supervisor or manager; and

- If the emergency purchase causes any budget line item to exceed the approved budget, the department requesting the purchase shall provide supporting information to the GM to obtain subsequent Board of Directors' approval for reserve funding or to make a budget transfer to cover the purchase.

450.60 Change Orders. The GM may approve change orders to contracts for the procurement of supplies, equipment, contracts for professional services, and other goods and services provided:

450.61 The change order is within the scope of the approved contract and the cost of the changed work does not exceed the adopted budget;

450.62 Taxes, shipping, and handling may cause the PO to exceed the authorized amount. These items do not require a change order, even if they exceed 20% of the original PO amount.

500.00 Construction. For construction to be performed by Agency staff, the normal provisions related to procurement of materials, supplies, and professional services apply. For construction contracts, the Agency operates according to §§ 21450-21451 and other applicable provisions of the Public Contract Code (PCC). Any agreement for the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind is a public works contract (PCC, § 1101). Construction does not include routine, recurring, and usual maintenance and repair performed on existing public facilities to keep them operational.

510.00 Force Account. The Agency may choose to perform any construction work with its own employees. If the Agency chooses to contract for the work, it may later decide to proceed with its own employees if the work is advertised and no bids are received or the work is advertised and the Agency rejects all bids. If the Agency contracts for the work, the following processes will be used.

520.00 Contracts for public work estimated to cost \$12,500 or less. Contracts for public work estimated to cost \$12,500 or less may be awarded by informal bids. Bids may be solicited from prospective contractors by written request, telephone, legal advertising or public notice (including Agency website). Bids will be submitted in writing, including by email or response to email. Staff will make reasonable efforts to receive at least three bids. Regardless of solicitation method, all bidders must receive the same information about specifications and requirements of the product or service. Bids shall not be shared with any other bidders or the public until the award is made. Bidders may be advised that they will be notified only if a contract is awarded to them. All bids received must be retained by the requesting department and scanned into the Laserfiche Document Repository.

530.00 Contracts for public work exceeding \$12,500. Contracts for public work estimated to cost more than \$12,500 shall comply with PCC § 21451, including:

- Contracts shall be let to the lowest responsible bidder or bidders.
- The Board shall determine whether the contract shall be let as a single unit or divided into severable parts.
- The call for bids shall be advertised by three insertions in a daily newspaper of general circulation or by two insertions in a weekly newspaper of general circulation, and on the Agency’s website, stating whether the work shall be performed in one unit or divided into parts.
- The work may be let under a single contract or several contracts, as stated in the call for bids.
- Successful bidders shall file with the Agency payment and performance bonds as required by with Civil Code § 9550 et seq. and the contract documents.
- The Board may reject any bid.
- The agency may purchase in the open market without advertising for bids, materials and supplies for use in any work under contract.
- The Agency will retain all bid documents per the Document Retention Policy.

530.10 Unless the bid process utilizes different criteria, and unless an exemption applies, bids shall be awarded to the “responsive” and “responsible” bidder who submits the lowest bid.

- Responsive shall mean a bidder whose bid is in conformance with the requirements of the bid solicitation, including specifications and the Agency’s terms and conditions. Bidders who substitute terms and conditions or who qualify their bids in such a manner as to limit their liability may be considered non-responsive.
- Responsible refers to the ability of the bidder to successfully fulfill a contract. Prospective bidders may be requested to furnish proof of financial resources, appropriate insurance coverage, a list of current or previous customers, and other pertinent data. Such action may be taken after receipt of bids.

530.20 If there are questions about whether the lowest bidder is “responsible” or “responsive”, advice of legal counsel shall be sought.

540.00 Change Orders, Claims, Disputes. The GM may approve change orders for public works construction projects as long as increases do not exceed the Board-approved project costs, change the approved scope, or extend the contract completion date. Changes

beyond the approved scope, cost, or scheduled completion date shall be brought to the Board for approval. (See PL BOD 008).

550.00 Exceptions to Public Works Bidding.

550.10 Emergency. In the case of an emergency, the Agency, pursuant to a four-fifths vote of the Board, may repair or replace a public facility, take any directly related and immediate action required by that emergency, and procure the necessary equipment, services, and supplies for those purposes, without giving notice for bids to let contracts. Before and after the Board takes such action, it must make special findings and follow the procedures provided in PCC § 22050.

550.20 Where Public Works Bidding is Not Advantageous To the extent permitted by law, AWA may enter into a public works contract regardless of the amount without competitive bids if the Board has determined that the bid process would be unavailing or would not produce an advantage to AWA, and the advertisement for competitive bids would thus be undesirable, impractical, or impossible. The Board must then also find that the contract is based on the competence and qualifications of the contractor and the contract represents a fair and reasonable price for the work under all of the circumstances. Legal counsel shall be consulted prior to seeking Board approval for such a procurement.

600.00 Ethics and Conflicts of Interest.

No member, officer, or employee of the Agency, or their designees or agents, and no public official who exercises authority over or responsibility with respect to purchasing during his or her tenure, or for one year thereafter, shall have any interest, direct or indirect, in any purchase, agreement or sub agreement, or the proceeds thereof, for any purchase or purchase agreement. Per AWA PL BOD 003. The GM, Department Managers, Engineering Supervisor, Resident Engineer, and PA shall attend ethics training complying with AB 1234 at least once every two years.

700.00 Policy Review.

This Policy shall be reviewed at least every two years.

APPENDIX A – § 200.318 General procurement standards

- (a) The non-Federal entity must use its own documented procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section.
- (b) Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
- (c)
- (1) The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent must participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity must neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial, or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.
- (2) If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest mean that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.
- (d) The non-Federal entity's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.
- (e) To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal government, the non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services.
- (f) The non-Federal entity is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.
- (g) The non-Federal entity is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value

engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(h) The Non-Federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(i) The non-Federal entity must maintain records sufficient to detail the history of procurement. These records will include but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(j)

(1) The non-Federal entity may use time and material type contracts only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time and material type contract means a contract whose cost to a non-Federal entity is the sum of:

(i) The actual cost of materials; and

(ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

(2) Since this formula generates an open-ended contract price, a time-and materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

(k) The Non-Federal entity alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.