

LOS ANGELES – SAN DIEGO – SAN LUIS OBISPO
RAIL CORRIDOR AGENCY

Contracting and Procurement Policy

June 2019

LOSSAN Agency Procurement Policy Manual

I.	Introduction.....	4
II.	General Policies.....	5
A.	Purchasing Policy.....	5
B.	Independent Cost Estimate Policy.....	6
C.	General Rules for Scopes of Work and Specifications Policy.....	6
D.	Bonding Requirements Policy.....	6
E.	Insurance Requirements Policy.....	8
F.	Term of Agreements Policy.....	8
G.	Bid or Proposal Rejections Policy.....	9
H.	Cost and Price Analysis Policy.....	9
I.	Final Contract Approval and Distribution Policy.....	9
J.	Contract Encumbrances Policy.....	10
K.	Contract Administration Policy.....	10
L.	Federal Procurement Policy.....	10
M.	Cooperative Intergovernmental Agreements Policy.....	10
N.	Emergency Procurement Policy.....	10
III.	Signature Authority Levels.....	12
A.	Procurement Delegation Policy.....	12
B.	Board Approval Policy.....	12
C.	Managing Director Approval Policy.....	12
D.	Approval Limits and Hierarchy Table.....	13
IV.	Standards of Conduct for Procurement.....	14
A.	LOSSAN Agency Conflict of Interest Code Policy.....	14
B.	Procurement Standards of Conduct Policy.....	14
C.	State and Federal Conflict of Interest Code Policy.....	15
D.	Vendor Relations Policy.....	15
E.	Vendor Protest Policy.....	16
	Types of Procurements.....	21
V.	Informal Competitive Procurements.....	21
A.	Corporate Credit Card Policy.....	21
B.	Micro-Purchase Policy.....	22
C.	Informal Purchase Policy.....	23
D.	Sole Source Procurement Policy.....	23
E.	Direct Advertising Sole Source Procurement Policy.....	24
VI.	Formal Competitive Procurements.....	26
A.	Competitive Sealed Bids (Invitation for Bids – IFB) Policy.....	26
B.	Competitive Negotiated Procurements – Request for Proposal (RFP) Policy.....	28
C.	Contract Task Order Policy.....	35
D.	Cooperative Procurement Policy.....	35
E.	Status of Past and Present Contracts Policy.....	36
VII.	Other Procurement Types.....	36
A.	Fixed Asset Purchases Policy.....	36
B.	Public Works/Construction Services Policy.....	36
C.	Architectural and Engineering Services Policy.....	36
D.	Payment Policy.....	37
E.	Construction Change Orders Policy.....	37
F.	Revenue Contracts Policy.....	38
G.	Letter Amendments.....	38
VIII.	Disadvantaged Business Enterprise (DBE) Program Policy.....	39
A.	Policy Statement.....	39

LOSSAN Agency Procurement Policy Manual

B.	Program Objectives	39
C.	Non-Discrimination.....	40

I. Introduction

The Policy Manual of the Los Angeles – San Diego – San Luis Obispo Rail Corridor Agency (LOSSAN Agency) sets forth the general procurement policy and standards that will govern the conduct of the LOSSAN Agency procurement activities and of personnel engaged in these activities.

These policies are in place to ensure that goods and services are obtained timely, efficiently and economically, while adhering to principles of good public policy and practices and sound business judgment. The policies outlined in the Policy Manual have been established to foster free and open competition among vendors, consultants and contractors and incorporate the ethical standards set forth in the Agency's Code of Conduct. The Policy Manual is organized to provide for a common understanding of the methods for initiating, developing, executing and administering third-party contracts within the parameters of Federal, State, Local and LOSSAN Agency requirements.

The Orange County Transportation Authority (OCTA), as the managing agency of the LOSSAN Agency, is responsible for facilitating and assisting in the process for the purchase and sale of all goods, equipment and services. All activities of a contractual nature with vendors, suppliers and contractors are coordinated through and conducted by the LOSSAN Agency and the OCTA procurement department.

The LOSSAN Agency currently does not own any assets, and therefore this policy does not include or address the disposal, surplus, or scrap of assets.

II. General Policies

A. Purchasing Policy

1. The LOSSAN Agency and its officers are responsible for the purchase and sale of all goods and services. As the managing agency of the LOSSAN Agency, OCTA's Contracts Administration and Materials Management (CAMM) is responsible for facilitating the purchase and sale of all goods and services for the LOSSAN Agency.
 - a) The Managing Director can delegate purchasing authority to other staff members of the Agency, but only for an emergency situation with a limited period and purpose.
2. **Purchase Requisition Processing**

The budget process shall be the first step in the procurement process. As the LOSSAN Agency develops its annual budget, it shall be required to specifically identify all scheduled procurements on a line item basis.
3. Requirements for the procurement of materials, supplies, equipment, services and construction are to be submitted to CAMM on a properly completed and approved requisition before CAMM may proceed with procuring the requirement.
 - a) Purchase requisitions shall be submitted as soon as possible.
 - b) The requisition shall contain a description of the requirement and all pertinent information known to the user, including accounting codes and funding sources.
 - c) Requisitions for purchases other than those of a routine nature, including noncompetitive procurements, shall be accompanied by additional information explaining the procurement in more detail or justifying the requested noncompetitive procurement.
 - d) Requisitions shall be assigned to the appropriate Contract Administrator (CA) as determined by the CAMM Management.
 - a) CA shall contact requesting departments to discuss Invitation for Bid (IFB) and/or Request for Proposals (RFP) procurements.
4. All requirements will be processed in an expeditious manner and the CA shall make every effort to meet the completion dates requested by the LOSSAN Agency.
 - a) Should extenuating circumstances prevent compliance with the dates requested by the LOSSAN Agency, the CA responsible for the requirement shall advise the LOSSAN Agency of the situation and seek an alternate acceptable resolution to satisfy the requirement.
 - b) Critical or emergency requirements will be handled immediately and expedited in accordance with the LOSSAN Agency bylaws.
 - c) The LOSSAN Agency Executive Committee is authorized to act in emergency situations but all actions must be reported to the Governing Board.

LOSSAN Agency Procurement Policy Manual

B. Independent Cost Estimate Policy

1. LOSSAN Agency staff shall provide an Independent Cost Estimate (ICE) with the procurement requisition, to assure that the scope of work is sufficiently funded to accomplish the tasks being requested or level of effort.
2. The LOSSAN Agency shall obtain such estimates from sources, including but not limited to, published competitive prices, results of competitive procurements or estimates by Project Managers.

C. General Rules for Scopes of Work and Specifications Policy

1. The following general rules shall apply to scopes of work and specifications:
 - a) Provide a clear and concise Scope of Work and not impose unreasonable requirements.
 - b) Specifications and Scopes of Work shall identify all characteristics and specific tasks and functions of the items or services to be procured, and meet the LOSSAN Agency's requirements.
 - c) Whenever possible, the expected quality of services to be provided or the performance characteristics of the item shall be specified.
 - d) The requestor shall identify all optional items, and the solicitation documents shall set forth the expected needs and the manner in which the related bid prices will be considered.
 - e) Brand name specifications must be accompanied by an explanation that clearly indicates that the specification is not intended to be restrictive.
 - f) The salient characteristics represented by the brand names shall be identified to allow for evaluation of possible "or equal" material.
 - g) Because standard specifications and requirements allow for more efficient operations and result in lower prices, they shall be used wherever suitable.
 - h) Industry, federal, state and local government specifications and requirements can be used.
2. Consultants are prohibited from writing the Scope of Work or assisting in the development or writing the Scope of Work in which they may bid.

D. Bonding Requirements Policy

1. It shall be the responsibility of the LOSSAN Agency Management to ensure that bonding requirements are followed and applied impartially, to comply with state and federal requirements, and to protect the interests of the LOSSAN Agency.
2. The following are required by the State of California for all Public Works projects in excess of \$25,000:
 - a) Bid guarantees or securities

LOSSAN Agency Procurement Policy Manual

- b) Performance bonds
 - c) Payment bonds
3. The following are recommendations for Equipment and Technical Services on a discretionary basis:

<i>Category</i>	<i>Bond Type</i>		
	<i>Bid</i>	<i>Performance</i>	<i>Payment</i>
<i>Equipment (Discretionary)</i>	<i>Up to 10%</i>	<i>Up to 20%</i>	<i>Contracts between \$5M & \$10M may require a 25% bond</i>
<i>Technical Services (Discretionary)</i>	<i>Up to 5%</i>	<i>Up to 100%</i>	<i>Contracts up to \$10M may require a 25% bond</i>

4. Bid Guarantee or Security
- a) A bid guarantee or security shall be in the form of:
 - a) Cash
 - b) Cashier's Check
 - c) Certified Check
 - b) The LOSSAN Agency shall require a bid bond or other security with each public works bid and for equipment and services when necessary as determined by the Board of Directors.
 - a) All bidders shall be so notified and the amount thereof stated in the solicitation documents.
 - b) Public works bids for construction requirements shall require bid security equal to at least ten (10) percent of the amount bid or the amount set forth by the State of California.
5. Performance Bonds
- a) The LOSSAN Agency shall require a performance bond for all applicable public works contracts in the amount of one hundred (100) percent of the contract value, in accordance with regulations set forth by the State of California.
 - a) The LOSSAN Agency may require performance bonds from vendors of services, supplies or equipment when deemed necessary by the Board of Directors.
6. Payment Bonds
- a) The LOSSAN Agency shall require a payment bond for public works contract from construction contractors, to assure contractor's full discharge of obligations to the material-men and employees and labor used on the project for public works contracts.

LOSSAN Agency Procurement Policy Manual

- a) The percentage required is stipulated in Section 9550 et seq., of the Civil Code of the State of California.
 - b) A payment bond shall be written by a corporate surety registered in the County of Orange in the State of California.
7. The LOSSAN Agency may use liquidated damages if it can reasonably expect to suffer damages from late completion or delivery, and the extent or amount of such damages would be difficult or impossible to determine. The assessment for damages shall be at a specific rate per day for each day of overrun in contract time. A memo detailing how the liquidating damages were determined must be included in the contract file. The rate must be specified in the procurement solicitation as well as in the contractor's agreement.

E. Insurance Requirements Policy

The LOSSAN Agency is responsible for ensuring that all insurance requirements for procurements are reviewed and approved by Risk Management, based on the following criteria.

1. All procurements for new vendors to the LOSSAN Agency, regardless of procurement type or amount must be approved by Risk Management.
2. All amendments to contracts that change the scope of work on an agreement must be approved by Risk Management.
3. The LOSSAN Agency will name or cause to be named the State, Department and the Secretary as named insureds, and loss payees (pertaining to State-owned Equipment) to any policy of insurance purchased by the LOSSAN Agency and in any indemnity provision in any agreement between the LOSSAN Agency and any other party the LOSSAN Agency has an agreement with that involves or related in any way to the administration, operation or maintenance of the service by the LOSSAN Agency.

F. Term of Agreements Policy

1. Multi-year contracts shall be utilized when appropriate.
2. Contract terms can exceed a total of five (5) years when:
 - a) The LOSSAN Agency documents rationale for contracts longer than five (5) years; and
 - b) Board of Directors' prior concurrence is required before a contract can extend beyond five (5) years. The Recommendation section of the staff reports must specifically state the total number of years that the contract will be in effect.

LOSSAN Agency Procurement Policy Manual

G. Bid or Proposal Rejections Policy

1. The LOSSAN Agency reserves the right to reject any and all bids or proposals, or to waive any informality or non-substantive defects in bids or proposals as the business interest of the LOSSAN Agency may require. The LOSSAN Agency shall document in the contract file the business reason for rejecting bids or proposals.
2. Only those bids or proposals shall be considered which are deemed responsive to the Invitation for Bids (IFB) or R
3. Bids and proposals submitted after the date and time specified in the solicitation shall be rejected by the LOSSAN Agency as non-responsive and will be returned to the bidder unopened. Any exception to this policy must be approved by the LOSSAN Agency and CAMM Management.

H. Cost and Price Analysis Policy

The LOSSAN Agency will work in coordination with CAMM to perform a cost or price analysis on procurements as deemed necessary. This analysis shall be used to determine the reasonableness of contract prices.

I. Final Contract Approval and Distribution Policy

If the LOSSAN Agency Board of Directors approval is required, the LOSSAN Agency shall draft their staff report in such a manner as to authorize the Managing Director to negotiate and execute the final contract based on standard contract terms.

1. The process for final contract approval shall be as follows:
 - a) Board of Directors selection and authorization (if required) is received
 - b) Final contract is developed
 - c) Final contract is signed by:
 - a) LOSSAN Agency General Counsel
 - b) Consultant, and
 - c) LOSSAN Agency Managing Director
 - d) CAMM shall have responsibility for issuance of Notice to Proceed after contract execution.
2. The Board of Directors shall be required to approve a final contract if:
 - a) Final contract amount changed from the amount approved by the Board of Directors
 - b) The LOSSAN Agency cannot reach agreement with the Board of Directors selected firm and there is a need to begin negotiating with a new firm
 - c) Final contract is successfully negotiated with the second or third ranked firm for architectural or engineering services
 - d) Specifically requested by the Board of Directors

LOSSAN Agency Procurement Policy Manual

J. Contract Encumbrances Policy

The LOSSAN Agency shall be responsible for making the determination for encumbrances for purchase orders and contracts.

K. Contract Administration Policy

CAMM shall act as liaison between the LOSSAN Agency staff and vendors, and shall be responsible for pre-award activities and post contract administration as defined in the LOSSAN Agency Policy Manual.

L. Federal Procurement Policy

Federal procurement requirements apply to all federally funded procurements undertaken in support of the LOSSAN Agency's operations, as well as defined good business practices which shall be followed by the LOSSAN Agency during procurement activities.

M. Cooperative Intergovernmental Agreements Policy

Intergovernmental agreements are contracts between the LOSSAN Agency, a city, county, state or federal agency or other public agency. These agreements are sometimes referred to as Cooperative Agreements. There are contractual documents that record cost-sharing arrangements, receipts of revenue or establish the roles and responsibilities of the LOSSAN Agency and other public entity or entities.

These contracts are not competitively bid because they involve another government agency. They are not subject to audit by the Internal Audit Department, unless a specific audit is requested by the LOSSAN Agency. These agreements and any amendments are subject to the same approval limits, signature authority and process as all other contracts.

N. Emergency Procurement Policy

1. Emergency requirements will be handled immediately by the LOSSAN Agency and expedited by CAMM as required.

2. Emergency

a) The LOSSAN Agency Executive Committee is authorized to act in emergency situations, but all actions must be reported to the Board of Directors.

b) An emergency procurement shall be defined as a purchase immediately necessary for the preservation of life or property, or, to prevent an immediate termination of a critical LOSSAN Agency function or activity.

c) Anyone of the following (in descending order of preference) can act as an alternate for the necessary authorization:

a) Executive Committee

b) Managing Director

c) Deputy Managing Director

LOSSAN Agency Procurement Policy Manual

- d) Finance and Administration Manager
- d) The LOSSAN Agency employee making or placing the emergency procurement order personally assumes the responsibility of immediately following up the procurement order with a proper requisition for approval to CAMM.
- e) An emergency is not a situation that develops due to poor planning on the part of the requesting department.

III. Signature Authority Levels

A. Procurement Delegation Policy

1. The Managing Director, through the CAMM department shall issue:
 - a) Request for Proposals or Invitation for Bids up to \$100,000
 - b) Agreements and/or purchase orders for all services including:
 - a) Architectural and engineering for an amount up to \$100,000
 - b) Professional services for an amount up to \$100,000
 - c) US Postal Service and services by utilities controlled and regulated by law regardless of type or amount
 - d) Public Works Projects in accordance with existing legal limitations not to exceed \$50,000
 - e) Sole Source procurements up to \$100,000 for materials, equipment or supplies, and services
 - f) Fixed Assets acquisitions up to \$100,000
 - g) Inventory materials, equipment and supplies up to \$100,000
2. Amendments
 - a) The Managing Director shall have the authority to amend contract values as follows:
 - a) Fifteen (15) percent of the original contract amount or \$100,000 whichever is less
3. The Managing Director shall have the authority to issue construction change orders in accordance with the State of California Public Contracting Code Section 20142 as follows:
 - a) The Managing Director shall have the authority to approve change orders up to \$5,000 when the total amount of the original contract does not exceed \$50,000
 - b) The Managing Director shall have the authority to approve change orders up to ten (10) percent of the original contract amount for contracts with a value between \$50,000 and \$250,000
 - c) The Managing Director shall have the authority to approve change orders up to \$25,000 plus five (5) percent of the original contract amount in excess of \$250,000
 - d) In no event shall any such change or alteration exceed \$210,000

B. Board Approval Policy

1. The Board of Directors shall approve the issuance of all RFPs and IFBs in excess of \$100,000 including the weighted criteria.
2. The Board of Directors shall approve all procurements for values that exceed the Managing Director's authorization.

C. Managing Director Approval Policy

The Managing Director is responsible for updating the procurement policies, as

LOSSAN Agency Procurement Policy Manual

necessary. The Board of Directors must approve major policy matters, such as determining what contract actions are significant enough for Board of Directors' review or approving procurement methods for general categories or procurements.

D. Approval Limits and Hierarchy Table

Procurement Process	Dollar Amount	Board Approvals Required
Micro Purchase	≤ \$5,000	None
Informal	> \$-5,000 and < \$100,000	None
Fixed Asset Purchases	≤ \$100,000	None
	> \$100,000	Award
Public Works and Construction Projects	≤ \$50,000	None
	> \$50,000	Award
Architectural and Engineering Service	≤ \$100,000	None
	> \$100,000	Selection of Top Ranking Firms
Professional and Technical Services	≤ \$100,000	None
	> \$100,000	Selection of Consultant
Amendments/ Formal Procurements	Lesser of 15% of Original Contract Amount or \$100,000	None
	Over 15% or over \$100,000	Board Approval
Public Works Change Orders	Pursuant to State of California Contract Code, Section 20142 and less than \$210,000 per change	None
Sole Source	≤ \$100,000	None
	> \$100,000	Award
Cooperative Agreements and Revenue Agreements	< \$100,000	None
	> \$100,000	Award

IV. Standards of Conduct for Procurement

A. LOSSAN Agency Conflict of Interest Code Policy

1. The LOSSAN Agency Board of Directors has adopted a Code of Conduct which adheres to a strict code that governs accepting gifts, relationships with contractors, maintaining confidentiality and avoidance of conflicts of interest.

B. Procurement Standards of Conduct Policy

1. There shall be uniform and equitable application of the LOSSAN Agency's Standards of Conduct involving all activities associated with the procurement of goods and services.
 - a) LOSSAN Agency personnel shall not be involved in any procurement decisions in which he or she or persons related to same have a financial interest.
 - a) In cases where there may be a benefit, either direct or indirect, LOSSAN Agency personnel shall be responsible to report in writing to the Director of CAMM.
 - (a) If LOSSAN Agency personnel fail to report such benefit, he or she shall be subject to any disciplinary proceeding deemed appropriate by the LOSSAN Agency, including possible dismissal.
 - b) No employee shall participate in the selection, award or administration of a contract or purchase order, if a conflict of interest real or implied would be involved.
 - c) Such a conflict would arise when any one of the following has a financial or other interest in the firm selected for award:
 - (a) The employee
 - (b) Any member or his or her household or immediate family
 - (c) An organization that employs or is about to employ any of the above
 - b) No LOSSAN Agency employee shall solicit, demand or accept from contractors, subcontractors or parties to sub-agreements, anything of a financial value, favors or gratuities for or because of any action taken, or not to be taken, in the performance of their duties.
 - a) Employees may accept unsolicited gifts of nominal intrinsic value.
 - b) Employees are not to accept paid meals from vendors or consultants that are then billed back to the LOSSAN Agency.
 - c) An employee failing to adhere to the above will be subject to any disciplinary proceeding deemed appropriate by the Agency, including possible dismissal.
 - c) No LOSSAN Agency employee shall use confidential information

LOSSAN Agency Procurement Policy Manual

for his or her actual or anticipated personal gain, or the actual or anticipated personal gain of any other person related to such LOSSAN Agency employee by blood, marriage, or by common commercial or financial interest.

- a) An employee failing to adhere to the above will be subject to any disciplinary proceeding deemed appropriate by the LOSSAN Agency, including possible dismissal.

C. State and Federal Conflict of Interest Code Policy

1. Employees of the LOSSAN Agency shall also be subject to the conflict of interest laws of the State of California and the U.S. Department of Transportation; Federal Transportation Administration.
 - a) Employees who violate the laws shall be subject to the penalties, sanctions or other disciplinary actions provided for therein.

D. Vendor Relations Policy

1. LOSSAN Agency personnel:
 - a) Shall solicit only general information from vendors, consultants, and contractors.
 - b) Shall obtain price-range estimates for budgeting purposes only.
 - c) Shall not act in a manner that implies a conflict of interest or preferential treatment of one vendor, consultant, or contractor over another.
 - d) Shall not make contractual obligations to vendors.
 - a) Only the Board of Directors or Managing Director can contractually bind the LOSSAN Agency.
 - e) Shall not divulge confidential information to any vendor unless such information is a specific part of a project under discussion.
 - f) Must stop all discussions with vendors, consultants, or suppliers once a requisition has been sent to CAMM, and all discussion by staff must go through CAMM.
 - g) If a member of the Proposal Evaluation Committee has a need to meet with individuals from one of the proposing firms on an unrelated matter, the evaluator must document the meeting notice on their Outlook calendar with a notice to the evaluators' supervisor and the Director of CAMM and must prepare a brief synopsis of what occurred after the meeting.
 - h) The proposal evaluation period shall be defined as the period beginning on the date that the solicitation is released through the date that the contract is fully executed. Proposing firms, subcontractors and advocates will be prohibited from making contact with members of the proposal evaluation committee during this period.
2. Visits or other communication by requesting departments with vendors concerning details of their products or services shall be coordinated

LOSSAN Agency Procurement Policy Manual

through CAMM.

3. All contacts with vendor, suppliers, or consultants that relate to a particular procurement that is in the solicitation, evaluation, negotiations, or award phase must be conducted by CAMM staff.
 - a) Only CAMM personnel shall discuss prices and quantities with supplier's representatives.
 - b) All correspondence with suppliers of a contractual nature or that modify the scope of work shall be handled through CAMM.
4. Conflict of Interest
 - a) All Offerors responding to the Request for Proposals must avoid organizational conflicts of interest which would restrict full and open competition in this procurement. An organizational conflict of interest means that due to other activities, relationships or contracts, an Offeror is unable, or potentially unable to render impartial assistance or advice to the LOSSAN Agency; an Offeror's objectivity in performing the work identified in the Scope of Work is or might be otherwise impaired; or an Offeror has an unfair competitive advantage. Conflict of Interest issues must be fully disclosed in the Offeror's proposal.
 - b) Firms that are hired to perform services for the LOSSAN Agency are prohibited from concurrently acting as an advocate for another firm who is competing for a contract with the LOSSAN Agency, either as a prime or subcontractor.

E. Vendor Protest Policy

1. The LOSSAN Agency shall ensure to the greatest extent possible uniform, timely, and equitable consideration of all complaints received by the LOSSAN Agency concerning procurement activities.
2. As the managing agency for the LOSSAN Agency, the OCTA CAMM department is responsible for facilitating all vendor protests on behalf of the LOSSAN Agency. For Board of Directors approved procurements, the initial responsibility for granting a fair review and disposition of any protest shall be that of the Managing Director.
 - a) If the protest is not resolved at that level, the protester may pursue a resolution by the Board of Directors.
 - b) It shall be the responsibility of the CAMM Management to see that all information regarding any protest is made available to the Managing Director and/or Board of Directors upon their request.
3. For staff approval procurements, the responsibility of protest resolution shall rest solely with the Managing Director.
4. Protest Term Definitions
 - a) Protest shall mean a written objection by an interested party to a solicitation for offers for a proposed contract for the acquisition of supplies or services or a written objection by an interested party to

LOSSAN Agency Procurement Policy Manual

- a proposed selection or the award of such a contract.
 - b) "Days" shall mean calendar days.
 - c) "File" or "Submit" shall mean the date of receipt by the LOSSAN Agency.
 - d) "Interested Party" shall mean all bidders/candidates on a procurement, whose direct economic interest would be affected by the award of a contract or by the failure to award a contract.
 - e) "Bid" shall mean and include the term "offer" or "proposal" as used in the context of small purchase procedures:
 - a) Competitive sealed bids [Invitation for Bids (IFB)]
 - b) Competitive negotiations [Request for Proposals (RFP)]
5. Basis for Protest
- a) It is in the policy of the LOSSAN Agency to ensure that free and open competition takes place in all procurement activities and that no restrictive specifications are issued.
 - b) If, in the course of a procurement action, an interested party has reason to believe that these conditions do not exist, the interested party may file a protest in accordance with the provisions of these Protest Procedures with the CAMM Management requesting a review of the claim and a timely resolution of the issue as defined in Protest Deadline section of document.
6. Submission of Protest
- a) The protest shall be submitted in writing to the attention of the CAMM Management, and shall include:
 - a) The name and address of the protester
 - b) The solicitation number and the project description
 - c) A statement of the grounds for protest and all supporting documentation
 - d) The resolution to the protest desired from the LOSSAN Agency
7. Types of Protests
- a) A "pre-bid" or "solicitation phase protest" is received prior to the bid opening or proposal due date.
 - b) A "pre-award protest" applies only when:
 - a) A bidder/proposing firm protest the recommendation to a particular contractor
 - b) It is received after receipt of bids/proposals, but before award of a contract
 - c) A "post-award protest" is a protest received after selection of a Consultant/Bidder by staff or Board of Directors.
8. Protest Deadline
- a) "Pre-bid or solicitation phase protests" shall be filed no less than fifteen (15) days prior to the bid opening or proposal due date.
 - b) "Pre-award protests" shall be filed within five (5) days after

LOSSAN Agency Procurement Policy Manual

- Bid/Proposal due date.
- c) "Post-award protests" shall be filed within seven (7) days after the selection/award has been made.
9. Where to File
- a) All protests shall be directed to the CAMM Management.
 - b) Protests delivered using the US Postal Service shall be addressed as follows:

LOSSAN Rail Corridor Agency
CAMM Management
550 South Main Street, PO Box 14184
Orange, California 92683-1584
Attention: BID PROTEST

- c) Protests delivered in person or by means other than the US Postal service shall be submitted to the following address:

LOSSAN Rail Corridor Agency
CAMM Management
600 South Main Street, 4th Floor
Orange, California 92868
Attention: BID PROTEST

10. Review Levels
- a) Upon receipt the CAMM Management shall promptly consider the protest and may give notice of the protest and its basis to other persons including bidders/candidates involved in or affected by the protest.
 - b) The CAMM Management shall notify the protester in writing within five days that the protest has been received and is undergoing review.
 - c) If the procurement is federally funded, the LOSSAN Agency shall notify the Federal Transportation Agency (FTA) in writing of the receipt of the protest and keep FTA informed about the status of the protest.
 - a) This written notification shall be sent within ten (10) days from receipt of the protest.
 - d) The CAMM Management in coordination with the LOSSAN Agency Finance and Administration Manager, shall review all material submitted with the initial protest.
 - e) No additional material shall be accepted for consideration during the protest review unless specifically requested by the CAMM Management.
 - f) If additional material is requested, it shall be submitted by the requested date.

LOSSAN Agency Procurement Policy Manual

- to make award promptly.
 - c) Failure to make prompt award will otherwise cause undue harm to the LOSSAN Agency.
 - 13. Protest Remedies
 - a) There shall be no Limitation on Remedies selected by the LOSSAN Agency
 - a) Nothing contained herein shall be construed to neither act as a limitation on the LOSSAN Agency's choice of remedies nor confer any right upon any interested party to a remedy.
 - b) In determining the appropriate remedy, the LOSSAN Agency shall consider all the circumstances surrounding solicitation or contract selection and/or award, which shall include:
 - (a) The seriousness of any deficiency found to exist in the contracting process.
 - (b) The effect of the action of the competitive process.
 - (c) Any urgency surrounding the contract requirement.
 - (d) The effect that implementing the remedy will have on the LOSSAN Agency's overall ability to accomplish its mission.
 - c) If the LOSSAN Agency determines that the award or proposed award was not made in accordance with the applicable LOSSAN Agency statutes, regulations, policies, and procedures, the LOSSAN Agency shall, in its sole discretion, grant any remedy it deems appropriate.
14. Vendors Involved in the Protest Process

Vendors involved in the protest process with the LOSSAN Agency are not prohibited from submitting proposals on new work. The vendor's proposal for new work will be evaluated as part of the proposal evaluation process. At the time of Board action for the new work, the Board of Directors will be made aware that a selected vendor is currently protesting the LOSSAN Agency under a different procurement. If the vendor in dispute is being recommended for consideration, the Board of Directors will make a decision to approve or not approve the vendor selection on a case by case basis.

Types of Procurements

V. Informal Competitive Procurements

A. Corporate Credit Card Policy

1. The Corporate Credit Card (CCC) may replace some purchase orders, invoices and small dollar payment requests as well as petty cash, to simplify the procurement process for low dollar purchases in order to meet procurement needs in a timely manner.
2. Corporate Card Administrator
 - a) The LOSSAN Agency's CCC Program Administrator shall be the LOSSAN Agency Finance & Administration Manager.
3. Cardholder
 - a) Employee must pass employment probationary period unless otherwise directed by the Managing Director.
 - b) Before a CCC is given to any employee, their department manager(s)/director(s) must give their approval for the employee to have the ability to purchase small dollar items.
 - c) The Cardholder shall be responsible for:
 - a) Security of the card
 - b) Use of the card
 - c) Compliance with the LOSSAN Agency's CCC Policies and Procedures
 - d) Reconciliation of the monthly bank statement
 - e) Compliance with the LOSSAN Agency's Business Policies and Procedures
4. Transaction Limits
 - a) The CCC has a single transaction limit of \$5,000 with a monthly limit of \$10,000, with the exception of advertisements placed with Google, which has a monthly limit of \$100,000.
 - b) A transaction shall include the purchase price, sales tax, freight, handling fees and any other costs associated with buying the item.
 - c) Transaction will not exceed the approved amount.
5. Restricted Uses
 - a) Certain items shall be restricted from purchase.
 - b) The lending of purchasing card or giving the card number to other employees shall be considered a misuse.
 - c) Misuse of the card shall result in the revocation of the purchasing card and may result in disciplinary action, up to and including termination.
6. Ordering Process
 - a) The Cardholder is responsible for determining that the transaction total does not exceed the single purchase limits, which shall

LOSSAN Agency Procurement Policy Manual

include tax, freight and handling. All transactions shall be approved or denied based on whether the single purchase limit has been exceeded or the monthly spending limit has been exceeded.

- b) The Cardholder shall be responsible for inspecting any shipment of goods ordered.
- c) In case of returns, the Cardholder shall coordinate first with the supplier.

7. Corporate Card Transaction Log

- a) It is required that a Purchasing Transaction Log be maintained by the Cardholder.
- b) Cardholders must always obtain a detailed receipt for each purchase when using the Purchase Card.
- c) All packing slips must be retained by the Cardholder as part of the Corporate Card documentation.
- d) The log and receipts shall be retained as backup to the monthly bank statement.
- e) It is mandatory to retain all vendor receipts/documentation to simplify reconciliation for purchases made with the Corporate Card.
- f) Cardholders shall ask the vendors to send the invoices and/or receipts directly to the Cardholder.
 - a) It is the Cardholder's responsibility to ensure that there is a receipt for each purchase.

8. Reconciliation

- a) Each cardholder will receive from the bank a monthly statement. This statement along with the transaction log and copies of all receipts must be sent to the LOSSAN Agency Finance & Administration Manager by the deadline set each month
 - a) The Cardholder shall, to the greatest extent possible, reconcile the monthly bank statement the same day it is received from the bank, to verify its accuracy.

B. Micro-Purchase Policy

- 1. A Micro-Purchase is an informal method of procuring goods and services with a value of \$5,000 or under. A micro-purchase may require obtaining competitive quotations. If a quote is obtained, the CA shall award to lowest responsive and responsible bidder. The following procurement methods may be used for Micro-Purchases:
 - a) The purchasing credit card may be used.
 - b) For those vendors who do not accept purchasing credit cards, payment requests shall be submitted to Accounting.
 - c) Procurements shall not be divided or reduced in size merely to fall within the micro-purchase limit.

LOSSAN Agency Procurement Policy Manual

2. The CA shall document in the file that a determination was made that the price is fair and reasonable, and the method used to make that determination.

C. Informal Purchase Policy

1. Informal purchases for services:
 - a) For those purchases of \$5,001 to \$100,000 the Request for Quote (RFQ) process may be used.
 - a) An Evaluation Committee consisting of the CA and Project Manager shall use factors such as cost/price analysis and proposal content to determine award.
 - b) The CA shall document results of all such informal procurement actions, including that the price was fair and reasonable and the method used to make that determination.
2. Informal purchases for goods:
 - a) For those purchases of \$5,001 to \$100,000 the RFQ process may be used.
 - a) Award is made to the lowest bidder.
 - b) The CA shall document results of all such informal procurement actions, including that the price was fair and reasonable and the method used to make that determination.

D. Sole Source Procurement Policy

This section applies to all sole source procurements as defined below, with the exception of direct advertising procurements. See Section E. for specific policy regarding direct advertising procurements.

1. Sole Source procurements may be used only when:
 - a) The item is available only from a single source.
 - b) The public exigency or emergency for the requirement exists which will not permit a delay resulting from competitive solicitation.
 - a) Failure to submit requirements in a timely manner to meet project deadlines is not an emergency situation.
 - c) After solicitation of a number of sources, competition is determined inadequate.
 - d) The item is an associated capital maintenance item as defined in 49 USC and 5307(a)(1) that is procured directly from the original manufacturer or supplier of the item to be replaced.
 - a) The staff must first certify in writing (i) that such manufacturer or supplier is the only source for such item; and (ii) that the price of such item is no higher than the price paid for such item by like customers.
 - e) When FTA awards a grant agreement or enters into a cooperative agreement with a team, consortium, joint venture or partnership, or provides FTA assistance for a research project in which FTA has approved the participation of a particular firm or combination of

LOSSAN Agency Procurement Policy Manual

firms in the project work, the grant agreement or cooperative agreement constitutes approval of those arrangements.

2. Sole Source procurements shall be avoided whenever possible.
3. A contract amendment or change order that is not within the scope of the original contract shall be considered a Sole Source procurement and must comply with the same requirements identified in this section.
4. Requests for Sole Source procurement must first be approved by the Managing Director.
 - a) A written memo explaining why a sole source is needed, including a detailed explanation of how the cost was determined to be reasonable shall be provided to the Managing Director along with a completed Sole Source Authorization Form.
 - b) If professional services are being provided, an analysis of the level of effort that will be extended by the sole source firm.
5. Sole Source procurements up to \$100,000 shall be approved by the Managing Director.
6. Sole Source contracts or purchase orders over \$100,000 shall be approved by the Board of Directors.

E. Direct Advertising Sole Source Procurement Policy

1. The purchase of advertisements is considered a sole source when it can only be procured directly through a vendor who owns the assets (such as billboard, radio, TV, newspaper), or is the only vendor available to place an advertisement on a specific asset.
2. Requests for direct advertising sole source procurements must first be approved by the Managing Director.
 - a) A written memo explaining why a sole source is needed, including a detailed explanation of how the cost was determined to be reasonable shall be provided to the Managing Director along with a completed Sole Source Authorization Form.
3. Direct advertising sole source procurements up to \$100,000 shall be approved by the Managing Director.
4. Sole Source contracts or purchase orders over \$100,000 shall be approved by the Board of Directors. Some advertising costs are unique and may require pay for use rather than a contract. In some instances, the cumulative payments made in a given fiscal year may exceed the \$100,000 approval threshold of the Managing Director. In these instances, all expenditures will be reports to the Board of Directors in advance of exceeding the threshold.
5. When multiple advertisements are being placed with a single vendor, a

LOSSAN Agency Procurement Policy Manual

purchase order may requested to be issued through CAMM.

VI. Formal Competitive Procurements

A. Competitive Sealed Bids (Invitation for Bids – IFB) Policy

1. The following conditions must be present for an IFB to be used:
 - a) A complete, adequate and realistic specification or purchase description is available.
 - b) Two or more responsive and responsible bidders are willing and able to compete effectively for the business.
 - c) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.
 - d) No discussion is needed with bidders.
2. Invitation for Bid (IFB) is used for:
 - a) Public works/construction projects \$50,000 or greater. Contractors may be hired on an On-Call basis for \$50,000 or under.
 - b) The LOSSAN Agency shall utilize the definition found in California Public Contracts Code Section 1101 to determine if procurement is a public works project.
 - c) These projects must be awarded to the lowest, responsive, responsible bidder.
 - d) If a single bid is received greater than \$50,000, an internal audit report shall be issued.
 - a) The CA shall provide recommendation, data, copy of current Dunn & Bradstreet report, and request for audit report.
 - b) Internal Auditor shall contact contractor, solicit financial data and review to ensure the following:
 - (a) Fair and competitive procurement process.
 - (b) Financial stability of the contractor.
 - e) Fixed Asset Purchases
 - a) Fixed assets are those with unit costs greater than \$5,000 and a useful life of at least three (3) years.
 - b) Award is made to the lowest responsive and responsible bidder.
 - c) Board approval of contract award is required for procurements greater than \$100,000.
3. The LOSSAN Agency shall initiate the process by submitting a requisition, Specification or Statement of Work and an ICE.
4. The IFB packet shall include:
 - a) General instructions to the bidders concerning the bid format, pre-contractual expenses, contract conditions, pre-bid conferences, and other information.
 - b) A blank bid form used by the bidder to summarize the bid and that binds the bidder to a legal offer.

LOSSAN Agency Procurement Policy Manual

- c) Required forms to be completed by the bidder and submitted with the IFB.
 - d) Documents which display key facts, specifications, maps, report formats, and other important information to clearly define the goods or services needed in order for the bidder to properly respond to the IFB. Imposing unreasonable requirements on bidders shall be prohibited.
- 5. A CAMM Manager will review the IFB package prior to its release to the public.
- 6. If the procurement has a value greater than \$100,000 Board of Directors approval is required prior to releasing the IFB. The LOSSAN Agency and the CA will prepare a staff report.
 - a) Draft IFBs shall be sent to the Clerk of the Board's office which will be available for review by Board of Directors members or the public.
- 7. After the Board of Directors approves the release of the IFB, a public notice must be published in a newspaper of general circulation for two (2) consecutive weeks prior to the bid closing date.
 - a) The public notice shall include:
 - a) General description of the service or goods to be purchased.
 - b) Directions on how to obtain the IFB.
 - c) Bid submittal date and time.
 - d) Location in which bids will be publicly opened.
 - e) Applicable FTA clauses per FTA Circular 4220.1.F.
 - f) DBE goal percentage if federally funded.
- 8. CAMM shall post the IFB on CAMMNET
- 9. Addenda to the IFB package may be issued only by CA.
 - a) Addenda must be issued in writing.
 - b) All addenda will be posted on CAMMNET.
 - a) Those firms who are currently registered on CAMMNET and have identified the appropriate commodity codes shall be notified electronically of the Addenda release.
 - b) If the solicitation was not posted on CAMMNET, the addenda shall be mailed to those firms who received the original solicitation.
- 10. Sealed bids shall remain unopened and stored in a secure location until the public opening.
 - a) The CA shall open the bids publicly at the time and place specified in the IFB package. The CA shall record the following information for each bid:
 - a) Time and date the bid was submitted.
 - b) Time and date the bid was opened.
 - c) Signature of the person opening the bid.
 - d) Signature of the person witnessing the opening.

LOSSAN Agency Procurement Policy Manual

- b) The public may review bids at the time of opening, and during the evaluation period up to the award of the bid.
11. Each bid shall be recorded, reviewed and evaluated by the CA and the Project Manager.
 - a) Payment discounts may not be used to determine low bid.
 - b) Upon conclusion of evaluation, the contract award shall be made by written notice to the responsive and responsible bidder whose bid, conforming to all the material terms and conditions of the IFB, is lowest in price.
 - c) The CA shall prepare a report summarizing the bids and the report shall be made available to the LOSSAN Agency.
 - d) The award shall be made by the Board of Directors or Managing Director depending on value of the order and other factors.
 - e) All bids shall be open to public review after an award has been made.
 - f) If a single bid is received, an analysis must be made to determine if there were any elements in the procurement documents that may have restricted competition. The analysis must be documented and placed in the contract file.
 12. CAMM will request an analysis to be conducted by the Internal Audit Department, for any construction, equipment or service procurements over \$50,000 if only a single bid is received.
 13. If Board of Directors' approval is required for the award of the contract, the requesting department and the CA shall prepare a staff report authorizing the Managing Director to execute the final purchase order or contract, and the report shall include:
 - a) Objectives of the project.
 - b) Identification of all bidders responding to the IFB.
 - c) Description of the procurement and evaluation process.
 14. In the event a tie situation exists for an IFB, award may be made to one of the bidders by drawing lots or all bids may be rejected.

B. Competitive Negotiated Procurements – Request for Proposal (RFP) Policy

1. The RFP process is a competitive proposal method used when proposals can be solicited from an adequate number of qualified vendors. Proposals are evaluated on a number of factors including price, which are identified in the solicitation along with their relative importance. Award is made to the responsible firm whose proposal is most advantageous to the LOSSAN Agency with price and other factors considered. The Managing Director has the authority to cancel a solicitation. A cancellation notice will be provided.
2. The LOSSAN Agency must always initiate a requisition for services, scope of work, and an independent cost estimate prior to the start of the RFP

LOSSAN Agency Procurement Policy Manual

process. Imposing unreasonable requirements on proposers shall be prohibited.

3. The following conditions must exist in order to use a competitive negotiated procurement method:
 - a) There must be a complete and adequate scope of work which would allow for competition.
 - b) The competitive negotiated procurement process does not require award to the lowest bidder.
 - c) The contract award amount, whether a firm fixed price or cost reimbursement, is determined based on the original vendor proposal, which may be changed using a Best and Final Offer (BAFO) and/or through negotiation between the two parties.
 - a) Discussions or negotiations may also be used to address technical requirements.
 - d) If time and material contract is to be used, a determination must be made in writing that no other type of contract is suitable. The determination must demonstrate that it is not possible at the time of contract execution to estimate accurately the extent or duration of the work or to anticipate costs with any reasonable degree of confidence. Each Time and Expense Agreement shall include a clause that specifies a ceiling price that shall not be exceeded by the contractor, except at its own risk.
 - e) Cost plus a percentage of cost type contract shall be prohibited nor shall a cost plus percentage of construction cost type contract be used in pricing Architectural/Engineering contracts.
4. If the requirement is for an Architectural/Engineering and/or Professional service, the following shall apply:
 - a) Architectural and Engineering services must be competitively solicited and evaluated based solely on technical merit. Cost is not an evaluated factor.
 - b) Board approval of selection of the top ranked firms shall be required for budgeted procurements greater than \$100,000.
5. An RFP generally includes the sections below. A CAMM manager will review the RFP package prior to its release to the public:
 - a) Purpose of the procurement
 - b) Procurement schedule
 - c) Proposal submittal requirements
 - d) Scope of work
 - e) Project schedule
 - f) Selection criteria
 - g) The evaluation process that will be used
 - h) Proposed Agreements
 - i) Cost and Price forms
 - j) Applicable federal requirements
 - k) Other forms as applicable (See Forms)

LOSSAN Agency Procurement Policy Manual

6. The Board of Directors must approve the release of the RFP and evaluation criteria and weights for all procurements where the budget for the initial term is over \$100,000. If Board of Directors' approval is required, LOSSAN Agency staff and the CA will prepare their respective sections of the staff report for review by CAMM Management and the Managing Director.
7. Preparation of the RFP
 - a) When the procurement is over \$100,000, the RFP shall clearly state that the selection of a consultant and award of a contract is the decision of the Board of Directors.
 - b) CAMM shall post the RFP on CAMMNET and advertise in a newspaper of general circulation for two (2) consecutive weeks prior to the RFP closing date.
 - a) The advertisement shall include:
 - (a) General description of the service or goods to be purchased
 - (b) Directions on how to obtain the RFP
 - (c) RFP submittal date and time
 - (d) Applicable FTA clauses per FTA Circular 4220.1.F
 - (e) DBE goal percentage if federally funded
 - c) Each criterion shall demonstrate a norm of twenty-five (25) percent weighting. (With the exception of A&E RFPs)
 - a) Variations are allowed in the weighting with a written justification by the CA and shall be identified in the Board Report, if applicable.
 - b) In evaluating the qualifications of the firm criteria, any information obtained from the Past and Present Contracts form, regarding any of the candidate's contracts have been terminated due to a dispute or legal proceeding, will be taken into consideration.
8. Pre-Proposal Conference
 - a) It may be necessary to hold a Pre-Proposal Conference, prior to proposal submission, to provide firms with a clarification of the RFP requirements.
 - a) The CA, prior to the release of the RFP, shall, along with the Project Manager, make the determination as to whether or not a Pre-Proposal Conference will be required. This decision will be based on the complexity of the project, and need to inform prospective offerors of the requirements.
 - b) Information regarding the Pre-Proposal Conference shall be clearly identified in the RFP, and if applicable, the public notice.
9. Addenda
 - a) The CA shall prepare and issue all Addenda to the solicitation, when necessary to make changes to the RFP or respond to questions

LOSSAN Agency Procurement Policy Manual

- submitted by firms.
 - b) All changes to the RFP shall be addressed by a written addendum to the RFP and signed by the CA.
10. Proposal Receipt and Disposition
- a) CAMM shall be responsible to assure all proposals are received in accordance with the terms identified in the RFP.
 - b) Consultants may withdraw a proposal by written notice to the CA.
 - a) A request for withdrawal must be in writing and received by the CA prior to the proposal due date.
 - c) Proposals shall be considered late if received after the date and time established in the RFP.
 - a) When a proposal is late, CAMM staff shall return the unopened proposal promptly to the Consultant.
 - d) If a single proposal is received, an analysis must be made to determine if there were any elements in the procurement documents that may have restricted competition. The analysis must be documented and placed in the contract file.
11. Evaluation Committee
- a) As part of preparing the procurement, the CA with input from the Project Manager shall select the proposal evaluation committee. The committee should represent diverse backgrounds who are subject matter experts in their particular field.
 - a) An outside representative may be included on the evaluation committee if the project is one that has outside stakeholders or if the Project Manager and the CA decide it is in the best interest of the procurement.
 - b) Negotiated procurements with a total dollar value greater than \$100,000 require three (3) evaluation committee members in addition to the CA.
 - c) The CA and the Project Manager shall ensure that the Evaluation Committee is sufficiently large enough to ensure that the LOSSAN Agency has adequate representation on the evaluation committee.
 - d) Evaluation Committee members shall be selected based on the expertise needed to thoroughly evaluate the proposals.
 - e) In select instances members of the Board of Directors may participate as members of evaluation committee; such as procurements for state and federal advocacy services; legal services and external financial auditing services.
 - b) The CA shall chair the evaluation committee and is a voting member.
 - c) Each Evaluation Committee member shall have one vote.
 - d) Evaluation Committee members and others who may on a need to know basis, will be required to complete a Declaration of Impartiality and Confidentiality Form to safe guard against unauthorized disclosure of information as well as identify any

LOSSAN Agency Procurement Policy Manual

potential conflict of interest. If a conflict of interest has been identified, the Director of CAMM will make a recommendation to the Managing Director to authorize their removal.

- e) The Committee shall read and score each proposal as well as provide narrative statements to explain the rationale for the scoring.
- f) The Committee shall come together as a whole to reveal their scores and discuss the rationale for their decision.
- g) A short list of firms, whose technical scores fall into a competitive range, shall be invited to participate in an interview.
- h) Evaluation Policy

- a) If a member of the Proposal Evaluation Committee has a need to meet with individuals from one of the proposing firms on an unrelated matter, the evaluator must document the meeting notice on their Outlook calendar with a notice to the evaluators' supervisor and the Director of CAMM and must prepare a brief synopsis of what occurred after the meeting.

- b) If, during the evaluation process, Evaluation Committee member(s) requires clarification of a proposal, the CA may request such clarification in writing from the proposing firm.

- (a) If the proposing firm provides information that changes its proposal beyond the clarification, the evaluation committee members shall not evaluate the information.

- c) For Architectural and Engineering services only, the proposing firm's qualifications shall be evaluated and the most qualified proposing firm shall be selected subject to negotiation of fair and reasonable compensation.

- (a) Price shall not be considered as an evaluation factor in determining the most qualified firm.

- d) For Contract Task Order (CTO) based procurements, all firms must meet all the requirements identified in the Statement of Work.

- e) If in reviewing the evaluation documents, there is a score or scores that differ significantly from the other Evaluation Committee members, the Managing Director may instruct the CA to reconvene the Proposal Evaluation Committee to discuss the scoring.

- (a) If the Committee member(s) cannot provide an adequate justification for the score(s), then the Managing Director shall have the authority to eliminate that member(s) score(s) from the overall evaluation process.

- i) Discussions / Negotiations Policy

- a) The Evaluation Committee may conduct discussions and/or negotiations with all of the short-listed firms prior to final selection.

- b) The CA shall have the authority to negotiate and speak for

LOSSAN Agency Procurement Policy Manual

the LOSSAN Agency' negotiating team.

- (a) Negotiations shall be a team effort lead by the CA.
- (b) The CA shall request and receive all data required from the Consultant to enter into negotiations.
- (c) The CA shall confer with appropriate departments, such as Internal Audit or Legal, when data received requires their special expertise.
- c) Negotiations may be concluded prior to final selection of the consultant or conclude after a final selection has been made.
 - (a) Once the CA declares negotiations to be concluded, he or she shall write a memo of negotiations to be signed by both the CA and the Project Manager.
- d) Once the final recommendation has been made by the Evaluation Committee, the CA will notify all firms that submitted proposals in writing indicating who the recommended firm is and provide a statement indicating when the proposal evaluation data will be available (same date that the staff report for the procurement becomes a public document).
- e) Board members and their staff will not distribute any evaluation documents other than information provided in the staff report to other proposing firms or their advocates until after the Board of Directors takes final action on the procurement.
- f) Once the final selection of a consultant has been made, the CA shall draft the contract and obtain signatures. The contract shall reflect the formal negotiation results.
- j) Award of Contract
Contract awards will be made to the responsible firm whose proposal is most advantageous to the LOSSAN Agency with price and other factors considered. In determining which proposal is most advantageous, the LOSSAN Agency may award to the proposer whose proposal offers the greatest business value to the LOSSAN Agency based upon an analysis of a tradeoff of technical factors and price to arrive at the proposal that represents the "best value" to the LOSSAN Agency.
 - a) For procurements greater than \$100,000, the award of the contract shall occur when the Board of Directors approves the selection of Consultant and authorizes the Managing Director to execute a contract.
 - b) For procurements \$100,000 or less, the award of the contract shall occur when the evaluation process has been completed and the Managing Director concurs with the Evaluation Committee.

LOSSAN Agency Procurement Policy Manual

12. Debriefings
The Consultant may request, in writing, a debriefing within three (3) business days of receipt of the on-line notification of contract award.
13. Contract Administration
The CA and the Project Manager shall be responsible for monitoring and reviewing the contract to determine whether the terms and conditions are being met.
14. Formal Contract Amendments Policy
 - a) Amendments for contracts or purchase orders which amount to fifteen (15) percent or less of the total original contract amount or \$100,000, whichever is less, do not require Board of Directors' approval.
 - b) The Managing Director may authorize changes or additions in the work being performed under construction public works contracts in accordance with the State of California Public Contracting Code section 20142 as follows:
 - a) Any increase to the contract's maximum obligation for any change or addition to the work ordered shall:
 - (a) Not to exceed \$5,000 when the total amount of the original contract does not exceed \$50,000.
 - (b) Not to exceed ten percent of the amount of the original contract that is greater than \$50,000, but does not exceed \$250,000.
 - (c) Not to exceed \$25,000, plus five (5) percent of the original contract that exceeds \$250,000.
 - (d) In no event shall any such change or alteration exceed \$210,000.
 - c) The Board of Directors must approve all contracts with option terms that if the option term is exercised would result in a contract amount greater than \$100,000. When this occurs, the Board of Directors shall approve the initial term plus all individual options.
 - d) A significant change to the scope of work that deviates from the original purpose of the scope of work that is so extensive that, in effect, the contractor is performing different work from that described in the original contract is considered a cardinal change and will be viewed as a sole source.
 - e) Request for changes to contract terms and conditions that alter or eliminate the requirement must be submitted in writing detailing the justification for the change and signed by a supervisor.

LOSSAN Agency Procurement Policy Manual

C. Contract Task Order Policy

1. Contract Task Order (CTO) is used to provide an opportunity under master agreements to contract on an on-call basis (sharing one pool of funds).
2. CTOs shall require review by the CAMM Section Manager and Project Manager and review and signature from the Managing Director and the Finance & Administration Manager.
3. Master CTO agreements shall be issued to the on-call firms, and as the need for the particular service arises during the term of the agreements, CTOs shall be issued.
4. Master CTO agreements for a particular service may only be issued for the services as defined in the master agreement. Example: If the Master CTO agreement is for financial services, the CTOs may only be issued for financial services. All firms awarded a CTO Agreement must be able to perform all the services identified in the Statement of Work.
5. There are two (2) awarding CTO procedure types available, Competitive Pricing Awards and Sequential Awards. CAMM and the requesting department shall decide which procedural type will be used. The decision to use competitive pricing or sequential awards must be documented in the file as to the rationale for the decision.
 - a) The awarding procedure type shall be clearly discussed in the RFP, and consistently applied during the term of the agreements.
 - b) The CTO amount must be supported by a written cost proposal from the consultant.
 - c) The CTO amount cannot exceed the cost proposal.
6. Competitive Pricing Awards
 - a) The CTO process shall start with the Requisition, ICE and a Scope of Work which shall be forwarded to CAMM for review and processing.
 - b) All CTO firms must receive the Scope of Work with a request to provide pricing quotes based on the Scope of Work, and the rates included in the master agreements.

D. Cooperative Procurement Policy

1. The Managing Director will make the determination to purchase goods and services from other public agencies when it is in the best interest of the LOSSAN Agency to do so. Cooperative Agreements may be initiated with the State of California, using the California Multiple Awards Schedule (CMAS), the County of Orange, or with other appropriate public agencies.
2. The CA will evaluate all cooperative procurement terms and conditions for the purchase of goods and services and advise the Project Manager of notable issues, and with legal assistance if necessary. The CA will review and ensure there is sufficient justification for the cooperative purchase

LOSSAN Agency Procurement Policy Manual

(price and/or schedule) and document such in the contract file.

E. Status of Past and Present Contracts Policy

The LOSSAN Agency requires Offerors to submit with their proposal, the Status of Past and Present Contracts form where the Offeror's firm has either provided services as a prime contractor or a subcontractor during the past five (5) years in which the contract has ended or will end in a termination, settlement or in legal action.

VII. Other Procurement Types

A. Fixed Asset Purchases Policy

1. Fixed Assets are those with unit costs greater than \$5,000 and a useful life of at least three years.
2. If the procurement is \$100,000 or less the Informal Procurement Process shall be used.
3. If the procurement is greater than \$100,000, a formal Invitation for Bid (IFB) shall be used.
4. In either case, the award is made to the lowest responsive and responsible bidder.
5. Board of Directors' approval of vendor selection is required for procurements greater than \$100,000.

B. Public Works/Construction Services Policy

1. The LOSSAN Agency is required to follow California Public Contract code as related to public works contracting.
2. A Public Works contract is an agreement for erection, construction, alteration, repair or improvement of any public structure, building, road, or other public improvement of any kind.
3. Public works and construction projects shall be awarded through a competitive IFB process and must be awarded to the lowest responsive and responsible bidder.

C. Architectural and Engineering Services Policy

1. Architectural and Engineering (A&E) applies to procurements of professional consultants for engineering, architectural, land surveying or other support services.
2. A&E services must be competitively solicited and evaluated based solely on technical merit, pursuant to the state and/or federal Brooks Act.
3. A&E services are procured through the RFP procedure.
4. Only the highest ranked firms' cost proposal will be reviewed for fair and

LOSSAN Agency Procurement Policy Manual

reasonableness and included in the final negotiated and approved contract.

D. Payment Policy

1. Contract funds should not be expended prior to completion of contract.
 - a) Payment for additional work is not allowed by check or payment request.
 - b) A contract amendment must be created prior to all additional work that requires any type of fee or payment.
2. The LOSSAN Agency may pay advanced costs if there is a sound business reason justifying the advanced payment and adequate security of the payment. If the contract is funded by the FTA, prior written concurrence from the FTA must be received before an advanced payment can be made.
3. Progress Payments – Progress payments are payments for contract work that has not yet been completed. For a fixed price contract, tasks or deliverables will be included in the contract. Progress payments may be made based on the percentage of work completed for each deliverable or task that has not been previously included in a previous invoice.

In order to make progress payments, the contract must include adequate security sufficient enough to protect the LOSSAN Agency's financial interest in the progress payment. Such security may be in the form of withholding a certain percentage from each invoice (i.e. retention amount), performance bonds, use of escrow accounts or letter of credit.

The contractor must submit documentation that justifies the amount of the progress payment and the PM must verify that the documentation submitted is sufficient to approve the payment. The PM may not make progress payments or increase the contract price beyond the funds obligated under the contract.

E. Construction Change Orders Policy

1. The LOSSAN Agency shall comply with the California Public Contract Code, Section 20142. Amendments to construction contracts may be authorized by the Managing Director as follows:
 - a) \$5,000 per change when the total amount of the original contract does not exceed \$50,000, or
 - b) Ten (10) percent of the amount of any original contract that exceeds \$50,000 but does not exceed \$250,000, or
 - c) For contracts greater than \$250,000, the change shall not exceed \$25,000, plus five (5) percent of the amount of the original contract amount in excess of \$250,000.
 - d) In no event shall any such change or alteration exceed \$210,000.
2. Changes in excess of the above amounts require Board approval.

LOSSAN Agency Procurement Policy Manual

F. Revenue Contracts Policy

1. A revenue contract is any third party contract whose primary purpose is to either generate revenues in connection with a transit related activity or to create business opportunities utilizing locally funded or FTA funded assets.
2. The requirements for competitive negotiated procurements apply to all revenue generating contracts. If the revenue contract uses FTA funds, all FTA requirements as specified in Circular 4220.IF apply.

G. Letter Amendments

1. A letter amendment is a method used to make changes to an existing contract. A letter is written, sent to the contracting firm notifying them of the change to their Agreement with the LOSSAN Agency. The letter amendment is signed by LOSSAN's Managing Director, but the contracting firm is not required to sign the letter and return it to the LOSSAN Agency.
2. Letter amendments may only be used to make on-going staff changes (other than key personnel); time extensions, and to exercise an option term if no Board approval is required or there is no increase to the contract's maximum payment obligation.

H. Services Marketed by Brokers

The LOSSAN Agency may contract for services that are marketed by brokers, including but not limited to, property insurance policies and health insurance related policies. For these services, the broker firm is responsible to market, procure, evaluate, negotiate, and contract for the services on behalf of the LOSSAN Agency. The broker firm will obtain a minimum of two quotes for the services they broker, and provide copies to the LOSSAN Agency for review. If two quotes can't be obtained in the marketplace, the broker must document why two quotes could not be obtained. The services procured by brokers will adhere to the same signature authority levels defined in this policy.

VIII. Disadvantaged Business Enterprise (DBE) Program Policy

A. Policy Statement

OCTA, serving as the managing agency for the LOSSAN Agency, has established a Disadvantaged Business Enterprise (DBE) Program in accordance with Title 49 Code of Federal Regulations (CFR), Part 26: *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs* and subsequently issued U.S. Department of Transportation (U.S. DOT) Guidance (Race-Neutral Policy Implementation Directives).

B. Program Objectives

It is the policy of the LOSSAN Agency to ensure that DBEs, as defined in Title 49 CFR, Part 26, have an equitable opportunity to compete for and participate in the LOSSAN Agency's U.S. DOT-assisted contracts and subcontracts. The DBE Program objectives are designed to:

1. Ensure non-discrimination in the award and administration of the Authority's U.S. DOT-assisted contracts.
2. Create a level playing field by which DBEs can fairly compete for the Authority's U.S. DOT-assisted contracts.
3. Ensure that the Authority's DBE Program and overall annual goals are narrowly tailored in accordance with applicable law.
4. Ensure that only firms that fully meet Title 49 CFR, Part 26 eligibility standards are permitted to participate as DBEs in the Authority's DBE Program.
5. Help remove barriers which impede the participation of DBEs in the Authority's U.S. DOT-assisted contracts.
6. Assist in the development of DBE firms that can compete successfully in the marketplace outside of the DBE Program.
7. Provide appropriate flexibility to recipients of federal financial assistance in establishing and providing opportunities for DBEs.

The LOSSAN Agency further ensures that implementation of its DBE Program is afforded the same priority as compliance with all other legal obligations incurred by the LOSSAN Agency in its financial assistance agreements with the U.S. DOT. It is the expectation of the Managing Director that all LOSSAN Agency personnel shall adhere to the full spirit and intent of the DBE program and carry out all DBE requirements and procedures accordingly.

LOSSAN Agency Procurement Policy Manual

C. Non-Discrimination

The LOSSAN Agency will not exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract governed by Title 49 CFR, Part 26 on the basis of race, color, sex or national origin.

In administering a DBE Program, the LOSSAN Agency will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishments of the objectives of the DBE Program with respect to individuals of a particular race, color, sex or national origin, and will further require such contract assurance in every U.S. DOT-assisted contract and subcontract.

Through such efforts, the LOSSAN Agency will ensure that its contracting and procurement-related processes promote equity in access, consideration and opportunity for DBEs in response to the requirements set forth under Title 49 CFR, Part 26: *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*.