



Policy Title	Non-Energy Public Contracting		
Policy Number	CPA2019-12	Effective Date	Original: 12/05/2019

Policy No. 12 - Non-Energy Public Contracting Policy

I.

PURPOSE

It is in the interest of the Clean Power Alliance of Southern California (“CPA”) to establish non-energy competitive solicitation and procurement practices that facilitate efficient business operations, offer fair compensation, transparency, accountability, and provide local workforce opportunities within a framework of high quality, competitive offerings whenever practical.

This policy shall not apply to any energy procurements or transactions governed by the Energy Risk Management Policy, Resolutions Nos. 18-006 and 18-009, or any amendments or successors thereto.

II.

DEFINITIONS

1. **“Architectural and Engineering Services”** include Services provided by architectural, landscape architectural, engineering, environmental, land surveying, and construction project management firms, or services incidental thereto that members of these professions and those in their employ may logically or justifiably perform, which are subject to Article XXII of the California Constitution and Government Code Section 4529.10 et seq.
2. **“Architectural and Engineering Agreement”** is an agreement between CPA and a Proposer for Architectural and Engineering Services.
3. A **“Best Value”** award is based on factors in addition to price that provide the best overall value to CPA, except as applied to Public Works Contracts over \$1,000,000, which are subject to the “best value” definition set forth in Public Contract Code Section 20155.1(a).
4. **“Board”** means the Board of Directors of CPA.
5. **“Competitive Solicitation”** is a competitive process in which CPA procures Goods, Services, or a combination thereof from Proposers, including the procurement of Architectural and Engineering Services, in order for CPA to secure the Best Value for CPA and its customers. This definition does not apply to “Public Works Contract.”
6. **“Cooperative Procurement”** refers to the combining of requirements of two or more Public Entities to leverage the benefits of volume purchases, delivery and supply chain advantages, best practices, the reduction of administrative time and expenses, or some combination thereof.

7. **“Fiscal Year”** or **“FY”** refers to CPA’s fiscal year as specified in Section 7.1 of CPA’s Joint Powers Agreement or as changed by CPA Board resolution.
8. **“Goods”** means all types of tangible personal property, including materials, supplies, furnishings, or equipment.
9. **“Informal Bid Process”** is a process wherein the Executive Director requests written quotes from at least three (3) vendors.
10. **“Legal Services”** is legal representation, advocacy, advice, counsel, or other similar legal services provided by an attorney, or a law firm, company or partnership with attorneys duly licensed by the California State Bar or authorized to practice in the state of California.
11. **“Master Agreement”** is an agreement between CPA and a Proposer for any Goods, Services, or combination thereof, except for Legal Services Agreement.
12. **“Office Equipment”** includes furnishings, computers, information technology (IT) hardware or software, or other personal property.
13. **“Piggyback Solicitation”** refers to the use of a prior solicitation, competitively bid by a Public Entity for the same Goods and/or Services currently requested or needed by CPA; or may be a form of intergovernmental cooperative purchasing in which CPA will be extended the same pricing and terms of a contract entered into by another Public Entity. Generally, the originating entity can competitively award a contract that will include language allowing for other entities to utilize the contract, or, CPA may join in a single competitive procurement with another Public Entity. The Piggyback Solicitation provides an advantage in terms of pricing, thereby gaining economies of scale that CPA or an individual Public Entity would otherwise not receive if each competed on its own.
14. **“Pre-Qualified Providers”** or **“PQP”** is a Proposer who is available and willing to perform work on an as-needed basis under the Request for Qualifications process.
15. **“Proposer”** is a person or business entity who seeks to do business with CPA by responding to a Competitive Solicitation of any kind, a Cooperative Procurement or Piggyback Solicitation, or seeking to enter into a contract with CPA through an exception or alternative to the Competitive Solicitation requirements.
16. **“Proposal”** is a response by a Proposer to a request by CPA.
17. **“Public Entity”** means the state, county, city, city and county, district, public authority, public agency, municipal corporation, or any other political subdivision or public corporation in the state, including a community choice aggregator as defined in Public Utilities Code Section 331.1.
18. **“Public Works Contract”** means an agreement for the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind, pursuant to California Public Contract Code Section 1101.
19. **“Services”** is the performance of labor by an outside company or individual for and/or on behalf of CPA. It can be rendered to CPA by a company or individual, with or without the furnishing of Goods.
20. **“Specialized Services”** are special services with persons specially trained, experienced, expert, and competent to perform the special services. The special services consist of services, advice, education or training for CPA. The special services include but is not

limited to financial, economic, accounting (including the preparation and issuance of payroll checks or warrants), legal, administrative, or building security matters. The special services may include maintenance or custodial matters if the Board finds that CPA's resources and economic interests are served by such a contract.

21. A **"Task Order Solicitation"** or **"TO"** is issued in the Request for Qualifications procurement process to solicit bids from providers who have been pre-qualified under the Request for Qualifications process. If CPA awards the bid, the TO will be appended to a Master Agreement once the Task Order is awarded to a Pre-Qualified Provider.

III.

DELEGATION OF PROCUREMENT OR PURCHASING AUTHORITY TO EXECUTIVE DIRECTOR

1. The Board designates the Executive Director ("ED") as CPA's purchasing agent. As the purchasing agent for CPA, the Executive Director is hereby authorized on behalf of CPA to (i) purchase Goods; (ii) rent furnishings and equipment; or (iii) contract for Services, Specialized Services, or Legal Services, as provided herein.
2. Delegation of ED's authority under this Policy is in addition to and must be consistent with Resolution 19-05-009 and its successors.

IV.

RULES REGARDING COMPETITIVE SOLICITATION OF GOODS OR SERVICES EXCEPT ARCHITECTURAL AND ENGINEERING SERVICES AND PUBLIC WORKS

1. **Services or a Combination of Goods and Services.** A Competitive Solicitation for Services or a Combination of Goods and Services shall be required if the aggregate anticipated value of a contract exceeds \$50,000 in any 12-month period or if, irrespective of the contract value, the ED determines in the ED's discretion that a Competitive Solicitation is in the best interest of CPA. For any contracts valued at \$50,000 or less, the ED shall request quotes, whether written or oral, from at least three (3) vendors and the ED will purchase from the vendor offering the Best Value.

When a Competitive Solicitation is required, one of the following processes may be used.

- a. **Request for Proposal (RFP):**

- i. **Description:** An RFP is typically used to procure complex or unique Services in which CPA's requirements are defined but expertise and methods may vary; when creative or innovative approaches are needed; and/or, where performance of services is anticipated to be ongoing in nature.
- ii. **Content:** An RFP will include, at a minimum, a requirements statement or statement of work; experience, expertise, or qualification criteria; and evaluation criteria for which a Proposal will be evaluated. An RFP also typically states CPA's goals, objectives, project summary, major tasks, or timelines. An RFP will include a sample agreement and may include a budget for the work being procured. CPA will require proposals to offer a detailed explanation of Proposer's approach, detailed work plans, solutions, or methods, and price/budget, as applicable.

- iii. Contracting: CPA will contract with a Proposer through a written Agreement. CPA may engage in negotiations on the terms and conditions of the Agreement with the selected Proposer(s), including but not limited to the scope of services or price/budget.
- b. Request for Qualifications (“RFQ”):
 - i. Description: An RFQ is typically used to procure Services or a combination of Goods and Services when CPA needs to establish a pool of Pre-Qualified Providers. The RFQ process is typically used to procure distinct, stand-alone, or discrete projects having a specific deadline; or for services ordered or used by CPA on a routine basis.
 - ii. Content: The RFQ will specify the areas of expertise, experience, or knowledge that CPA seeks, and, if applicable, the process for a Proposer to become PQP in those specified areas. CPA will maintain a list of PQPs for each specified area. The RFQ should attach a copy of the proposed form of agreement.
 - iii. Task Order Solicitation: PQPs will be awarded work through a Task Order Solicitation that CPA may issue from time to time. The TOs will contain CPA’s objectives; a statement of work, including any deliverables, tasks, or milestones; estimated time of completion; or pricing, cost, or budget. A TO will designate the area(s) of expertise, experience, or knowledge that CPA seeks or anticipates needing and the TO will be sent to PQPs in those specified area(s). Interested PQPs shall submit a bid in response to the TO and that bid should offer, at a minimum, Proposer’s acknowledgement of CPA’s objectives; approach to the identified statement of work, including any deliverables, tasks, or milestones; pricing, cost or budget; and other relevant information, solutions or methods as specified in the TO.
 - iv. Contracting: A Proposer is expected to sign a Master Agreement no later than five (5) business days after CPA issues the relevant TO. **A signed Master Agreement does not guarantee a Proposer any minimum amount of work.** The Master Agreement is not effective unless and until a TO has been awarded by CPA and the Master Agreement has been executed by the successful Proposer and CPA.

2. Goods.

- a. Purchase of Goods. ED may purchase from a single vendor an aggregate total amount of \$50,000 of Goods in a single Fiscal Year without an Informal Bid Process or Request for Bid. The ED must affirm and approve such purchases as being necessary.
- b. Informal Bid Process. For purchase of Goods with an aggregate total amount between \$50,001 to \$125,000 for a single vendor in a single FY, the ED shall procure the Goods through the Informal Bid Process. ED may purchase from the vendor offering the Best Value. ED must approve any procurement of Goods, must verify compliance with the Informal Bid Process, must verify that the procurement stays within the FY budget, and affirm the purchase is necessary.

- c. Invitation for Bid (“IFB”):
 - i. Description: For any other purchase of Goods, ED shall issue a formal IFB.
 - ii. Content: The IFB shall specify, at a minimum, the item(s) specifications or dimensions; description of requirements; and quantities. A bid in response to an IFB must contain a Proposer’s name, address, phone number, and the proposed cost to provide the requested items. The IFB should attach a copy of the proposed form of agreement.
 - iii. Contracting: CPA will contract with a Proposer using a written agreement.
- 3. **Specialized Services or Legal Services**. No competitive procurement is required for Specialized Services or Legal Services. However, it is recommended that the ED use the Informal Bid Process to procure Specialized Services or Legal Services whenever practical. When using the Informal Bid Process, ED may procure services from a provider offering the Best Value.
- 4. **Rent or Lease of Office Equipment or Office Space**: No Competitive Solicitation shall be required to rent or lease Office Equipment or office space provided that (a) ED affirms that the rent or lease of Office Equipment or office space is necessary; (b) ED solicits or reviews at least three quotes, whether verbal or written, from at least three (3) offerors; and (c) ED approves of the rent or lease of Office Equipment or office space.
- 5. **Awards of Competitive Solicitation**: Competitive Solicitations may be awarded on a Best Value basis, unless otherwise required by California law or otherwise specified in the Competitive Solicitation document.
- 6. **Additional Authorized Procurement Methods**: CPA may engage in the procurement of Goods, Services, or some combination thereof through any of the following procurement methods.
 - a. Cooperative Procurement: CPA may use a Cooperative Procurement when the use of a Cooperative Procurement enhances operational efficiencies; demonstrates potential cost savings for CPA, including transaction costs. For example, CPA may purchase Goods or Services from contracts established pursuant to Leveraged Procurement Agreements (LPAs), California Multiple Award Schedules (CMAS), or through a joint procurement with another Public Entity.
 - b. Piggyback Procurement: CPA may engage in Piggyback Procurement when such a procurement can be shown to enhance operational efficiencies; demonstrate potential cost savings for CPA, including transaction costs; and when the Piggyback Procurement complies with California law.
- c. Sole Source Purchasing:
 - i. With the exception of Public Works Contracts and Architectural and Engineering Agreements, CPA may justify procurement of Services, or a combination of Goods and Services, from a sole source when the following factors exist:
 - 1) No other vendor offers a service or employs personnel meeting the minimum requirements.

- 2) CPA's required timeframe for project completion is critical and cannot be exceeded without extreme hardship.
 - 3) The cost to continue with the same service provider is less than the cost for any other vendor due to the time necessary to get 'up to speed' (learning curve) with the project.
 - 4) A unique and proprietary solution has been offered which is determined to be in the best interest of CPA.
- ii. CPA may justify procurement of a Good from a sole source when the following factors exist. The Good is:
 - 1) Available from only one source (e.g., proprietary to a manufacturer, distributor, and/or reseller, etc.).
 - 2) The only brand that meets the qualifications or specifications needed by CPA.
 - 3) A brand that must match or inter-member with an existing system, and cannot be substituted without replacing the system, resulting in significant costs to CPA
 - 4) Going to enable CPA to avoid other costs (e.g., data conversion, training, purchase of additional hardware, etc.)
 - iii. The following factors shall not qualify as reasons to purchase with a sole source: personal preference for a product or Proposer; or the length of time needed to conduct a Competitive Solicitation is inconvenient.
 - iv. In all cases, sole source purchases must be justified in writing, with sufficient detail to explain the basis for suspending the competitive procurement process, and the ED shall review the justification and approve the use of sole source purchasing. The sole source justification shall be retained with the Proposer's contract documentation. ED may develop a justification form or checklist for sole source purchases. The ED shall report any sole source contracts on a monthly basis.

7. Additional Procedures

- a. ED may, at his/her discretion, shortlist Proposers; phase its evaluation of a Proposal; interview Proposers; or, require site inspections, demonstrations, or a pilot of proposed Goods or Services.
- b. ED shall use his/her best efforts to secure at least three Proposals from Proposers when using a Competitive Solicitation.
- c. With regard to any Public Works Contract, CPA shall comply applicable law.

V.

RULES REGARDING COMPETITIVE SOLICITATIONS OF ARCHITECTURAL AND ENGINEERING SERVICES:

The selection for Architectural and Engineering Services shall be based on the Proposer's demonstrated competence and the professional qualifications necessary for the satisfactory performance of Services required at fair and reasonable prices.

If CPA is required to procure Architectural and Engineering Services, pursuant to Article XXII of the California Constitution and Government Code Section 4529.10 et seq., the following process, at a minimum, shall be employed:

1. ED shall issue a RFP or RFQ specifying the qualifications, competence, minimum standards, and other qualification-based criteria appropriate for the scope of work being sought by CPA, and attaching a copy of the proposed Architectural and Engineering Agreement;
2. ED shall appoint a selection team consisting of at least two employees who are most knowledgeable about the desired Services and scope of work;
3. The selection team shall rank the firms based upon professional experience, qualifications in the work to be performed, including relative project experience, demonstrated design excellence, capability and involvement of key personnel, excellence in cost control and scheduling, relative location of firm to project location, ability to perform the work within the established timeframe and any other criteria appropriate to the scope of work being considered. The selection team may conduct interviews of qualified firms, if deemed appropriate.

CPA will enter into an Architectural and Engineering Agreement with the Proposer that CPA determines, acting in its sole discretion, offers the Best Value.

VI.

COMPETITIVE SOLICITATION ADVERTISEMENT AND PROPOSER LIST

1. All Competitive Solicitations shall be posted on CPA's website. CPA is not required to formally publish its Competitive Solicitations in a newspaper or similar publication.
2. Notwithstanding the RFQ process and the PQP list, CPA may maintain a list of Proposers for any Competitive Solicitation. To be added to the list of Proposers, interested Proposers must provide the ED with Proposer's contact information, including address, phone number, and a current email address. It is the Proposer's obligation to keep its contact information current with CPA. CPA will use its best effort to send any Competitive Solicitations to all Proposers who request to be placed on the list of Proposers.
3. CPA does not guarantee any Proposer placed on the list of Proposers any work.

VII.

RESERVATION OF CPA'S RIGHTS

1. ED may, at its sole discretion, take any of the following actions:
 - a. Reject any or all Proposals, for any reason without explanation to the Proposer(s);
 - b. Elect in its Competitive Solicitation to select any part of a Proposal, or sub-divide, or combine a Proposal;
 - c. Cancel a Competitive Solicitation, in its entirety;
 - d. Elect to proceed with a contract for only some of the Services included in the Proposal.

2. ED shall have the right to amend a Competitive Solicitation by written addendum. CPA is responsible only for that which is expressly stated in the Competitive Solicitation document and any authorized written addenda. Should such addendum require additional information not previously requested, failure to address the requirements of such addendum may result in the Proposal being found non-responsive and not being considered, as determined in the sole discretion of CPA.
3. ED is not responsible for and shall not be bound by any representations, statements, or explanations made by any individual acting or purporting to act on his/her behalf, other than the CPA Staff member identified on the Competitive Solicitation document, provided the representations, statements, or explanations by the identified CPA Staff member are in writing.
4. ED reserves the right to waive inconsequential irregularities in a submitted Proposal.
5. ED reserves the right to submit supplementary follow-up questions or inquiries to request clarification of information submitted and to request additional information from any one or more of the Proposers.
6. CPA shall not be liable for any costs incurred by any Proposer in connection with the preparation or submission of any Proposal or any action taken by Proposer in its effort to do business with CPA. Any and all such costs whatsoever shall remain the sole responsibility of the Proposer.
7. CPA shall not be liable to any Proposer in law or equity for any reason whatsoever for any acts or omissions arising out of or in conjunction with this Policy.
8. CPA shall require Proposers to provide certain performance assurances including but not limited to performance security or payment and performance bonds for Public Works Contracts.
9. With regard to Public Works Contract, CPA shall comply applicable law.
10. Proposers are expected to complete all of their due diligence activities prior to entering into any final contract negotiations with CPA, including a review of CPA's policies, requirements, forms, or other guidance documents that CPA may issue from time to time. CPA Policies, including CPA's Vendor Communications Policy, are available on CPA's website at: www.cleanpoweralliance.org/key-documents.

VII.

SEVERABILITY

If any section, subsection, sentence, or clause of this Policy is determined to be illegal, invalid, or unenforceable, such illegality, invalidity, or unenforceability shall not affect the legality, validity, or enforceability of this Policy as a whole or of any section, subsection, sentence, or clause herein that is not so determined.