



SunLine Transit Agency  
March 27, 2019  
10:55 a.m. – 11:15 a.m.

## AGENDA

### BOARD OPERATIONS COMMITTEE

Wellness Training Room  
32-505 Harry Oliver Trail  
Thousand Palms, CA 92276

In compliance with the Brown Act and Government Code Section 54957.5, agenda materials distributed 72 hours prior to the meeting, which are public records relating to open session agenda items, will be available for inspection by members of the public prior to the meeting at SunLine Transit Agency's Administration Building, 32505 Harry Oliver Trail, Thousand Palms, CA 92276 and on the Agency's website, [www.sunline.org](http://www.sunline.org).

In compliance with the Americans with Disabilities Act, Government Code Section 54954.2, and the Federal Transit Administration Title VI, please contact the Clerk of the Board at (760) 343-3456 if special assistance is needed to participate in a Board meeting, including accessibility and translation services.

Notification of at least 48 hours prior to the meeting time will assist staff in assuring reasonable arrangements can be made to provide assistance at the meeting.

#### ITEM

#### RECOMMENDATION

- |  |                  |
|--|------------------|
| 1. CALL TO ORDER                       |                  |
| 2. ROLL CALL                           |                  |
| 3. SELECTION OF NEW CHAIR & VICE-CHAIR | APPROVE          |
| 4. PRESENTATIONS                       |                  |
| 5. FINALIZATION OF AGENDA              |                  |
| 6. PUBLIC COMMENTS                     | RECEIVE COMMENTS |

#### **NON AGENDA ITEMS**

Members of the public may address the Committee regarding any item within the subject matter jurisdiction of the Committee; however, no action may be taken on off-agenda items unless authorized. Comments shall be limited to matters not listed on the agenda. Members of the public may comment on any matter listed on the agenda at the time that the Board considers that matter. Comments may be limited to 3 minutes in length.

**ITEM**

**RECOMMENDATION**

- |  |                                |
|--|--------------------------------|
| 7. COMMITTEE MEMBER COMMENTS   | RECEIVE COMMENTS               |
| 8. <b>SECOND READING OF ORDINANCE NO. 2019-01 TO PROHIBIT SMOKING AT SUNLINE BUS STOPS</b><br>(Staff: Vanessa Mora, Deputy Chief Safety Officer) | <b>APPROVE</b><br>(PAGE 3-8)   |
| 9. <b>PROCUREMENT POLICIES AND PROCEDURES NO. B-160501 REVISION APPROVAL</b><br>(Staff: Eric Taylor, Deputy Chief Financial Services)            | <b>APPROVE</b><br>(PAGE 10-98) |
| 10. <b>LEGISLATIVE UPDATES</b><br>(Staff: Brittney B. Sowell, Clerk of the Board/<br>Public Affairs Advisor)                                     | <b>DISCUSSION</b><br>(PAGE 99) |
| 11. ADJOURN  |                                |

## SunLine Transit Agency

<b>DATE:</b>	<b>March 27, 2019</b>	<b>ACTION</b>
<b>TO:</b>	<b>Board Operations Committee Board of Directors</b>	
<b>FROM:</b>	<b>Vanessa Mora, Deputy Chief Safety Officer</b>	
<b>RE:</b>	<b>Second Reading of Ordinance No. 2019-01 to Prohibit Smoking at SunLine Bus Stops</b>	

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### **Recommendation**

Recommend that the Board of Directors approve the second reading of Ordinance No. 2019-01 to prohibit smoking at SunLine Transit Agency bus stops under the authority of SunLine Transit Agency (STA) which includes amendments to sections 2.015, 2.020, 2.025 and 2.030 per the motion approved by the Board from the February 27, 2019 Board meeting.

### **Background**

There are several provisions of California State law governing the act of smoking and providing protections from the adverse effects of secondhand smoke. Additional regulations are left to local authority.

California Health and Safety Code section 118880 states, "[t]he Legislature finds and declares that tobacco smoke is a hazard to the health of the general public" a legislative finding that forms the basis for the regulation of smoking by the state, and by extension, local jurisdictions within the State.

It is the intent in enacting this Ordinance to provide for the public health, safety and welfare by discouraging the inherently dangerous behavior of tobacco use near non-tobacco users, by protecting the public from smoking and tobacco related litter and pollution, and by affirming and promoting the family friendly atmosphere of SunLine Transit Agency's bus stops.

Based on the Board's discussion and motion to amend the ordinance and bring back for a second reading, staff and general counsel have added language that identifies the number of feet that smoking is prohibited in relation to SunLine's bus stops. The amended version incorporates this verbiage into sections 2.015, 2.020, 2.025 and 2.030.

### **Financial Impact**

None.

**ORDINANCE NO. 2019-01**

**AN ORDINANCE OF SUNLINE TRANSIT AGENCY RELATING TO THE  
REGULATION AND PROHIBITION OF SMOKING AT SUNLINE TRANSIT AGENCY  
BUS STOPS**

WHEREAS, the California Legislature has determined that tobacco smoke is a hazard to the health of the general public and has empowered local public entities to ban or regulate smoking in a manner not inconsistent with State law; and,

WHEREAS, the County of Riverside and the Coachella Valley cities comprising the joint powers agency known as SunLine Transit Agency (STA) desire to further the public health, safety and welfare by prohibiting smoking at all SunLine Transit Agency bus stops under the authority of STA.

NOW, THEREFORE, the Board of Directors of STA does ordain as follows:

**SECTION 1: ADOPTION OF PROHIBITION OF SMOKING ORDINANCE.**

STA hereby adopts this Ordinance prohibiting smoking at SunLine Transit Agency bus stops within the jurisdictional boundaries of STA as attached hereto as Exhibit A.

**SECTION 2: SEVERABILITY.**

If any section, subsection, sentence, clause or phrase of the Ordinance is for any reason held to be invalid or unconstitutional by the decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Ordinance of STA. The Board of Directors of STA hereby declares that it would have passed this Ordinance, and each section, subsection, clause, sentence or phrase thereof, irrespective of the fact that any one or more other sections, subsections, clauses, sentences, or phrases may be declared invalid or unconstitutional.

**SECTION 3: EFFECTIVE DATE.**

The Ordinance, attached hereto as Exhibit A, shall take effect thirty (30) days from its passage by the Board of Directors of STA.

**SECTION 4: PUBLICATION.**

The Clerk of the Board is authorized and directed to cause this Ordinance to be published within fifteen (15) days after its passage in a newspaper of general circulation and circulated within the jurisdictional boundaries of STA in accordance with Government Code Section 36933(a) or, to cause this Ordinance to be published in the manner required by law using the alternative summary and posting procedure authorized under Government Code Section 36933(c).

INTRODUCED at the regular meeting of the Board of Directors of SunLine Transit Agency on the 27th day of February, 2019.

APPROVED AND ADOPTED by the Board of Directors of SunLine Transit Agency at a regular meeting held on 27th day of March, 2019.

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Kathleen Kelly  
Chairperson of the Board

ATTEST:

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Brittney B. Sowell  
Clerk of the Board

APPROVED AS TO FORM:

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Eric S. Vail  
General Counsel

**EXHIBIT A**  
**CHAPTER TWO**

2.010	Purpose
2.015	Definitions
2.020	<a href="#">Legislative finding regarding reasonable distance</a>
<del>2.025</del>	Smoking prohibited
<del>2.025030</del>	Posting of sign required
<del>2.030035</del>	Enforcement
<del>2.035040</del>	Other applicable laws

**Section 2.010**      **Purpose**

State law recognizes the right of residents and visitors to the Coachella Valley to be free from unwelcome secondhand smoke. The purpose of this ordinance is to promote and protect the public health, safety, and general welfare by prohibiting smoking at SunLine bus stops under the jurisdiction of STA, where persons will be exposed to unwelcome secondhand smoke. This ordinance is further intended to ensure a cleaner and more hygienic environment of the Coachella Valley, its residents and visitors, and its natural resources.

**Section 2.015**      **Definitions**

As used in this Section:

- A. "Electronic Smoking Device" means an electronic device that can be used to deliver an inhaled dose of nicotine, tetrahydrocannabinol (THC), or other substances, including any component, part, or accessory of such device, whether or not sold separately. This definition includes any such device, whether manufactured, distributed, marketed, or sold as an electronic hookah, vape, or any other product name or descriptor, including any component, part of accessory of such device, whether or not sold separately.
- B. "CEO/General Manager" means the CEO/General Manager of SunLine Transit Agency.
- BC. "Reasonable Distance" means a distance that ensures occupants of an area in which smoking is prohibited are not exposed to secondhand smoke created by smokers outside the area. Except as otherwise provided in this chapter, this distance shall be a minimum of 20 feet, unless the smoker is actively passing from one location to another or the smoker is in a location where smoking is permitted.

- D. "Smoke" means the release of gases, particles, or vapors into the air as the result of combustion, electrical ignition, or vaporization and/or inhaling, exhaling, burning or carrying any lighted, heated or ignited cigar, cigarette, cigarillo, pipe, hookah, electronic smoking device, or any plant product, including but not limited to tobacco and cannabis, intended for human inhalation.
- DE. "Smoking" means the release of gases, particles, or vapors into the air as the result of combustion, electrical ignition, or vaporization and/or inhaling, exhaling, burning or carrying any lighted, heated or ignited cigar, cigarette, cigarillo, pipe, hookah, electronic smoking device, or any plant product, including but not limited to tobacco and cannabis, intended for human inhalation.
- DE. "STA" means the joint powers authority established by Riverside County and Coachella Valley cities charged with the duties, obligations and responsibilities to implement and enforce this Ordinance and any related ordinance and any regulations promulgated pursuant thereto as directed by the STA Board.

**Section 2.020**      **Legislative finding regarding reasonable distance**

The California Legislature declares, pursuant to the United States Surgeon General's 1986 Report on the Health Consequences of Involuntary Smoking that regulation of smoking in public places is necessary to protect the health, safety, welfare, comfort and environment of nonsmokers. (California Health and Safety Code section 118920) Therefore, the Board of SunLine Transit Agency finds and determines in order to protect the health and safety of passengers waiting for bus transit at a bus stop, and to minimize their exposure to secondhand smoke that a reasonable distance from each bus stop shall be a minimum of 20 feet in any direction from the stop.

**Section 2.025**      **Smoking prohibited**

Except as otherwise provided, Smoking, including the smoking of any Electronic Smoking Device, shall be prohibited ~~at the~~within 20 feet of all boarding and waiting areas of bus stops under the authority of STA.

**Section 2.025030**      **Posting of sign**

Except where other signs are required, whenever smoking is prohibited "No Smoking" or "Smoke Free" signs shall be conspicuously posted. Signs posted to comply with this section shall also include the Reasonable Distance requirement indicating smoking is prohibited within 20 feet. Notwithstanding this provision, the presence or absence of signs shall not be a defense to the violation of any other provision of this Ordinance. The CEO/General Manager or his or her designee shall use discretion to approve appropriate signage.

**Section 2.030035**      **Enforcement**

A. Any person who is found to violate any provision of this Ordinance shall be deemed guilty of an infraction and shall be punishable by:

1. A fine not exceeding one hundred dollars (\$100.00) for the first violation;
2. A fine not exceeding two hundred dollars (\$200.00) for the second violation; and
3. A fine not exceeding five hundred dollars (\$500.00) for a third violation within one (1) year.

**Section 2.035040 Other applicable laws**

This Ordinance shall not be interpreted or construed to permit smoking where it is otherwise restricted or prohibited by other applicable laws.



**SunLine Transit Agency**

**DATE:** March 27, 2019 **ACTION**

**TO:** Board Operations Committee  
Board of Directors

**FROM:** Eric Taylor, Deputy Chief Financial Services

**RE:** Procurement Policies and Procedures No. B-160501 Revision  
Approval

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**Recommendation**

Recommend that the Board of Directors approve the attached revised Procurement Policies and Procedures No. B-160501.

**Background**

The Procurement Policies and Procedures document details the procurement process for SunLine Transit Agency. It establishes the guidelines on how the process should be conducted, what steps must be taken based on the funding source and type of goods or services sought and what levels of approval must apply to the process.

The changes detailed in this revision were focused on:

- Updates requiring Board approval -
  - Update title changes to reflect current positions
  - Remove the one (1) year duration limit on contracts executed within the CEO/General Manager's authority
  - Update procedures to reflect current processes and financial systems
- Updates not requiring Board approval –
  - Update values to match Federal Transit Administration (FTA) limits on how procurements are conducted, i.e. informal vs. formal
  - Update FTA contract clauses

These changes will allow SunLine to remain in compliance with requirements and provide some potential time savings for Agency staff related to the type of procurement process required for the different value levels.

**Financial Impact**

No financial impact.



## Purchasing Policies and Procedures

Approved: ~~31, May 2013~~ 27, March 2019  
Supersedes Policy Dated 26, September 2001  
Supersedes Contract Policy Dated 25, February 2004  
Supersedes Policy Dated 31, May 2013

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<p style="text-align: center;"><b>SunLine Transit Agency</b></p> <p style="text-align: center;"><b>PROCUREMENT POLICIES &amp; PROCEDURES</b></p>	<p style="text-align: center;"><b>CHAPTER NO. 1</b></p> <p style="text-align: center;"><b>STANDARDS OF CONDUCT</b></p> <p style="text-align: center;"><b>PAGE 1 OF 5</b></p>
<p><b>AFFECTED CHAPTERS: ALL</b></p>	<p><b>RELEASE DATE: <u>MARCH 27, 2019</u><del>DEC. 3, 2008</del></b></p> <p><b>SUPERSEDES: SEPT. 26, 2001</b> <b>SUPERSEDES: <u>DEC. 3, 2008</u></b></p>

**100 STANDARDS OF CONDUCT**

1.1 Overview

SunLine Transit Agency must be vigilant in its protection of the public trust and toward that end, employees, officers, board members, and agents of SunLine must conduct themselves in a manner which will foster public confidence in the integrity of SunLine’s procurement system. These standards, along with SunLine’s Conflict of Interest Code, employment policies and California law are intended to prescribe Standards of Conduct designed to ensure honesty and integrity in all SunLine procurements.

These standards apply to all phases and activities associated with the procurement of goods and services by SunLine from the initial development of specifications and bid documents through performance and delivery of goods and services by the selected vendor or contractor.

If you have any questions about the meaning or application of these standards, you should bring them to the Chief Financial Officer~~Director of Finance~~.

1.2 In General

SunLine is required to maintain a written code of Standards of Conduct applicable to its employees (including contractor employees), officers,



board members, and agents (including outside consultants) involved in the selection, award or administration of contracts involving the use of public funds.

No employee, officer or agent of SunLine may participate in selection, or in the award or administration of a contract if either a “real or apparent” conflict of interest exists. SunLine employees may not solicit or accept gratuities, favors or anything of monetary value from contractors, potential contractors, or subcontractors.

These standards are in addition to those imposed under California law and are intended to supplement SunLine’s adopted Conflict of Interest Code. These standards apply broadly to all SunLine employees who may be involved in a procurement action in some capacity, not just to those who are listed in SunLine’s Conflict of Interest Code.

### 1.3 Personal Conflicts of Interest

No SunLine employee, officer, bBoard member, agent or contractor shall participate in the selection, award or administration of a third party contract or other agreement if a real or apparent conflict of interest would be involved. Such a conflict of interest arises, whether real or apparent, when any of the following has a financial or other interest in the firm(s) considered or selected for award:

- a) An employee, officer, board member, or agent of SunLine;
- b) Any member of his/her immediate family, including but not limited to, husband, wife, father, mother, brother, sister, son, daughter, father-in-law, mother-in-law, son-in-law, and daughter-in-law;
- c) His/her partner or business associate; or
- d) A company or organization which is about to employ any of the above.

Apparent or Appearance of Conflict is based on a reasonableness standard- i.e. Would a reasonable person with knowledge of all material facts believe there appears to be a conflict?

### 1.4 Organizational Conflicts of Interest

#### 1.4.1 DEFINITION

An organizational conflict of interest may be real or apparent and arises where, because of other activities, financial interests,

relationships, or contracts - a contractor is unable, or potentially unable, to render impartial assistance or advice to SunLine. Such a conflict exists in circumstances where the contractor's objectivity is or might be impaired or where the contractor has an unfair competitive advantage.

#### 1.4.2 ORGANIZATIONAL CONFLICTS

Organizational conflicts lead to two (2) distinct problems - bias or an unfair competitive advantage.

- a) Bias is a situation where an advisor is placed in a position that creates an incentive to distort advice or decision making.
- b) Unfair competitive advantage occurs when one contractor has information not available to other contractors in the normal course of business. For example, an unfair competitive advantage would occur when a contractor developing specifications or work statements has access to information that SunLine has paid the contractor to develop, or information which SunLine has furnished to the contractor for its work, when that information has not been made available to the public and to other offerors. Because this information enhances the contractor's competitive position in the procurement process, it represents an unfair competitive advantage over other offerors.

#### 1.4.3 PROCUREMENT ACTIVITIES

SunLine's procurement activities shall be structured to ensure full and open competition and to eliminate or minimize any unfair competitive advantage in circumstances where an organizational conflict, real or apparent, is presented. Appropriate structural steps are dependent upon the particular circumstances surrounding the procurement and might include: prohibiting the contractor from participating in the procurement, the bid process or in evaluation of bids, fully disclosing all information to all prospective offerors for a reasonable amount of time, adjustment of specifications to address any potential advantage, among others.

#### 1.5 Gifts and Gratuities

- a) SunLine employees, agents, or **b**Board members will neither solicit nor accept gifts, gratuities, favors, or anything of monetary value from contractors, potential contractors, or potential subcontractors.

- b) Such things as invitations for business lunches, parties, or similar functions shall be declined if offered by any bidders or potential bidder to a future or pending procurement. This policy is intended to avoid any situation which may give an appearance of improper influence in SunLine procurement activities. Notwithstanding the above, this section shall not apply to the following:
1. An unsolicited non-monetary gift of nominal value accepted in the ordinary course of a business meeting. Nominal value means a value of less than \$20.00 and no more than \$50.00 in any 12-month period.
  2. A gift, gratuity, favor, loan, or other item of nominal value when circumstances make it clear that an obvious long-standing social or family relationship, rather than a business relationship, is the motivating factor. In the case of acceptance of such a gift or gratuity, the SunLine employee shall make a written disclosure of the nature, amount and circumstances of the gift/gratuity to the Contracting Officer or designee and shall be precluded from further activity in connection with the procurement.
- c) Failure to adhere to these provisions shall constitute a violation of SunLine policy and may subject the violator to disciplinary action, up to and including termination.

#### 1.6 Contacts with Vendors, Bidders, and Proposers

Prior to the issuance of a procurement solicitation, informational and research contacts with prospective vendors may be made for the purpose of gathering data. However, in making such contacts, employees, officers, board members, and agents shall avoid any commitment or implication of a possible future award.

Accordingly, no request for complimentary services or supplies, which may imply an obligation on the part of SunLine, shall be made. Requests for testing services, product samples, or demonstrations, and free trips to examine vendor products are to be avoided.

Whenever procurement is in process (e.g., during the solicitation, evaluation, negotiation, and award phases) all contacts with potential contractors or vendors shall be made through the Contracting Officer or designee.

## 1.7 Procedures and Penalties

In cases where an employee, officer, board member, or agent of SunLine may have a conflict or apparent conflict of interest, the individual(s) must promptly report the conflict in writing to the [Chief Financial Officer](#)~~Director of Finance~~. Failure to adhere to this requirement is a violation of policy and may subject any SunLine employee to disciplinary action, up to and including termination.

Employees, officers, directors, and agents of SunLine are also subject to the laws of the State of California concerning conflicts of interest. Monetary penalties and, in some cases, criminal penalties are imposed by California law for violations. In addition, SunLine employees are subject to discipline for a violation that could lead to or result in termination of employment.

| Signature \_\_\_\_\_ Date \_\_\_\_\_

<p><b>SunLine Transit Agency</b></p> <p><b>PROCUREMENT POLICIES &amp; PROCEDURES</b></p> <p><b>AFFECTED CHAPTERS: 200</b></p>	<p><b>CHAPTER NO. 2</b></p> <p><b>PROCUREMENT INTEGRITY AND CONTROL</b></p> <p><b>PAGE 1 OF 5</b></p>
	<p>RELEASE DATE: <a href="#">MARCH 27, 2019</a><del>APR. 27, 2011</del></p> <p>SUPERSEDES: MAR. 23, 2011  SUPERSEDES: MAR. 24, 2010  SUPERSEDES: FEB. 25, 2009  SUPERSEDES: DEC. 03, 2008  SUPERSEDES: SEPT. 26, 2001  <a href="#">SUPERSEDES: APR. 27, 2011</a></p>

## **200 CONTRACT POLICY**

### 1.1 Purpose

The purpose of this document is to outline the policy for SunLine Transit Agency (“SunLine”) to establish authorization levels and procedures for entering into [purchase orders](#), contracts, agreements and memorandums of understanding (“contracts”). For purposes of this Policy, the term “contract” is broadly defined to include any arrangement under which SunLine is providing money, goods or services to another entity or individual in exchange for something in return.

### 1.2 Policy

This policy is intended to establish guidelines that apply when SunLine enters into contracts and accepts grant funding for transit, and a variety of projects, that may include services, equipment, travel, products and/or the use of subcontractors and consultants. While this document is meant to set policy on the processing of all contracts, it is not intended to be inflexible.

The following three categories define the approval process that applies to all contracts, depending upon the financial amount involved and the urgency of the matter.

The CEO/General Manager is the designated “Contracting Officer” for SunLine Transit Agency. The CEO/General Manager may delegate certain contracting authority to subordinate staff within the limitations of this policy. The persons delegated authority by the CEO/General Manager may exercise Contracting Officer authority on behalf of the CEO/General Manager. The CEO/General Manager has organizationally established a Contracting Officer’s staff position to insure compliance with these procedures and to exercise certain authority expressed in these policies.

Where certain duties are assigned herein to the Contracting Officer, this assignment shall be to the head of SunLine’s Procurement Department. All delegations of Contracting Officer authority shall be in writing.

#### 1.2.1 CEO/GENERAL MANAGER AUTHORIZATION

- a) The CEO/General Manager is authorized to enter into contracts on behalf of SunLine in an amount not to exceed \$100,000 ~~provided that the term is not greater than one (1) year~~, without obtaining prior authorization from the Finance Committee or SunLine’s Board of Directors. The \$100,000 threshold applies to the purchase of items listed in a board approved plan or board approved budget. For goods or services not itemized in ~~an~~ board approved plan or board approved budget, the CEO/General Manager’s authority is an amount not to exceed \$25,000 ~~or a term not greater than one (1) year~~.
- b) The CEO/General Manager is authorized to enter into a contract or to obligate SunLine in excess of \$100,000 only in the event of an emergency relating to transit operations or involving a safety issue. The CEO/General Manager shall make every reasonable effort to contact the Chairperson of the Board or the Finance/Audit Committee prior to entering into such an obligation, but his/her inability to do so shall not impede his/her authority to sign documents necessary to respond to the emergency or safety issue. Any such contracts or obligations shall be brought to the Board at its next regular meeting for discussion and ratification.
- ~~c) The aggregate amount of contracts or obligations permitted under this section shall not exceed \$200,000 in any fiscal year, without prior Board approval.~~

- d) ~~The aggregate value of all contracts awarded to any one individual or entity under this section shall not exceed \$100,000 in any fiscal year, without prior Board approval.~~
- ce) A list of any contracts, change orders and amendments entered into with a value of \$25,000 to \$100,000 under this section shall be provided ~~by the General Manager~~ to the Finance/Audit Committee and the SunLine Board of Directors at the next available regularly scheduled meeting (normally monthly).
- f) The CEO/General Manager may designate the Finance Director/Chief Financial Officer to execute contracts on his/her behalf on a contract-by-contract basis.

### 1.2.2 BOARD AUTHORIZATION

- a) ~~Following internal approval of the contract, including General Counsel's review and approval, s~~Staff shall present all contracts, amendments or modifications requiring Board approval to the Finance/Audit Committee and SunLine Board of Directors at the regularly scheduled meetings for review and approval to delegate authority to the CEO/General Manager to negotiate and execute the contract, amendment, or modification, subject to review and approval by legal counsel~~prior to signature. — Staff shall provide such drafts with sufficient lead time to allow for appropriate review.~~
- b) All contracts shall be accompanied by a staff report that fully discusses the scope of the contract, its purposes and benefits, and sufficient financial detail that identifies all funding requirements and financial implications of the contract.
- c) In the event that a contract, an amendment, or a modification is presented to SunLine for signature that does not allow for the timely process that is required under this policy, the following procedures shall apply. ~~T~~After ~~obtaining General Counsel's approval of the contract,~~ the CEO/General Manager (or his/her designee) may contact the Chairperson of the Board of Directors and/or the Chairperson of the Finance/Audit Committee and present the issues involved and the urgency of the matter. These individuals may request a special meeting of the Finance/Audit Committee to review the subject contract and the Finance/Audit Committee may approve the signing of the contract, after legal counsel's review and approval, under special circumstances. If a contract is signed under these conditions, it shall be presented to the SunLine Board of Directors at its next regularly scheduled meeting with an explanation of the special circumstances.



### 1.2.3 AMENDMENTS, CHANGE ORDERS, MODIFICATIONS AND RECURRING CONTRACTS

- a) The [CEO/General Manager](#) (or his/her designee) may execute amendments or modifications to existing contracts without prior approval of the Board if the amendment is less than \$25,000. In no event shall the aggregate value of amendments or modifications to an existing contract exceed the \$100,000 threshold without Board approval.
- b) However, the [CEO/General Manager](#) is authorized to execute construction change orders in an amount [between \\$25,000 and \\$100,000](#) for any one transaction. The Chairman or Vice-Chairman of the Board of Directors shall approve the changes in advance of execution by the [CEO/General Manager](#). For construction change orders authorized under this section, the [CEO/General Manager](#) shall present these changes as an Information Item at the first Board Meeting following approval of the change order.

### 1.3 Procedures

- a) Once approval is obtained for a given transaction, all contracts shall be executed by the [CEO/General Manager](#), with the power of re-delegation. The use of a digital signature, as defined in Government Code §16.5 [et seq.](#), is allowed on purchase orders.
- b) SunLine staff shall provide ~~the Contracts & Compliance Administrator~~ with the original of every signed contract or agreement, amendment or modification thereof, [to the Procurement staff](#) for SunLine's records.

## 201 SUNLINE CONTROLS AND LIMITATIONS

Final authority for purchasing actions and decisions are to be made by the Board of Directors except as delegated to the [CEO/General Manager](#). The [CEO/General Manger](#) may delegate Contracting Officer authority and authorize the re-delegation of Contracting Officer authority.

Notwithstanding the contracting authorities delegated to the [CEO/General Manager](#), the Board of Directors retains review and approval authority for procurement contracts exceeding \$100,000 and modifications / amendments, exceeding an aggregate of \$100,000 over the life of the contract.

The [CEO/General Manager](#) is delegated authority to approve contracts of \$100,000 or less as long as the item is included and itemized in the approved annual budget [or included in a board approved plan](#).

Items not specifically itemized in an approved budget or included in a board approved plan requires the Board of Directors' approval for procurement actions in excess of \$25,000.

## **202 POLICY AND PROCEDURES AMENDMENTS AND DEVIATIONS**

Amendments that represent major management policy change will be approved by the SunLine Board of Directors. The CEO/General Manager may issue amendments, which are required because of changes in Federal or State law or regulation. All amendments issued under this section require the review of SunLine Counsel, for legal sufficiency.

Individual deviations from the Manual that are not prohibited by law or governing Federal regulations, and which affect only one contracting action, may be approved by the CEO/General Manager. The CEO/General Manager may approve a class deviation if such deviation is not prohibited by law or governing Federal regulations. However, when it is known that a deviation will be required on a permanent basis, a revision to this Manual should be made. All deviations require review by the SunLine Counsel for legal sufficiency.

## **203 PURCHASE REQUISITION APPROVAL**

~~Purchase requisitions of \$25.00 or less must have the signature of the requisitioner. For purchases between \$25.01 and \$1,000, will require the electronic approval signature of the requisitioner and the Supervisor/Superintendent (if applicable) and the department Chief director (or their designees) must be obtained before the Requisition will be approved being forwarded to the Finance Department for processing. Requisitions over \$1,000 will also require the electronic approval signature of the Finance Department Director. In addition, Purchase Requisitions for \$1,000.01 or greater must also have the signature approval of the Finance Department.~~

Should a purchase requisition be submitted for an operational expense which will incur expenses in two (2) or more consecutive fiscal years, a paper requisition shall be routed for physical signatures in lieu of electronic approval as detailed above. The procurement staff will enter the purchase requisition into the Agency's financial system to document the respective portion for the appropriate fiscal year.

Purchase Requisitions are not required for medical, legal and insurance expenses, payroll, petty cash and travel, utility payments, postage, temporary help, conferences and subscription renewals.

~~After all of the required information and signatures are on the Purchase Requisition, the requisitioning department shall make and keep a copy and forward the original(s) to the Finance Department.~~

## 204 PURCHASE ORDER APPROVAL

Upon completion, the Contracting Officer (or designee) shall sign the Purchase Order prior to providing to vendor.

A copy of the approved Purchase Order shall be sent to the vendor and to the requesting department. Where the Purchase Order is generated merely to enter the financial obligation into the system, the Purchase Order will not be sent to the vendor. In those instances, the Contract or other Agreement shall be sent to the vendor along with a reference to the Purchase Order number.

Vendors shall be told to include the Purchase Order number on all correspondence, including packages, invoices, credit memos, etc.

Signature \_\_\_\_\_ Date \_\_\_\_\_

<p style="text-align: center;"><b>SunLine Transit Agency</b></p> <p style="text-align: center;"><b>PROCUREMENT POLICIES &amp; PROCEDURES</b></p> <p><b>AFFECTED CHAPTERS: 303</b></p>	<p><b>CHAPTER NO. 3</b></p> <p><b>PROCUREMENT STANDARDS</b></p> <p>PAGE 1 OF 22</p>
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### 300 PURPOSE AND SCOPE

The SunLine Transit ~~Agency~~[Authority](#) procurement policy statement sets forth the framework for the SunLine procurement regulations, which consists of the Board Approved Policy and Procedures ~~Manual~~[Manual](#) (Manual).

The Manual prescribes general procurement policies and procedures which shall govern the solicitation, award and administration of all (except employment contracts where there is an employer employee relationship; contracts for the retention of interim management staff, temporary employees and employment search/recruiting services when federal law permits) SunLine contracts and purchases for supplies, services, equipment and construction when federal law permits.

[The use of federal funds in any procurement action requires adherence to the FTA Circular 4220.1F. The FTA is currently in the process of updating this Circular to incorporate the provisions of the Super Circular, 2 CFR part 200. Until that update is issued, when there is a conflict between FTA Circular 4220.1F and the Super Circular, the Super Circular supersedes.](#)

### 301 STANDARDS

## Competition

SunLine recognizes that fairness and justice are of importance to the development of good vendor relations, and that the practice of these traits should be a primary objective of the procurement process. All technical and price information received from a vendor will be treated as confidential during the bid/quotation period. These documents will become public information only after the bid/purchase has been awarded. During the bidding/quotation period extreme care will be taken to avoid giving a bidder an advantage over another through an unequal exchange of information. The process of disclosing bid/quotation details for the purpose of securing further reduction in competitive prices (bid shopping) is unfair and unethical. Vendors should be informed that it is SunLine's practice to make competitive choices on the basis of the first price submitted and no revised prices will be solicited or accepted.

SunLine believes that natural free market pressures are an effective determinant of fair and reasonable prices, and therefore encourages the application of competitive methods of procurement in all possible cases. SunLine also recognizes that a blind application of the "low bidder" principle is not always consistent with the best interest. Consequently, the competitive comparison must be qualified by an intelligent analysis of technical, delivery, quality, service and past performance factors.

In cases where competitive procurement methods cannot be applied, it is consistent with good purchasing practice that the techniques of comparative pricing and negotiations be applied to assure reasonableness of price. During the conduct of any competition, extreme care must be exercised to assure that each bidder is treated fairly and that all competitors are given equal opportunity.

In competitive procurement, SunLine shall not include practices that unduly restrict competition. The description may include a statement of the qualitative nature of the material, product, or service to be procured. When necessary, those minimum essential characteristics and standards to which it must conform is used to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used. SunLine shall use a "brand name or equal" description only when it can-not provide an adequate specification or more detailed description, other than by inspection and analysis, in time for the acquisition under consideration.

## **302 DISADVANTAGED BUSINESS ENTERPRISE (DBE) AND EQUAL EMPLOYMENT OPPORTUNITY (EEO) POLICY**

## 1.1 Disadvantaged Business Enterprises (DBE)

The Federal Transit Administration (FTA) requires that recipients of FTA grant assistance take necessary and reasonable steps to ensure that Disadvantaged Business Enterprises (DBE's) are afforded the maximum opportunity to participate in the performance of contracts which are financed in whole or in part with federal funds. As evidence of compliance, SunLine must, on an annual basis, set goals for DBE participation in such contracts, which are expected to be awarded during the following fiscal year and describe efforts from the previous fiscal year. SunLine has filed, as prescribed by law, a DBE program that should be consulted for a more in depth discussion of SunLine's procedures and obligations regarding DBE's.

For the purpose of this program, a DBE is defined as a small business concern, which is both owned and controlled by socially and economically disadvantaged persons. This means that disadvantaged individuals must own at least 51% of the business and control the management and daily operations of the business. Included in the classification of disadvantaged individuals are United States citizens who are Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Asian-Indian Americans, women or members of other groups or individuals who the Small Business Administration (SBA) has determined are economically and socially disadvantaged under 49 CFR Part 26.

The following affirmative steps shall be taken to assure that small and minority businesses are utilized when possible as sources of supplies, equipment, construction and services:

- a) Including qualified small and minority businesses on solicitation lists;
- b) Assuring that small and minority businesses are solicited whenever they are potential sources;
- c) When economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum small and minority business participation;
- d) Where the requirement permits, establishing delivery schedules which will encourage participation by small and minority businesses;
- e) Using the services and assistance of the Small Business Administration, the office of Minority Business Enterprises of the

Department of Commerce and the Community Services Administration as required; or

- f) If any subcontracts are to be let, requiring the prime contractor to take the affirmative steps listed above.

### 1.2 Women's Business Enterprises (WBEs)

SunLine shall take similar appropriate action in support of Women's Business Enterprises.

### 1.3 Equal Employment Opportunity (EEO) Policy

The SunLine Board has adopted the Equal Employment Opportunity (EEO) Policy, which applies to both internal hiring and promotion practices as well as to vendors who do business with SunLine. All Invitations for Bids and Requests for Proposal issued by SunLine require the Bidder or Proposer to certify that:

- a) It does not discriminate against any employee or applicant for employment, because of race, religion, sex, age, creed, color, disability, or national origin;
- b) It is in compliance with all Executive Orders and federal, state and local laws regarding fair employment practices and non-discrimination in employment; and
- c) It agrees to demonstrate positively and aggressively the principle of equal opportunity in employment.

## **303 CONTRACT ADMINISTRATION SYSTEM**

SunLine's contract administration is a collaborative effort requiring the participation of many departments. The Contracting Officer has the responsibility to ensure that contract administration duties are performed in accordance with these procedures.

SunLine may assign technical representatives to act as project managers for procurement actions determined to be major or critical. Such designation shall come from the CEO/General Manager. The Project Manager or other designated SunLine technical representative shall ensure that the goods or services received meet specification requirements and otherwise comply with contractual requirements.

~~The SunLine technical representative or project manager approves the Contractor's invoices. Designated personnel in the receiving Parts department shall receive goods requiring only a visual inspection. The technical representative, project manager, or receiving department personnel shall review all invoices for conformity to the contract prior to approval. A signature by the person accepting the goods or services on behalf of SunLine Transit shall indicate approval. All invoices must then be signed by a Director level or above or the designee of the department purchasing the goods or services.~~

Some contracts such as Construction or Technical Services require close out by the Contracting Officer in consultation with other technical staff. The Contracting Officer or designee shall initiate all close-out actions in a timely manner. Closeout actions may include settlement of claims or disputes, contract audits, the return of bonds, filing of documents with other government offices, verification of payment records, and performance evaluations.

The Contracting Officer or designee shall ensure that all encumbered funds associated with closed contractual efforts are released in the accounting system.

## **304 PAYMENT**

### **1.1 Advance Payments**

FTA does not authorize and will not participate in funding payments to a contractor prior to the incurrence of costs by the contractor unless prior written concurrence is obtained from FTA. There is no prohibition on a grant recipient's use of local match funds for advance payments. However, advance payments made with local funds before a grant has been awarded, or before the issuance of a letter of no prejudice or other pre-award authority, are ineligible for reimbursement.

### **1.2 Progress Payments**

SunLine may use progress payments provided the following requirements are followed:

- a) Progress payments are only made to the contractor for costs incurred in the performance of the contract;



- b) The grantee must obtain adequate security for progress payments. Adequate security may include taking title, letter of credit or equivalent means to protect the grantee's interest in the progress payment.

Construction Progress Payments are covered by the Public Contracts Code, which requires prompt payment (within 30 days of receipt of an undisputed progress payment), and the payment of interest on progress payments not paid within 45 days. Construction progress payments are usually made in accordance with an approved schedule of values and only after a physical verification of the percentage of completion of a particular pay item.

Construction progress payments are usually subject to retention of 10 percent except in the case of progress payments for design build under Public Contract Code 20209, which places retention at 5 percent for construction work and no retention for engineering work.

As a general rule the amount of progress payments authorized shall not create a negative incentive for the contractor to complete the work. Therefore, the last payment should provide sufficient financial incentive to the contractor to insure completion of the work.

### 1.3 Receiving/Approval to Pay

#### 1.3.1 RECEIPT OF GOODS DELIVERED TO PARTS WAREHOUSE

The procedures for receiving goods will be followed. Upon receipt, the packing slip is compared to the goods received. A visual inspection of the items received is then conducted. If the items are acceptable by receiving personnel, the packing slip is signed and dated. The items received, date received, packing slip number, and back order quantities are to be noted in the record keeping Agency's financial system. These documents will then be sent to the Accounts Payable personnel in the Finance Department for inclusion in the approval packet.  
~~and will constitute approval to pay as received.~~

#### 1.3.2 RECEIPT OF SERVICES OR GOODS NOT DELIVERED TO PARTS WAREHOUSE

The Project Manager or SunLine technical representative is responsible to work with their department's respective Chief or designee for the approval of the receipt of services or goods not delivered to the Parts Warehouse as part of the approval packet.

~~upon completion, the Project Manger or technical representative will sign all documents that confirm the proper completion of services performed and forward the receiving document to the Finance Department to constitute approval to pay as received.~~

Invoices are received by Accounts Payable personnel and routed to the Procurement staff for review against the contract or purchase order. After validation that rates match, the invoice and related documentation are routed back to Accounts Payable for preparation of approval packet. This approval packet is then routed to the respective Chief or designee for review and approval of invoice to validate quantity and quality of services are acceptable and to authorize payment to vendor. A signature by the Chief or designee shall document this approval.

### **305 PREQUALIFICATION SYSTEM**

SunLine will ensure that all pre-qualified lists of persons, firms, or products that are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. SunLine shall not preclude potential bidders from qualifying during the solicitation period.

### **306 SYSTEM FOR ENSURING MOST EFFICIENT AND ECONOMIC PURCHASE**

The Contracting Officer or designee shall review items requested by the using departments to determine the most efficient and economic means of satisfying a requirement. This shall include combining like orders to reduce overall costs. The review shall include a review of Federal surplus property in lieu of purchasing new equipment or property whenever feasible and where such purchase will reduce the overall project costs.

### **307 A&E AND OTHER GEOGRAPHIC PREFERENCES**

The use of geographic preferences on Federal Transit Administration contracts is prohibited. The use of statutorily or administratively imposed, in-State or local, geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference, is also prohibited. This requirement does not preempt State licensing laws. However, geographic location may be a selection criterion in procurements for architectural and engineering (A&E) services, provided

its application leaves an appropriate number of qualified firms given the nature and size of the project to compete for the contract.

### **308 UNREASONABLE QUALIFICATION REQUIREMENTS**

The Contracting Officer shall refrain from using unreasonable or excessive qualifications and requirements that may adversely impact small businesses seeking to do business with SunLine.

### **309 UNNECESSARY EXPERIENCE AND EXCESSIVE BONDING**

The Contracting Officer shall only state the minimum necessary experience and bonding requirements to protect SunLine's interest and comply with both State and FTA requirements.

### **310 ARBITRARY ACTION**

All persons involved in the award, selection, and administration of SunLine contracts shall refrain from arbitrary actions, which are defined as actions that are not supported by the business needs of the agency and unnecessarily subjects the affected parties to decisions made without the utilization of objective criteria.

### **311 PROTEST POLICIES AND PROCEDURES**

SunLine shall make every effort to award contracts in compliance, with State, Federal and Local regulation. Bidders who feel that a contract has been, or may be, awarded improperly shall have the right to protest the specifications and/or contract award in compliance with applicable local State and Federal regulations. SunLine's protest procedures only apply to formal purchases. Small and Micro Purchases are not subject to a formal protest.

#### **1.1 Filing Protest**

Protests dealing with restrictive specifications or alleged improprieties in the solicitation must be filed no later than eight (8) working days prior to bid opening or the closing date for receipt of proposals. Any other protest must be filed no later than ~~fiveeight~~ (58) calendarworking days after SunLine distributes Notices of Intent to Award a contract.

Protests shall be in writing and addressed to the CEO/General Manager.

The protest shall contain a statement describing the reasons for the protest and any supporting documentation. Additional materials in support of the initial protest will only be considered if filed within the time limit specified in herein. The protest shall indicate the ruling or relief desired from SunLine.

## 1.2 Confidentiality

Materials submitted by a protester would not be withheld from any interested party, except to the extent that the withholding of information is permitted or required by law or regulation. If the protest contains proprietary material, a statement advising of this fact may be affixed to the front page of the protest document and the alleged proprietary information must be so identified wherever it appears.

## 1.3 Withholding of Award

When a protest is filed before opening of bids, the bids will not be opened prior to resolution of the protest, and when the protest is filed before award, the award will not be made prior to resolution of the protest, unless SunLine determines that:

- a) Items to be procured are urgently needed, or delivery or performance will be unduly delayed by failure to make award promptly; or
- b) Failure to make award will cause undue harm to SunLine.

In the event an award is to be made while a protest is pending, the Federal Transit Administration shall be notified if Federal funding is involved.

## 1.4 Processing the Protest

- a) If FTA funds are involved in the purchase, notice shall be provided to the FTA on receipt of a protest. This notice may be provided by Email to the FTA Regional Administrator.
- b) SunLine shall respond to the protester within five (5) working days of receiving the protest. A conference on the merits of the protest may be held with the protester.

- c) Any additional information required by SunLine from the protester shall be submitted as expeditiously as possible, but no later than three (3) days after receipt of such request.

#### 1.5 Notification

SunLine shall notify the protester of its decision no later than ten (10) days following receipt of all relevant information.

#### 1.6 Appeal

If a protester is not satisfied with the decision made by SunLine, and Federal funds are involved, the protester may file protest with the Federal Transit Administration. Review by FTA will be limited to:

- a) Violation of Federal law or regulations;
- b) Violation of SunLine's protests procedures described herein, or failure by SunLine to review protest.

Protests must be filed with FTA (with a concurrent copy to SunLine) within five (5) days after SunLine renders a final decision, or five (5) days after the protester knows, or has reason to know, that SunLine failed to render a final decision. After five (5) days, SunLine will confirm with FTA that FTA has not received protest on the contract in question.

SunLine shall not be responsible for any protests not filed in a timely manner with FTA.

The [CEO](#)/General Manager or [dD](#) Designee shall respond to all Protests.

### **312 LIQUIDATED DAMAGES PROVISIONS**

SunLine may use liquidated damages if it may reasonably expect to suffer damages 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, and the rate must be specified in the contract. Any liquidated damages recovered shall be credited to the project account involved unless the FTA permits otherwise. Other yardsticks may be used to assess damages as long as the measurement is clear and unambiguous. Liquidated damages are not to be used as a penalty, or to coerce performance of any contractual provision.

### **313 CONTRACT FILE DOCUMENTATION**

The Contracting Officer or designee is responsible for contract file documentation. The contract file documentation shall vary depending on that nature and the complexity of the procurement action. All files should contain a valid requisition, Independent Estimate, and a copy of the solicitation.

Micro Purchases may be documented on a single sheet containing the following at a minimum:

- a) That the price is fair and reasonable
- b) How the price was determined fair and reasonable by staff

Small Purchases may be documented using the approved procurement file documentation checklist issued by the Contracting Officer. All files shall contain the following as a minimum:

- a) The reason for the contract type selection
- b) The name of the contractors solicited
- c) The reason for the selecting the procurement method
- d) The reason for selecting the successful contractor
- e) How the price was determined fair and reasonable

Formal Purchases shall be documented using the approved procurement file documentation checklist issued by the Contracting Officer. All files shall contain the following as a minimum:

- a) The reason for the contract type selection
- b) The name of the contractors solicited
- c) The reason for the selecting the procurement method
- d) The reason for selecting the successful contractor
- e) How the price was determined fair and reasonable

## **314 COMPETITION**

Full and Open Competition. All procurement transactions will be conducted in a manner providing full and open competition. Some situations considered to be restrictive of competition include, but are not limited to:

- a) Unreasonable requirements placed on firms in order for them to qualify to do business;
- b) Unnecessary experience and excessive bonding requirements;

- c) Noncompetitive pricing practices between firms or between affiliated companies;
- d) Noncompetitive awards to any person or firm on retainer contracts;
- e) Organizational conflicts of interest. An organizational conflict of interest means that because of other activities, relationships, or contracts, a contractor is unable, or potentially unable, to render impartial assistance or advice to the grantee; a contractor's objectivity in performing the contract work is or might be otherwise impaired; or a contractor has an unfair competitive advantage;
- f) Specifying only a "brand name" product instead of allowing "an equal" product to be offered without listing its' salient characteristics.

### 315 CONTRACT PROVISIONS FOR FTA GRANTEES

A number of general contract provisions are required by the Federal Transit Administration (FTA) for FTA funded contracts. These provisions are intended to establish minimum guidelines to which SunLine must adhere when purchasing supplies, equipment and construction and professional services. The provisions and the types of contracts to which they apply are described in the FTA Best Practice Procurement Manual Appendix A.1.

These requirements change from time to time. When drafting a contract, therefore, check the latest materials from FTA. [If there is any conflict between the latest materials from FTA and the table below, the FTA materials shall govern.](#)

	Clause Title	Flow down Requirements <u>and</u> <u>Applicability</u>
1.	<a href="#"><u>Breaches and Dispute Resolution</u></a>	<a href="#"><u>All third party contractors and their contracts at every tier in excess of \$150,000 shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions</u></a>

		<a href="#">and penalties as may be appropriate</a>
2.	<a href="#">Termination</a>	<a href="#">All third party contractors and their contracts in excess of \$10,000</a>
3.	<a href="#">Civil Rights Requirements</a>	<a href="#">All third party contractors and their contracts at every tier</a>
4.	<a href="#">Copeland Anti-Kickback and Davis-Bacon Acts</a>	<a href="#">All third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier for construction contracts over \$2,000</a>
5.	<a href="#">Contract Work Hours and Safety Standards Act</a>	<a href="#">All third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier for contracts in excess of \$100,000 that involve mechanics or laborers</a>
6.	<a href="#">Patent and Rights in Data</a>	<a href="#">All third party contractors and their contracts at every tier for experimental, developmental, or research contracts</a>
7.	<a href="#">Access to Records and Reports</a>	<a href="#">All third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier for contracts funded in whole or in part with FTA funds</a>
8.	<a href="#">Clean Air</a>	<a href="#">All third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier for contracts exceeding \$150,000</a>
9.	<a href="#">Clean Water Requirements</a>	<a href="#">Contracts and subcontracts which exceeds \$150,000</a>
10.	<a href="#">Energy Conservation Requirements</a>	<a href="#">All third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier for all contracts</a>
11.	<a href="#">Disadvantaged Business Enterprises (DBE)</a>	<a href="#">All third party contractors and their contracts at every tier for contracts</a>
12.	<a href="#">Cargo Preference Requirements</a>	<a href="#">All contracts involving equipment, materials, or commodities which may be transported by ocean vessels</a>
13.	<a href="#">Bonding Requirements</a>	<a href="#">All third party contractors and their</a>



		<u>contracts at every tier and subrecipients and their subcontracts at every tier for construction or facility improvement contracts or subcontracts exceeding \$250,000</u>
14.	<u>Buy America Requirements</u>	<u>The Buy America requirements flow down from FTA recipients and subrecipients to their first tier contractors for the purchase of more than \$150,000 of iron, steel, manufactured goods, or rolling stock</u>
15.	<u>Fly America Requirements</u>	<u>The Fly America requirements flow down from FTA recipients and subrecipients to first tier contractors</u>
16.	<u>Pre-Award and Post Delivery Audit Requirements</u>	<u>Acquisition of revenue service rolling Stock</u>
17.	<u>Bus Testing</u>	<u>No flow down requirement but applies to the purchase or lease of any new bus model or model with major change in configuration or components</u>
18.	<u>Government-wide Debarment and Suspension (Non-procurement)</u>	<u>The provisions of Part 29 apply to all grantee contracts and subcontracts at any level expected to equal or exceed \$25,000</u>
19.	<u>Lobbying</u>	<u>All contracts of \$100,000 or more</u>
20.	<u>Seismic Safety Requirements</u>	<u>All first tier contractors at every tier for construction contracts of new buildings or additions to existing buildings</u>
21.	<u>Public Transportation Employee Protective Arrangements</u>	<u>All third party contractors and their contracts at every tier for each contract for transit operations</u>
22.	<u>Charter Bus and School Bus Requirements</u>	<u>Operational Service Contracts</u>
23.	<u>Drug and Alcohol Testing</u>	<u>All third party contractors at every tier who perform a safety-sensitive function</u>
24.	<u>No Government Obligation to Third Parties</u>	<u>All third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier for all contracts</u>
25.	<u>Recycled Products</u>	<u>All third party contractors and their contracts at every tier and subrecipients and their subcontracts</u>

		<a href="#">at every tier for all contracts for items designated by the EPA</a>
26.	<a href="#">Safe Operation of Motor Vehicles</a>	<a href="#">All third party contractors and their contracts at every tier for all third party contracts</a>
27.	<a href="#">Incorporation of Federal Transit Administration (FTA) Terms</a>	<a href="#">Applies to all contracts</a>
28.	<a href="#">Federal Changes</a>	<a href="#">Applies to all contracts</a>
29.	<a href="#">Program Fraud and False or Fraudulent Statements and Related Acts</a>	<a href="#">All third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier for all contracts</a>
30.	<a href="#">Privacy Act</a>	<a href="#">When a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts.</a>

#### 1.1 Remedies for Breach of Contract and Dispute Resolution

All contracts ~~other than those following informal procurement procedures~~ [in excess of \\$150,000](#) are to include provisions or conditions that stipulate remedies the grantee can resort to if the contractor violates or breaches the terms of the contract. These provisions are to allow for either administrative, contractual, or legal remedies, and are to provide for appropriate sanctions or penalties.

#### 1.2 Termination

All contracts for more than \$10,000 are to include provisions that allow SunLine to terminate the contract and that stipulate the manner by which the termination will be made and the basis for settlement. The termination provisions must also describe the conditions under which the contracts may be terminated for default and the conditions under which the contract may be terminated because of circumstances beyond the control of the contractor that is, termination for convenience.

In a termination for default (for instance, where the delivery is late or where the contractor has failed to comply with certain contract provisions), the contractor is paid only for supplies delivered and accepted by SunLine or for services performed with the agreement of SunLine. Again, the contract must specifically describe the conditions under which the contract may be terminated.

If there is good reason for the contractor not being allowed to meet the conditions of the contract, and the situation is beyond his / her control, the contractor may be allowed to continue to work, or the contract can be terminated for convenience.

In the latter case, the contractor should be paid his / her closeout costs and a part of the fee as provided in the contract.

### 1.3 [Equal Employment Opportunity Civil Rights Requirement](#)

All ~~any~~ contracts ~~for more than \$10,000~~ must include a clause requiring the contractor to take positive action to ensure that persons employed or seeking employment are treated without bias regarding their race, color, national origin, sex, religion, disability or reprisal. In fact, Federal EEO requirements require contractors to post notices to this effect in conspicuous locations within the plant or work site. These conditions also must be stated in all IFBs and RFPs SunLine issues. Contractors should be warned that failure to comply with these terms could result in the cancellation of the contract; moreover, the contractor may become ineligible for additional contracts.

### 1.4 Copeland Anti-Kickback Act

All construction or repair contracts must include provisions that the contractor will comply with the Copeland Anti-Kickback Act which prohibits the contractor from inducing any persons employed on the project to give up any portion of their pay. Further, the provision requires SunLine to report all suspected or reported violations to FTA.

### 1.5 Davis-Bacon Act

This provision, to be included in all construction contracts for more than \$2,000, stipulates that the contractor will pay all laborers and mechanics employed on the project at least once a week and at a rate not less than the minimum wage specified in a wage determination formally issued by the Secretary of Labor. A copy of this determination is to be included in each solicitation, and the award of a contract is to be conditioned upon the contractor accepting the terms of this wage determination schedule. Further, SunLine is to report all suspected or reported violations to FTA.

### 1.6 Contract Work Hours and Safety Act

All construction contracts for more than \$100,000 that employs laborers and mechanics on a public works project must include a provision requiring the contractor to pay the mechanics and laborers on the basis of a standard 8-hour workday and a 40-hour workweek. In addition, any

work in excess of 8 hours a day or 40 hours a week must be compensated at a rate of not less than 1 ½ times the workers base rate. Further, no laborer or mechanic will be required to work in surroundings or under working conditions that are unsanitary, hazardous or dangerous as determined under the standards established by the Secretary of Labor.

#### 1.7 Delivery and Invention / Patent Rights

Any contract under which the contractor is engaged in research, development, experimental or demonstration efforts is to include a notice of FTA's requirements and regulations regarding reporting all patent rights, copyrights, and rights to data regarding any discovery or invention made by the contractor.

#### 1.8 Access to Records

All negotiated contracts (except those awarded according to informal procurement procedures) are to include a provision stipulating that SunLine, FTA, the Comptroller General, or any authorized agent of these three parties, are to be granted access to any of the contractor's books, documents, papers, and records, that relate directly to the contract. This provision is to stipulate that the contractor maintain all these records for 3 years following contract closeout to allow for audits, examinations, excerpts and transcriptions of the contractors files.

A second "access to records" provision applies to all construction, reconstruction, or improvement of facilities and equipment contracts awarded under other than competitive bidding procedures. These contracts are to include a provision granting FTA, the Comptroller General, or any of their authorized representatives access to any books, documents, papers, and records of the contracting parties pertinent to the operations or activities under such contracts.

#### 1.9 Clean Air Act / Clean Water Act

All contracts for more than \$1~~500~~0,000 must include a provision that commits the contractor to comply with the requirements of Section 508 of the Clean Water Act and Section 306 of the Clean Air Act. These regulations prohibit the use of facilities included in the EPA "List of Violating Facilities" under non-exempt Federal contracts. In addition, this provision requires the reporting of any violations to FTA and to the EPA.

#### 1.10 Energy Efficiency

All contracts are to recognize the standards and policies relating to energy efficiency that are contained in the respective State Energy Conservation

plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163).

#### 1.11 Disadvantaged Business

Congress has stressed the importance of having minority business firms involved in the competition for Federal dollars distributed as a result of the Federal procurement awarded to private contractors throughout the country. The requirements for FTA grantees are reflected in FTA Circular 4220.1F. This section states that transit authorities must take “affirmative steps” to assure that small and minority firms, women business enterprises, and labor surplus area firms are used whenever possible as sources of supplies, equipment, construction and services. SunLine has filed an FTA approved DBE program which discusses how it will deal with DBE's.

#### 1.12 Cargo Preference

To ensure fair and reasonable participation by privately owned U.S. flag vessels in transporting cargo that are subject to the merchant marine Act of 1936 – including “equipment, materials, or commodities procured, contracted for, or otherwise obtained within or outside the U.S. with funds made by or on behalf of the U.S.” – appropriate clauses must be inserted in all third-party contracts where the possibility exists for ocean transportation of such items.

The clauses must provide that at least 50 percent of the gross tonnage (computed separately by dry bulk carriers, dry cargo liners, and tankers) generated by the contract be transported on U.S. flag vessels.

#### 1.13 Bonding

For construction contracts less than \$100,000 SunLine is to follow the requirements of this procedure relating to bid guarantees, performance bonds, and payment bonds. The Contracting Officer shall secure bonding sufficient to reduce the risk of Non-Performance.

[For construction contracts of \\$100,000 to \\$250,000, the following bonding requirements apply:](#)

[a\) Construction Activities: Bid guarantee, contract performance and payment bonding will be required by SunLine to the extent](#)

deemed adequate by FTA and applicable Federal regulations, and comply with any other bonding requirements FTA may issue;

b) Other Activities: SunLine will comply with any other bonding requirements or restrictions FTA may impose.

For contracts for more than \$~~250400~~,000, however, FTA has established certain minimum bonding requirements (FTA 4220.1F and 2 CFR part 200). FTA may accept the bonding policy of SunLine as long as these minimum requirements are met:

- a) a bid guarantee from each bidder equal to 5 percent of the bid price;
- b) a performance bond for 100 percent of the contract price; and
- c) a payment bond on the part of the contractor for 100 percent of the contract price.

#### 1.14 Buy America

The Buy America requirements are located at 49 U.S.C. 5323(j) and (m) and 49 CFR 661 and 663. As now stipulated, any steel, cement, ~~and~~ manufactured product goods and rolling stock purchase of more than \$150,000 used in projects supported by FTA funds must be produced in the United States unless the Secretary of Transportation determines that one of the following exceptions applies:

- a) Applying this provision would be inconsistent with the public interest;
- b) The materials and products required for a project are not produced in the United States either in sufficient quantity or not of the quality required for the project;
- c) Where an FTA grantee is purchasing buses or other rolling stock (including train control, communication, and traction power equipment), the cost of components produced in the United States is more than 760 percent of the cost of all the components of the rolling stock or equipment, and final assembly of the stock or equipment has taken place in the United States; or
- d) Including domestically produced material will increase the purchase cost of the overall project by rolling stock by more

~~than 10 percent, or the cost of any other project by~~ more than 25 percent for rolling stock.

(NOTE: In calculating the cost of components under the terms of this provision, labor costs involved in the final assembly are not to be included.)

The provisions of §661.11 of this part do not apply when foreign sourced spare parts for buses and other rolling stock (including train control, communication, and traction power equipment) whose total cost is 10 percent or less of the overall project contract cost are being procured as part of the same contract for the major capital item.

#### 1.15 Fly America

The Federal Government will not participate in the costs of international air transportation of any persons involved in or property acquired for the project unless that air transportation is provided by U.S. -Flag carriers to the extent service by U.S. -Flag air carriers is available, consistent with the requirements of the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. 40118, and U.S. General Services Administration (US GSA) regulations "Use of United States Flag Air Carriers," 41 C.F.R. 301-131 through 301-143. Accordingly, Fly America provisions will be included in all procurements to which they apply.

#### 1.16 Rolling Stock

In acquiring rolling stock, SunLine shall utilize the following:

##### 1.16.1 METHOD OF ACQUISITION

In compliance with 49 U.S.C. § 5325(f), any third party contract award for rolling stock will be based on initial capital costs, or on performance, standardization, life cycle costs, and other factors, or on a competitive procurement process.

##### 1.16.2 MULTI- YEAR OPTIONS

In accordance with 49 U.S.C. § 5325(e)(1), a procurement for rolling stock financed with Federal assistance under 49 U.S.C. chapter 53 may not consist of a multi-year contract with options, exceeding five (5) years after the date of the original contract, to purchase additional rolling stock and replacement parts. This means SunLine shall not enter into any contract for rolling stock or

replacement parts with a period of performance exceeding five (5) years inclusive of options.

### 1.16.3 PRE- AWARD AND POST- DELIVERY REQUIREMENTS

SunLine will comply with the requirements of 49 U.S.C. § 5323(m) and FTA regulations, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases," 49 C.F.R. Part 663 and, when promulgated, any amendments to those regulations.

### 1.16.4 BUS TESTING

To the extent applicable, SunLine must comply with the requirements of 49 U.S.C. § 5318(e) and FTA regulations, "Bus Testing," 49 C.F.R. Part 665, and any amendments to those regulations that may be promulgated.

## 1.17 Debarment and Suspension

A contract award in an amount expected to exceed \$25,000 or a contract award at any tier for a federally required audit (irrespective of the contract amount) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. part 180. The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regularoty authority other than Executive Order 12549.

Recipients, contractors, and subcontractors that enter into covered transactions are required to verify that the entity is not excluded or disqualified. This is done by checking the SAM exclusions, collecting a certification from the other party, or adding a clause to the contract. Certain third party contractors are required to certify that they are eligible to participate in federally funded activities. There are two types of certification, higher tier and lower tier. The certification, which is required, is depended upon the dollar value of the contract which is awarded. A principal, of the submitting firm must sign a certification. Primarily, higher tier certifications are required from participants in third party contracts where the total dollar value of the procurement is expected to exceed \$100,000. Lower tier certifications are primarily required from:

a) \_\_\_\_\_ Proposals on contracts expected to exceed \$25,000 but not \$100,000; and

b) \_\_\_\_\_ Proposals on contracts, regardless of amount, where the selected contractor will be expected to have a critical influence or



~~substantive control over grant activities (i.e. investigators or providers of Federal Grants required audits).~~

~~FTA Circular 2015.1 should be consulted for other instances where certifications are required. Copies of the appropriate certifications are also contained within the circular.~~

#### 1.18 Lobbying

Recipients of FTA grants and certain third party contractors and subcontractors are required to certify that Federal dollars are not being used to influence Congressional activities in connection with the award of a grant, loan, or contract and must report any Non-Federal moneys used for these activities. The requirement applies to any contractors or subcontractors receiving more than \$100,000 in an FTA funded contract. Standard certification language will be required in all responses to RFPs and IFBs as will disclosure of lobbying activities on the Standard form LLL “Disclosures Form to Report Lobbying”.

#### ~~1.19 Notification Requirement~~

~~With respect to any procurement for goods and services (including construction services) having an aggregate value of \$500,000 or more SunLine will:~~

- ~~a) Specify in any announcement of the awarding of the contract for such goods or services the amount of Federal funds that will be used to finance the acquisition; and~~
- ~~b) Express the amount as a percentage of the total costs of the planned acquisition.~~

#### ~~1.20 Bonding Requirements for Construction activities exceeding \$100,000~~

- ~~a) Construction Activities: Bid guarantee, contract performance, and payment bonding will be required by SunLine to the extent deemed adequate by FTA and applicable Federal regulations, and comply with any other bonding requirements FTA may issue;~~
- ~~b) Other Activities: SunLine will comply with any other bonding requirements or restrictions FTA may impose.~~

#### 1.219 Seismic Safety

SunLine will comply with the requirements of US DOT regulations at 49 C.F.R. Part 41, Executive order No 12699, "Seismic Safety of Federal and Federally- Assisted or Regulated New Building Construction," 42 U.S.C. 7704 note, pursuant to the Earthquake Hazards Reduction Act of 1977, as amended, 42 U.S .C. 7701 et seq., (specifically, 49 C.F.R. 41.117), pertaining to seismic safety requirements for US DOT assisted construction projects, and with any implementing guidelines FTA may use.

#### 1.202 Public Transportation Employee Protective Arrangements

SunLine will comply as mandated by the FTA Master Agreement Section 24 and with any implementing guidelines FTA may use.

#### 1.213 Charter Services Operations

Neither SunLine nor any transit operator performing work in connection with any Project will engage in charter service operations, except as permitted by 49 U.S.C. 5323 (d) and FTA regulations, "Charter Service," 49 C.F.R. Part 604, and any amendments thereto that may be issued. Any charter service agreements required by these regulations is incorporated by reference and made part of the Grant Agreement or Cooperative Agreement.

#### 1.224 School Transportation Operations

Neither SunLine nor any transit operator performing work in connection with any Project will engage in school operations for the transportation of students or school personnel exclusively in competition with private school transportation operators, except as permitted by 49 U.S.C. 5323(f) and FTA regulations, "School Bus Operations," 49 C.F.R. Part 605, and any amendments thereto that may be issued. Any school transportation agreement required by these regulations is incorporated by reference and made part of the Grant Agreement or Cooperative Agreement.

#### 1.235 Substance and Alcohol Testing

SunLine shall ensure that any entity performing a safety- sensitive function on its behalf, implements and certifies compliance with FTA regulations pertaining to drug and alcohol abuse as required by 49 CFR Parts 653 and 654. Covered contractors shall be required to establish, implement and produce documentation necessary to establish compliance with parts 653 and 654 and to certify compliance under all reporting requirements of the FTA.

#### 1.24 No Government Obligation to Third Parties

The federal government is not a party to any agreement issued by SunLine and shall not be subject to any obligations or liabilities to the Agency, and third party service providers, or any other party pertaining to any matter resulting from any related contracts.

#### 1.25 Recycled Products

SunLine shall ensure that any Contractor procuring \$10,000 or more worth of recyclable items agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

#### 1.26 Safe Operation of Motor Vehicles

In compliance with Federal Executive Order No. 13043, "Increasing Seat Belt Use in the United States," 23 U.S.C. Section 402 note, the FTA encourages third party contractors to adopt and promote on-the-job-seat belt use policies and programs for its employees and other personnel that operate any company owned, rented or personally operated vehicles.

### **316 DISPUTES**

Construction Claims shall be resolved utilizing the procedures contained in the Public Contract Code for amounts in excess of \$375,000. For lesser amounts, SunLine may decide to establish a contract disputes board where members of the three-panel dispute board arrive at a recommendation. Each party selects a member to the board and mutually agrees to the third member. The results of the disputes resolution board may be binding on each party by stipulation.

Other contract disputes are to be resolved by the Contracting Officer within their delegated authority level. Ultimately, the CEO/General Manager, in consultation with administrative staff, will resolve administrative disputes that may involve contract actions.

The FTA shall be notified of all claims in accordance with Grant Management Guidelines contained in OMB Circular 5010.

Signature \_\_\_\_\_ Date \_\_\_\_\_

<p><b>SunLine Transit Agency</b></p> <p><b>PROCUREMENT POLICIES &amp; PROCEDURES</b></p>	<p><b>CHAPTER NO. 4</b></p> <p><b>METHODS OF PROCUREMENT</b></p> <p><b>PAGE 1 OF 36</b></p>
<p><del>AFFECTED CHAPTERS: 407</del></p>	<p><b>RELEASE DATE:</b> <u>MARCH 27, 2019</u><del>JULY 19, 2012</del></p> <p><b>SUPERSEDES:</b> <u>JULY 19, 2012</u></p> <p><b>SUPERSEDES:</b> SEPT. 28, 2011</p> <p><b>SUPERSEDES:</b> APR. 8, 2010</p> <p><b>SUPERSEDES:</b> MAR. 24, 2010</p> <p><b>SUPERSEDES:</b> FEB. 25, 2009</p> <p><b>SUPERSEDES:</b> DEC. 03, 2008</p> <p><b>SUPERSEDES:</b> SEPT. 26, 2001</p>

**400 PURPOSE AND SCOPE**

The SunLine Transit ~~Agency~~authority Procurement Policy Statement sets forth the framework for the SunLine Procurement Regulations, which consists of the Board Approved Policy Statement and the Procedures Manual (Manual) issued by the ~~Chief Financial Officer~~Director of Finance.

The Manual prescribes general procurement policies and procedures which shall govern the solicitation, award and administration of all (except employment contracts where there is an employer employee relationship) SunLine contracts and purchases for supplies, services, equipment and construction.

**401 ACQUISITION PLANNING**

Acquisition planning starts with the identification of a requirement and ends with in-service management of the acquired asset. During the acquisition planning process the requesting department must consider both the Procurement Administrative Lead Time (PALT) and the Product Lead Time.

The Procurement Administrative Lead Time is the time it takes from the receipt of a properly completed  [& approved](#)  requisition to the placement of the contract. A properly completed requisition includes an Independent Estimate.

General PALT Guidelines stated in working days and represents the average time it takes to place an order.

**General PALT Guidelines (Working Days)**

<b>1-7 Days</b>	<b>Micro Purchases</b>
<b>15-30 Days</b>	<b>Small Purchases</b>
<b>4-6 Months</b>	<b>Formal Purchases</b>

In addition to the PALT is the product lead time. The requesting department must consider the product lead time in its planning efforts. The product lead time is the time it takes the contractor to produce the goods or services being provided.

Therefore, the requesting department, in coordination with the Contracting Officer, must research the requirement in order to determine both the product and procurement administrative lead times to determine when a requisition must be submitted to the Contracting Officer.

An improperly planned procurement action is not sufficient justification for a Sole or Single Source procurement.

**402 COOPERATIVE AGREEMENTS AND SURPLUS ITEM PURCHASES**

The FTA encourages grantees to search federal surplus catalogues in order to avoid purchasing new items which may exist in the government's surplus inventory.

By California State legislation, the Department of General Services, State Office of Procurement, may act as the buying agent for political subdivisions of the state. The purpose of the State Cooperative Purchase Program is to enable government entities to take advantage of discount prices available through volume purchases.

SunLine may enter into cooperative purchasing agreements with other governmental agencies. When FTA funds are utilized for non-state cooperative purchases, SunLine must comply with piggybacking rules and regulations promulgated by the FTA. In particular, SunLine's estimated

quantities must have been contemplated in the original award agreement and the contract must contain an assignment clause that authorizes assignment of contractual rights to SunLine.

#### **403 CHECK REQUEST POLICY**

When a check is required, the requesting department's needs shall be noted on a Check Request Form. Check requests are primarily used for medical, legal and insurance expenses, payroll, petty cash and travel, utility payments, postage, temporary help, conferences and subscription renewals. A properly completed Check Request Form includes the department ~~directors~~Chief's approval, company name, items needed, exact costs (including all taxes, freight charges and any other fees), person contacted, date of delivery, department name, and account number.

The requisitioner must sign the check request and appropriate department heads and forwarded to the ~~Director of Finance~~Chief Financial Officer or the Finance Department.

#### **404 PETTY CASH POLICY**

Purchases of up to \$150.00 for ancillary items may be made through petty cash. However, this is a privilege that should never be used to circumvent the procurement procedures. A petty cash voucher shall be obtained from the Finance Department and approved by the Department ~~Director~~Chief. All receipts, and any change received in the transaction, shall be returned to the Finance Department immediately upon return to the facility.

#### **405 PURCHASE REQUISITION PROCEDURES**

Purchases begin with a purchase requisition. The requisitioning department shall prepare and submit ~~to the Director of Finance the a~~ purchase requisition, completing all sections including unit cost and total cost, through the Agency's financial system.

A Purchase Requisition, with the associated electronic approval ~~of the requisitioning department's director (or designee, as appropriate)~~, must be completed before a Purchase Order can be prepared. The ~~director~~appropriate approver approving the Purchase Requisition is responsible for validating its completeness and accuracy including appropriate general ledger number. The ~~director approver~~ is also responsible for ensuring the availability of funds in the proper account. Requisitioner must show that a need exists for the items to be requisitioned before a purchase is made, a complete and accurate description of the item must be provided in writing documented, along with all other information necessary to make the

procurement decision. A properly completed Purchase Requisition includes a description of the item to be procured, the quantity needed, unit cost, ~~and~~ total cost and all approvals necessary.

The description section shall provide detailed specifications regarding the item to be purchased. When applicable, where the service will be performed or when and where the items will be delivered should be shown on the purchase order. For the purchase of services, the requisitioning department must include any relevant documentation (e.g., a contract or letter of agreement) with the Purchase Requisition.

The department ~~director~~ Chief should determine which account will be expensed when the requisition is invoiced and must provide the account name and number. If the procurement is to be expensed against more than one account code, all accounts must be listed.

In order for a purchase requisition to be submitted, the general ledger account(s) used for purchase must have available budget. If the requisition is unable to be submitted due to budgetary constraints, the requisitioner should contact the Budget Manager for additional details.

#### **406 PURCHASE ORDERS (POs)**

~~Purchase Order (PO) numbers may only be assigned by the Agency's financial system once a properly submitted purchase requisition has been processed. Finance Department, or computer systems managed by the Finance Department and only following receipt of a complete and appropriately approved purchase requisition. The Agency's financial system will assign the next consecutive purchase requisition number, which after processing, will become the PO number.~~

~~The Finance Department or automated system will assign the next consecutive PO number.~~

~~Upon receipt of an approved purchase requisition and after the Purchase Order number has been assigned, the Finance Department procurement staff will input all pertinent information into the computer system for automated record keeping. ~~The Contracting Officer will review the~~ Purchase requisition and all documentation to ensure its completeness and accuracy before beginning the solicitation process.~~

Purchase Orders are contracts. Purchase Orders are used primarily for the purchase of standard goods and supplies used in Maintenance, Repair and Operations purchased under Micro and Small Purchase Procedures. A Purchase Order is not appropriate for Formal Purchases or the purchase of non-routine services, system purchases, or construction.



In cases where a contract is used instead of a Purchase Order, the system generated Purchase Order Number will be communicated to the Contractor for inclusion on the Contractor's Invoices. The Purchase Order itself will not be sent to the Contractor.

## 407 INFORMAL PROCUREMENT PROCEDURES

This section of SunLine's Procurement Policies and procedures describes the informal procurement process in detail.

### 1.1 Micro Purchases

#### **Materials, Supplies, Equipment and Services less than or equal to \$103,000**

Purchases less than or equal to \$103,000\* are not subject to bidding requirements if the Contracting Officer or designee considers the price offered as fair and reasonable. The Contracting Officer may accept one quotation from responsible and responsive firms. Purchases shall not be split to avoid more rigorous procedural requirements but consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. The Contracting Officer shall rotate these micro purchases among qualified small businesses.

For procurements totaling \$1,000.00 or less, the Contracting Officer or designee may utilize phone quotes or other appropriate means to ensure that a fair and reasonable price is paid. Verbal quotes are recorded and included in the procurement file documentation.

For purchases of more than \$1,000.01, written quotations from vendors are required. The responsibility for soliciting quotations rests with the procurement department.

\*On June 20, 2018 the Office of Federal Financial Management issued a Memorandum authorizing the increase of threshold for micro-purchases from \$3,500 to \$10,000 via an exception, when exceptions are not prohibited by statute. The exception takes effect upon the issuance of the memo and would apply to all recipients in accordance with 2 CFR part 200.318 (General procurement standards).

### 1.2 Small Purchases

**Materials, Supplies, Equipment and Services – Other than Public Works that are greater than \$103,000 and less than \$42500,000\*.** Under the Federal Transit Authority’s guidelines, purchases between these values are referred to as the Simplified Acquisition Threshold.

**Public Works that are greater than \$103,000 and less than \$25,000.**

Purchases in this range require written quotes to be solicited from at least three (3) Vendors. The Contracting Officer must make the determination that the price offered as fair and reasonable utilizing a price or cost analysis. The award is made to the proposer offering the bid or proposal most advantageous to SunLine. Small Purchases can be solicited utilizing either a quotation that contemplates award to the lowest evaluated price or may consider factors in addition to price. The Request for Quotation shall specify the basis for award consistent with the principles of bidding and competitive negotiations contained herein.

This process is to be documented on the bid record contained in the file documentation. A record indicating the procurement method used, the contract type, why the vendor was selected, and how the price was

determined fair and reasonable at a minimum should be documented in the procurement file. Award will be made to the firm that complies with the provisions of the request for quotations and provides the lowest responsive and responsible price.

1.3 Formal Purchases (Sealed Bids, Competitive Proposals & Noncompetitive Proposals)

**Materials, Supplies, Equipment and Services greater than or equal to \$250,000 (For Items not identified by Item in a Board Approved Budget);**

~~Materials, Supplies, Equipment and Services greater than or equal to \$100,000 (For Items Identified by Item in a Board Approved Budget);~~

~~Public Works greater than or equal to \$25,000.~~

Purchases of this amount require an appropriate formal competitive procurement process and must have the approval of SunLine Board of Directors. Technical specifications and requirements will be prepared by the appropriate department head and submitted to the Contracting Officer, or designee, who will prepare and release appropriate Invitations for Bids

(IFBs), Request for Proposals (RFPs), or Request for Qualifications (RFQs). Authorization from the Board of Directors is necessary to issue and award of an IFB, RFP or RFQ above this threshold.

A record indicating the procurement method used, the contract type, why the vendor was selected, and how the price was determined fair and reasonable at a minimum should be documented in the procurement file.

#### **408 FORMAL PROCUREMENT METHOD SELECTION**

Competitive Bidding, or Sealed Bidding is the preferred method for procurement when:

- a) A fair and reasonable price can be established;
- b) Reasonably definite, design or performance specifications can be written;
- c) Adequate competition can be anticipated; or
- d) Reasonable estimate of costs can be made.
- e) The contract type is a firm fixed price;
- f) No discussions with the bidders are necessary;

##### 1.1 When to use Competitive Proposals

Competitive proposals are to be used when:

- a) The items desired cannot be precisely defined, described or standardized;
- b) The contract is for research and development with an end product that may be conceptual in nature;
- c) The technical aspects and price may be negotiated;
- d) Discussions may be necessary during the solicitation process;
- e) Offerors will have the opportunity to revise the price or technical aspects of their proposals;
- f) Quantity and contractual factors must be considered along with price; or

- g) Artistic and aesthetic value are more important considerations in evaluating the proposal than the price;

## 1.2 When to Use Non-Competitive Negotiation

By California statute, formal procurements by Non-Competitive Negotiation are permitted only under one of the following circumstances:

- a) If, after rejecting bids, SunLine's ~~Director of Finance~~Chief Financial Officer determines that in his/her opinion the supplies, equipment and materials may be purchased at a lower price in the open market, the ~~Director of Finance~~Chief Financial Officer may authorize the purchase of the supplies, equipment and materials in the open market without further observance of the provisions requiring contracts, bids or notices. In order to utilize this provision, the specifications for the procurement must remain the same and the bid, must be less than the lowest monetary bid received through the formal procurement process.
- b) In case of great public calamity, such as fire, flood, storm, epidemic or other disaster, SunLine Board may, by resolution passed by a two-thirds vote of all its members declare and determine that the public interest and necessity demand the immediate expenditure of public money to safeguard life, health or property, and thereupon proceed to expend or enter into a contract involving the expenditure of any sum needed in such emergency without observance of the provisions requiring contracts, bids or notice.

Additionally, federal regulations require that one or more of the following conditions be met:

- a) There is a public exigency or emergency that does not allow time for competitive negotiation.
- b) The Federal Transit Administration (FTA) authorizes a non-competitive negotiation.
- c) The items(s) are available only from a single source, as a matter of fact and not as a matter of preference or convenience.
- d) After solicitation of a number of sources, competition is determined to be inadequate.

- e) The item to be procured is an associated capital maintenance item as defined in 49 U.S.C. §5307(a)(1) that is procured directly from the original manufacturer or supplier or the item is to be replaced after written certification to FTA that:
  - 1) The manufacturer or supplier is the only source for the item, and
  - 2) The price of the item is no higher than the price paid by other similar customers.
- f) A contract amendment or change order is needed that is not within the scope of the original contract.

#### **409 NON- COMPETITIVE PROPOSAL PROCEDURES**

A non-competitive proposal may be requested when a single or sole source of the goods or services is available. Single Source procurements occur when, because of economic, schedule, or risk requirements, only a single source of supply can satisfy SunLine's requirements. Options that were not considered in the initial award decision, along with contract [c](#)Changes and [m](#)Modifications can also create a Single Source situation.

A Sole Source is when there is only one known source that can satisfy SunLine's requirements.

The requesting department shall document the reasons for a Sole or Single Source Procurement to the Contracting Officer. The Contracting Officer shall review all requests for Sole or Single Source Procurements to insure that such procurement methods are justified. This information shall be included in the procurement file documentation. Any changes in the procurement method shall be coordinated between the requesting department and the Contracting Officer.

The proposal request must contain all FTA required contract provisions along with the requirement for the Contractor to assist SunLine in conducting an evaluation of the proposed price.

A Cost Analysis is required when the price cannot be determined fair and reasonable by a Price Analysis technique.

For capital maintenance items that must be purchased from the original manufacturer to preserve warranty or where alternative sources are not available, SunLine must certify to FTA:

- a) that such manufacturer or supplier is the only source for such item; and
- b) that the price of such item is no higher than the price paid for such item by like customers.

#### **410 PROCEDURES FOR COMPETITIVE BIDDING**

The following steps are taken in the competitive bidding process.

##### **1.1 Review the Requisition and Verify the Independent Estimate**

Prior to initiating a formal procurement action, the Contracting Officer or designee shall review the Purchase Requisition and ensure that the requisition adequately describes the goods or services being procured and that an Independent Estimate has been obtained. The Contracting Officer shall also review the requisition to insure that it contains the proper approvals.

##### **1.2 Prepare Invitations for Bid (IFBs)**

Invitations for Bid (IFBs) consist of a number of provisions, some of which are general depending on the type of solicitation and some of which are project specific. In general, the department initiating the procurement prepares project specific provisions of an IFB and the general provisions are prepared by the Contracting Officer or designee. The Contracting Officer or designee is ultimately responsible for assembly of the IFB and ensuring that it meets all procurement policies and is consistent with all applicable federal, State and local procurement rules and regulations.

Examples of some of the project specific provisions of an IFB include:

- a) Contract specifications, which describe requirements for the supplies, equipment, construction or services to be delivered under the terms of the contract. It indicates to prospective contractors precisely what SunLine requires.
- b) The specifications also establish the procedures by which it will be determined that all requirements of the contract have been met.
- c) Design specifications, which describe in detail the data necessary to produce an item such as the size and dimensions, physical characteristics, quality test, etc.

- d) Performance specifications, which express the desired performance characteristics in terms of output, function or operation of items and equipment.
- e) Public Works license requirements, bonding requirements, insurance requirements, and add / delete quantities.

(NOTE: Combinations of the above are also used to meet the requirements of a purchase transaction. The exact combination of specifications should be fashioned to meet the needs of each purchase.)

- f) A statement of work, which defines the work required of a contractor, either to develop the equipment being delivered to satisfy the prime mission of SunLine, or to compliment the procured items being delivered, or to provide services being procured without a portion of the total procurement being delivered.

The basic distinction between the specification and the statement of work is that the specification defines minimum standards of the item to be procured, while the statement of work defines minimum work to be accomplished by the contractor under the contract.

IFBs shall be worded as precisely as possible. Ambiguous or incomplete specifications can result in unnecessary delays and costly errors. Special care must be taken to ensure that the specifications are not exclusionary or overly restrictive.

The specification may include a statement of the qualitative nature of the material, product or service to be procured and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. When it is impractical or uneconomical for the department initiating the procurement to make a precise description of the technical requirements of the buy, a “brand name or approved equal” description may be used in solicitations.

### 1.3 Develop Bidder’s List

The department initiating the procurement shall develop a list of prospective bidders and include those recommendations on the Purchase Requisition. In addition the Contracting Officer shall maintain a file of bidders interested in particular types of contracts. Prospective contractors shall possess the ability to perform successfully, a good record of past performance, integrity, adequate financial and technical resources, and any other factors relevant to the specific item being contracted.

The bidders list shall be developed with consideration of SunLine's DBE/WBE program.

#### 1.4 Methods and Timing of Soliciting Bids

As a goal, SunLine will attempt to provide at least 14 days for standard procurements and not less than 30 calendar days when procuring non-standard items.

Invitations for Bids shall be sent to at least three financially and technically qualified prospective bidders, if possible. Pre-invitation notices may be furnished to a sufficient number of prospective bidders so as to elicit adequate competition as stated in the RFB, RFI, RFQ ~~etc.~~

Notices inviting bids shall be published at least once in a newspaper of general circulation at least ~~ten~~(10) days prior to bid opening and may be published in trade journals and magazines as deemed necessary or appropriate.

#### 1.5 Pre-Bid Conference

A pre-bid conference may be used as a means of briefing prospective bidders and explaining complicated specifications and requirements to them as early as possible after the invitation has been issued and before the bids are opened. The pre-bid conference will not be used as a substitute for amending a defective or ambiguous invitation. Attendance by potential bidders may be mandatory if their attendance is essential to understanding the solicitations requirements, or voluntary if responsive bids can be received without the conference.

#### 1.6 Amendments of IFBs

If after issuance of invitations for bids, but before the time set for opening of bids it becomes necessary to make changes in quantities, specifications, delivery schedules, opening dates, etc. or to correct or clarify a defective or ambiguous invitation, such changes shall be accomplished by issuance, in writing, of an amendment to the Invitation For Bids. The amendment shall be sent to each prospective bidder to whom the Invitation For Bids has been furnished.

Each amendment issued during an Invitation For Bid shall:

- a) Be serially numbered and dated.
- b) Include the number, date and a description of the original Invitation For Bids concerned.



- c) Clearly state the changes made in the Invitation For Bids and the extension of the opening date, if any.
- d) Include instructions to bidders for acknowledging receipt of the amendment and information concerning the effect or failure to acknowledge and return the amendment.
- e) Before issuing an amendment to an Invitation For Bids, SunLine will take into consideration the period of time remaining until the time set for opening and the need for extending the time set of opening must be considered. Where only a short time remains before the time set for opening, consideration shall be given to notifying bidders of an extension of time by email, fax or telephone. Such notification should be confirmed in the amendment.
- f) Any information given to a prospective bidder concerning an Invitation For Bids shall be furnished promptly to all other prospective bidders as an amendment to the invitation. If such information is necessary to bidders in submitting bids on the invitation or if the lack of such information would be prejudicial to uninformed bidders no award shall be made on the invitation unless such amendment has been issued in sufficient time to permit all prospective bidders to consider such information in submitting or modifying their bids.

#### 1.7 Cancellation of IFBs

Invitations For Bids shall not be canceled unless cancellation is clearly in SunLine's interest (e.g., where there is no longer a requirement for the material or service, or where amendments to the invitation would be of such magnitude that a new invitation is desirable). When an invitation is canceled, bids which have been received shall be returned unopened to the bidders and a notice of cancellation shall be sent to all prospective bidders to whom invitations for bids were issued.

The notice of cancellation shall identify the Invitation For Bids; briefly explain the reason the invitation is being canceled; and where appropriate, assure prospective bidders that they will be given an opportunity to bid on any re-solicitation of bids or any further requirements for the type of material or service involved.

If the Invitation For Bids is canceled before the time for bid openings, this fact shall be recorded in the file, with a statement of the number of concerns invited to bid and the number of bids received. The CEO/General Manager or designee shall be authorized to cancel bids.

Notification shall be provided to the Board of Directors when the estimated amount exceeds the Board authorization threshold.

#### 1.8 Receipt of Bids

Bids shall be submitted so as to be received in the office designated in the Invitation For Bids not later than the exact time set for the receipt of bids. The only acceptable evidence to establish the time of receipt at SunLine offices is the time/date stamp of SunLine which shall be placed on the bid wrapper immediately upon receipt. SunLine employee receiving the bid shall sign the exterior of the bid package to verify the date and time received and person receiving the bid. The timeliness of bids is the sole responsibility of the bidder.

#### 1.9 Withdrawal of Bids

Any Bidder may withdraw their bid, either personally, by email, or by written request, received by SunLine, at any time prior to the time fixed for the receipt of the bids. Negligence on the part of Bidders in preparing their bid confers no right of withdrawal of their bid after such bid has been opened. No bid may be withdrawn for a period of ~~sixty (60)~~120 days following bid opening.

#### 1.10 Bid Opening

All bids received prior to the time set for opening shall be recorded and kept unopened and secured in a safe place.

Prior to bid opening, information concerning the identity and number of bids received shall be made available only to SunLine employees who have the proper need for such information. When bids are submitted, they shall be handled with sufficient care to prevent disclosure of their characteristics before bid opening.

Unidentified bids may be opened solely for the purpose of identification and then only by an authorized official of SunLine. If a sealed bid is opened by mistake or for purposes of identification, the official shall immediately write on the envelope an explanation of the opening, the date and time opened, the Invitation For Bid number and their signature. Bids opened by mistake or for identification purposes shall be resealed in the envelope and no information contained therein shall be disclosed prior to the public bid opening.

The Contracting Officer in charge of the solicitation shall decide when the time set for bid opening has arrived and shall so declare to those present.

All bids received at the time set for receipt shall be publicly opened, and when practical, read aloud by the Contracting Officer to the persons present. The bids received shall be recorded. If it is impractical to read the entire bid, as where many items are involved, the total amount of the bid shall be read if feasible.

A second SunLine employee shall be present to witness the opening and reading of the bids and shall sign an abstract to verify its accuracy.

The original of each bid shall be carefully safeguarded, particularly until the abstract of bids has been made and its accuracy verified.

Performance of the bid opening procedure may be delegated to an assistant, but the Contracting Officer remains fully responsible for the actions of such assistant.

Examination and evaluation of original bids by other interested individuals may be made only under the immediate supervision of the Contracting Officer in charge of the solicitation (or his/her designee) and under conditions which preclude the possibility of a substitution, addition, deletion, or alteration in the bids. Copies may be distributed to interested SunLine officials for evaluation.

The original bid form shall not be allowed to pass out of the hands of the Contracting Officer or his/her designee. A copy of each bid must be maintained in SunLine's procurement files in lieu of such originals for the interim period.

All bids, including attachments and envelopes, shall be retained for the official files.

#### 1.11 Recording of Bids

The Invitation For Bid number, bid opening dates and time, general description of the procurement item, names of bidders, prices bid and any other information required for bid evaluation, shall be entered on the official record of abstract form and shall be available for public inspection. When the items are too numerous to warrant the recording of all bids completely, an entry shall be made of the invitation number, opening date and time, general description of the procurement items, and the total price bid where definite quantities are involved.

The official record or abstract shall be completed as soon as practical after bids have been opened and read aloud. The ~~Department Director~~ Contracting Officer in charge of the solicitation and a second employee shall certify the accuracy of the record of abstract. The ~~Department~~

Director Contracting Officer or designee shall be responsible for maintaining files for these records and abstracts.

The file of the Invitation For Bids shall show the distribution, which was made and the date thereof. The names and addresses of prospective bidders requesting the Invitation For Bids who were not included on the original solicitation list shall be added and made a part of the record.

#### 1.12 Tabulation of Bids

Bids shall be evaluated on the basis of responsiveness and responsibility indicated in the Invitation For Bids. Award shall be made to the bidder submitting the lowest bid, unless SunLine determines that the bid is not responsive and/or the bidder is found to be not responsible. Award may be made on a line item level or on a bottom line basis taking into consideration the administrative costs. The Bid shall contain a statement regarding SunLine's rights to make award based on the line items or lump sum.

#### 1.13 Analysis of Limited Bid Response

If less than three bids have been received, the Contracting Officer may examine the reasons for the small number of bids received. This examination may include calling potential bidders who did not respond to the solicitation to see if there were restrictive provisions in the bid documents, or if any other element of free and open competition was lacking. A price or cost analysis shall be performed to establish the reasonableness of the bid price before an award is made.

#### 1.14 Price and Cost Analysis

A price or cost analysis shall be used to determine the reasonableness of the bid price.

The Contracting Officer shall conduct a price analysis to evaluate a bid price based on adequate price competition. If a valid price analysis cannot be completed, support personnel may be requested to assist with a cost analysis of the bid price.

Price analysis is the process of examining and evaluating a bid price without evaluation of the separate cost elements and proposed profit of the individual prospective supplier whose price is being evaluated. Normally, price analysis may be accomplished through one or more of the following activities:

- a) A comparison of the bid prices.
- b) The comparison of prior quotations and contract prices with current quotations for the same or similar end items (to provide a suitable basis for comparison, appropriate allowances must be made or differences in such factors as specifications, quantities ordered, time for delivery, etc.);
- c) The use of “yardsticks” (such as dollars per pound, per horsepower, or other units) to point up apparent gross inconsistencies which should be subjected to greater pricing inquiry;
- d) The comparison of prices set forth in published price lists issued on a competitive basis, published market prices or commodities, and similar indicators, together with discount or rebate arrangements;
- e) The comparison of proposed prices with estimates of cost independently developed by personnel with SunLine; or
- f) The comparison of prices paid by others (government or commercial) of the same or similar items to the proposed prices.

If only one bid is received, the sole bidder must cooperate with SunLine as necessary in order for its bid to be considered for award. A new solicitation of bids may be made if the single bid price appears unreasonable or if no determination is made as to the reasonableness of cost of the single bid.

#### 1.15 Responsive Bidder Evaluation

Before awarding the contract, SunLine shall determine those bidders that are responsive to the minimum requirements of the bid documents. A responsive bidder is one that, at a minimum:

- a) Submits products or services responsive to the bid requirements; and
- b) Submits all required certifications and representations; and
- c) Submits a bid and other required documents by the due date; and
- d) Complies with all Insurance and Bonding Requirements; and

- e) Otherwise complies with all bid instructions.

#### 1.16 Responsible Bidder Evaluation

Before awarding the contract, SunLine shall determine that a prospective contractor is responsible and the prices are reasonable. A responsible prospective contractor is one who meets the standards forth below:

- a) Has adequate financial resources, or the ability to obtain such resources as required during the performance of the contract;
- b) Is able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing business commitments, commercial as well as governmental;
- c) Has a satisfactory record of performance. Contractors who are, or have been, seriously deficient in current or recent contract performance, when the number of contracts and the extent of deficiency of each are considered, will be considered non-responsive.
- d) Has a satisfactory record of integrity and business ethics;
- e) Is otherwise qualified and eligible to receive an award under applicable laws and regulations;
- f) Has the necessary organizational, experience, operational controls; and technical skills, or the ability to obtain them; or
- g) Has the necessary production, construction, and technical equipment and facilities, or the ability to obtain them.

#### 1.17 Responsible Bidder Documentation

The Contracting Officer, based upon the following sources, may make the evaluation of the responsibility of prospective contractors:

- a) A list of debarred, suspended or ineligible firms or individuals;
- b) From the prospective contractor's bids and proposals, replies to questionnaires, financial data such as balance sheets, profits & loss statements, cash forecasts, and financial histories of the contractor and affiliated concerns; current and past production records, list of tools, equipment, and facilities, written statements

of commitments concerning financial assistance and subcontracting arrangements.

- c) Publications, including credit ratings, trade and financial journals, and business directories may also be used;
- d) References such as suppliers, subcontractors, customers or the prospective contractor, banks and financial institutions, commercial credit agencies, other government agencies, purchasing and trade associations, and better business bureaus and chamber of commerce; or
- e) Documented past performance on contracts with SunLine.

#### 1.18 Rejection of all Bids

Preservation of the integrity of the competitive bid system dictates that after bids have been opened, award must be made to that responsible bidder who submitted the lowest responsive bid, unless there is compelling reason to reject all bids and cancel the invitation.

Every effort shall be made to anticipate changes in a requirement prior to the date of bid opening and to notify all prospective bidders of any resulting modification or cancellation, thereby permitting bidders to change their bids and preventing unnecessary exposure of bid prices.

As a general rule, after opening, an Invitation For Bids should not be canceled and re-advertised due solely to increased requirements for the items being procured. Award should be made on the Invitation For Bids and the additional quantity should be treated as a new procurement.

Invitations for bids may be canceled after opening but prior to award, and all bids rejected, where it is consistent with Federal, State, and local procurement regulations. A written determination must be included in the Invitation For Bid file stating that cancellation is in the best interest of SunLine for reasons such as the following:

- a) Inadequate, ambiguous, or otherwise deficient specifications were cited in the Invitation For Bids;
- b) The supplies or services are no longer required;
- c) The Invitation For Bids did not provide for consideration of all factors of cost to SunLine;

- d) Bids received indicate that the needs of SunLine can be satisfied by a less expensive item differing from that on which bids were received;
- e) All otherwise acceptable bids received are at unreasonable prices;
- f) The bids were not independently arrived at in open competition, were collusive, or were submitted in bad faith. Such situation must be substantiated and reported to SunLine counsel; or
- g) The bids received did not provide adequate competition to ensure reasonable prices. A price or cost analysis shall be used to establish the reasonableness of price.

SunLine may reject bids received and proceed to purchase supplies, equipment or materials in the open market without further observance of the provisions regarding contracts, bids or notice if it is determined that the supplies, equipment or materials may be purchased at a lower price in the open market. Such an action must be approved by a two-thirds vote of all members of SunLine Board of Directors if the purchase amount exceeds the Board approval threshold. For lesser amounts, the [CEO/General Manager's](#) approval is required.

If administrative difficulties are encountered after bid opening which may delay award beyond bidder's ~~120~~ day acceptance periods, the several lowest bidders shall be requested, before expiration of their bids, to extend the bid acceptance period (with consent of sureties, if necessary) in order to avoid the need for a re-advertisement.

When it is determined to reject all bids, SunLine shall notify each bidder that all bids have been rejected and stating the reason for such action.

#### 1.19 Rejection of Individual Bids

Normally, any bid which fails to conform to the essential requirements of the Invitation For Bids, such as specifications, delivery schedule, warranty, or the required bid documents, shall be rejected as non-responsive.

A bid shall be rejected where the bidder imposes conditions, which modify requirements of the Invitation For Bids. For example, bids may be rejected in which the bidder:

- a) Attempts to protect themselves against future changes in conditions such as increased costs, if a total price to SunLine cannot be determined for bid evaluation;



- b) Fails to state a price and in lieu thereof states that price shall be “price in effect at the time of delivery”;
- c) States a price but qualifies such price as being subject to “price in effect at time of delivery”;
- d) Where not authorized by the Invitation For Bid, conditions or qualifies his/her bid by stipulating that the bid is to be considered only if, prior to date of award, bidder received or does not receive award under a separate procurement.
- e) Limits rights of SunLine under any contract clause;
- f) Fails to meet DBE requirements;
- g) Modifies the bid documents;
- h) Fails to list subcontractors on public works bids when the subcontracted work exceeds ½ of 1 percent;
- i) Fails to comply with all of the requirements of the IFB.

Bids received from any person or firm debarred or ineligible shall be rejected if the period of debarment or ineligibility has not expired.

Low bids received from firms determined to be not responsible pursuant to Federal, State or local procurement regulations shall be rejected.

A bid may be rejected if a bid guarantee is required and a bidder fails to furnish it in accordance with the requirement of the Invitation For Bids.

The originals of all rejected bids, and any written findings with respect to such rejections, shall be preserved in the file relating to the procurement.

After submitting a bid, if a bidder transfers all of his/her assets or that part of his/her assets related to the bid during the period between the bid opening and the award, the transferee may not take over the bid, thus SunLine may reject the bid.

#### 1.20 Award of Contract

Unless all bids are rejected, SunLine shall make award by written notice, within the time for acceptance specified in the bid or extension thereof, to the lowest responsible and responsive bidder. When specified in bidding documents, factors such as discounts, transportation costs, and life cycle

costs shall be considered in determining which bid is the lowest. Payment discounts will only be used when history determines that the discount is likely to be earned.

When an award decision has been made, notification shall be made by emailing all bidders of a notice of intent to award naming the selected bidder. The Notice of Intent to Award shall officially start the protest period. If no protest is received within the protest period, then a Notice of Award shall be sent to the selected contractor along with all contract documents after board approval, if required. The successful bidder shall complete and execute the contract documents, and provide proof of insurance and /or bonding to SunLine within the time specified. SunLine will finalize the execution of the contract and send a copy to the successful bidder.

#### **411 COMPETITIVE PROPOSAL PROCEDURES**

Competitive proposals are to be used when:

- a) The items desired cannot be precisely defined, described or standardized;
- b) The contract is for research and development with an end product that may be conceptual in nature;
- c) The technical aspects and price will be negotiated;
- d) Offerors may have the opportunity to revise the price or technical aspects of their proposals;
- e) Technical factors must be considered along with price;
- f) Artistic and aesthetic values are important considerations in evaluating the proposal.

The following steps are taken in competitive proposal procurements.

##### **1.1 Review of the Requisition and Independent Estimate**

The Contracting Officer shall review the requisition to insure that it has the proper approvals, that the requisition is accompanied by a sufficient technical description of the work to be performed, and that the requisition is accompanied by an Independent Estimate.

##### **1.2 Request for Proposal Scoring and Evaluation**

The Contracting Officer shall determine, in coordination with the Project Manager and Using Department what factors shall be considered in addition to price. The factors that will serve as the basis of the award shall be clearly stated in the RFP. Price must be a factor in all RFPs except for solicitations for Architectural and Engineering Services. Typical factors are:

- a) Contractor Experience on Similar Projects;
- b) Experience of Project Management Personnel;
- c) Past Performance;
- d) Clarity of Work Statement;
- e) Price.

The factors shall be stated in the RFP including a statement of the relative value of each item. The relative value of technical factors shall be stated in terms that communicate to the potential offerors that the price is worth more, less or the same as all technical factors combined.

Numerical weights may be assigned to the technical factors with the total of the factors equaling 100 points. Numerical ratings are affective when conducting qualifications based selections for Architect and Engineering Services where price will not be rated.

Adjectival ratings are appropriate when it is important to avoid inadvertent price and technical trade-offs. Adjectives such as Superior, Satisfactory, Marginal, and Unsatisfactory may be used. Color ratings may also be used such as Blue, Green, Yellow and Red. As long as the ratings are assigned an objective definition used to discriminate among the proposals, they may be used in the evaluation of the RFP. When Adjectival ratings are used, the award will be made based on the proposal providing the best value to SunLine when price and other factors are considered.

When a numerical value is assigned to all factors, including price, the relative weight of pricing has been determined by the relative weight. A minimum score in each technical area must be established to avoid awarding a contract to a vendor who has an unacceptable rating in any of the technical areas. When pricing is scored, the lowest evaluated price shall be given the maximum points and the other scores are attained by dividing the lowest evaluated price by the higher price and multiplying the result by the maximum possible score. The results should be rounded to evaluate only whole numbers.

The evaluation factors and sub-factors to be used in scoring by the evaluation team must be developed prior to reviewing the proposals.

### 1.3 Prepare Request for Proposals (RFPs)

A Request for Proposal consists of a number of provisions, both project specific and general. The department initiating the procurement should prepare project specific provisions of the RFP in coordination with the Contracting Officer. Contracting Officer or designee is responsible for general provisions and for assembly of the RFP and ensuring that it complies with all procurement policies and is consistent with all-applicable Federal, State and Local procurement rules and regulations.

The project specific sections of the RFP shall specifically describe the actual minimum materials and/or services needed; the time for providing same; the procedure by which a prospective offeror may examine plans and specifications, if any; the criteria by which proposals will be evaluated and the relative importance of each factor, and the closing date for submission of proposals which must give sufficient time to permit a proper response.

### 1.4 Develop Proposer's List

The department initiating the procurement shall develop a list of prospective Proposers. In addition, the Contracting Officer shall maintain a file of Proposers interested in particular types of contracts. Prospective contractors should possess the ability to perform successfully, a good record of past performance, integrity, adequate financial and technical resources, and any other relevant factors.

The Proposers list shall be developed with consideration of SunLine's DBE/WBE program.

### 1.5 Methods and Timing of Soliciting Proposals

As a goal, SunLine will attempt to provide not less than 30 calendar days for preparation of proposals in competitive proposal procurements.

Requests for Proposals shall be sent to at least three (3) financially and technically qualified prospective bidders, if possible. Pre-invitation notices may be furnished to a sufficient number of prospective bidders so as to elicit adequate competition.

Notices inviting proposals shall be displayed at SunLine office, or at other appropriate public places and shall be published no less than one time in

a newspaper of general circulation and may be published in trade journals and magazines as deemed necessary or appropriate. Publication in a newspaper shall allow sufficient time for a responding party to submit a proposal but in no case shall the publication be made less than 10 days prior to the proposal due date.

#### 1.6 Pre-Proposal Conference

A pre-proposal conference may be used as a means of briefing prospective bidders and explaining complicated specifications and requirements to them as early as possible after the RFP has been issued and before the proposals are opened. The pre-bid conference shall never be used as a substitute for amending a defective or ambiguous request. Attendance by potential bidders or proposers may be mandatory or voluntary depending on the circumstances of the procurement.

#### 1.7 Amendments of RFPs

If after issuance of requests for proposals, but before the time set for opening of proposals, it becomes necessary to make changes in quantities, specifications, delivery schedules, opening dates, etc. or to correct or clarify a defective or ambiguous RFP, the period of time remaining until the time set for proposal submittal and the need for extending this time must be considered. Where only a short time remains, consideration should be given to notifying bidders of an extension of time by fax, email or telephone. Such notification should be confirmed in the amendment.

Any information given to a prospective bidder concerning an RFP shall be furnished promptly to all other prospective proposers as an amendment to the RFP if the lack of such information would be prejudicial to uninformed proposers and such clarification of information may be a consideration affecting any proposers response to the solicitation. The amendment shall be sent to each concern to which the RFP has been furnished.

Each amendment issued to a Request for Proposals shall:

- a) Be serially numbered and dated;
- b) Include the number, date and a description of the original RFP concerned;
- c) Clearly state the changes made in the RFP and the extension of the due date, if any; and

- d) Include instructions to bidders for acknowledging receipt of the amendment and information concerning the effect of failure to acknowledge or return the amendment.

#### 1.8 Cancellation of RFPs

Requests for Proposals should not be canceled unless cancellation is clearly in SunLine's interest (e.g., such as where there is no longer a requirement of the material or service or where amendments to the request would be of such magnitude that a new request is desirable). Where a request is canceled, proposals, which have been received, shall be returned unopened to the proposers and a notice of cancellation shall be sent to all prospective proposers to whom RFPs were issued.

The notice of cancellation shall identify the Request for Proposals; briefly explain the reason the request is being canceled; and where appropriate assure prospective proposers that they will be given an opportunity to compete on any re-solicitation of proposals or any further requirements for the type of material or service involved.

If the Request for Proposals is cancelled before the time set for proposal submittal, this fact shall be recorded in the file, together with a statement of the number of concerns invited to submit proposals and the number of proposals received.

#### 1.9 Receipt of Proposals

Proposals shall be submitted so as to be received in the office designated in the Request for Proposals not later than the exact time set in the Request for Proposals. The receipt of a late proposal may be grounds for disqualification. The only acceptable evidence to establish the time of receipt at SunLine's office is the time/date stamp of SunLine which shall be placed on the proposal wrapper immediately upon receipt. SunLine employee receiving the proposal shall sign the exterior of the proposal package to verify the date and time received and who received the proposal. The timeliness of proposals is the sole responsibility of the proposer.

#### 1.10 Modification or Withdrawal of Proposals

Any Bidder may withdraw their proposal, either personally or by telegraphic or written request, received by SunLine at any time prior to the time fixed for the receipt of the proposals. Negligence on the part of Bidders in preparing their proposal confers no right of withdrawal of their proposal after such proposal has been opened. No proposal may be withdrawn for a period of 60 days following proposal opening.

### 1.11 When to Conduct Negotiations

Subject to the exceptions below, after receipt of initial proposals, written or oral discussions may be conducted with all responsible and responsive offerors who submit proposals within a competitive range when price and other factors are considered. If discussions are conducted with an offeror, discussions must be conducted with all offerors within the competitive range. Offerors shall be notified when their proposals are no longer under consideration and they have been excluded from the competitive range. No information or debriefing will be held with excluded offerors until the award recommendation has been made.

Discussions are not mandatory and SunLine shall reserve the right to accept initially priced offers. Discussion after receipt of initial proposals is not required in the following cases:

- a) Procurement is for supplies for which prices or rates are fixed by law or regulation;
- b) Time for delivery will not permit discussions;
- c) The procurement is for a product and, due to the existence of adequate competition or accurate prior cost experience, it can be clearly demonstrated that acceptance of an initial proposal would result in a fair and reasonable price.

### 1.12 Subject Matter of Negotiations

Discussions may be held to provide clarifications, point out deficiencies in a particular proposal, and to gain information necessary towards making an award decision. Restrictions on the information that may be revealed to the offerors by SunLine personnel during the course of negotiations include:

- a) SunLine personnel shall not furnish information to a potential supplier which may afford them an advantage over other suppliers;
- b) After receipt of initial proposals no information contained in any proposal or information regarding the number or identity of offerors shall be made available until the bid is awarded;
- c) When it is necessary to rectify ambiguities, mistakes or omissions, an appropriate amendment shall be furnished to all offerors in a timely manner; or

- d) "Auction techniques", such as advising offerors of their price relationship with others, are prohibited.

Whenever negotiations are conducted with several offerors, while such negotiations may be conducted successively, all offerors selected to participate in such negotiations shall be offered an equitable opportunity to submit such price, technical, or other data necessary as a result of the negotiations. All such offerors shall be informed of the specified date (and time if desired) of the closing of negotiations. Revisions to proposals must be submitted by such date.

Where the Request for Proposals sets forth one requirement and after receipt of proposals, either due to change or innovation by an offeror, it becomes apparent that the project needs may be better fulfilled in another manner within the general scope of the solicitation, all offerors shall be appropriately advised in writing by an amendment and further discussions or negotiations shall follow.

#### 1.13 Conduct of Negotiations

Evaluation of offerors' or contractors' proposals, including price revision proposals, by all personnel concerned with the procurement, as well as subsequent negotiations with the offeror or contractor shall be completed expeditiously.

Complete agreement of the parties on all basic issues shall be the objective of the contract negotiations.

Oral discussions or written communications shall be conducted with offerors to the extent necessary to resolve uncertainties relating to the purchase or to the price to be paid. Discussions and clarifications may be held but the Contracting Officer must be careful not to share technical information regarding any particular proposal with another proposer, as technical leveling is not permitted. Basic questions should not be left for later agreement during price revision or other supplemental proceedings.

Cost or profit figures of one offeror or contractor shall not be revealed to other offerors or contractors.

Price or cost analysis should be made in connection with every negotiated procurement action including contract modifications. Price Analysis is appropriate when an evaluation can be made without the submission of cost data supporting each element of the proposed price. Cost Analysis shall be performed when the proposer is required to submit cost data in order to evaluate their cost proposal.



#### 1.14 Notice Closing Negotiations

Such notice shall advise offerors that:

- a) Negotiations are being conducted;
- b) Offerors are being asked for their “best and final” offer, not merely to confirm or reconfirm prior offers; and
- c) Any revision or modification of proposals must be submitted by the date specified.

#### 1.15 Determining Reasonableness of Price

Price analysis is the process of examining and evaluating a prospective price without evaluation of the separate cost elements or proposed profit of the prospective supplier.

Cost analysis is the review and analysis of a contractor’s cost or pricing data and of the factors applied in projection from the data to the estimated costs, in order to form an opinion on the degree to which the contractor’s proposed costs represent what performance of the contract should cost, assuming reasonable economy and efficiency.

As compared to price analysis, cost analysis involves a more detailed review of the offeror’s proposal and is used where SunLine has less assurance of a fair and reasonable price.

The following procedure for cost analysis is to be followed:

- a) Verify contractor’s cost data;
- b) Evaluate specific elements of costs and project this data to determine the effect on prices of such factors as:
  - 1) The necessity for certain costs,
  - 2) The reasonableness of amounts estimated for the necessary costs,
  - 3) Allowances for contingencies, and
  - 4) The basis used for allocations of particular overhead costs to the proposed contract;

- c) When the necessary data is available, compare the contractor's estimated cost with:
  - 1) Actual costs previously incurred by the contractor,
  - 2) The contractor's last prior cost estimate for the same or similar estimates,
  - 3) Current cost estimates from other possible sources, and
  - 4) Prior estimates or historical costs of other contractors manufacturing the same or similar items;
- d) Forecasting future trends in costs from historical experience:
  - 1) In periods of either rising or declining costs, an adequate cost analysis must include some evaluation of the trends,
  - 2) In cases involving recently developed, complex, equipment, even in periods of relative stability, trend analysis of basic labor and materials costs should be undertaken.

In performing a cost analysis, there are three questions that should be asked in the examination of costs, particularly those in the overhead area:

- a) Is the cost allowable in accordance with guidelines in Part 31 of the Federal Acquisition Regulations (FAR) and OMB Circular A-87;
- b) Is the cost allocable to the particular project; and
- c) Is the cost reasonable?

#### 1.16 Basis of Award

A proposal evaluation team shall be assembled. The team must include at least three members familiar with the requirements of the solicitation. The requesting department should be a member of this team. Detailed evaluation criteria must be developed prior to the receipt of proposals. The proposal review team must use the detailed criteria in order to determine the successful proposal. The criteria used must support the criteria listed in the solicitation as the basis of award.

The Contracting Officer or designee, whom shall chair the review committee, tallies the evaluation results. All members of the team shall

complete and sign evaluation sheets recording the results of their evaluation. The Contracting Officer shall have all members complete a conflict of interest form to insure that no conflict of interest exists between the evaluators and the contractors being evaluated.

After evaluations of proposals in accordance with the criteria set forth in the RFP, the contract shall be awarded to the offeror of the proposal most advantageous to SunLine, price and other factors considered.

Contracts shall be awarded to responsible and responsive contractors who possess the ability to perform successfully under the Terms and Conditions of the proposed procurement action. As is the case with procurements made by competitive bid, consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources, or accessibility to other technical resources.

#### **412 SPECIAL PROCEDURES FOR ARCHITECT/ENGINEERING SERVICES**

Competitive Negotiations procedures are to be followed with the exception of the deviations stated herein. FTA Circular 4220.1F, [2 CFR part 200](#) and Government Code 4526 requires that SunLine use competitive negotiation procedures for qualification-based procurement of architectural and engineering (“A/E”) services and related services such as program management, construction management, feasibility studies, preliminary engineering, design, surveying, mapping, or related services. Price is not used as a factor in determining the most qualified proposer.

Following this method, competitor’s qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. Under this method, the competitors meeting the minimum requirements of the solicitation are ranked. The highest ranked proposer is then invited to enter into negotiations. The objective of the negotiations is to agree on a fair and reasonable price for the proposed work. The Independent Estimate supported by a price or cost analysis will determine the basis of the pricing target for SunLine. SunLine may require an audit of the contractor’s proposal prior to final payment.

The steps to be used for proposal evaluation and contract negotiations for A/E contractors are as follows:

- a) The Evaluation team is assigned by the Contracting Officer [or designee](#) after consultation with the Using Department and/or [CEO/General Manger](#) to review eligible firms and all responses to RFP;
- b) The Team evaluates the firms based on criteria such as:

- 1) Professional qualifications for performance of the required services,
  - 2) Specialized experience and technical competence in the type work required,
  - 3) Capacity to accomplish the work in the required time,
  - 4) Past performance in terms of cost control, quality of work and compliance with performance schedules;
- c) The Evaluation team may hold discussions with the most highly qualified firms (“short list”) to obtain clarity on particular aspects of their proposal;
  - d) The Evaluation team prepares a selection report for the Contracting Officer recommending, in ranked order, those firms that are considered to be the most highly qualified to perform the required services;
  - e) The Contracting Officer shall make the final selection from a list of the most highly qualified firms prepared by the evaluation team;
  - f) After the final selection has taken place, the Contracting Officer may release information identifying the rankings and the firm with whom negotiations will be attempted. If negotiations are terminated without awarding a contract to the highest rated firm, SunLine may release information that negotiations will take place with the next highest rated firm. Notice shall be provided to firms when negotiations have been terminated;
  - g) The final selection authority authorizes negotiations to begin with the most qualified firm, which includes fees and cost estimates;
  - h) The negotiation of compensation to the contractor should represent a fair and equitable payment for the services performed. At this stage, negotiations must take place not only on the amount of compensation, but also the method of payment;
  - i) In determining the amount of compensation and the method of payment, consideration shall be given to:

- 1) Scope and complexity of designs, surveys and other work and the skills necessary for these services,
  - 2) Quality and quantity of data provided to the A/E by SunLine,
  - 3) Location of, and conditions under which, the services will be performed,
  - 4) Date services to begin and time allowed for performance;
- j) Costs should be negotiated taking into consideration:
- 1) Direct labor,
  - 2) Overhead,
  - 3) General and administrative expenses,
  - 4) Materials,
  - 5) Other direct costs, and
  - 6) Profit, which is further influenced by:
    - i. Degree of A/E's risk,
    - ii. Level of effort,
    - iii. Level of talent or expertise the A/E must furnish
    - iv. Amount of subcontracting,
    - v. Amount of top level A/E management involved,
    - vi. Subcontracts, and
    - vii. Contractors investment;
- k) When the contract is negotiated and signed, the negotiations are documented and placed in the file;
- l) The contract shall be monitored to ensure that expenditures and payments therefore are commensurate with performance and that both have met all the terms of the contract; and

- m) The contractor is responsible for the professional quality, technical accuracy and coordination of all services under the contract. The contractor may be liable to SunLine for costs resulting from errors or deficiencies in design furnished under the terms of the A/E contract.

## **413 SPECIAL PROVISIONS FOR PUBLIC WORKS / CONSTRUCTION CONTRACTS**

1.1 Overview: Bidding procedures for public works and for construction contracts can be complex and require reference to both Federal and State law, depending upon the source of funding used for the project, the type of project and varying price thresholds. The provisions of this manual are intended to be general in nature and the Contracting Officer is responsible to ensure that particular requirements are met and to consult with legal counsel, when appropriate. In general, the following categories of requirements may apply, depending upon the nature of the Project.

1.2 In some cases, the California Public Contract Code may be applicable to a particular contract action. The Public Contract Code covers a variety of topics including prompt payment of Construction Progress Payments, Disputes Resolution, and Bid Shopping for Subcontractors and other provisions. The following is a general (non-exhaustive) list of provisions that may apply:

- PCC 3300 – Contractor License Designation
- PCC 20101 – Contractor Pre-Qualification
- PCC 20103.8 – Additive or Deductive Items for Construction
- PCC 20104 – Procedure for Resolution of Construction Claims under \$375,000
- PCC 20209.5 et seq. – Design Build Contracting
- PCC 20216 – Disclosure of Bid Information
- PCC 4104 – Bid Shopping
- PCC 7106 - Non-collusion affidavit

Eligible design/build construction projects shall be procured in a method consistent with FTA Requirements as well as Public Contract Code 20209.5 et seq.

1.3 Both Federal and California law impose prevailing wage requirements on contractors under certain circumstances. The Contracting Officer is responsible to ensure compliance with any Federal requirements under the Davis Bacon Act and with California Labor Code sections 1700 et seq.

1.4 Security Features, including but not limited to Bid Bonds, Payment Bonds and Performance Bonds are required depending upon the nature and amount of the project. For example, a payment bond is required on Construction Contracts in excess of \$25,000 under California law. The project threshold for many Federal bonding requirements is \$100,000. The Contracting Officer is responsible to ensure compliance with any Federal or State law requirements and may impose more stringent security requirements depending upon the nature of the project and risks associated with it.

#### ~~414~~ **FTA CONTRACT AWARD REQUIREMENTS**

~~If SunLine announces contract awards with respect to any procurement for goods and services (including construction services) having an aggregate value of \$500,000 or more, the Contracting Officer shall:~~

- ~~a) Specify the amount of Federal funds that will be used to finance the acquisition in any announcement of the contract award for such goods or services; and~~
  
- ~~b) Express the said amount as a percentage of the total costs of the planned acquisition.~~

#### **4145 EVALUATION OF OPTIONS**

An option is a unilateral right to purchase more goods or services at specified terms. When the option includes additional compensation to the contractor, the additional prices must be evaluated as a part of the original contract award or the exercise of the option becomes a sole-source contract under FTA regulations. The costs for sole-source awards must be evaluated utilizing a cost analysis or other applicable market pricing.

#### **4156 CONTRACT CHANGE ORDERS AND MODIFICATIONS**

A Contract Change Order is a change within the general scope of the original contract. The Contracting Officer shall describe the changed terms of the contract, making reference to the existing language in the contract and the changes being made to that language. The Contracting Officer may use the terms, “was” and “is” to reflect the impact of the change. Schedule changes shall be implemented in accordance with contractual provisions. All contract changes must be supported by adequate consideration.

The Contracting Officer shall make every attempt to agree on the price of the change order prior to directing the work. This may not be possible in some cases like that of construction contracts where any delay in making the change may have the potential of increasing the overall cost of the project.

In cases where a change is directed prior to agreement on the price the Contracting Officer or designee shall request cost and pricing data from the contractor in order to reach agreement on the price of the change order. Where negotiations are held with the contractor, a negotiations memorandum shall be documented indicating the initial negotiations positions of the parties, the substantiation for those positions, and migration from the respective positions toward agreement on a price.

The negotiation memorandum shall indicate the degree to which the SunLine negotiators relied on additional documentation provided by the contractor. The memorandum shall identify the additional documentation relied upon by SunLine. Failure to agree on a price may result in a contractual dispute.

Where the contractor is required to submit cost data to substantiate any price increases or decreases, the Contracting Officer or designee shall perform a Cost Analysis.

Change Orders shall be approved by the authorized SunLine approving official and signed by both parties.

Modifications that are not within the general scope of the contract are to be handled as non-competitive proposals and subject to a cost analysis.

Change orders and modifications are to be sequentially numbered in a form approved by SunLine Counsel.

## **4167 EXERCISE OF OPTIONS**

The Contracting Officer must ensure that the exercise of an option is in accordance with the Terms and Conditions of the option stated in the initial contract awarded.

An option may not be exercised unless the Contracting Officer has determined that the option price is better than prices available in the market or that the option is the more advantageous offer at the time the option is exercised.



| Signature \_\_\_\_\_ Date \_\_\_\_\_:

<p style="text-align: center;"><b>SunLine Transit Agency</b></p> <p style="text-align: center;"><b>PROCUREMENT POLICIES &amp; PROCEDURES</b></p> <p><b>AFFECTED CHAPTERS: ALL</b></p>	<p><b>CHAPTER NO. 5</b></p> <p><b>CONTRACT TYPE SELECTION</b></p> <p><b>PAGE 1 OF 3</b></p>
	<p><b>RELEASE DATE:</b> <u>MARCH 27, 2019</u><del>DEC. 03, 2008</del></p>
	<p><b>SUPERSEDES:</b> <u>DEC. 03, 2008</u> <b>SUPERSEDES:</b> <u>SEPT. 26, 2001</u></p>

**501 COMPENSATION ARRANGEMENTS**

Contracts are divided into specific types of compensation arrangements reflecting SunLine’s varying responsibility, as the buyer, to pay the allowable cost incurred by the contractor, as the seller. The following list includes the most commonly used compensation arrangements. It is up to the Contracting Officer to decide which compensation arrangement is most appropriate for a specific procurement.

SunLine’s adopted procurement policy prohibits use of a cost-plus-a-percentage-of-cost contract. The following are definitions of allowable compensation arrangements:

**502 FIRM FIXED-PRICE**

A firm-fixed-price contract provides for a price that is not subject to any adjustment on the basis of the contractor’s cost experience in performing the contract. This contract type places upon the contractor maximum risk and full responsibility for all costs and resulting profit or loss. It provides maximum incentive for the contractor to control costs and perform effectively and imposes a minimum administrative burden upon the contracting parties. This type of arrangement should be used for commercial items where competition is present and reasonable estimates of costs may be obtained.

### **503 FIXED-PRICE INCENTIVE**

This type of arrangement is similar to a Firm Fixed Price contract but it is characterized by an adjustment formula in the contract, which relates to the efficiency of the contractor. A target profit and target cost is negotiated, along with a profit formula. The contractor's profit increases or decreases according to the formula, as the actual costs are less or more, respectively, than the target cost. The fixed-price incentive arrangement is distinguished from the cost incentive arrangement by the inclusion of a ceiling price. Costs in excess of the ceiling price are borne entirely by the contractor.

### **504 FIXED-PRICE WITH PRICE RE-DETERMINATION**

This is essentially a Fixed Price arrangement with adjustments within specified limits negotiated, as actual costs become known. As in fixed-price escalation arrangements, SunLine assumes the risk of contingencies, which may occur. The price re-determination may be made either at specified times during performance or after completion of performance. This type of arrangement should be used in limited instances only.

### **505 COST-REIMBURSEMENT**

A cost-reimbursement contract may be used only when:

- a) The contractor's accounting system is adequate for determining costs applicable to the contract; and
- b) Appropriate Government surveillance during performance will provide reasonable assurance that efficient methods and effective cost controls are used.

The contractor is reimbursed for costs only and receives no fee. This type of contract is used for facilities contracts, and research and development contracts with non-profit organizations.

### **506 COST-SHARING**

The contractor receives no fee and is reimbursed for only a portion of his/her costs. This type of contract is used where the benefits of a research and development contract accrue to both parties.

**507 COST-PLUS-INCENTIVE-FEE**

A cost-plus-incentive-fee contract is a cost-reimbursement contract that provides for an initially negotiated fee to be adjusted later by a formula based on the relationship of total allowable costs to total target costs. This contract type is used to place incentives on certain performance areas where the benefits justify the expenditure.

**508 COST-PLUS-A-FIXED-FEE**

The contractor receives a set fee negotiated at the inception of the contract and is reimbursed for all costs allowable under established cost principles. This type of contract is used when research and developmental work is required and the contractor shares some responsibility for the proposed cost of the work effort.

**509 TIME-AND-MATERIALS / LABOR-HOUR**

These are contracts provided for supplies or services on the basis of direct-labor hours at specified fixed hourly rates and materials at cost. This type of contract should be used with caution. It is the least preferred method of contracting.

If this contracting method is used, the contract must include a ceiling that the contractor exceeds at their own risk. Also, the Contracting Officer must document their determination that no other contract type is suitable.

| Signature \_\_\_\_\_ Date \_\_\_\_\_

<p style="text-align: center;"><b>SunLine Transit Agency</b></p> <p style="text-align: center;"><b>PROCUREMENT POLICIES &amp; PROCEDURES</b></p> <p><b>AFFECTED CHAPTERS: ALL</b></p>	<p><b>CHAPTER NO. 6</b></p> <p><b>COST AND PRICE ANALYSIS</b></p> <p><b>PAGE 1 OF 5</b></p>
	<p><b>RELEASE DATE:</b> <a href="#">MARCH 27, 2019</a><del>DEC. 3, 2008</del></p>
	<p><b>SUPERSEDES:</b> <a href="#">DEC. 03, 2018</a> <b>SUPERSEDES:</b> <a href="#">SEPT. 26, 2001</a></p>

## 601 PRICE AND COST ANALYSIS

The Contracting Officer is responsible for insuring that every procurement action is supported by a documented price and / or cost analysis. Price analysis is required for all purchases. The degree of analysis will vary based on the proposed price and complexity of the goods or services being procured. A cost analysis must be performed when the offeror is required to submit the elements (i.e., labor hours, overhead, materials, etc.) of the estimated cost, (e.g., under professional consulting and architectural and engineering services contracts, etc.).

A cost analysis will be necessary when adequate price competition is lacking and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or on the basis of prices set by law or regulation.

[Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.](#)

## 602 INDEPENDENT ESTIMATES

All requisitions must be supported by an Independent Estimate prior to the receipt of bids, quotes, or proposals. The requesting department, with support from the Contracting Officer, is responsible for developing the estimate. An Independent Estimate means that the estimate is derived from sources other than a prospective bidder or proposer. Independent Estimates can vary depending on the complexity of the procurement action. For relatively simple procurement actions the Independent Estimate can be derived from historical pricing, knowledge of the person requesting the procurement, or from other readily available information from reliable Internet sources.

For procurement actions that are fairly complex, estimating assumptions from sources familiar with the technical complexity of the contemplated procurement action should support the Independent Estimate. In some cases it may be necessary to hire technical expertise to help with an accurate Independent Estimate. All Independent Estimates will be included with the requisition.

### **603 PRICE ANALYSIS**

Price analysis is the process of examining and evaluating a proposed price without evaluating its separate cost elements and proposed profit. SunLine may use various price analysis techniques and procedures to ensure a fair and reasonable price. Examples of such techniques include, but are not limited to, the following:

- a) Comparison of proposed prices received in response to the solicitation. Normally, adequate price competition establishes price reasonableness;
- b) Comparison of previously proposed prices and previous Government and commercial contract prices with current proposed prices for the same or similar items, if both the validity of the comparison and the reasonableness of the previous price(s) can be established;
- c) Use of parametric estimating methods/application of rough yardsticks (such as dollars per pound or per horsepower, or other units) to highlight significant inconsistencies that warrant additional pricing inquiry;
- d) Comparison with competitive published price lists, published market prices of commodities, similar indexes, and discount or rebate arrangements;

- e) Comparison of proposed prices with independent SunLine cost estimates;
- f) Comparison of proposed prices with prices obtained through market research for the same or similar items; and
- g) Analysis of pricing information provided by the offeror.

The first two techniques are the preferred techniques. However, if the Contracting Officer determines that information on competitive proposed prices or previous contract prices is not available or is insufficient to determine that the price is fair and reasonable, the Contracting Officer may use any of the remaining techniques as appropriate to the circumstances applicable to the acquisition.

Value analysis can give insight into the relative worth of a product and the SunLine may use it in conjunction with the price analysis techniques listed in this section.

#### **604 COST ANALYSIS**

Cost analysis is the review and evaluation of the separate cost elements and profit in an offeror's or contractor's proposal (including cost or pricing data or information other than cost or pricing data), and the application of judgment to determine how well the proposed costs represent what the cost of the contract should be, assuming reasonable economy and efficiency.

SunLine may use various cost analysis techniques and procedures to ensure a fair and reasonable price, given the circumstances of the acquisition. Such techniques and procedures include the following:

- a) Verification of cost or pricing data and evaluation of cost elements, including:
  1. The necessity for, and reasonableness of, proposed costs, including allowances for contingencies,
  2. Projection of the offeror's cost trends, on the basis of current and historical cost or pricing data,
  3. Reasonableness of estimates generated by appropriately calibrated and validated parametric models or cost-estimating relationships, and



4. The application of audited or negotiated indirect cost rates, labor rates, and cost of money or other factors;
- b) Evaluating the effect of the offeror's current practices on future costs. In conducting this evaluation, the Contracting Officer shall ensure that the effects of inefficient or uneconomical past practices are not projected into the future. In pricing production of recently developed complex equipment, the Contracting Officer should perform a trend analysis of basic labor and materials, even in periods of relative price stability;
  - c) Comparison of costs proposed by the offeror for individual cost elements with:
    - 1) Actual costs previously incurred by the same offeror,
    - 2) Previous cost estimates from the offeror or from other offerors for the same or similar items,
    - 3) Other cost estimates received in response to the SunLine's request,
    - 4) Independent Government cost estimates by technical personnel, and
    - 5) Forecasts of planned expenditures;
  - d) Verification that the offeror's cost submissions are in accordance with the contract cost principles and procedures in Part 31;
  - e) Review to determine whether any cost or pricing data necessary to make the contractor's proposal accurate, complete, and current have not been either submitted or identified in writing by the contractor. If there are such data, the Contracting Officer shall attempt to obtain them and negotiate, using them or making satisfactory allowance for the incomplete data;
  - f) Analysis of the results of any make-or-buy program reviews, in evaluating subcontract costs.

Signature \_\_\_\_\_ Date \_\_\_\_\_

**SunLine Transit Agency**

**DATE:** March 27, 2019 **DISCUSSION**

**TO:** Board Operations Committee

**FROM:** Brittney B. Sowell, Clerk of the Board/Public Affairs Advisor

**RE:** Legislative Updates

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**Background**

SunLine Transit Agency's Board Operations Committee meets on a routine basis to review Agency policies and procedures. With the recent committee restructuring, staff recognized that it would be a good opportunity to increase the number of updates and discussion brought forward to this body. As such, moving forward, all legislative matters and advocacy efforts being undertaken by SunLine will be discussed with the Board Operations Committee for Board member feedback.

Updates will encompass changes and news on local, state and federal levels that affect SunLine and the transit industry. At times, the Agency will take a supporting or opposing position on proposed legislation and staff will engage with the Board Operations Committee to gather input on the matter.