I. CALL TO ORDER AND ROLL CALL

II. EMERGENCY ITEMS
   A. Discussion/Action of emergency items, if necessary.

III. PUBLIC COMMENTS
Any member of the public may address the Committee for a period not to exceed three minutes on any item of interest not on the agenda within the jurisdiction of the Committee. The Committee will listen to all communication, but in compliance with the Brown Act, will not take any action on items that are not on the agenda.

IV. APPROVAL OF CONSENT CALENDAR
   A. Approval of Management Committee Draft Minutes: September 14, 2011 Page 4
   B. Receive and File:
      1. ICTC Board Draft Minutes: October 26, 2011 Page 9
      2. ICTC SSTAC of Imperial Valley Draft Minutes: October 5, 2011
      3. ICTC TAC Subcommittee Draft Minutes: October 27, 2011

V. REPORTS
   A. ICTC Executive Director
   B. Southern California Association of Governments
   C. California Department of Transportation – District 11
   D. Committee Member Reports

CITIES OF BRAWLEY, CALEXICO, CALIPATRIA, EL CENTRO, HOLTVILLE, IMPERIAL, WESTMORLAND, IMPERIAL IRRIGATION DISTRICT AND COUNTY OF IMPERIAL
VI. DISCUSSION CALENDAR

A. Update on the status of the transition process for County employees into the ICTC

VII. ACTION CALENDAR

A. ICTC Purchasing Policy  Page 17

ICTC staff requests that ICTC Management Committee forward this item to the ICTC Commission for review and approval after public comment, if any:

1. Approve the FY 2011-12 ICTC Purchasing Policy

B. ICTC Disadvantaged Business Enterprise (DBE) Goal for FY 2011-12 for FTA funds  Page 97

ICTC staff requests that ICTC Management Committee forward this item to the ICTC Commission for review and approval after public comment, if any:

1. Approve the proposed FY 2011-12 DBE goal of 1.4%, for distribution for public comment.
2. Direct staff to return with this item in January 2012 for review and adoption of the proposed DBE goal after the public review process has been completed.

VIII. NEXT MEETING DATE AND PLACE

The next meeting of the Management Committee will be held on Wednesday, December 14, 2011 at 10:30 a.m., at the City of Westmorland, Westmorland CA.

IX. ADJOURNMENT

A. Motion to Adjourn
IV. CONSENT CALENDAR

A. APPROVAL OF ICTC MANAGEMENT COMMITTEE MINUTES

SEPTEMBER 14, 2011
VOTING MEMBERS PRESENT:

City of Brawley                Rosanna Bayon Moore
City of Calipatria             Rom Medina
City of El Centro              Ruben Duran
City of Holtville              Alex Meyerhoff
City of Imperial               Marlene Best
County of Imperial             Jerry Santillan
County of Imperial             William Brunet

(Non-voting) ICTC               Mark Baza

STAFF PRESENT: Kathi Williams, David Salgado, Cristi Lerma

OTHERS PRESENT: Sam Amen (Caltrans), Chili Cilch (Caltrans), Bill Figge (Caltrans), Ross Cather (Bill Figge), Grace Conner (El Centro)

The following minutes are listed as they were acted upon by the Imperial County Transportation Commission Management Committee and as listed on the agenda for the meeting held Wednesday, September 14, 2011 together with staff reports and related documents attached thereto and incorporated therein by reference.

I. CALL TO ORDER AND ROLL CALL

Chairman Medina called the Committee meeting to order at 10:45 a.m. Roll call was taken. Introductions were made.

II. EMERGENCY ITEMS

There were none.

III. PUBLIC COMMENTS

There were none.

IV. CONSENT ITEMS

A motion was made by Best, seconded by Meyerhoff to approve consent items 4A through 4C. Motion carried unanimously.

A. Approved ICTC Management Committee Minutes for July 27, 2011.

B. Received and filed:
ICTC MANAGEMENT COMMITTEE MINUTES  SEPTEMBER 14, 2011

1. ICTC Board Draft minutes for July 27, 2011
2. ICTC SSTAC of Imperial Valley Minutes for August 3, 2011
3. ICTC TAC of Imperial Valley Draft Minutes for July 28, 2011

C. Amendment to the Agreement for the FY 2010-11 Financial Service Audit of the Regional Transportation Planning Agency

1. Authorized the Chairman to sign the amendment to the agreement for financial audit services for FY 2010-11, with the firm Hutchinson and Bloodgood for the not to exceed fee of $32,800.00 effective July 1, 2011 through June 30, 2012.

V. REPORTS

A. ICTC Executive Director
Ms. Williams’ announcement and updates included:
- An overview was given for the Dial-A-Ride (DAR) Consolidated Request for Proposals (RFP). The RFP is currently in draft form with the scope of work still in process. Ms. Williams requested from each agency a letter from the City Manager stating whether they would like to participate or opt out of the process. The letter is due on September 30th, 2011 according to the schedule given to city staff. The tentative schedule for the process will be: Distribution of the RFP in January 2011, responses by February 2011, with a new or different contract to begin on July 1, 2011.

Mr. Baza’ announcements and updates included:
- A Council of Governments (COG) Workshop is scheduled for September 30, 2011 at Coachella Valley Association of Governments (CVAG). All City Managers and Commissioners are invited to attend. The goal of the workshop is to give us goals and revenues of other agencies.
- The ICTC Budget for Fiscal Year 2011-2012 is now posted on the ICTC website at www.imperialctc.org.

B. Southern California Association of Governments
- Mr. Baza in the absence of a SCAG representative gave a few announcements:
  o Applications are being viewed for the Regional Affairs Officer for the Imperial office.
  o An opportunity with SCAG to obtain a receptionist to be shared with ICTC will be shortly posted.
- Ms. Bayon Moore gave a few updates:
  o New member orientation will take place at the regional office on September 26, 2011
  o The region wide luncheon with City Managers will be on September 28, 2011
  o Arnold San Miguel will be filling in for Imperial and Coachella Valley’s until a replacement is found for the Regional Affairs Officer.

C. California Department of Transportation – District 11
Mr. Sam Amen had the following updates:
- Dogwood project is moving forward.
- The SR 98 widening project will begin the design phase soon. This project was split into 4 phases due to funding.
- Brawley Stage 3 is moving forward and remains on schedule.

D. Committee Member Reports
- Ms. Best announced that Imperial City Hall will be rededicated on September 29th at 5:30 p.m. It will also be a Chamber of Commerce mixer.
VI. ACTION CALENDAR

A. Statewide Local Streets and Roads Assessment Project

Mr. Baza stated that the ICTC received a request from the California State Association of Counties (CSAC) and the League of Cities. This request was in regards to a contribution from all California regional agencies for financing for a Statewide needs assessment report on the condition of local streets and roads. A Statewide report was previously prepared in 2009. Both organizations indicate that this prior report was very beneficial in providing information to the several key organizations and the State legislature, as decisions were made on funding policies for local infrastructure, roadways and transportation. The total cost to update the report is estimated to be $250,000. Our region’s share would be $1,051. Staff would recommend participation in this process as the cost is minimal as compared to the possible benefits for our local streets and roads systems.

It is requested the ICTC Management Committee forward this item to the ICTC Commission for review and approval:

1. Authorize the Chairman to sign a resolution authorizing the Imperial County Transportation Commission to contribute Regional Surface Transportation Program (RSTP) Funding to the ongoing Statewide Local Streets and Roads Needs Assessment Project.

A motion was made by Meyerhoff, seconded by Brunet, Motion carried unanimously.

B. IMPERIAL VALLEY TRANSIT, Regional Fixed Route Bus Transit Service Year End Invoicing for the IVT - Blue and Green Lines for FY 2010-11

Ms. Williams stated that the FY 2010-11 year end invoices were processed, ICTC staff identified that the fare revenue for IVT was higher than anticipated. The subsidy was therefore underutilized. This continues to reflect the increasing demand and increasing passenger ridership on the main line bus routes. As the FY 2010-11 year end invoices were processed, ICTC staff identified that the fare revenues for IVT Blue and Green Lines were lower than anticipated. However, there continues to be an increasing demand and passenger ridership continues to increase. Because the IVT system did not utilize its full subsidy amount, there is a cost savings that can be utilized to make an adjustment on the IVT Blue and Green Lines final invoice.

It is requested that ICTC Management Committee forward this item to the ICTC Commission for review and approval.

1. Authorize a FY 2010-11 year end payment to FIRST TRANSIT Inc. in an amount of $53,643.00 from cost savings for the Imperial Valley Transit (PY 01265) for a final payment for the IVT Blue and Green Lines (PY 01264).

A motion was made by Best seconded by Santillan, Motion carried unanimously.

C. Adoption of the Passenger Statistical Summary (PSS) Project for FY 2010-11 for Imperial Valley Transit (IVT)

Ms. Williams stated that due to the receipt of federal grants for public transit, federal reporting requirements state that transit systems are required to report on “passenger miles”. This process takes place every three years and is utilized to track the individual distance or mileage travelled by each boarding passenger. The County has administered this project since its original inception in
2008, on behalf of the ICTC. The County awarded the second iteration of this project for FY 2010-11 to the firm of *Rea and Parker Research, Inc.* again in May 2010. The project work effort commenced on July 1, 2010. The consultant has since developed the sampling methodology, and acquired staff who will monitor various bus routes throughout the fiscal year. A final report will be prepared based on the guidance of the federal requirements. This final report is due to the federal agency by October 2011.

It is requested the ICTC Management Committee forward this item to the ICTC Commission for review and approval:

1. Approve the Passenger Statistical Sampling Project for FY 2010-11.
2. Direct staff to forward the report to the National Transit Database (NTD)

A motion was made by Santillan, seconded by Best, *Motion carried* unanimously.

D. Triennial Performance Audit of the Administration/Management of the Imperial County Transportation Commission - FY 2007-08, 2008-09, 2009-10

Ms. Williams introduced Mr. Derek Wong, with the firm PMC, who reported recommendations and findings.

It is requested the ICTC Management Committee forward this item to the ICTC Commission for review and approval:

1. Approve the FY 2007-08, 2008-09, 2009-10 Triennial Performance Audit of the Imperial County Transportation Commission.
2. Direct staff to forward the FY 2007-08, 2008-09, 2009-10 Triennial Performance Audit of the Imperial County Transportation Commission to Caltrans.

A motion was made by Santillan, seconded by Duran, *Motion carried* unanimously.

I. INFORMATIONAL ITEMS
   A. An overview of the Value Analysis Study conducted in partnership with Imperial County and the City of El Centro to improve the oversight process for local projects on the State Highway System was presented by Ms. Chili Cilch of Caltrans. Ms. Cilch shared key study findings, recommendations, including plans for implementing process improvements. For more information on this study, you may contact Ms. Cilch at 619 688-4217. There will also be one more presentation made at the October 26th, ICTC meeting in El Centro.

VII. NEXT MEETING DATE AND PLACE
   The next meeting of the Management Committee will be held on **Wednesday, October 12, 2011** at **10:30 a.m.**, at the **City of Westmorland**, Westmorland CA.

VIII. ADJOURNMENT
   A. Motion was made by Santillan and seconded by Bayon Moore, *Motion carried* and meeting adjourned at 12:25 p.m.
IV. CONSENT CALENDAR

B. RECEIVE AND FILE:

ICTC BOARD DRAFT MINUTES:  
OCTOBER 26, 2011

ICTC SSTAC OF IMPERIAL VALLEY  
DRAFT MINUTES:  
OCTOBER 5, 2011

ICTC TAC SUBCOMMITTEE DRAFT MINUTES:  
OCTOBER 27, 2011
IMPERIAL COUNTY TRANSPORTATION COMMISSION
MINUTES FOR OCTOBER 26, 2011
6:00 p.m.

VOTING MEMBERS PRESENT:

City of Brawley Ryan Kelley
City of Calipatria Hector Cervantes
City of El Centro Sedalia Sanders (Vice-Chair)
City of Holtville David Bradshaw (Chair)
City of Imperial Mark Gran
City of Westmorland Larry Ritchie
County of Imperial Jack Terrazas
County of Imperial Mike Kelley

NON-VOTING MEMBERS PRESENT:

Caltrans District 11 Ross Cather (alt.)

VOTING MEMBERS NOT PRESENT:

City of Calexico Luis Castro
Imperial Irrigation District John Pierre Menvielle

STAFF PRESENT: Mark Baza, Kathi Williams, Cristi Lerma, David Salgado

OTHERS PRESENT: Sam Amen, Caltrans

The following action minutes are listed as they were acted upon by the Imperial County Transportation Commission and as listed on the agenda for the meeting held Wednesday October 26, 2011 together with staff reports and related documents attached thereto and incorporated therein by reference.

I. CALL TO ORDER AND ROLL CALL

Chair Bradshaw called the Commission meeting to order at 6:00 p.m. Roll call was taken.

II. EMERGENCY ITEMS

A. There were none.

III. PUBLIC COMMENTS

There were none.

IV. APPROVAL OF CONSENT CALENDAR

A motion was made by M. Kelley and seconded by Sanders to approve the consent calendar; Motion carried unanimously.

4A. Approved ICTC Board Minutes for September 28, 2011
4B. Received and filed ICTC TAC Draft minutes for September 29, 2011
   Received and filed ICTC SSTAC minutes for September 7, 2011
V. REPORTS

A. ICTC Executive Director

- Mr. Baza stated that he is working on two Tiger III grant applications for the City of El Centro and City of Calexico. He stated that he is extremely optimistic about their approval. Both projects have regional significance.

B. Southern California Association of Governments (SCAG)

Mr. Baza had the following announcements and updates:
- SCAG and ICTC are still proceeding with the hiring for a shared office assistant.
- SCAG made an offer for the Regional Affairs Officer but no decision has been made that ICTC staff is aware of.

C. California Department of Transportation

Mr. Cather had the following announcements and updates:
- Brawley Stage 3 is moving forward and remains on schedule.
- The Value Analysis Study has been finalized. A presentation will be made at the November ICTC meeting.

D. Commission Member Reports

- Mr. Terrazas provided an update regarding the SCAG 2012 Regional Transportation Program (RTP). SCAG staff have had discussions about obtaining non-traditional funds sources to financially constrain the RTP. The goal is to incorporate as many funding opportunities as possible including traditional and non-traditional fund sources to be able to meet the targets in the Greenhouse Gas Emissions strategies.
- Ms. Sanders stated that the League of Cities quarterly meeting will be on November 10, 2011 in the City of Imperial.
- Mr. R. Kelley stated that the Brawley Cattle Call festivities begin on November 5, 2011 with the Chili Cook Off. There will be festivities everyday of the week with Rodeo on November 13, 2011.
- Mr. Ritchie announced that the Honey Festival will be on November 19, 2011 at the park in Westmorland.

VI. ACTION CALENDAR

A. Request from the Imperial County Transportation Commission (ICTC) to participate in the Imperial County Employees Retirement System (ICERS)

Mr. Baza stated that with the H.R. consultant’s help ICTC has done extensive research for the transition for County employees into ICTC employees to include retirement benefits. It is ICTC’s request to obtain retirement services through ICERS. This will allow ICTC to maintain its current level of services to the employees and allow ICTC to have access to an established and stable retirement system.

1. Authorize the Executive Director to request ICTC’s participation into the Imperial County Employees System (ICERS) for all staff, including the Executive Director.

A motion was made by M. Kelley and seconded by R. Kelley, Motion carried with a unanimous 2/3rds super majority vote: R. Kelley, H. Cervantes, S. Sanders, D. Bradshaw, M. Gran, L. Ritchie, J. Terrazas, M. Kelley were present.
VII. NEXT MEETING DATE AND PLACE

The next meeting of the Imperial County Transportation Commission will be held on Wednesday, November 16, 2011 at 6:00 p.m., at the Imperial Irrigation District, William R. Condit Auditorium 1285 Broadway, El Centro, CA.

VIII. ADJOURNMENT

Meeting adjourned at 6:36 p.m.
TECHNICAL ADVISORY COMMITTEE
DRAFT MINUTES

October 27, 2011

Present:

Yazmin Arellano City of Brawley
Gordon Gaste City of Brawley
Abraham Campos City of El Centro
Nick Wells City of Holtville
Ana Salazar The Holt Group/City of Holtville
Virginia Mendoza (Chair) City of Imperial
Jorge Galvan City of Imperial
Wayne Walker City of Westmorland
Bill Brunet County of Imperial
John Gay County of Imperial

Others:

Steven Sullivan City of Brawley
Ed Delgado County of Imperial
Emmanuel Sanchez County of Imperial - APCD
Fumi Galvan The Holt Group
Mark Baza ICTC
Kathi Williams ICTC
Cristi Lerma ICTC
David Salgado ICTC
Erwin Gojuangco Caltrans
Luis Medina Caltrans

1. The meeting was called to order by Chair Virginia Mendoza at 10:05 a.m. A quorum was present. Introductions were made.

2. A motion was made to adopt the September 29, 2011 minutes. (Gaste/Campos) Motion Carried.

3. DBE/Good Faith Efforts

   It was concluded at the prior TAC meeting that there were many questions regarding DBE/Good Faith Efforts. The topic was to be revisited and Mr. Gojuangco joined today’s meeting to answer
questions and help clarify any ambiguity. Mr. Baza introduced the topic by stating that DBE challenges are not unique to this region. FHWA is requiring Caltrans and other state DOT’s to ensure compliance with Good Faith Efforts during the procurement process.

Mr. Gojuangco stated that he is aware that the UDBE/Good Faith Efforts are impacting Imperial County. When the DBE program changed from race neutral to race conscious in June of 2009 the emphasis was to train everyone. Mr. Gojuangco distributed the most recent office bulletin that can also be found on the Caltrans website. Some of the concerns FHWA has had are: 1) not enough or adequate time is given by the lowest bidder; and 2) Not enough UBDE’s are being contacted. When this happens the agency’s process is found to be non-responsive and is asked to re-advertise. Mr. Gojuangco suggested that agencies submit the memo with UDBE documents ahead of time and Caltrans will work very hard to get back to the agencies within a 10 day window. Therefore, if there are issues they can be addressed before the contract is awarded. Personal stories were shared and there was further discussion on the issue.

4. Caltrans Updates / Announcements

- Mr. Medina distributed a current obligation plan for the region for FY 2011-12 and discussed projects with each agency. No significant issues were noted at this time.
- Mr. Gojuangco stated that a FHWA memo recently revealed that the provisions to Buy America waiver will now apply to the purchase of vehicles utilizing CMAQ funds.
- Mr. Medina stated that he will have a final report next month regarding FY 2010-11 obligations.
- State Safe Routes to School program Cycle 10 rolls out in December 2011.

5. ICTC Staff Updates / Announcements

Mr. Salgado gave an update regarding the items discussed at the Commission meeting the night before.
- SCAG is in the process of hiring an office assistant and will be shared by SCAG and ICTC. A SCAG representative has not been hired; however SCAG has conducted interviews, offered the job to one of the applicants, and is currently in negotiations.
- Mr. Baza is working on two Tiger III grant applications for the City of El Centro and City of Calexico. Both projects have regional significance.
- The ICTC Board approved ICTC’s request to participate in the Imperial County Employees Retirement System (ICERS). This action item required a super majority approval and will be on the ICERS Agenda in early November.

6. General Discussion

- There was none.

7. Meeting adjourned at 11:26 a.m.
Present

Voting Attendees:
Michael L. Hack  Consumer Chair (Chair)
Rebecca Sanchez  Area Agency on Aging (Vice Chair)
Heddy McNeer  Consumer
Kathi Williams  CTSA – ICTC
David Salgado  CTSA – ICTC
Jose Meza  ARC – Imperial Valley

Non-Voting Attendees:
Mark Baza  ICTC
Cristi Lerma  ICTC
David Jones  IVT/Calexico Dial-A-Ride
Marv Balin  IVT/Calexico Dial-A-Ride

1. Chair Hack called the meeting to order at 10:05 am. A quorum was present. Introductions were made.


3. Reappointment of Voting Positions
   - A motion was made to extend the terms for Heddy McNeer, Mike Hack and David Salgado from November 2011 to November 2014. (Williams/Sanchez) Motion Carried.

4. Installation of Officers
   - A motion was made to appoint Mike Hack as the Chair and Rebecca Sanchez as the Vice-Chair for fiscal year 2011-12. (Williams/Salgado) Motion Carried.

5. CTSA Reports
   - Mr. Salgado and Ms. Williams had the following updates:
     - The City of Imperial installed bus stop shelters on La Brucherie and Aten Roads. The installation of 2 benches is still pending; however the shelters are very nice.
     - Both Mr. Salgado and Ms. Williams attended the Cal Act Conference in Berkeley, CA in September. An ADA Roundtable attended by agencies from throughout the State and a tour of a zero emission hydrogen fuel cell bus for AC Transit in Oakland were attended by Mr. Salgado.
Both Mr. Salgado and Ms. Williams took a tour of the Gillig bus factory in Hayward, CA. The Gillig factory produces all their brand of buses in-house from start to finish.

ARC was awarded the FTA 5310 grant for FY 2010-11. The funds will be programmed into the RTIP in about 3 months.

The Triennial Audit was presented to the Commission by Derek Wong of PMC. The Commission approved the transmittal of the audit to CALTRANS. There were no significant issues.

The Consolidated Dial-A-Ride RFP process is underway. Cities that are participating are Brawley, Calexico, El Centro and Imperial. Cities will still be able to choose to opt out after reviewing the proposals.

The draft report for the Short Range Transit Plan’s evaluation of the transit system will be available soon. Operators and member agencies will be asked to comment on the report.

ICTC staff continues to receive and process large amounts of ADA applications for IVT Access.

The Passenger Statistical Sampling project was presented by Dr. Parker of Rea and Parker Associates. The Commission approved the project and directed staff to forward the report to the Federal Transit Administration. The report estimates that there are over 950,000 passengers on Imperial Valley Transit yearly.

ICTC is going out to bid for 2 hybrid vehicles for staff use.

6. Operator Reports

- Mr. Balin stated that the new IVT Access reservation system Trapeze is working well. He said that staff continues to learn more about its features. In an emergency such as the recent power outage, staff logs everything manually and inputs it into the system as soon as electricity is restored.
- Mr. Salgado stated that he rode along with the Med-Express bus to San Diego recently and that the service continues to provide patients accessibility to medical facilities in San Diego.
- Mr. Hack inquired as to when the Dial-A-Ride would be providing service on Saturdays again. Ms. Williams stated that staff has informed cities to communicate with their contractors.
- Mr. Balin indicated that a survey was conducted on the Calexico Dial-A-Ride that was requested by Calexico City Council. Overall the City of Calexico wanted to see if there is a need to reduce service hours on Sunday. City staff will review the surveys and let IVT know of the results.
- Ms. Williams asked if the El Centro Dial-A-Ride was currently experiencing wheelchair capacity issues. Mr. Meza indicated that the service was full. Ms. Williams indicated that the ICTC staff are receiving calls regarding lack of access on the El Centro Dial-A-Ride. ICTC staff will request a meeting with City staff to relay concerns and comments.
- Ms. Williams stated that as a result of the Triennial Audit, it was revealed that there are some farebox issues with the West Shores Dial-A-Ride. A meeting with the contactor will be scheduled soon to further discuss the concerns.
- Mr. Balin stated that there are plenty of new IVT Access brochures available and encouraged SSTAC members to take some back to their agencies.

7. General Discussion

- Ms. Sanchez stated that the Senior Directory will be coming out in November. Only hard copies will be available.

8. Adjournment

- Meeting adjourned at 11:05 a.m.
VII. ACTION CALENDAR

A. ICTC PURCHASING POLICY
November 1, 2011

ICTC Management Committee
Imperial County Transportation Commission
1405 N. Imperial Ave Suite 1
El Centro, CA 92243

SUBJECT: ICTC Purchasing Policy

Dear Committee Members:

As a recipient of Federal Transit Administration (FTA) dollars, and as a good management practice the ICTC is required to adopt and implement a Purchasing Policy document. ICTC staff have researched purchasing policies from several organizations and developed the attached document. This document is expected to be updated and amended as additional programs and projects, funding sources and other opportunities become available.

ICTC staff requests that ICTC Management Committee forward this item to the ICTC Commission for review and approval:

1. Approve the FY 2011-12 ICTC Purchasing Policy

Sincerely yours,

MARK BAZA
Executive Director

Attachment

MB/ksw/cl

CITIES OF BRAWLEY, CALEXICO, CALIPATRIA, EL CENTRO, HOLTVILLE, IMPERIAL, WESTMORLAND, IMPERIAL IRRIGATION DISTRICT AND COUNTY OF IMPERIAL

S:\KSW\Projects\ICTC\purchasing policy FY 11-12 MC
Purchasing Procedures

November 2011
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PURPOSE OF PROCUREMENT MANUAL

As a recipient of public funds, Imperial County Transportation Commission (ICTC) management is responsible for ensuring that funds are properly spent for the purposes for which they are intended. The purpose of this manual is to make certain that all funds are expended according to sound procurement principles and to provide uniform procurement procedures to be followed by all ICTC personnel. It is not intended to create rights for third parties. The Federal Transit Administration (FTA), the Federal Highway Administration (FHWA), the California Department of Transportation (Caltrans), and other government agencies providing funds to ICTC, expect ICTC to use its own procurement procedures to administer its projects, ICTC also must adhere to the standards established by applicable state and federal law.

The procedures in this manual are intended to ensure ICTC’s compliance with Commission policies and, when applicable, FTA Circular 4220.1F, and Title 49, Part 18 of the Code of Federal Regulations, as these documents establish the standards and guidelines for the procurement of supplies, equipment, construction, and services for all federal programs. Recognizing that public funds may be expended, ICTC is responsible for ensuring full and open competition and equitable treatment of all potential sources in the procurement process. ICTC’s staff is responsible for planning, solicitation, award, administration, and documentation of contracts. This manual describes the steps necessary to assure public funds are expended properly and protect the integrity of ICTC’s procurement process.

All references to state or federal laws and regulations refer to those versions of the laws and regulations as may be updated or amended from time to time.
PART I – SPECIFIC POLICIES AND PROCEDURES

Part I of this manual contains or may reference specific policies and procedures that have been put into practice by ICTC due to local State of federal requirements. Part II of this manual contains appendices and supporting documentation. It is anticipated that this document will be amended and or revised as regulations, funding programs and other opportunities arise. For the purposes of this manual, even when not specifically indicated as such, “Executive Director” refers to the ICTC Executive Director or designee.

SECTION 001 – BACKGROUND

This manual sets forth the requirements ICTC uses in the solicitation, award, and administration of its third-party contracts with nongovernmental entities, whether the contract results in revenue or expense to ICTC. These requirements are based on the common grant rules, federal statutes, executive orders and their implementing regulations, FTA policy, FHWA policy, State of California Public Utilities Code, State of California Public Contract Code, State of California Labor Code, ICTC Commission and administrative policies, and all other local, state, and federal requirements relating to procurement and applicable to ICTC as a regional public agency.

Reference(s)
Appendix 1, FTA Circular 4220.1F

SECTION 002 – REFERENCES

The following federal and state regulations are incorporated by reference in this manual to the extent required by law.

2. Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), P.L. 102-240
4. 49 CFR part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments
5. 49 CFR part 19, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations
7. Executive Order 12612, “Federalism,” dated 10-26-87
8. FTA Master Agreement
13. Federal Brooks Act and State Mini-Brooks Act

Resource(s)
☐ None

Reference(s)
☐ Appendix 1, FTA Circular 4220.1F
SECTION 003 – APPLICABILITY OF COMPETITIVE PROCUREMENT REQUIREMENTS

The solicitation, award, and administration of third-party contracts must be carried out on a competitive basis, except in the instances set forth below. If the awardee of the ICTC contract will receive compensation from any source as a result of ICTC’s award, then a competitive process should be used to ensure equity and fairness.

1. If the requirements of sole source or limited competition procurement are met as set forth in Commission policy.
2. If contracting with another government agency pursuant to California Public Utilities Code section 132352.4(b) (2).
3. If ICTC chooses to use an alternate procurement method that is authorized for state or local agencies by state or federal law, including, but not limited to, use of a competitive negotiation process in accordance with the provisions of Article 7.5 (commencing with Section 20216) of Chapter 1 of Part 3 of Division 2 of the Public Contract Code (design-build), Public Contract Code sections 20209.7, 20216, 20341, and 20351 et seq., and Public Utilities Code section 120222 et seq.

Procedure

- None

- Appendix 1, FTA Circular 4220.1F, Chapter VI
- State of California Public Utilities Code Sections 125223 and 125224
- State of California Public Contract Code Sections 20351 and 20352

SECTION 004 – DEFINITIONS

All definitions in 49 U.S.C. § 5302 are applicable. For purposes of the manual, the following additional definitions are provided:

1. “Approval, Authorization, Concurrence, Waiver” means a deliberate written statement of an official authorized to permit ICTC to take or omit action required by a contract, Commission Policy or 4220.1F, which action may not be taken or omitted without additional permission. An oral permission or interpretation has no legal force, authority, or effect.
2. “Best Value” is a competitive, negotiated procurement process in which ICTC reserves the right to select the most advantageous offer by evaluating and comparing factors in addition to cost or price such that it may acquire technical superiority, even if it must pay a premium price. A “premium” is the difference between the price of the lowest-priced proposal and the one that ICTC believes offers the best value. ICTC should disclose these factors in its solicitation.
3. “Bidder” refers to a respondent to an ICTC solicitation document, such as an invitation for bids (IFB) or request for quotes (RFQ), which will lead to a selection based on cost.
4. “Commission,” “Owner,” “Grantee,” or “ICTC” means the Imperial County Transportation Commission.
5. “Cardinal Change” means a major deviation from the original purpose of the work or the intended method of achievement or a revision of contract work so extensive, significant, or cumulative that the contractor is required to perform very different work from that described in the original contract.
6. “Change Order” means an order authorized by ICTC directing the contractor to make changes, pursuant to contract provisions for such changes, with or without the consent of the contractor.


8. “Contract Documents” means all of the contents of the solicitation documents and associated addenda, contract drawings, technical reports, technical specifications, and documented agreements. Said documents shall be considered as part of any contract made pursuant to a solicitation.

9. “Contractor,” “consultant,” “vendor,” “provider” “operator” or “seller” is the successful bidder to whom a contract is awarded.

10. “Project manager Staff” means the contract analyst or specialist assigned to the procurement who serves as the single point of contact for all correspondence during the procurement and/or contract administration process. This person also is responsible for relating to commercial terms and conditions during the period of performance of the agreement to the consultant or contractor.

11. “Constructive Change” means an act or omission that, although not identified by a “change order,” does in fact cause a change in the contract work.

12. “Cooperative Agreement” means an instrument by which FTA or FHWA awards federal assistance to support a project in which it takes an active role or retains substantial control.


14. “Design-Bid-Build Project” means a construction project under which an architect or engineer is commissioned to prepare drawings and specifications under a design services contract, and a separate contract is let for construction by engaging the services of a contractor through sealed bidding or competitive negotiations to complete delivery of the project.

15. “Design-Build Project” means: (1) a contract to design and build a public transportation system, or an operable segment of such system, that conforms to specific requirements in statute and ICTC policy; and (2) may include an option to finance, or operate for a period of time, the system or segment or any combination of designing, building, operating, or maintaining such system or segment. A “design-build project” also means a construction project to design and construct a public transportation facility.


17. “Executive Director” refers to the ICTC Executive Director.

18. “FHWA” refers to the Federal Highway Administration.

19. “Force Account” means ICTC’s own labor forces and equipment in the context of performing project work.

20. “FTA” refers to the Federal Transit Administration.

21. “Full and Open Competition” means that all responsible sources are permitted to compete.

22. “Governmental Recipient” means a state or local government, such as ICTC, that receives federal funding and therefore must comply with the Common Grant Rule at 49 CFR Part 18.

23. “Grand Total Bid Price” means the grand total price and shall include all direct and indirect labor and material costs, taxes, duties, fees, and any other charges applicable to complete the total requirements as specified in the solicitation document, including all addenda, contract drawings, and technical specifications.

24. “Grant” means the instrument by which the FTA awards federal assistance to support a particular project in which the FTA does not take an active role or retain substantial control.
25. “Grantee” means the public or private entity to which a grant or cooperative agreement is awarded. The grantee is the entire legal entity even if only a particular component of the entity is designated in the assistance award document. For the purposes of this policy, “grantee” also includes any sub grantee of the grantee. Furthermore, a grantee is responsible for assuring that its sub grantees comply with the requirements and standards of this policy and that sub grantees are aware of the requirements imposed upon them by federal statutes and regulations.

26. “Hazardous Substances” and/or “Contaminated Materials” means any substance, waste, or material which is determined by any state, federal, or local governmental authority to be capable of posing a risk of injury to health, safety, and/or the environment, including, but not limited to, all substances, wastes, and materials designated or defined as hazardous, extremely hazardous, or toxic pursuant to Section 311 of the Clean Water Act, 33 USC Sections 1321, et seq., Section 1004 of the Resource and Conservation and Recovery Act, 42 USC Sections 6903, et seq., Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 USC Sections 9601, et seq.; Section 25141 of the Hazardous Waste Control Law, California Health and Safety Code Sections 25117, et seq.; Section 25316 of the Carpenter Presley-Tanner Hazardous Substance Account Act, California Health and Safety Code Section 25316; Section 25501 of the Hazardous Materials Release Response Plans and Inventory Law, California Health and Safety Code Sections 25281, et seq., as may be hereinafter amended.

27. “Job Order Contract (JOC)” means a competitively bid, firm fixed-price, indefinite quantity contract that is based upon specific unit pricing contained in a unit price book (prepared by the public agency or by independent commercial sources) setting forth detailed repair and construction items of work, including descriptions, specifications, units of measurement, and individual unit prices for each item of work. The JOC includes unit pricing for work at time of award, but not the specified quantity and location of the work to be performed. At the time a job order (JO) is issued, the scope of work (SOW) will identify the quantity and specific details and location of the work to be performed. A JOC may be used when it will result in a cost savings through economies of scale or expedite the delivery of work.

28. “Joint Procurement” (sometimes referred to as “cooperative procurement”) means a method of contracting in which two or more purchasers agree from the outset to use a single solicitation document and enter into a single contract with a vendor for delivery of property or services in a fixed quantity. A joint procurement is not drafted for the purpose of accommodating the needs of other parties that may later choose to participate in the benefits of that contract as such a contract is merely assignable to third parties to the extent the parties agree and the original procurement scope and amount are sufficient.

29. “Local Government” means a county, municipality, city, town, township, local public authority, or any agency or instrumentality of a local or regional government. This term does not include a local public institution of higher education.

30. “Master Agreement” means the FTA document incorporated by reference and made part of the FTA’s standard grant and cooperative agreements that contains the standard terms and conditions governing the administration of a project supported with federal assistance.

31. “Notice To Proceed (NTP)” is a written notice from the contract officer to a contractor authorizing the contractor to commence work and to start the performance period.

32. “Offeror” or “Proposer” refers to a respondent to an ICTC solicitation document, which will lead to a selection based on qualifications and possibly cost.

33. “Owner’s Representative,” “Engineer,” “Resident Engineer,” “Construction Manager,” means the authorized agents or representatives of ICTC designated to ensure strict conformance with the contract documents.
34. “Property” includes real property consisting of land and buildings, structures, or appurtenances on land, equipment, supplies, other expendable property, intellectual, and intangible property.

35. “Public Transportation” means transportation by a conveyance that provides regular and continuing general or special transportation to the public, but does not include school bus, charter, sightseeing, or intercity passenger rail transportation provided AMTRAK, (or a successor to such entity).

36. “Recipient” means the public or private entity to which the FTA or FHWA awards federal assistance through a grant, cooperative agreement, or other agreement. The term “recipient” includes “grantee,” each member of a consortium, joint venture, team, or partnership awarded FTA or FHWA assistance. Neither a contractor nor a subcontractor is a “recipient.”

37. “Revenue Contract” means a contract with the primary purpose of producing revenues or creating business opportunities involving the use of FTA- or FHWA-assisted property.

38. “Solicitation Documents” refers to the packet of materials provided to prospective consultants or contractors in the form of an IFB, request for proposal (RFP), and RFQ, etc., requesting a responsive bid, proposal, or a statement of qualifications.

39. “State” means any of the several states of the United States, District of Columbia, and the Commonwealth of Puerto Rico, any territory of the United States, or any agency or instrumentality of a state exclusive of local governments. “State” does not include a county, municipality, city, town, township, local public authority (which includes any public and Indian housing agency under the United States Housing Act of 1937), school district, council of governments (whether or not incorporated as a nonprofit corporation under state law), any other regional or interstate government entity (such as a regional transit authority), or any agency or instrumentality of a local government.

40. “State or Local Government Purchasing Schedule or Purchasing Contract” means an arrangement between state or local government with multiple vendors in which vendors agree to provide an option to the state or local government entities to acquire specific property or services in the future at established prices.

41. “Third-Party Contract” refers to any contract awarded by ICTC to a consultant, vendor, or contractor.

42. “Unsolicited Proposal” means a proposal that is innovative and unique; independently originated and developed by the offeror; prepared without ICTC’s supervision, endorsement, direction, or direct involvement; sufficiently detailed so that its benefits in support of ICTC’s mission and responsibilities are apparent; not an advance proposal for property or services that ICTC could acquire through competitive methods; and not an offer responding to ICTC’s previously published request for proposals.

43. “Value Engineering” means the systematic application of recognized techniques that identify the function of a product or service, establish a value for that function, and provide the necessary function reliably at the lowest overall cost.

44. “Written Order” means a written order signed by the Executive Director, or properly authorized representative or agent, mailed to the contractor at the address designated in his bid or to such other address he may designate in writing as its official place of business.

Reference(s)
- Appendix 1, FTA Circular 4220.1F, Chapter I
SECTION 005 – CONFORMANCE WITH THE LAW AND ICTC POLICIES AND PROCEDURES

ICTC should use procurement procedures that reflect applicable state and local laws and regulations, provided that the procurements conform to applicable federal law. All procurements and contracts must be approved in accordance with ICTC’s policies concerning delegation of authority (See Section 035 (Delegation of Authority) of this manual for additional information.

Reference(s)
- Appendix 1, FTA Circular 4220.1F, Chapter II

SECTION 006 – CONTRACT DEVELOPMENT AND ADMINISTRATION

Policy
For purchases that do not involve federal funds and that do not need any specialized terms and conditions regarding matters such as allocation of risk or liability due to the nature of the procurement and not exceeding $100,000, a PO may be used without a contract. For purchases in excess of $3,001 involving federal funds, however, all applicable federal requirements and certifications are required for the PO or contract. For purchases exceeding $100,000, a contract must be used in order to ensure provisions are included to protect ICTC’s interests. ICTC will implement a contract development and administration process that ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or PO’s.

Resource(s)
- none

SECTION 007 – STANDARD OF CONDUCT FOR ICTC STAFF INVOLVED IN PROCUREMENTS

ICTC’s staff is required to follow the ICTC Standard of Conduct Policy when carrying out procurement or contracting functions.

Resource(s)
- Appendix 1, FTA Circular 4220.1F, Chapter III
- Appendix 2, ICTC Standard of Conduct Policy

SECTION 008 – STATEMENT OF NECESSITY TO ENSURE MOST EFFICIENT AND ECONOMIC PURCHASE

It is ICTC policy to review proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives and any other appropriate analysis to determine the most economical approach. The project manager will review all requisitions for compliance with this policy.

1. ICTC adopts adequate procedures for determining the types and amounts of property and services it needs to acquire. These procedures will avoid the purchase of unnecessary property and services not needed (including duplicates and quantities or options not intended to be used). ICTC
monitors compliance of these procedures by determining what is necessary, current, and reasonably expected at the time the contract was executed.

a. ICTC may not add quantities or options to contracts solely to permit assignment to another party at a later date. These limits on assignments do not preclude joint procurements that are entered into simultaneously by two or more parties to obtain advantages unavailable for smaller procurements.

b. If the quantity of property or services reasonably believed as needed at the time of contract award changes, ICTC may assign its unneeded contract authority to another entity.

2. ICTC considers procurement size on whether to consolidate or break out the procurement to obtain a more economical purchase.

a. When economically advantageous to enter into joint procurements with others government agencies, ICTC will be responsible for undertaking the joint procurement and may, upon contract award, assign to the other participants responsibilities for administering those parts of the contract affecting their property or services.

b. ICTC may break out procurements into smaller amounts to provide greater opportunities for DBEs, small and minority firms, and women’s business enterprises to participate. ICTC will not split a larger procurement merely to gain the advantages of small purchase procedures.

3. ICTC contracts may include options to ensure the future availability of property or services so long as it is able to justify them as needed for its projects. An option, for a specified time, may allow ICTC to acquire more than what was originally procured or also may extend the term of the contract.

4. To obtain the best value, ICTC reviews lease versus purchase alternatives and, if necessary, determine the more economical alternative. Before leasing an asset, ICTC makes a written comparison of the cost of leasing compared with purchasing or constructing the asset. Costs used in the comparison are reasonable, based on realistic current market conditions, and based on the expected useful service life of the asset.

5. ICTC is responsible for preparing specifications that describe its needs, while assuring that those specifications are not exclusionary, discriminatory, unreasonably restrictive, or otherwise in violation of federal laws or regulations. The specifications describe the property or services to be procured and state how the proposals will be evaluated.

Resource(s)
☐ None

Reference(s)
☐ Appendix 1, FTA Circular 4220.1F, Chapter IV

SECTION 009 – USE OF OTHER GOVERNMENT AGENCIES’ PROCUREMENTS

Public Utilities Code section 132352.4(b) (2) states that ICTC is permitted to contract with other government agencies without utilizing competitive procurement procedures. This exception to competitive procurement is not permitted when FTA or FHWA funds will be utilized to carry out the project unless the procuring agency followed federal procurement requirements. To foster greater economy and efficiency, ICTC will strive to enter into state and local intergovernmental agreements for procurement or use of common goods and services. Project manager staff will attempt to coordinate its procurement efforts with those of other agencies in order to further support these goals. The requirements and standards of this manual apply to procurements entered into under such agreements. If evidence that a competitive procurement process was followed by the procuring agency is sufficient, then purchases
under another entity’s procurement are allowable. Approval of the Executive Director is required to utilize another governmental agency’s procurement.

Resource(s)
☐ None

Reference(s)
☐ Appendix 1, FTA Circular 4220.1F, Chapter V

SECTION 010 – THRESHOLD DETERMINATIONS CONCERNING CONTRACTORS

There are several determinations that must be made by the assigned project manager staff member before a contractor, consultant, or vendor can be utilized, whether or not the procurement is competitive. A discussion of these issues follows.

1. Conflicts of Interest. A contractor is eligible for an award by ICTC so long as the procurement in question does not create an actual, potential, or apparent conflict of interest. A prohibited conflict of interest exists when a firm is or may be unable to render impartial, objective assistance or advice to ICTC or where a firm would receive an unfair competitive advantage. Prohibited conflicts of interest include, but are not limited to, the following situations:
   a. Any firm that provides design services to ICTC will be ineligible for award of a construction contract to construct the improvements which are the subject of the design services.
   b. Any firm that provides construction management services to ICTC will be ineligible for award of a construction contract for which construction management services were or will be provided.
   c. General contractors or subcontractor firms may provide services on other ICTC projects. A contractor shall not, however, participate in the review and analysis of, or render opinions regarding its work performed on other ICTC projects, or as limited in this section. Unless otherwise defined by the Executive Director, a general contractor is a contractor whose procurement is typically for at least a one-year period with an option for one or more one-year option extensions to provide services as needed from time to time on a work order or task order basis, rather than for one specific predefined project. General contractors support ICTC staff in managing other ICTC contractors. General contractors are prime contractors to ICTC. Subcontractors to general contractors are not classified as general contractors. General contractor procurements are identified as such during the procurement process.
   d. If the selected consultants and/or sub-consultants will be assisting ICTC in the preparation of one or more documents that will be used for a future solicitation, assisting ICTC evaluate the work of others on the project, or designing the specifications for a future project, the consultant team selected will not be allowed to participate as a proposer or join a team submitting a proposal in response to future solicitation(s) because this could cause an organizational conflict to arise.
   e. A consultant that provides legal, lobbying, auditing, or public relations services to an entity with a conflicting position from ICTC or with whom ICTC is in or previously was in litigation, may be precluded from providing services to ICTC if ICTC believes the consultant may not be able to render impartial advice or provide effective advocacy on behalf of ICTC.

2. A notice of potential for conflict of interest shall be included within any solicitation document issued by ICTC.
3. For purposes of this section of the manual, a “firm” is defined as any company or family of companies where there is a single parent board of directors or staff of officers who can influence the policies and actions of the design company.

4. For purposes of this section of the manual, “ineligible” shall include the prime contractor for the services, subcontractors for portions of the services, and affiliates of either. An affiliate is a firm that is subject to the control of the same persons through joint ownership or otherwise.

5. If there is any doubt by a firm regarding a potential conflict of interest for a specific project or function, the appropriate member of management staff, depending on type of project, will (upon written request) provide a written ruling. Contractors should be encouraged to use this procedure prior to submittal of a bid or proposal. In the event a conflict of interest is determined to exist, a written appeal may be made by the affected firm to the Executive Director within five calendar days of notice from ICTC of the conflict. The Executive Director will determine the adequacy of the appeal and make a subsequent final decision. No further appeal shall be considered.

6. The Executive Director shall review and, if appropriate, waive any actual, potential, or apparent conflict of interest that may exist or arise as a result of concurrent legal representation of ICTC and parties whose interests may conflict.

7. Debarment. Prior to doing business with a firm, the Project manager staff must verify that the firm has not been debarred by ICTC or any of the agencies funding the procurement.

**Resource(s)**
- None

**Reference(s)**
- None

**SECTION 011 – USE OF VALUE ENGINEERING IN CONSTRUCTION CONTRACTS**

ICTC encourages the use of value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lowest cost. The current approved “Construction IFB” boilerplate document has value engineering language that can be included or deleted with concurrence from a Project manager staff member.

**Resource(s)**
- None

**Reference(s)**
- Appendix 1, FTA Circular 4220.1F, Chapter I, Page 7; Chapter IV, Page 24

**SECTION 012 – CONTRACT AWARDS TO RESPONSIBLE BIDDERS/OFFERORS**

1. ICTC will make awards only to responsible bidders/offers possessing the ability to perform successfully under the terms and conditions of a proposed procurement.

2. ICTC may award a contract to other than the lowest bidder under certain circumstances as is in the best interest of the ICTC. ICTC may include a statement in the solicitation reserving the right to award the contract to other than the low bidder or offeror.

3. ICTC will award only to “responsible” contractors that it believes possess the ability, willingness, and integrity to perform successfully under the terms and conditions of the contract. ICTC determines responsibility after receiving bids or proposals and before making contract award. A
bidder/offeror must demonstrate affirmatively to ICTC that it qualifies as “responsible” and that its proposed subcontractors also qualify as “responsible.” To determine that a bidder/offeror is “responsible,” ICTC, at a minimum, will determine and ensure that the bidder/offeror satisfies the following criteria:

a. Has no known record of dissatisfactory integrity or improper business ethics;
b. Is neither debarred nor suspended from federal programs under DOT regulations, “Non-procurement Suspension and Debarment;”
c. Bidder/offeror confirms that it is in compliance with the Common Grant Rules’ affirmative action and FTA’s DBE requirements;
d. Bidder/offeror confirms it is in compliance with the public policies of the federal government;
e. Has the necessary organization, experience, accounting, and operational controls and technical skills (or the ability to obtain them);
f. Is in compliance with applicable licensing and tax laws and regulations;
g. Has, or can obtain, sufficient financial resources to perform the contract;
h. Has, or can obtain, the necessary production, construction, and technical equipment and facilities;
i. Is able to comply with the required delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments; and is able to provide a satisfactory current and past performance record in view of its records of long-time performance or performance with a predecessor entity, including key personnel with adequate experience, a parent firm with adequate resources and experience if applicable, and key subcontractors with adequate experience and past performance in carrying out similar work, with particular attention to management approach, staffing, timeliness, technical success, budgetary controls, and other specialized considerations.

4. A prospective bidder or offeror that is or recently has been seriously deficient in contract performance is presumed to be non-responsible unless ICTC determines that the circumstances were beyond the bidder’s or offeror’s control or unless the bidder or offeror has taken appropriate corrective action. Past failure to apply sufficient tenacity, perseverance, and effort to perform acceptably is strong evidence of non-responsibility. Failure to meet the quality requirements of a contract is a significant factor to consider in determining satisfactory performance.

5. ICTC may consider the number of the bidder’s or offeror’s contracts involved and the extent of deficient performance in each contract when making the responsibility determination. ICTC maintains the right to reject all bids or proposals submitted in response to IFB or RFPs.

6. All requisitions resulting in the formal procurement process of an IFB, RFQ, or RFP should document the award to a responsible contractor through a recommendation memo, or other contract file documentation and, at a minimum, should include the following applicable items:

a. Review “Responsibility” Requirements. Before selecting a contractor for award, ICTC must consider such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.
b. Perform a reference check of an adequate number of references and complete the applicable reference check form.
c. Review the federal debarred/suspended contractor listing at: http://epls.arnet.gov. ICTC may collect a debarment and suspension certification from the prospective contractor or include a clause in the contract requiring disclosure. ICTC checks the Excluded Parties List System before awarding a contract.
d. Review the State debarred/suspended contractor listing at: http://www.dir.ca.gov/DLSE/Debar.html. ICTC treats any proposer listed on the debarment and suspension list as non-responsible and ineligible for award.
7. For all contracts in excess of $500,000, the following uniform system of determining whether or not a bidder/offeror is “responsible” may be applied. Following is a nonexclusive list of factors in relation to the work to be performed for the project:
   a. Financial Requirements:
      i. Bidders/offerors shall have evidence of the availability of working capital;
      ii. The largest value of all work any bidder/offeror has had under contract over a
          previous similar time frame as the subject contract shall meet or exceed the total
          amount of the bid;
      iii. The dollar value of at least one of the previous individual contracts listed shall be
          at least 50% percent of the dollar value bid on the ICTC contract; and
   b. Experience Requirements:
      i. The bidder/offeror must demonstrate organization experience on work similar to
         the ICTC contract by submitting a list, covering at least the previous five years,
         of all projects of any type that have been completed or are under construction.
         The list shall contain a name, title, address, and phone number for agency/firm
         staff to contact to verify the contract details;
      ii. The bidder/offeror shall demonstrate individual experience by submitting a list of
          all officers, superintendents, management staff and engineers who will be
          involved in the ICTC contract. These key personnel shall have at least three
          years’ experience on contracts where the work is similar to the ICTC contract
          and shall have been employed by the bidder/offeror for at least two years before
          the ICTC contract bidding date. The individuals listed shall have been involved
          at the same level of responsibility on successfully completed contracts during the
          previous five years that together exceeds the value of the ICTC contract. A
          résumé for each individual listed shall include the name, title, address, and phone
          number of an individual or organization who can verify the individual’s
          experience;
      iii. The bidder/offeror shall submit a summary of all claims made in the last five
          years arising out of previous contracts listed (this summary shall include all
          claims by owner against bidder or bidder against owner and the final status of
          each claim);
      iv. The bidder/offeror shall state whether or not it has defaulted on a project within
          the last two years;
      v. The bidder/offeror shall list any violation of the apprenticeship requirements
         under a State Business and Professions Code of Labor Code found by an
         appropriate authority within the last two years;
      vi. The bidder/offeror shall state whether they have been found guilty of failure to
         pay required prevailing wages on a public contract within the last two years;
      vii. The bidder/offeror shall state whether they have been formally found to be a non-
         responsible bidder, for reason other than being nonresponsive, by a public agency
         within the last two years;
      viii. The bidder/offeror shall list how many projects the bidder will be working on in
          conjunction with the ICTC project;
      ix. The bidder/offeror shall state whether they have ever been terminated by an
          owner or client or rejected from bidding on a public works project in the last five
          years;
      x. The bidder/offeror shall state whether a surety ever completed any portion of the
         work on the bidder’s project within the last five years;
      xi. The bidder/offeror shall state whether the bidder, any officer of such bidder, or
          any employee of such bidder who has a proprietary interest in such bidder has
          ever been disqualified, removed, or otherwise prevented from bidding on or
completing a federal, state, or local government project because of a violation of a law or safety regulation, and if so, explain the circumstances; and

xii. For all items identified under this subsection, the bidder/offeror shall provide name of owner, title of project, contract amount, location of project, date of contract, and name of bonding company.

c. Reporting Forms:
i. In order to demonstrate that the ICTC financial and experience requirements are met, the bidders/offerors shall submit, when requested by ICTC, a financial statement prepared by an independent auditor.

ii. Failure to provide accurate information relative to its financial status or experience may result in the debarment of the bidder/offeror from future ICTC work.

iii. ICTC will make its determination of responsibility based upon in submitted by bidders/offerors, and, if necessary, interviews with previous owners, clients, design professionals, or subcontractors with whom the bidder/offeror has worked. If a nonresponsive or non-responsible offeror submits additional evidence within the time limitation provided by ICTC, then that additional evidence should be considered by the director in making the recommendation to the Executive Director regarding determination of the bidder/offeror that should be awarded the contract.

8. The methods above may be employed at the discretion of the project manager to include the requesting of a Dun & Bradstreet Financial report on the low bidder (IFB) or highest evaluated offeror(s) (RFP). All methods employed must be documented and contained in the contract file.

Resource(s)
☐ None

Reference(s)
☐ Appendix 1, FTA Circular 4220.1F, Chapter IV, Pages 4, 5; and VI, Page 22, 23

SECTION 013 – WRITTEN RECORD OF PROCUREMENT HISTORY

ICTC will maintain and make available to authorized agencies, records detailing the history of a procurement. At a minimum, these records should include:

1. The rationale for the method of procurement: ICTC provides the rationale it used for each contract, including a limited competition or sole source justification for any acquisition that does not qualify as competitive;

2. Selection of contract type: ICTC states the reasons for selecting the contract type it used such as fixed-price or cost reimbursement;

3. Reasons for contractor selection or rejection: ICTC states its reasons for contractor selection or rejection and includes a written responsibility determination for the successful contractor; and

4. The basis for the contract price: ICTC evaluates and states its justification for the contract cost or price. The determination for items 1 and 2 above will be made through the use of documentation to the contract file. In addition, any Commission or Evaluation Advisory Committee agenda report requesting approval to award a third-party contract or recommendation memo will serve as a record detailing procurement history.
SECTION 014 – USE OF TIME-AND-MATERIAL CONTRACTS

ICTC will use time-and-material type contracts only:
1. After a determination that no other type of contract is suitable; and
2. If the contract specifies a ceiling price that the contractor shall not exceed the amount except at its own risk. Concurrency from the Executive Director for use of this type of contract is required. A request for use of such a contract or change order must be made at the time of purchase requisition submittal by the project manager.

SECTION 015 – USE OF TECHNOLOGY/ELECTRONIC COMMERCE

Along with other technology, ICTC uses a website to promote procurements that accommodate all federal requirements for full and open competition. ICTC’s written procedures are sufficient to ensure that all information the FTA and FHWA require for project administration is entered into its website.

SECTION 016 – VARIATIONS FROM PROCEDURES

1. In the event that circumstances dictate other than the processes indicated in this manual and the procurement does not exceed $100,000, the Executive Director may authorize a variation within the limits of Public Utilities Code Section 132352.4. For procedural variations on procurements that will exceed the amounts in the Public Utilities Code or Commission policy, prior Commission concurrence shall be obtained following submittal of a written statement by staff setting forth the reasons for not pursuing all or part of any of the processes. The Executive Director and Commission may only authorize a variation upon a finding that variation from the rules in this manual is in the best interest of ICTC.

2. Nothing herein is intended to limit the Executive Director’s authority to determine not to make a contract award if he/she determines that the
bids/proposals received or contract terms negotiated by ICTC staff are not in ICTC’s best interests.

Resource(s)
□ None

Reference(s)
□ California Public Utilities Code section 132352.4.

SECTION 017 – WRITTEN PROTEST PROCEDURES

ICTC has written protest procedures to handle and resolve disputes relating to its procurements. All protest decisions must be in writing. A protestor must exhaust all administrative remedies by pursuing ICTC’s protest procedures to completion before appealing the decision to CALTRANS or the FTA. In the case of contracts funded by the FTA, the FTA will review only protests regarding the alleged failure of ICTC to have written protest procedures or alleged failure to follow such procedures. An appeal to the FTA must be received by the cognizant FTA regional or headquarters office within five (5) working days of the date when the protestor has received actual or constructive notice of ICTC’s final decision.

1. ICTC’s role and responsibilities with regard to the FTA when there is a protest on FTA funded procurements:
   a. ICTC will provide copies of all protests and any or all related supporting documents for protests that have a value exceeding $100,000, or; involve a controversial matter, irrespective of amount, or; involve a highly publicized matter, irrespective of amount.
   b. ICTC will provide a brief description of the protest; the basis of disagreement, and; if open, how far the protest has proceeded, or; if resolved, the agreement or decision reached, and; whether an appeal has been taken or is likely to be taken.
   c. When ICTC denies a bid protest, and especially if an appeal to the FTA is likely to occur, ICTC will inform the FTA regional administrator for the region administering a regional project or the FTA associate administrator for the program office administering a headquarters project directly.

2. The FTA’s role and responsibilities with regard to FTA-funded procurements in the appeals process for reviewing protests state that the protestor must qualify as an “interested party,” which is an actual or prospective bidder or offeror whose direct economic interest would be affected by the award or failure to award the contract.
   a. A subcontractor does not qualify as an “interested party” because it does not have a direct economic interest in the results of the procurement.
   b. An established consortium, joint venture, partnership, or team that is an actual bidder or offeror and is acting in its entirety would qualify as an “interested party” because it has a direct economic interest in the results of the procurement. An individual member of a consortium, joint venture, partnership, or team, acting solely in its individual capacity, does not qualify as an “interested party” because it does not have a direct economic interest in the results of the procurement.
   c. An association or organization that does not perform contracts does not qualify as an “interested party” because it does not have a direct economic interest in the results of the procurement. Violations of federal law or regulation will be handled by the complaint process stated within that law or regulation. Violations of state or local law or regulations will be under the jurisdiction of state or local authorities.
SECTION 018 – CHANGES AND MODIFICATIONS

ICTC is responsible for issuing, evaluating, and making necessary decisions involving any change to its contracts, any change orders, or modifications. It also will evaluate and make the necessary decisions involving any claim of a constructive change to a contract. ICTC will have cost justifications supporting each change order it may issue and approve any proposed change order before it is issued. The cost of the change, modification, change order, or constructive change must be allowable, allocable, within the scope of any applicable grant, cooperative agreement, or other funding restriction and must be reasonable for the completion of project scope.

Reference(s)
- Appendix 1, FTA Circular 4220.1F, Chapter VII, Pages 4, 5

SECTION 019 – DISPUTES

ICTC has written procedures to handle and resolve disputes relating to procurements. All disputes must be in writing by contractors. Adequate documentation must be submitted by the contractor documenting the facts, events, negotiations, and/or applicable laws establishing the grounds for the dispute. ICTC will notify the FTA about disputes on FTA-assisted procurements that have a value exceeding $100,000 if the FTA funding could be used to resolve the dispute. Upon request from the FTA, ICTC will provide a brief description of the dispute; basis of disagreement, and; if open, how far the dispute has proceeded, or; if resolved, the agreement or decision reached, and; whether an appeal has been taken or is likely to be taken. This information will be provided to the FTA as applicable in ICTC’s next quarterly milestone progress report and in the next project management oversight review, if any.

Reference(s)
- Appendix 1, FTA Circular 4220.1F, Chapter VI-5.
SECTION 020 – CONTRACT PERIOD OF PERFORMANCE LIMITATION

Except for procurements of rolling stock and replacement part contracts, which are limited on federally funded procurements to five (5) years, ICTC’s other contracts (such as property, services, leases, construction, revenue) are not limited by federal requirements to the five-year limit. Even if a federal time limit is not applicable, however, ICTC staff will use sound business judgment and be judicious in establishing, extending, and documenting a contract’s period of performance. Generally, ICTC’s standard maximum contract length will not exceed five (5) years, inclusive of options, unless the reason for a longer term is documented in the contract folder. Contracts may be awarded with periods of performance in excess of five years if approved by the Executive Director. This requirement applies to the initial contract and contract extensions or renewals beyond a five-year term. The same process also is required for the exercise of an option which will extend the contract’s period of performance beyond five years. The period of performance generally should not exceed the time necessary to accomplish the purpose of the contract. ICTC staff should consider competition, pricing, fairness, and public perception when making decisions regarding the term of a contract. ICTC staff will document its rationale for determining the performance period designated for each contract.

ICTC considers contract time extensions in light of whether they are permissible changes or impermissible cardinal changes. All extensions to contracts will require option years pricing in the competitive bid documents.

Resource(s)
☐ None

Reference(s)
☐ Appendix 1, FTA Circular 4220.1F, Chapter IV-8

SECTION 021 – ASSIGNMENT OF CONTRACT RIGHTS AND JOINT PROCUREMENTS

ICTC limits its procurements to the amount required to meet its reasonably expected needs without adding excess capacity simply for the purpose of assigning contract rights to others at a later date. Advertised quantities and dollar amounts should be justifiable. When ICTC solicits, competes, and awards through the use of an indefinite-delivery-indefinite quantity (IDIQ) contract, the solicitation and the contract award should both contain a minimum and maximum quantity that represents reasonably foreseeable needs. Should ICTC find that it has inadvertently acquired contract rights in excess of its needs, it may assign those contract rights to other public agencies if the original contract contains an assignability provision that permits the assignment of all or a portion of the specified deliverables under the terms originally advertised, competed, evaluated, and awarded or contains other appropriate assignment provisions. This process is sometimes referred to as “piggybacking.”

1. In cases where ICTC finds it useful to “piggyback” off of another entity’s procurement, it first has to determine the contract price remains fair and reasonable and the negotiated contract provisions are adequate for compliance with all federal requirements if the contract will use federal funds. ICTC need not perform a second price analysis if a price analysis was performed for the original contract in the previous 12 months, however, ICTC staff will still need to determine whether the contract price or prices originally established are still fair and reasonable before using those rights. ICTC is then responsible for ensuring the contractor’s compliance with the FTA’s Buy America requirements and execution of all the required pre-award and post-delivery Buy America review certifications, if applicable. ICTC staff should review the original contract to be sure that the quantities the assigning recipient acquired, coupled with the
quantities it is seeking, do not exceed the amounts available under the entity assigning the contract.

2. Piggybacks and assignments may limit choices to specific property and services acquired. ICTC may choose to instead use joint procurements by combining or “pooling” procurements to obtain better pricing. Joint procurements are often more desirable than assignments because an assignment does not represent the combined buying power of more than one purchaser at the time when prices are established. A joint procurement also may offer the advantage of permitting the parties to acquire property and services more closely responsive to each purchaser’s material requirements than would be available through assignment of existing contract rights. However, if ICTC and another party jointly solicit and award a contract, the joint minimum and maximum quantities are expected to be stated in the solicitation and contract.

3. Intergovernmental procurements are arrangements that ICTC may establish with several vendors in which those vendors agree to provide essentially an option to acquire specific property or services in the future at established prices. If ICTC wishes to permit others to use its schedules, then it might seek the agreement of the vendor to provide the listed property or services to others with access to the schedules or it may permit the vendor to determine whether it wishes to do so. When obtaining property or services in this manner, ICTC staff should ensure that all federal requirements, required clauses, and certifications (including Buy America) are properly followed and included in the master intergovernmental contract or in the ICTC contract as applicable. When buying from these schedules, and as applicable, ICTC will obtain Buy America certification before entering into the contract or PO. If the product is not Buy America-compliant, ICTC should obtain a waiver from the relevant federal agency before proceeding if the procurement will be federally funded.

Resource(s)
☐ None

Reference(s)
☐ Appendix 1, FTA Circular 4220.1F, Chapter V, Pages 5-7

SECTION 022 – COMPETITION

This section is composed of the following subsections:

022A Full and Open Competition
022B Prohibition Against Geographic Preferences
022C Written Procurement Selection Procedures
022D Pre-Qualification Criteria

Section 022A – Full and Open Competition

ICTC will provide for full and open competition when soliciting bids or proposals. All procurement transactions, excluding small procurements under $3,000 or approved limited competition or sole source procurements, will be conducted in a manner providing full and open competition consistent with this manual. Some of the situations that may be considered to be restrictive of competition include, but are not limited to:
1. Unreasonable requirements placed on contractors in order for them to qualify to do business;
2. Unnecessary experience and excessive bonding requirements;
3. Noncompetitive pricing practices between firms or between affiliated companies;
4. Noncompetitive awards to any person or firm on retainer contracts;
5. 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;
6. The specification of only a “brand name” product without listing its salient characteristics and not allowing “an equal” product to be offered; and
7. Any arbitrary action in the procurement process.

ICTC will adhere to these principles of competition:

1. Fundamental to the use of any procurement method is the principle of full and open competition. The availability of suppliers who are willing to compete for a procurement is essential for the effective use of small purchase procedures, formally advertised procurements (IFBs), or negotiated procurements (RFPs and RFQs).
2. Competition in procurement is defined as a condition where at least two sources are able to compete for a requirement, both in price and technical skills.
3. An attempt to get at least three quotes or bids is required for ICTC’s competitive procurements.
4. ICTC will not fund procurements that restrict competition by utilizing exclusionary or discriminatory specifications. These include:
   a. Placing unreasonable requirements on firms by specifying technical features, conditions, or other factors for which there is insufficient operational justification of legitimate need;
   b. Allowing noncompetitive practices between firms (collusion, price fixing);
   c. Conflicts of interest within ICTC; and
   d. Requiring unnecessary experience and bonding.
5. By working throughout the procurement process to encourage full and open competition among potential contractors, ICTC will assure that both its interests and those of the state and federal government are protected and that ICTC is getting a fair return on the expenditure of federal, state, and local tax dollars.
6. Less than full and open competition is not justified based on failure to plan or limited availability of federal assistance to support the procurement (for example, expiration of federal assistance previously available for award). When less than full and open competition is available to ICTC on a federally-funded procurement, the common grant rule requires ICTC to:
   a. Solicit offers from as many potential sources as is practicable under the circumstances;
   b. Provide a sole source or limited competition justification. If ICTC decides to solicit an offer from only one source or use limited competition procurement, it must justify its decision adequately and in writing;
   c. Prepare or obtain a cost analysis verifying the proposed cost data, the projections of the data, and the evaluation of the costs and profits; and
d. Submit the proposed procurement for pre-award review if a federal agency so requests.

Resource(s)
☐ See also, Section 024K of this manual

Reference(s)
☐ Appendix 1, FTA Circular 4220.1F, Chapter VI, Pages 15-18

Section 022B – Prohibition Against Geographic Preferences in Federally Funded Procurements

ICTC will conduct procurements in a manner that prohibits the use of statutory 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. This 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.

Resource(s)
☐ None

Reference(s)
☐ Appendix 1, FTA Circular 4220.1F, Chapter VI-4

Section 022C – Written Procurement Selection Procedures

ICTC will have written selection procedures in its solicitations. All solicitations should:

1. Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description should not, in competitive procurements, contain features that unduly restrict competition. The description may include a statement of the qualitative nature of the material, product, or service to be procured and when necessary, should set forth those minimum characteristics and standards to which it must conform if it is 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. ICTC will use a “brand name or equal” description only when it cannot provide an adequate specification or more detailed description, without performing an inspection and analysis, in time for the acquisition under consideration. Further, use of “brand name or equal” must carefully identify its minimum needs and clearly set for those salient physical and functional characteristics of the brand name product in the solicitation.

2. Identify all requirements that bidders/offerors must fulfill and all other factors to be used in evaluating bids or proposals.
Section 022D – Prequalification Criteria

ICTC does not typically use a prequalification process, except in the case of major projects that will exceed $5,000,000. ICTC will not, however, preclude potential bidders from qualifying during the solicitation period, which is from issuance of the solicitation to its closing date, unless a determination has been made based on sufficient evidence that the bidder is not responsible. For procurements in excess of $5,000,000 that will utilize a prequalification process, ICTC will take measures to confirm that its list of prequalified persons or firms that are used in acquiring goods and services are current and include enough qualified sources to ensure full and open competition. Firms that choose to prequalify will be asked to submit documentation, including a completed Contractor’s Statement of Experience and Financial Condition.

SECTION 023 – BEST VALUE

ICTC may award a contract to a proposer who provides the greatest value when it is consistent with Commission Policy. “Best Value” describes a competitive, negotiated procurement process in which ICTC reserves the right to select the most advantageous offer by evaluating and comparing factors in addition to cost or price such that it may acquire technical superiority even if it must pay a premium price. A “premium” is the difference between the price of the lowest-priced proposal and the one that ICTC believes offers the best value. ICTC bases its determination of which proposal represents the best value on an analysis of the tradeoff of qualitative technical factors and price or cost factors. The documentation and analysis establishing best value should be documented in the RFP for small procurements, which includes the score sheets used to evaluate proposers on small procurements and establishes which proposer will provide the best value to ICTC for all procurements under the applicable small purchase threshold. For procurements in excess of the small procurement threshold, the contract file should contain documentation in the evaluation factors within the solicitation and relevant score sheets, as well as the record of negotiation (RON) and other written records to establish the best value criteria are met. ICTC will disclose those factors in its solicitation that will form the basis for award. The evaluation factors for a specific procurement reflect the subject matter and the elements that are most important to ICTC. Those evaluation factors may include, but need not be limited to, technical design, technical approach, length of delivery schedules, quality of proposed personnel, past performance, and management plan.
SECTION 024 – METHODS OF PROCUREMENT

This section is composed of the following subsections:
024A Procurement by Micro-Purchases for Services, Equipment or Construction (≤$3,000)
024B Procurement by Small Purchase Procedure for Equipment & Supplies ($3,001 to $50,000)
024C Procurement by Small Purchase Procedure for Services Other Than A&E ($3,001 to $100,000)
024D Procurement by Small Purchase Procedure for Construction ($3,001 to $50,000)
024E Procurement by Sealed Bids/ IFB for Equipment & Supplies, Construction (> $50,000)
024F Procurement by Competitive Proposal for Services Other Than A&E (> $100,000)
024G Procurement of A&E Services (all amounts greater than $3,000)
024H Pre-Award Audits
024I Procurement by Non-Competitive Proposals (Sole Source) (With Caltrans or Federal Funds)
024J Procurement by Non-Competitive Proposals (Sole Source) (Without Caltrans or Federal Funds)
024K Procurement by Limited Competition
024L Options
024M Contracts with Other Government Entities
024N Procurement Using Design-Build Delivery Method
024O Procurement Using Job Order Contracting Method

Section 024A – Procurement by Micro-Purchases for Services, Equipment or Construction (≤$3,000)

Procurement by micro-purchases refers to those purchases that do not exceed $3,000. Purchases below that threshold may be made without obtaining competitive quotations if it is determined that the price is fair and reasonable. If such a determination cannot be made, staff should seek at least two bids, which may be either written or oral, to permit prices and other terms to be compared. Such purchases are exempt from Buy America requirements. There should be equitable distribution among qualified suppliers (in the local area). Splitting of procurements to avoid a competitive procurement is not permitted; therefore, multiple purchases from the same vendor throughout a fiscal year should not exceed an aggregate total of $3,000. The Davis-Bacon Act applies to construction contracts between $2,000 and $2,500 and California Labor Code section 1720 applies to construction contracts over $1,000, so prevailing wage requirements apply even to micro purchases that exceed $1,000 if it is a public works project. Required documentation includes a determination that the price is fair and reasonable and how this determination was derived. Quotes may be solicited by internet, phone, fax, e-mail, or U.S. mail. All prices received must be documented on requisitions or in the contract file and a PO may be utilized.

Resource(s)
☐ None

Reference(s)
☐ Appendix 1, FTA Circular 4220.1F, Chapter VI
☐ California Labor Code section 1720 et seq.
☐ California Public Utilities Code Section 132352.4

Section 024B – Procurement by Small Purchase Procedure for Equipment Supplies ($3,001 to $50,000)

Small purchase procedures are those relatively simple and informal procurement methods for securing equipment, supplies, or other property over $3,001, which do not cost more than ICTC’s simplified acquisition threshold of $50,000. If small purchase procedures are used, price or rate quotations should be
obtained from an adequate number of qualified sources, with three sources being the minimum number of quotes staff must attempt to obtain.

1. Staff should attempt to obtain written bids or document oral bids from at least three suppliers in a manner that permits prices and other terms to be compared. This should be accomplished by sending a fax or e-mail request to an adequate number of firms using any combination of ICTC’s bid list, California Unified Certification Program, Caltrans DBE list, or known sources or sources generated from published documents. Staff should recommend the supplier that is determined to be the low responsive and responsible bidder meeting the terms, conditions, and specifications of the solicitation, taking into account the possible range of competing product and materials available, fitness of purpose, manufacturer’s warranty, and other similar factors in addition to price. Documentation of which vendors were sent quote requests, the responses received, and the low bidder selected should be documented by the project manager using the recommendation memo template.

2. Approved Equal Clause: In order to establish a basis of quality, functionality, and/or performance, certain materials, equipment, or kinds of materials may be specified, either by description of functionality and/or performance or by designating a manufacturer by name and referring to his brand of product designation, make, model, or part number or by specifying a kind of material. The solicitation should not exclude other processes, equipment or materials of equal functionality and/or performance, utility, or merit, which may be approved by ICTC upon request. Requests for approved equal, clarification of the solicitation specifications, and complaints on specifications must be received by ICTC, in writing, by the time specified in the solicitation. Any request for an approved equal or protest of the specifications must be fully supported with technical data, test results, or other pertinent information as evidence that the substitute offered is equal to or better than the specification requirement.

Resource(s)

☐ None

Reference(s)

☐ Appendix 1, FTA Circular 4220.1F, Chapter VI
☐ California Labor Code § 1720 et seq
☐ California Public Utilities Code Section 132352.4

Section 024C – Procurement by Small Purchase Procedure for Services Other Than Architectural & Engineering ($3,001 to $100,000)

1. Prior approval of the use of this procurement procedure and the evaluation criteria should be obtained from the applicable department manager or senior-level manager. The Project manager staff member assigned to the project also should concur with the use of this procurement method. An informal competitive process may be followed with price or rate quotations obtained from an adequate number of qualified sources to ensure that ICTC is obtaining a fair and reasonable price and that the recommended consultant will provide the best value to ICTC if a best value analysis is utilized. Generally, quotes/proposals must be sought from at least three qualified consultants to meet this requirement. The competitive process should be documented by the project manager in written
In obtaining price or rate quotations, a SOW and evaluation criteria should be developed and supplied to all bidders/offerors.

2. All procurements over $3,001 should have a documentation that establishes that the project manager made the effort to obtain the best price for ICTC for the goods or services with quality, level of effort, and other relevant factors taken into consideration.

Reference(s)
- None

Section 024D – Procurement by Small Purchase Procedure for Construction ($3,001 to $50,000)

Written notices inviting bids (NIBs) (also known as IFBs) for small construction projects should be sent to at least three qualified bidders by mail or facsimile on the same date or a formal IFB may be issued pursuant to Section 024E. The bid period must be a minimum of three calendar days for a small purchase IFB. When possible, the NIB/IFB should be sent to at least two certified DBE firms. The NIB/IFB must contain the time and location for receiving and opening bids. The contract will be awarded to the lowest priced, responsive, and responsible bidder after a notice of intent to award has been issued to all bidders and the protest period has expired. Construction on minor public works projects will require the following additional information to request a quote:

a. Purchase requisition with supporting documentation (budget estimate or engineer's estimate which serves as the ICE)
b. Complete specifications, drawings, and maps if applicable
c. Date work needs to be completed, period of performance, timeline
d. Schedule for job walk or site visit to determine work to be done if complete specifications and drawings are not provided
e. Required permits, certificates, licenses
f. Required bonds, insurance
g. List of crafts, classification or type of worker needed to execute the contract for the determination of prevailing wage rates by the building contractor

i. Protests: The NIB/IFB should state that protest submittals shall be in writing, be specific to the specification or procedure being protested, state the grounds for protest, and include all documentation needed to enable ICTC to reach a decision. The NIB/IFB also should include the following provisions: that the protest shall be submitted within clearly defined time limits prior to receiving proposals or opening bids or prior to award of contracts; the review and determination process by ICTC, including time limits for response; requirements for submittal of a protest reconsideration; a statement that the initial protest will be reviewed by a protest review committee and that protest reconsiderations will be reviewed by the Executive Director; and a statement that protests will be rejected if they are not complete.

2. Bonds: For projects under $50,000 a bid bond may be required at the discretion of the Executive Director. A bid bond will be required for projects over $50,000.
Additionally, a warranty of the work and maintenance bond may be requested depending upon the complexity of the project.

a. Bid Bond. If this type of bond is required, the bond must be payable to ICTC for ten (10) percent of the total bid price. The bid bond must be submitted with the bid. The bid bond of the successful bidder will be retained and in effect until the contract has been awarded.

b. Warranty of the Work and Maintenance Bond. If this type of bond is required, the contractor will warrant to ICTC, the architect, and/or engineer that all materials and equipment furnished under the contract will be of highest quality and new unless otherwise specified by ICTC, free from faults and defects, and in conformance with the contract documents. All materials and equipment not so conforming to these standards shall be considered defective. If required by ICTC’s designated representative, the contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. The work furnished must be of first quality, and the workmanship must be the best obtainable in the various trades. The work must be of safe, substantial, and durable construction in all respects. The contractor must warrant the work against defective materials or faulty workmanship for a minimum period of one (1) year after final payment by ICTC and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the warranty at no cost to ICTC or reimburse ICTC upon demand, for its expenses incurred in restoring said work to the condition contemplated, including the cost of any such equipment or materials replaced and the cost of removing and replacing any other work necessary to make such replacement or repairs.

3. Prevailing Wages: California state law requires that prevailing wages are to be paid on any public works projects over $1,000 in value. Prevailing wage certified payrolls shall be submitted to ICTC no later than the final invoice. If the work is conducted over period of time exceeding 90 days, certified payrolls must be submitted, at a minimum, with each payment application (invoice). No payment will be made without receipt of the required certified payrolls. The only exception to this procedure is when a special wage determination has been issued from the State of California Department of Industrial Relations.

4. Contractor’s License Classification: California state law requires that a licensed contractor perform the work on any public works contract over $500 (labor plus materials). The contractor shall possess a valid California contractor’s license in the appropriate classification. The solicitation may specify which license ICTC requires the contractor to hold in order to award a contract for the performance of the SOW.

Reference(s)

☐ Appendix 1, FTA Circular 4220.1F
☐ California Labor Code § 1720 et seq
☐ California Public Utilities Code Section 132352.4
Section 024E – Procurement by Sealed Bids/IFB for Equipment & Supplies and Construction (> $50,000)

Under this procedure, bids are publicly solicited, and a firm-fixed-price contract (lump sum or cost per unit of work with a not-to-exceed amount) is awarded to the responsive and responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for bids, is the lowest in price.

1. Guidelines for IFBs:
   a. The IFB includes the complete assembly of related documents (whether attached or incorporated by reference) furnished to prospective bidders for the purpose of bidding.
   b. IFBs must be based on a clear and accurate description of the technical requirements for the material, product, or service to be procured. The description should not contain, in competitive procurements, features that unduly restrict full and open competition. The “brand name or equal” description may be used to define the performance or other necessary requirements of procurement. When so used, the specific features of the brand name product that must be met by bidders must be clearly identified. Brand names that are known to meet the “or equal” requirements should be listed.
   c. IFBs should be publicized through distribution to prospective bidders, posting on the ICTC Web site, posting in public places, advertising in newspapers, and such other means as may be appropriate in sufficient time to enable bidders to prepare and submit their best bids before the time set for the public opening of bids.
   d. If the procurement is successful, the contract will be awarded to the responsive and responsible bidder submitting the lowest bid determined on the basis of the specifications set forth in the IFBs.
   e. The IFBs, including specifications and attachments, should permit full and open competition consistent with the requirement for the property or services to be procured. The requirement should represent the buyer’s minimum needs and be sufficiently described to promote full and open competition.
   f. All bids should be opened publicly at the time and place stated in the IFB.

2. In order for sealed bidding to be feasible, the following conditions should be present:
   a. A complete, adequate, and realistic specification or purchase description is available;
   b. Two or more responsible bidders are willing and able to compete effectively for the business;
   c. The procurement lends itself to a firm fixed-price contract, and the selection of the successful bidder can be made principally on the basis of price; and
   d. No price negotiation with bidders is needed before sending out the notice of intent to award.

3. If the sealed bid procurement method is used, the following requirements apply:
   a. The IFB will be publicly advertised, and bids should be solicited from an adequate number of known suppliers or contractors, providing them sufficient time to prepare bids prior to the date set for opening the bids;
   b. The IFB, which will include any specifications and pertinent attachments, should define the items or services sought in order for the bidder to properly respond;
   c. All bids will be publicly opened at the time and place described in the IFB;
   d. A firm-fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. For the procurement of tangible items, when specified in bidding documents, factors such as discounts, transportation costs,
and life cycle costs may be considered in determining which bid is lowest; payment discounts will only be used to determine the low bid when industry practice for the types of project involved indicates that such discounts are usually taken advantage of; and

e. Any or all bids may be rejected if there is a sound documented reason.

4. For purchases of equipment or supplies that are better suited for an RFP or purchase on the open market instead of an IFB, approval may be sought from the designated ICTC Project Manager to utilize a different procurement process. An alternate procurement process to the IFB may be in ICTC’s best interest in the following example situations:

a. The purchase may be made at a lower price on the open market.
b. Competitive bidding is an inadequate method of procurement because it is necessary to purchase prototype equipment or modifications in order to conduct and evaluate operational testing.
c. The article(s) to be procured is undergoing rapid technological changes, and it is in the public’s interest to issue an RFP so that the broadest possible range of competing product and materials available, fitness of purpose, manufacturer’s warranty, and other similar factors in addition to price can be taken into consideration.

5. If staff seeks authorization to utilize an alternate procurement process, documentation setting forth the reasons a deviation from the typical competitive bidding process is warranted, and a technical evaluation of the articles, prices, and suppliers should be placed in the contract folder.

6. Payment Method Contracts awarded as a result of IFBs should be fixed price. Escalation may be appropriate where unusual risks for labor or material are present and some flexibility is necessary and feasible. When escalation is necessary, an escalation ceiling must be established and must be the same for all bidders.

7. Solicitation of Bids

a. Preparation of IFBs. For supply and construction contracts, IFBs should contain the following information if applicable to the procurement involved:

i. Invitation number.
ii. Name and address of Project manager staff member.
iii. Date of issuance.
iv. Date, hour, and place of bid opening (prevailing local time should be used.)
v. Number of pages and numbered pages.
vi. A description of supplies or services to be furnished under each item in sufficient detail to promote full and open competition.
vii. The time of delivery or performance requirements.
viii. Statement of whether submission of electronic bids will be permitted.
ix. The IFB should set forth full, accurate, and complete information, including attachments.
x. Bid guarantee, performance, and payment bond requirements.
xi. A requirement that all bidders must allow an acceptance period of not less than a specified number of calendar days and that bids offering less than the minimum stipulated acceptance period will be rejected.
xii. Special technical qualifications due to the complexity of the equipment being procured, or for some other special reason.
xiii. Any authorized special provisions relating to such matters as progress payments, patents, liquidated damages, etc.
xiv. Any additional contract provisions or conditions required by state, local, or other jurisdictions.

xv. All factors to be considered in the evaluation of bids that weigh on price, such as shipping costs. It is essential that the IFB inform vendors of those factors that will be evaluated and exactly how each factor will be evaluated. Bidders must know these factors to properly construct their bid prices. It is imperative that this process be followed to assure that any perception of arbitrary application of the price factors by buyers is eliminated.

xvi. Directions for obtaining copies of any documents that have been incorporated by reference. All documents incorporated in the IFB by reference must be readily available to all potential bidders.

xvii. A bid price form should be included that is tailored such that it breaks down all of the appropriate cost elements and options such that ICTC staff can determine the low bidder and the responsiveness of the bids.

b. Bidding Time.
Consistent with the need for obtaining the supplies or services, all IFBs should allow sufficient bidding time (i.e., the period of time between the date of distribution of an IFB and the date set for opening the bids) to permit prospective bidders to prepare and submit bids. Generally, bidding time should not be less than 21 calendar days when procuring standard commercial articles and services. It should not be less than 30 calendar days when procuring other than standard commercial articles or services. The exception is when the urgency of the need does not permit such delay.

c. Place and Method of Delivery of Supplies.
IFBs specifying f.o.b. origin should state that bids will be evaluated on the basis of bid price plus transportation cost to the buyer from point of origin to one or more designated destinations.

d. Bid Sample.
For the procurement of tangible items, a “bid sample” may be required by the IFB document to assist the buyer in determining whether the bid is an offer to perform exactly as required in the invitation. Such samples, however, may be used solely for the purpose of determining responsiveness and should not be used to determine the bidder’s ability to produce the required items. Bidders should not be required to furnish samples unless there are certain characteristics of the product that cannot be described adequately in the specification or purchase description, thus necessitating inspection of a sample to assure procurement of an acceptable product. Submission of bid samples should be discouraged unless they are absolutely necessary.

e. Descriptive Literature for the Procurement of Tangible Items
i. Definition. The term “descriptive literature” means information, such as cuts, illustrations, drawings, and brochures, which describe or show the characteristics or construction of a product or explain its operation. The term includes only information required to determine acceptability of the product. It excludes other information such as that furnished in connection with the qualifications of a bidder or for use in operating or maintaining equipment;

ii. Use. Bidders should not be required to furnish descriptive literature as a part of their bids unless the project manager determines that such literature is needed to determine whether the product(s) offered meet the
specification requirements of the IFB or establish exactly what the bidder proposes to furnish.

f. Final Review of IFBs. The buyer should ensure that adequate review of each IFB is made to correct any discrepancies or ambiguities that could limit competition unnecessarily.

g. Contacting Prospective Bidders. Notice of release of the IFBs should be sent via e-mail or otherwise delivered to the maximum number of prospective bidders to promote and ensure maximum full and open competition. Unnecessary restrictions on competition should be avoided. ICTC encourages all parties interested in doing business with it to notify ICTC in advance of their interest.

h. Pre-bid Conference. A pre-bid conference may be used as a means of briefing prospective bidders and explaining to them complicated specifications and requirements, including DBE information, goals, and documentation as early as possible after the invitation has been issued and before the bids are opened or proposals are due. The pre-bid conference should not be used as a substitute for amending a defective or ambiguous IFB or RFP. Pre-bid conferences are especially valuable for construction projects because they encourage bidders to ask questions of the project team that created the technical specifications. When a pre-bid conference is held for a construction project, question-and-answer notes should be taken and sent to all bidders who acquired the bid package. If a modification is proposed as a result of the pre-bid conference, such modifications should be made through a formal addendum and not through the pre-bid notes. A DBE interest list should be prepared and posted within three days after the pre-bid conference on the ICTC Web site to assist contractors and subcontractors in locating each other to potentially partner on the project.

i. Advertising. All IFBs should be advertised in a manner that promotes participation in the bidding by all qualified and capable firms. If there is a DBE goal, the goal amount should be advertised. Advertising only in the immediate local news media may not be adequate for large projects needing contractors of a type that are not common locally.

j. Records of IFBs and Records of Bids.

The project manager should retain a record of every IFB he/she issues and a copy of each abstract or record of bids. This should ensure that the information in the file is utilized with the new procurement. The IFB file should show the date of the IFB and the original distribution source list.

k. Amendment of IFBs.

If after issuance of IFBs, but before the time set for bid opening it becomes necessary to make changes or corrections in quantities, specifications, delivery schedules, opening dates, etc., or to correct a defective or ambiguous invitation, the changes will be accomplished by issuance of an addendum to the IFB at least 72 hours before the bid is due. Distribution of the addendum will be made to each concern to which the invitation for bids has been furnished and/or placed on ICTC’s Web site. Before amending an IFB, the period of time remaining to bid opening and the possible need to extend this period should be considered and, if necessary, confirmed in the addendum. Any information given to a prospective bidder concerning an IFB should be furnished promptly to all other prospective bidders as an addendum to the IFB. No award should be made unless the addendum has been issued in sufficient time to permit all prospective bidders to consider the information in submitting or modifying their bids.

l. Responsiveness of Bids.
To be considered for award, a bid should comply in all material aspects with the IFB. Bidders must use ICTC bid forms in order to be in material compliance with the IFB requirements. This applies to both the method and timeliness of submission and the substance of any resulting contract. It is imperative that all bidders be afforded an equal opportunity so that the integrity of the bidding system is maintained. Bids should be completed, executed, and submitted in accordance with the instructions contained in the IFB.

m. Time of Bid Submission.

Bids should be submitted so as to be received in the office designated in the IFB not later than the exact time set for opening of bids. Late bids must be rejected.

n. Modification or Withdrawal of Bids.

Bids may be modified or withdrawn by written notice. The notice must be received in the office designated in the IFB not later than the exact time set for bid opening. A bid may be withdrawn, in person, by a bidder or his authorized representative provided:

i. his/her identity is made known;
ii. he/she signs a receipt for the bid; and
iii. the withdrawal is prior to the exact time set for bid opening.

o. Late Modifications and Withdrawals. Modifications and requests for withdrawal of bids that are received after the exact time set for bid opening are considered “late modifications” and “late withdrawals,” respectively. A late modification will not be considered.

8. Opening of Bids and Award of Contracts

Opening of Bids. The official designated as the bid opening officer should decide when the time set for bid opening has arrived and so declare to those present. All bids received prior to the time set for opening should be publicly opened, read aloud to the persons present, and be recorded. The name of the bidder and the total amount of each bid should be read. Bidders may obtain copies of the bid documents that must be disclosed pursuant to the California Public Records Act at any time after the bid amounts are publicly read and recorded. The original copy of each bid should be carefully safeguarded, particularly until an abstract of the bids has been made and its accuracy verified.

9. Recording of Bids.

All hard copy bids must be time and date stamped upon their receipt. A time-and-date stamp should be kept at the desks of the receptionists and administrative staff handling mail, and these staff members should be instructed to place a time-and-date stamp on all proposals/bids. To comply with FTA Circular 4220.1F, all bids received against an IFB will be documented using a bid summary form. The invitation number, bid opening date, general description of the procurement item, names of bidders, prices bid, and any other information required for bid evaluation should be entered into the bid summary. When the items are too numerous to warrant the complete recording of all bids, an entry should be made of the invitation number, opening date, general description of the procurement items, and the total price bid where definite quantities are involved. The bid summary should be completed as soon as practicable after the bids have been opened and read. The Project manager staff member serving as the bid opening officer will certify the accuracy of the information. If the IFB is cancelled before the time set for bid opening, the cancellation should be recorded, together with a statement of the number of organizations invited to bid and the number of bids received.
10. **Review of Bids.**

Review of bids for responsiveness and bidders for responsibility should be conducted by technically qualified staff and/or consultants without financial or organizational conflicts of interest. Consultants or non-employees that assist staff in evaluating and reviewing bids must fill out a declaration concerning conflicts prior to reviewing bids. No oral discussion or written communication should be conducted with bidders except to obtain clarification regarding the bid contents or provide information regarding protests or delays.

11. **Cancellation of Invitation After Opening.**

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-priced, responsive bid unless there is a compelling reason to reject all bids and cancel the invitation. An IFB should probably be cancelled if one of the following occurs (this is not an exhaustive list):

a. all bids contained unreasonable prices;
b. there is evidence of collusion or bad faith; or
c. competition was not adequate to ensure a reasonable price. The solicitation documents will be corrected, when necessary, before the procedure for re-solicitation may be followed.

12. **Rejection of Individual Bids.**

Any bid that fails to conform to the essential requirements of the IFB, such as certifications, documentation, specifications, delivery schedule, or any alternatives to these or other requirements specifically provided for in the IFB should be rejected as nonresponsive. Ordinarily, a bid will be rejected when requirements are not met or a bidder imposes conditions that would modify requirements of the IFB or limit its liability to the buyer in a way that gives the bidder an advantage over other bidders. A condition goes to the substance of a bid when it affects the price, quantity, quality, or delivery of the items offered. Any bid may be rejected if ICTC determines that it is unreasonable as to price, and the determination is supported by review and analysis of the action. If a bid guarantee is required and the bidder fails to furnish the guarantee in accordance with the requirements of the IFB, the bid must be rejected.

13. **Notice to Bidders of Rejection of All Bids.**

When it is determined to reject all bids, the project manager should notify each bidder that all bids have been rejected, stating the reason(s) for such action if appropriate.

14. **Award.**

Unless all bids are rejected, award should be made by written notice within the time specified for acceptance in the bid or extension thereof. Award should be made to that responsible bidder whose bid, conforming to the IFB, will be most advantageous to ICTC, price and other factors considered. Award should not be made until the protest period has ended and all required ICTC approvals have been obtained. All unsuccessful bidders should be sent a notice of intent to award as soon as possible in order to start the clock running on the protest period.

15. **Responsible Bidder-Reasonableness of Price.**

Before awarding the contract, the project manager with or without the assistance of technical staff or consultants, should determine that prospective contractor is responsible and that the prices offered are reasonable. These determinations should be made in the light of all prevailing circumstances.
Prior to issuing an IFB (except one for construction), a determination should be
made to establish the minimum period for prompt payment discounts to be
considered in the evaluation. The minimum period should be stated in the IFB.

17. Delay of Award.
If, after bid opening, administrative problems threaten to delay award beyond the
bidder’s acceptance period, bidders should be requested to extend the bid
acceptance period. This request must be made and confirmed in writing prior to
the expiration of their bids (with consent of sureties, if any) to avoid the need for
re-advertisement

18. Information to Bidders.
When award is made to other than the apparent low bidder, Project manager
should promptly notify the unsuccessful lower bidders that their bids were
rejected. The notification should state the reason for rejection. In addition,
notification that an award has been made to another firm should be given
immediately to all unsuccessful bidders.

A recommendation memo should be prepared for each IFB procurement. The
recommendation memo should include a certifying statement confirming that the
low bidder is acceptable with respect to the technical specifications of the IFB. It
should be prepared by the project manager to ensure that the apparent low bidder
is technically responsive. The memorandum should be supported by
documentation and placed in the contract file.

20. Protests.
Protest procedures shall be included in the IFB that have been approved by the
legal counsel.

Resource(s)
☐ □Appendix 2, ICTC Standard of Conduct Policy
☐ □

Reference(s)
☐ □ Appendix 1, FTA Circular 4220.1F, Chapter VI-8-9, 13-14
☐ □ California Public Utilities Code Section 132352.4
☐ □ California Public Contracts Code section 20209.5 et seq.

Section 024F – Procurement by Competitive Proposal for Services Other Than
Architectural and Engineering (<$100,000)

1. When the project or operating budget or ICE determines that the value of the
goods or services to be procured exceeds $100,000, the RFP/RFQ method should
be used. This competitive proposal method of procurement is normally
conducted with more than one source submitting an offer (i.e., proposal). Either a
fixed-price or cost-reimbursement type contract is awarded. This method of
procurement is generally used when conditions are not appropriate for the use of
sealed bids. If this procurement method is used the following requirements apply:
a. RFPs will be publicized. All evaluation factors will be identified along with
their relative importance.
b. Proposals should be solicited from an adequate number of qualified sources.
c. The RFP/RFQ will define the method for conducting technical evaluations of the proposals received and for selecting awardees.
d. Awards will be made to the responsible firm whose proposal is most advantageous to ICTC with price and other factors considered, which is sometimes referred to as best value.

2. The RFP/RFQ solicitation is publicized and proposals are requested from a number of sources. Negotiations may be conducted with one or more of the sources submitting offers and a fixed price or cost-reimbursement type (that identifies specific rates of compensation) of contract is awarded, as appropriate. When the RFP/RFQ is used, the following procedures apply:

a. Both a technical and a cost proposal should be solicited from an adequate number of qualified sources to permit reasonable competition consistent with the nature and requirements of the procurement. The RFP/RFQ should be publicized, and requests for the solicitation by other potential sources as a result of the advertisement should be honored to the maximum extent practicable. The objective is to promote full and open competition.
b. Care should be exercised to avoid providing any information to an offeror which would give them a competitive advantage. From the time the solicitation is being prepared to the time of contract negotiations, only the project manager or legal counsel should have contact with potential or actual proposers in order to reduce the any unfair advantage in the competitive process.
c. The RFP/RFQ should disclose a ceiling price or budget range unless a good reason exists not to.
d. The RFP/RFQ should identify all significant evaluation factors (criteria) and corresponding point value for each evaluating factor. ICTC may elect to negotiate with the highest scoring short-listed offeror based on proposal evaluating factors alone and forgo interviews if ICTC has sufficient information to determine that the offeror provides the best value to ICTC and the interview process is unnecessary.
e. ICTC may elect to conduct interviews with all responsible offerors who submit proposals within a competitive range, price, and other factors considered.
f. Upon selection of the most qualified offeror, ICTC may elect to conduct negotiations with one or more offerors in the competitive range. During the negotiation process, the offeror(s) will be given reasonable opportunity (with a common cutoff date) to support, clarify, correct, improve, or revise its/their proposal(s).
g. Unsuccessful offerors should be notified at the earliest practicable time that their offer is no longer being considered for award. Upon written request, unsuccessful offerors should be informed (in general terms only) of the reasons for not being awarded a contract, but this should not be done until after the contract has been executed with the awarded consultant in order to preserve the competitive process. Before, during, and after contract award, staff should take care to avoid disclosing offerors’ proprietary data if it is labeled as such.
h. Award should be made to the responsible offeror whose proposal will be most advantageous to ICTC; price, technical, and other factors considered (“other factors” means factors other than price-related factors such as quality of proposal, experience, etc.).

3. Solicitation of Proposal

a. Knowledge of the product or service and its use is essential to sound pricing. Before soliciting proposals, the project manager should develop an ICE of the proper price level or value of the product or service to be purchased. For
supplies, such estimates may be based on a physical inspection of the product and review of such items as drawings, specifications, job process sheets, and prior procurement data.

b. Selection of qualified sources for solicitation of proposals is basic to sound prices. Proposals should be invited from a sufficient number of competent sources to ensure adequate competition.

c. The RFP/RFQ should contain sufficient information to enable a prospective offeror to properly prepare a proposal. The RFP/RFQ should be as complete as possible with respect to:

i. item description or SOW;

ii. specifications;

iii. buyer furnished property, if any;

iv. required delivery schedule;

v. general provisions;

vi. special provisions;

vii. cost and pricing data requirements;

viii. contract clauses (standard or special);

ix. experience and technical experience;

x. project organization and key personnel;

xi. duration of agreement;

xii. payment method;

xiii. project schedule; and

xiv. any DBE requirements.

d. RFP/RFQs should specify a date and time for submission of proposals. Any extension of time should be granted uniformly to all prospective offerors. Each RFP/RFQ should be available to all prospective offerors at the same time, and no offeror should be given the advantage of advance knowledge regarding SOW details or evaluation factors that could affect the competitive process.

4. Pre-Proposal Meeting

A pre-proposal meeting may be used as a means of briefing prospective offerors and explaining to them complicated specifications and requirements, including DBE information, goals, and documentation as early as possible after the solicitation has been issued and before the proposals are due. The pre-proposal meeting should not be used as a substitute for amending a defective or ambiguous solicitation. After a pre-proposal meeting is held, question-and-answer notes should be taken and posted on the Web site. If a modification is proposed as a result of the pre-proposal meeting, such modifications should be made through a formal addendum and not through the question-and-answer notes.

5. Evaluation Committee.

Evaluation of proposals should be conducted by one or more committees of technically qualified personnel concerned with the procurement and should include at least one non-staff member. All non-staff members must receive the evaluation committee guidelines and complete a declaration concerning conflicts of Interest before taking part in the evaluation. Selection of evaluation committee members should be approved by the Executive Director or program manager. The objective of contract negotiation is to obtain complete agreement on all the basic issues. Oral discussion or written communication should be conducted with offerors, to the extent necessary, to resolve uncertainties relating to the technical and nontechnical issues. Basic questions should be resolved when they arise and not be left for later agreement during subsequent proceedings.
Proposals will be evaluated, negotiated, selected and any award made in accordance with the criteria and procedures described below. The approach and procedures are those that are applicable to a competitive negotiated procurement whereby proposals are evaluated to determine which proposals are within a competitive range. Discussions and negotiations may then be carried out with offerors within the competitive range after which best and final offers (BAFOs) may be requested. However, ICTC may select a proposal for award without any discussions or negotiations or request for any BAFO(s). Subject to ICTC's right to reject any or all proposals, the offeror will be selected whose proposal is found to be most advantageous to ICTC. Proposals will be evaluated, negotiated, selected and any award made in accordance with the criteria and procedures included in the RFP/RFQ. Proposals may not be evaluated on the basis of criteria that were not included in the RFP/RFQ.

6. Selection of Offerors for Negotiation and Award.

After receipt of initial proposals, written or oral discussion may be conducted with all responsible offerors who submitted proposals within a competitive range, price and other factors considered. Exceptions to this requirement are:

a. procurements in which rates or prices are fixed by law or regulation; and

b. procurements in which it can be clearly demonstrated (from the existence of adequate competition or accurate prior cost experience with the product or service) that acceptance of the most favorable initial proposal without discussion would result in a fair and reasonable price. In such procurements the RFP/RFQs must contain a notice that award may be made without discussion of proposals received and that proposals should be submitted initially on the most favorable terms possible from a price and technical standpoint. When there is uncertainty, however, as to the pricing or technical aspects of any proposal, the project manager and Project manager staff member should not make award without further exploration and discussion. When the project manager and Project manager staff member deem a proposal to be the most favorable and that proposal involves a material departure from the requirements stated in the RFP/RFQ, all offerors should be given an opportunity to submit new proposals on a basis comparable to that of the offeror tentatively selected.

7. Confidentiality of Negotiations.

In competitive negotiations, offerors should not be given any indication of a “target” price that must be met to ensure further consideration for contract award. Such practice constitutes an auction technique that may violate the integrity of the procurement process and must be avoided. Additionally, the RFP/RFQ boilerplate states that proposals (minus the cost proposal/estimate until the time of award) will not be treated as confidential documents unless they are marked as such by the bidder/offeror and the bidder/offeror is able to demonstrate the documents contain the type of information protected by law as confidential or trade secret. Large portions of proposals are typically public records. They should not, however, be released to the public during the procurement or contract negotiation process without the approval of the legal counsel.

8. Opening of Proposals.

Proposals will not be publicly opened. All detailed cost estimates (“cost proposals”) and evaluations related to costs will be kept strictly confidential throughout the evaluation, negotiation, and selection process. Only the members of the evaluation committee and ICTC officials having a legitimate interest will be provided access to the cost proposals and cost evaluation results during this period.
Failure to determine requirements in sufficient time to allow a reasonable period for preparation of RFP/RFQs; preparation of quotations; contract negotiation and preparation; and adequate lead time for performance may cause delays in deliveries and increased prices. Requirements issued on an urgent basis or with unrealistic delivery schedules should be avoided since they generally increase prices or restrict desired competition. All negotiated procurements over $3,001 must have documentation that staff made the effort to obtain the best price for ICTC for the goods or services with quality, level of effort, and other relevant factors taken into consideration.

Protest procedures shall be included in the RFP/RFQ that have been approved by the legal counsel.

11. A “one-step” selection procedure can be used for service contracts in excess of $100,000. The “one-step” competitive process is as follows:

a. Notice of the professional services required should be published at least once in a newspaper of general circulation in Imperial and San Diego County and in community newspapers, as appropriate, at least three weeks before the proposal due date. For federally funded projects, notice also should be published in one or more minority newspapers in Imperial and San Diego County. The notice should state that ICTC is interested in receiving responses from qualified firms and indicate how additional information can be obtained and the time and place for receiving responses.

b. Notice also should be sent to firms or individuals known to be interested in providing the required services, including small and emerging businesses on ICTC’s various interested party lists and to appropriate DBE firms or individuals.

c. The RFP/RFQ should include:

i. Pass/fail criteria to be used as an initial screening of responses. Such criteria should include, but not be limited to, insurance requirements, licensing, and any other consideration which would make the proposer ineligible to perform the work.

ii. Evaluation factors.

iii. Any standard contract language that the successful offeror will be required to comply with, including all applicable federal clauses, documentation and certifications.

d. Responses to an RFP/RFQ shall list all proposed subconsultants and subcontractors, their area of the work and certified DBEs. A cost proposal shall be submitted along with the technical proposal and will be used as an evaluation factor by the evaluation committee.

e. The project manager will document the receipt of all proposals. A time-and-date stamp shall be kept at the desks of the receptionists and administrative staff handling mail, and these staff members shall be instructed to place a time-and-date stamp on all proposals. ICTC’s procedure for determining whether a proposal is disqualified for being submitted to ICTC after the deadline for proposals or statements of qualification will be stated in the solicitation document.

f. The responses should be evaluated by an evaluation committee appointed by the project manager with the approval of the Executive Director. The evaluation committee should consist of ICTC staff and should include at least one person from outside the agency.
g. The firm(s) that are deemed responsible and responsive will be short-listed. Short-listed proposers should be sent a notice to short-listed proposers and those who have not made the short-list should be sent a notice to proposers not making short-list. This notice will trigger the protest period.

h. The top-ranked firm(s) may then be interviewed, if deemed necessary. The final list of qualified firms shall be based on the response to the RFP/RFQ, references, the interview, and other relevant factors. The project manager should summarize the findings of the evaluation committee in a recommendation memo to the Executive Director. The memo should include the evaluation committee’s recommendation for negotiations with one or more firms in the competitive range.

i. The Executive Director will approve or reject the recommendation based upon information provided by the evaluation committee and other factors as deemed appropriate, including, but not limited to, qualifications, ability to meet schedule and budget, cost of work, and meeting insurance requirements. The Executive Director also may interview one or more of the firms prior to making a selection.

j. Approval by the Executive Director of the recommendation shall be deemed approval to enter into negotiations with one or more firms in the competitive range. After one or more offerors are selected for contract negotiations, they should be sent a notice of intent to award. This notice is not a commitment by ICTC to award a contract; it is just notice that ICTC intends to negotiate. At this stage any necessary certificates of insurance should be requested from offerors with whom ICTC will negotiate. Proposers who are not selected for negotiation should be sent a notice of intent to enter negotiations with another consultant in order to trigger their protest period. A contract should not be finalized until a sufficient number of days have passed from the time the notice of intent to enter negotiations with another proposer is sent to the unsuccessful proposers for the protest period to have expired.

k. The cost proposals from the firm(s) in the competitive range should be used as a basis for negotiation. Negotiations will be conducted by the project manager and the Executive Director and can include factors other than cost, such as staffing levels, project schedule, etc. If negotiations are conducted with more than one firm in the competitive range, then staff attempt to obtain the most favorable terms by negotiating with all of the firms. Should negotiations fail, the Executive Director may issue a BAFO to the qualified firms. Once negotiations are complete, a contract incorporating the negotiated terms and conditions will be prepared for the approval of the Commission. A post-award notice should be sent to all of the unsuccessful firms at this point in time to notify them that a final selection has been made and trigger their protest period.

12. For services that have a very explicit SOW containing detailed, straight-forward specifications that will allow consistent responses and offerors can be considered qualified or not qualified based on predetermined criteria, the low-bid IFB process may instead be used. The project manager can determine whether the nature of any of the services are appropriate for using this low-bid process.

13. Cost must be used as a factor in evaluating all proposals for services pursuant to this section.

14. If desired, a “two-step” selection process may be followed, as follows:

a. Request For Proposals, Requests for information/letters of interest/statements of qualifications (RFPS/RFIs/LOIs/SOQs) may be solicited from the current ICTC vendor list, for the particular services specialty. This first stage of the procurement also is sometimes referred to as the RFQ stage.
b. Notice of the professional services required should be published at least once in a newspaper of general circulation in Imperial and San Diego County and in one or more minority newspapers in Imperial and San Diego County at least three weeks before the proposal due date. The notice should state that ICTC is interested in receiving RFPs/RFIs/LOIs/SOQs from qualified firms, indicate how additional information can be obtained, and indicate the time and place for receiving responses.

c. An RFP, RFI or RFQ may be sent to firms or individuals previously known to be interested in or capable of providing the required services. Reasonable effort should be made to send requests to minority firms known to be capable of providing the required services.

d. “Pass/fail” criteria will be established by staff and clearly stated in the RFP, RFIs/RFQ to be used as a screening of responses. Such criteria may include, but is not limited to, adherence to project budget, insurance requirements, and DBE compliance (if DBE is applicable).

e. An evaluation committee will be formed by ICTC staff and the Executive Director with should include at least one person from outside the agency.

f. The evaluation committee will evaluate the SOQs, and the project manager should prepare a recommendation memo to the Executive Director summarizing the evaluation committee’s findings and recommending one or more qualified firms to be invited to receive an RFP. The firm(s) that is deemed responsible and responsive will be short-listed. Short-listed proposers should be sent a notice to short-listed proposers and those who have not made the short-list should be sent a notice of failure to make short-list. Following approval by the Executive Director or designee, the project manager may then issue an RFP to the qualified firm(s).

g. From this point, the steps above for one-step procurement should be followed.

Resource(s)
Appendix 2, ICTC Standard of Conduct Policy

Reference(s)
Appendix 1, FTA Circular 4220.1F, Chapter VI
Section 023 of Procurement Manual (Best Value)
California Public Utilities Code Section 132352.4

Section 024G – Procurement of A&E Services (<$3,000)

1. ICTC will use competitive proposal procedures based on the Brooks Act and California Mini-Brooks Act when contracting for A&E services as defined in 40 U.S.C. §541 and California Government Code 4525. Other types of services considered A&E services include environmental, program management, construction management, feasibility studies, preliminary engineering, design, surveying, mapping, and services which require performance by a registered or licensed architect or engineer. The Brooks Act requires that:

a. An offeror’s qualifications be evaluated;

b. Price be excluded as an evaluation factor;

c. Negotiations be conducted with only the most qualified offeror; and

d. Failing agreement on price, negotiations with the next most qualified offeror be conducted until a contract award can be made to the most qualified offeror whose price is fair and reasonable to the grantee.
2. Separately bound or sealed cost proposals should be submitted as part of the process and should not be opened until after the evaluation committee has ranked the proposers. Cost proposals should be excluded as an evaluation factor and will only be used by the Executive Director or his/her designee when negotiating within the prescribed budget, except as may be otherwise provided in this manual.

3. The separately submitted cost proposal should be used as a basis for negotiation. Negotiations will be conducted by the Executive Director or his/her designee and can include factors other than cost, such as staffing levels, project schedule, etc. Should negotiations fail, the Executive Director, or his/her designee, will enter into negotiations with the next ranked firm. Once negotiations are complete, a contract incorporating the negotiated terms and conditions will be prepared for the approval of the Executive Director or his/her designee. Only the cost proposal of the firm(s) in negotiations should be opened. At the end of the process, all unopened cost proposals should be disposed of unopened or returned to the offeror.

4. All provisions of Section 024F (Procurement of Services Other Than A&E by Competitive Proposal with a value greater than $100,000) of this manual applicable to RFPs, which are not in conflict with this Section also should be used for A&E procurements.

5. Audits and Indirect Costs. The following requirements apply to a third-party contract for A&E services:
   a. Performance of Audits. The third-party contract or subcontract must be performed and audited in compliance with Federal Acquisition Regulation (FAR) Part 31 cost principles.
   b. Indirect Cost Rates. ICTC, the contractor, its subcontractors must accept FAR indirect cost rates for one-year applicable accounting periods established by a cognizant federal or state government agency, if those rates are not currently under dispute.
   c. Application of Rates. After a firm’s indirect cost rates established as described in subparagraph 3.e(5)(b) of this chapter are accepted, those rates will apply for purposes of contract estimation, negotiation, administration, reporting, and payments, not limited by administrative or de facto ceilings.
   d. Pre-notification – Confidentiality of Data. Before requesting or using cost or rate data, ICTC should notify the affected firm(s) that their data will be kept confidential and may not be accessible by or provided by the group of agencies that share cost data, except by written permission of the audited firm. If prohibited by law, that cost and rate data may not be disclosed under any circumstances. California’s Public Records Act may make it difficult to maintain confidential cost or rate data. As a result, before requesting or using cost or rate data, ICTC should notify the affected firm that its cost or rate data may be subject to disclosure and should try to obtain permission to provide that data from the firm if ICTC receives a public records request for these records under applicable California law.

6. The design-bid-build procurement method requires separate contracts for design services and construction. For design services, ICTC uses qualifications-based procurement procedures. For construction, ICTC uses competitive procedures as it may not use qualifications-based procurement procedures for the actual construction, alteration, or repair of real property. These may include sealed bidding or competitive negotiation procurement methods pursuant to sections 24A through 24F of this manual.
ICTC considers the nature of the services to be performed and its relationship to construction (not the nature of the prospective contractor) as the determinant on whether to use qualifications-based procurement procedures. In cases where it is unclear whether the procurement should be based on these A&E provisions of the manual, staff should consult the document entitled Policy Guidance Regarding Use of A&E Procurements.

8. ICTC does not require the use of qualifications-based procurement procedures for projects involving construction of intelligent transportation system (ITS) projects. Whether qualifications-based procurement procedures may be used for ITS procurements will depend on the actual services to be performed in connection with the project.

9. All procurements over $3,001 must establish that the project manager made the effort to obtain the best price for ICTC for the goods or services with quality, level of effort, and other relevant factors taken into consideration. Protest procedures should be included in the RFP or RFQ that have been approved by the legal counsel.

Resource(s)

☐ None

Reference(s)

☐ Appendix 1, FTA Circular 4220.1F Chapter VI-13; 21-22
☐ The Brooks Act, 40 U.S.C. §541
☐ California Government Code 4525
☐ California Public Utilities Code Section 132352.4.

Section 024H – Pre-Award Audits

FHWA Procurements in excess of $250,000 that are funded by state or federal transportation dollars and are not awarded on a low-bid basis may be subject to a pre-award audit by Caltrans or an ICTC auditor. Once an offeror is selected for award and before a contract is executed, the project manager should either send a request to Caltrans requesting a pre-award audit or arrange for a pre-award audit by ICTC’s auditor. The project manager should work together to ensure the auditor is provided sufficient information to complete the audit in a timely manner. All audit findings must be addressed by the offeror before the contract is executed by ICTC. ICTC also may elect to utilize a pre-award audit requirement for non-federally funded procurements if considered to be in ICTC’s best interest. Post-award audits may only be used when approved for a particular procurement by the ICTC Executive Director or designee, and written documentation of the approval should be placed in the contract file.

Resource(s)

☐ None

Reference(s)

☐ LPP 00-05&03
Section 024I – Procurement by Noncompetitive Proposals (Sole Source) With Caltrans or Federal Funds

When ICTC requires supplies or services available from only one responsible source and no other supplies or services will satisfy its requirements, ICTC may make a sole source award following documentation of an adequate justification. When ICTC requires an existing contractor to make a change to its contract that is beyond the scope of that contract, it may be a sole source award that must be justified. ICTC staff should work with the legal counsel to determine if a particular contract amendment could be considered a sole source. A sole source cannot be justified when the need for the sole source is due to either a failure to plan or a lack of advance planning or due to concerns about the amount assistance available to support the procurement (for example, expiration of federal assistance available for award). Procurement via the limited scope procurement method described in Section 024K also should be explored prior to utilizing the sole source method. The following requirements apply to a sole source procurement that falls within the parameters of this section:

1. A cost analysis (i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profit (ICE)), is required.
2. The project manager should not commence a sole source unless:
   a. The action is justified based on one or more of the justifications permitted by the federal funding agency(ies);
   b. Approval of the Executive Director is received.
3. The project manager is responsible for providing and certifying as accurate and complete necessary data to support his/her recommendation for a noncompetitive procurement.
4. When the acquisition will be paid for in whole or in part by federal funds, the following conditions must be met as applicable:
   a. Staff solicited competitive bids and was unable to obtain a responsive bidder.
   b. The grantor agency providing the federal funds has approved sole source procurement.
   c. The service is only available from a single source because the contractor will be required to use specialized training or experience, confidential information, intellectual property, or trade secrets owned by the contractor.
   d. The federal grantor agency made the award of funds being used based on ICTC’s use of a particular team of contractors, and the contractor to be sole sourced is one of the team members identified in the funding application.
   e. The work is necessary to continue development or production of highly specialized equipment or components thereof, and it is likely that award to another contractor would result in substantial duplication of costs that are not expected to be recovered through competition or when it is likely that award to another contractor would result in unacceptable delays in fulfilling ICTC’s needs.
   f. The sole source is authorized by statute or only one contractor can comply with specific statutory requirements.
   g. A national emergency exists and a particular facility or contractor is needed to achieve mobilization.
   h. The disclosure of ICTC’s needs in a public procurement process would compromise national security.
   i. A particular expert or neutral person’s services are needed for a current protest, dispute, claim, or litigation.
   j. A competitive procurement is precluded by the terms of an international agreement or treaty or the written directions of a foreign government providing reimbursement for the cost of the supplies or services.
k. To establish or maintain an educational or other nonprofit institution or a federally funded research and development center that has or will have an essential engineering, research, or development capability.

Resource(s)
☐ None

Reference(s)
☐ Appendix 1, FTA Circular 4220.1F, Chapter VI, Pages 15-18
☐ California Public Utilities Code Section 132352.4

Section 024J – Procurement by Noncompetitive Proposals (Sole Source) Without Caltrans or Federal Funds

1. Regardless of funding, sole source procurements are accomplished through solicitation or acceptance of a proposal from only one source. A contract amendment or change order that is not within the scope of the original contract also is considered a sole source procurement that must comply with this section. A sole source cannot be justified when the need for the sole source is due to either a failure to plan or a lack of advance planning, or due to concerns about the amount assistance available to support the procurement (for example, expiration of Federal assistance available for award). ICTC staff should work with the legal counsel to determine if a particular contract amendment could be considered a sole source. Procurement via the limited scope procurement method described in Section 024K also should be explored prior to utilizing the sole source method.

2. When there are no Caltrans or federal funds involved, one of the following additional factors may be utilized to justify a sole source acquisition in addition to the factors in Section 024I:
   a. Only one (1) contractor/consultant/vendor who can provide unique/highly specialized item/service.
   b. Economy or efficiency supports award to existing contractor/consultant as a logical follow on to work already in progress under a competitively awarded contract.
   c. Cost to prepare and conduct a competitive procurement exceeds the cost of the work or item.
   d. The item is an integral repair part or accessory compatible with existing equipment.
   e. The item or service is essential in maintaining research or operational continuity.
   f. The item/service is one with which staff members who will use the item/service have specialized training and/or expertise and retraining would incur substantial cost in time and/or money.

3. A cost analysis (i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profit (ICE)) is required.

4. The project manager should not commence noncompetitive negotiations unless the purchase requisition:
   a. justifies the use of such actions; and;
   b. approval of the Executive Director;

5. The project manager is responsible for providing and certifying as accurate and complete necessary data to support their recommendation for noncompetitive procurements.
Section 024K – Procurement by Limited Competition

1. Generally, ICTC must provide for full and open competition in solicitations. The Common Grant Rule for governmental recipients of federal funding, however, permits ICTC to limit the number of sources from which it solicits bids or proposals when ICTC has such an unusual and urgent need for the property or services that it would be seriously injured unless it were permitted to limit the solicitation. A limited competition procurement cannot be justified when the need for foregoing the full and open competition requirement is due to either a failure to plan or a lack of advance planning or due to concerns about the amount assistance available to support the procurement (for example, expiration of federal assistance available for award). Only under certain circumstances can ICTC conduct a procurement using limited competition requirements. A small purchase procurement procedure in which only three quotes are sought on a shorter time frame could be used even for a procurement exceeding the normal applicable thresholds if a justification for limited competition exists. The justifications in Sections 024I and 024J may be sufficient. Additionally, one of the justifications below may be sufficient. Prior consultation with legal counsel member may be required in order to utilize a limited competition procurement method.
   a. Documentation is provided establishing that full and open competition in connection with a particular acquisition is not in the public interest.
   b. Documentation is provided establishing that an unusual and urgent need for the services exists and ICTC would be seriously injured unless it is permitted to limit the competition.
   c. Documentation is provided establishing that public exigency or emergency will not permit a delay resulting from a full formal competitive procurement for the supplies or services.
   d. Acquisition of an expert or neutral person’s services are needed for a current or potential protest, dispute, claim, or litigation.

2. Limited competition procurements require approval by the Executive Director.

Section 024L – Options

1. In compliance with FTA Circular 4220.1F options must be evaluated as part of the price evaluation of offers on FTA-funded procurements if an option will be
An option is a unilateral right in a contract by which, for a specified time, ICTC may elect to purchase additional equipment, supplies, or services called for by the contract or may elect to extend the term of the contract. If ICTC chooses to use options, the requirements below apply:

a. Evaluation of Options.
   The option quantities or periods contained in the contractor’s bid or offer must be evaluated in order to determine contract award. When options have not been evaluated as part of the award, the exercise of such options will be considered sole source procurement.

b. Exercise of Options.
   i. The project manager 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.
   ii. An option may not be exercised unless the project manager 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.

2. The terms for the options and for the exercising of them should be defined in each contract.

3. The bid price form used in an IFB and the cost proposal form used in an RFP should state that the option prices will be included in the total price for evaluation purposes.

Resource(s)
☐ None

Reference(s)
☐ Appendix 1, FTA Circular 4220.1F, Chapter VI-19-21

Section 024M – Contracts with Other Government Agencies

ICTC may contract with any department or agency of the United States or the State of California and local governmental authorities within or outside of the region, including those in Mexico, any city, county, public district, public corporation, or joint powers authority formed pursuant to the provisions of the Joint Exercise of Powers Act, Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code upon those terms and conditions as ICTC finds are in its best interests without conducting a competitive procurement.

Resource(s)
☐ None

Reference(s)
☐ California Public Utilities Code Section 132352.4

Section 024N – Procurement Utilizing Design-Build Procurement Method

The design-build procurement method consists of contracting for design and construction simultaneously with contract award to a single contractor, consortium, joint venture, team, or partnership that will be
responsible for both the project’s design and construction. The legal counsel should be consulted prior to using this delivery method as it may require nonstandard solicitation and contract templates.

Resource(s)
☐ None

Reference(s)
☐ California Public Contracts Code Section 20209.5, et seq.

Section 024O – Procurement Utilizing “Job Order Contract” JOC Procurement Method

A JOC is a competitively bid, firm-fixed-price, indefinite quantity contract that is based upon specific unit pricing contained in a unit price book (prepared by a public agency or by independent commercial sources) setting forth detailed repair and construction items of work, including descriptions, specifications, units of measurement, and individual unit prices for each item of work. The JOC includes unit pricing for work at time of award, but not the specified quantity and location of the work to be performed. At the time a JOC is issued, the SOW will identify the quantity and specific location of the work to be performed and any DBE commitment applicable to the JOC. A JOC may be used when it will result in a cost savings through economies of scale or expedite the delivery of work.

1. General Requirements.
   JOCs shall be awarded under written agreement subject to the following limitations:
   a. The specifications were advertised in accordance with, Section 1, “Bidding Process” based on the maximum potential value of the JOC.
   b. The specifications provided for sealed competitive bidding on unit-cost terms for all labor, material, and equipment necessary to perform all work contemplated for individual JOCs.
   c. The JOC does not exceed a term of three years in duration.
   d. The JOC shall only be used for the performance of minor routine or recurring construction or for the renovation, alteration, or repair of existing public facilities.

2. A JOC may not contain any provision that would guarantee the contractor cumulative JOCs in excess of $50,000.

3. Issuance of JOCs.
   Following award of a JOC, JOs may be issued by the Executive Director in accordance with ICTC Commission policies, administrative policies, and procedural manuals when it is not in conflict with other Commission policies and it is the best interest of ICTC to use the JOC procurement process because one or more of the following criteria have been met:
   a. Use of the JOC process will result in a cost savings through economies of scale or expedite the delivery of work; or
   b. Compliance with the traditional competitive bidding requirements will not produce an advantage to ICTC; or
   c. Advertising for bids is undesirable because it will be practically impossible to obtain what is needed or required by an unforeseen deadline if the traditional competitive bidding method is used; or
   d. The entity or entities providing funds for the project have authorized use of the JOC process.

4. An individual JO may not exceed the sum of $2,000,000, except in the case of an emergency, or as specifically authorized by the Executive Director, whose authorization shall not be delegated.
5. No public work that logically should be performed as a single contractual transaction requiring the expenditure of more than $2,000,000 shall be separated into separate JOs for purposes of avoiding this limitation.

6. Non pre-priced items of work may be included in JOs provided that the non pre-priced items are within the scope and intent of the JOC and are priced reasonably and in conformity all applicable laws, regulations and policies.

7. JOC Intergovernmental Agreements.
The ICTC Executive Director may permit, subject to requirements of this section and subject to such terms and conditions that the Executive Director may prescribe, any public entity, including the California Department of Transportation, or any municipal corporation, school or other special district within Imperial County, to participate in JOCs entered into by ICTC, and may enter into any agreements necessary to do so. A JOC may not be used by a third party on a non-ICTC project without contracting via the Service Bureau.

Resource(s)
☐ None

Reference(s)
☐ None

SECTION 025 – COST AND PRICE ANALYSIS

1. ICTC staff should perform a cost or price analysis in connection with every procurement action that will result in expenditure of funds, including contract modifications and amendments that call for additional funds. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the project manager must create an ICE before receiving bids, cost estimates or proposals.

2. Task Order Contracts. If the ICE prepared prior to the solicitation was sufficiently detailed by task to allow a determination of the reasonableness of the price for a particular task, no additional ICE is required. If, however, the level of detail in the original ICE is insufficient or there is a reason to believe the amounts used in the original ICE are no longer reasonable or accurate, an ICE should be revised.

A cost analysis must be performed when the bidder is required to submit the elements (i.e., Labor Hours, Overhead, Materials, etc.) of the estimated cost, e.g., under professional consulting and A&E services contracts. A cost analysis will also 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.

4. Price Analysis.
A price analysis may be used in all other instances to determine the reasonableness of the proposed contract price.

5. Profit/Fee.
ICTC will negotiate profit/fee as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is
performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor’s investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

6. Federal Cost Principles. Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with federal cost principles on federally funded procurements.

7. Cost Plus Percentage of Cost Prohibited. The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used on federally funded procurements.

8. Establishing Indirect Cost Rates. For contracts other than A&E contracts that are federally funded, if the contractor or subcontractor does not have an approved government agency indirect cost rate agreement, the contract’s dollar value should determine how that rate is verified.

   a. Contracts of $5 Million or Less. The audit recommendations of the contractor’s certified public accountant or indirect cost information in the contractor’s annual statement to their stockholders, shareholders, or owners, or examples of acceptance of their rates by other governmental agencies within the last six months may be accepted.

   b. Contracts Exceeding $5 Million.

Resource(s)
☐ None

Reference(s)
☐ Appendix 1, FTA Circular 4220.1F, Chapter VI-19-21
☐ 

SECTION 026 – BONDING REQUIREMENTS

1. For non-federally funded construction or facility improvement contracts or subcontracts less than $50,000 in value, bonding may be required at the discretion of the Executive Director or legal counsel.

2. For construction or facility improvement contracts or subcontracts exceeding $100,000, it is the policy of ICTC to impose these minimum requirements at the discretion of the Executive Director:

   a. A bid guarantee from each bidder equivalent to ten (10) percent of the bid price must be issued by a bonding company registered in California or such other amount as may be set forth. The “bid guarantee” shall consist of a firm commitment such as a bid bond executed by an admitted surety insurer and made payable to ICTC, cash, cashiers’ check, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified. A bid shall not be considered unless accompanied by one of the forms of bidder’s security. On the failure or refusal of any bidder to execute the contract, its bidder’s security shall be forfeited to ICTC. ICTC may withhold the bidder’s security of the second- and third-lowest, responsive and responsible bidders until the contract has
been finally executed. ICTC shall, upon request, return cash, cashier’s checks, and certified checks submitted by all other unsuccessful bidders within ten (10) days after the contract is awarded, and their bidder’s bonds shall be of no further effect.

b. A performance bond on the part of the contractor for at least 50 percent of the contract amount for contracts without federal funds, 100 percent of the contract price for federally funded contracts, or for such percentage as may be required by law or funding agencies. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor’s obligations under such contract.

c. A payment bond on the part of the contractor. A payment bond is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract. Payment bond in the amount of 100 percent of the contract price is required unless the award is less than $100,000 or the Commission grants a variance.

d. A cash deposit, certified check, or other negotiable instrument may be accepted by a grantee in lieu of performance and payment bonds, provided the grantee has established a procedure to assure that the interest of the grantor agency is adequately protected.

3. At the discretion of the Executive Director, bonding of higher limits than the minimum may be imposed if the project risk warrants such.

Resource(s)
☐ None

Reference(s)
☐ Appendix 1, FTA Circular 4220.1F, Chapter IV-23

SECTION 027 – PAYMENT PROVISIONS IN THIRD-PARTY CONTRACTS

1. Advance Payments
   a. For non-federally funded contracts, the use of advance payments is strongly discouraged and will only be agreed to if no other option is available.
   b. For federally-funded contracts, the federal funding agencies do 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 the federal funding agency (ies).

2. Progress Payments. The risk associated with use of progress payments is that ICTC may make payment for contract work that has not been completed. ICTC should only use progress payments if the following conditions are met, as applicable:
   a. The percentage of completion method for progress payments can only be used on construction contracts if the procurement is FTA funded.
   b. Progress payments are only made to the contractor for costs incurred in the performance of the contract.
   c. ICTC obtains adequate security for the progress payments and has sufficient written documentation to substantiate the work for which payment is requested. Adequate security may include taking title or obtaining a letter of credit or taking
equivalent measures to protect the recipient’s financial interest in the progress payment.

d. ICTC obtains sufficient documentation to demonstrate completion of the amount of work for which progress payments are made.

Resource(s)
☐ None

Reference(s)
☐ Appendix 1, FTA Circular 4220.1F, Chapter IV-10-11

SECTION 028 – LIQUIDATED DAMAGES PROVISIONS

1. ICTC may use liquidated damages if it may reasonably expect to suffer damages (increased costs on project involved) from late completion and the extent or amount of such damages would be difficult or impossible to determine.

2. The use of liquidated damage provisions is at the discretion of the Executive Director, legal counsel and project manager.

3. 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 third-party contract. Any liquidated damages recovered shall be credited to the project account involved unless the grantor agency permits otherwise.

Resource(s)
☐ None

Reference(s)
☐ Appendix 1, FTA Circular 4220.1F, Chapter IV-11

SECTION 029 – CONTRACT AWARD ANNOUNCEMENT

Once the contract terms have been negotiated, a post-award notice should be sent to those bidders/offerors who were not selected for the award. The project manager will send a notice to proceed to the successful proposer/bidder following execution of a contract. If ICTC implements a contract award announcement procedure for federally funded procurement for goods or services (including construction services), the announcement should 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.

Resource(s)
☐

Reference(s)
☐ None

SECTION 030 – CONTRACT PROVISIONS

All contracts should include provisions to define a sound and complete agreement. Boilerplate language in ICTC’s contract templates may not be modified or removed without approval from the Executive
Director. In addition, contracts and subcontracts should contain contractual provisions or conditions that allow for:

1. Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, including sanctions and penalties as may be appropriate, for all contracts in excess of the small purchase threshold.
2. Termination for cause and for convenience, including the manner by which it will be affected and the basis for settlement, for all contracts in excess of $3,001 in value.

**Resource(s)**

- None

**Reference(s)**

- Appendix 1, FTA Circular 4220.1F, Chapter IV-11

**SECTION 031 – CARDINAL CONTRACT CHANGE**

1. A cardinal contract change is a significant change in contract work (goods or services) that causes a major deviation from the original purpose of the work or the intended method of achievement or causes a revision of contract work so extensive, significant, or cumulative that, in effect, the contractor is required to perform very different work from that described in the original contract. Such practices are sometimes informally referred to as “tag-ons.” A change within the scope of the contract (sometimes referred to as an “in-scope” change) is not a tag-on or a cardinal change.

2. A cardinal change cannot be identified easily by assigning a specific percentage, dollar value, number of changes, or other objective measure that would apply to all cases. The following guidance should be used, however, in order to determine if a change is a cardinal change and if such a change will therefore constitute a sole source. The legal counsel should be consulted to make a final determination regarding whether a particular contract change will constitute a cardinal change.
   a. Changes in Quantity. To categorize virtually any change in quantity as a prohibited cardinal change (sometimes referred to as an “out-of-scope” change) fails to account for the realities of the marketplace and unnecessarily restricts a recipient from exercising reasonable freedom to make minor adjustments contemplated fairly and reasonably by the parties when they entered into the contract. The U.S. Supreme Court decision in Freund v. United States, 260 U.S. 60 (1922) supports this policy.
   b. Customary Marketing Practices. Marketing practices can influence the determination of which changes will be “cardinal.”
   c. Balancing Test. Based on the nature and extent of the work to be performed; the amount of effort involved; whether the change was originally contemplated at the time the original contract was entered into; or the cumulative impact on the contract’s quantity, quality, costs, and delivery terms, is the change significant? Generally, a change that causes the contract value to exceed the advertised potential contract value by more than 25 percent will be considered a cardinal change.
   d. Rolling Stock. In the case of rolling stock, a major change in quantity or a substitution of major end items not contemplated when competition for the original award took place would generally be a cardinal change. Another cardinal
change would, at this time, include a change from a high-floor to a low-floor vehicle. Changing an engine might result in a cardinal change depending on the circumstances surrounding the project and whether a compatible replacement could be obtained through competition. FTA, however, considers changes to seating, fabrics, and colors, exterior paint schemes, signage, and floor covering, and other similar changes to be permissible changes.

e. Federal Procurement Standards. The broader standards applied in federal contracting practice reflected in Federal court decisions, federal boards of contract appeals decisions, and comptroller general decisions provide guidance in determining whether a change would be treated as a cardinal change. ICTC will not necessarily treat these federal procurement decisions as controlling; however, ICTC intends to consider the collective wisdom within these decisions in determining the nature of third-party contract changes along the broad spectrum between permissible changes and impermissible cardinal changes.

Resource(s)
□ None

Reference(s)
□ Appendix 1, FTA Circular 4220.1F, Chapter V-7
□ Section 024I and 024J of this manual (sole source procurements)

SECTION 032 – STATUTORY AND REGULATORY REQUIREMENTS FOR FEDERALLY FUNDED CONTRACTS

1. ICTC is responsible for evaluating these requirements (DBE, Lobbying, Clean Air, etc.) for relevance and applicability to each procurement. For example, procurements involving the purchase of iron, steel, and manufactured goods will be subject to the “Buy America” requirements in 49 C.F.R. Part 661 if there is FTA funding, but different Buy America provisions will apply if there is FHWA funding in a procurement.

2. It is the responsibility of each person in the procurement process to ensure that all required clauses specific to the type of procurement are included in the contract, that those federal clauses and signed certifications accompany all bid or proposal documents, that the bidder/offeror completes the required certifications and that the contract includes reference to the clauses and contains the signed certifications.

Resource(s)
□ None

Reference(s)
□ Appendix 1, FTA Circular 4220.1F

SECTION 033 – PUBLIC WORKS PROJECTS (CONSTRUCTION, ALTERATION, DEMOLITION, REPAIR, MAINTENANCE, IMPROVEMENT OF ANY STRUCTURE AND OF LAYING OF CARPET)
1. For the purpose of this manual, the following State of California regulations and interpretation of them by ICTC apply:
   a. Labor Code Section 1720, which states: “As used in this chapter, public works means:
      (a) Construction, alteration, demolition, or repair work done under contract and paid for in whole or in part out of public funds; and (b) the laying of carpet in a public building done under contract and paid for in whole or in part out of public funds.”
   b. Labor Code Section 1771, which states: “Except for public works projects of one thousand dollars ($1,000) or less, not less than the prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in this chapter shall be paid to all workers employed on public projects. This section is applicable to work performed under contract and is not applicable to work carried out by a public agency with its own forces.”

2. With regard to this manual, ICTC interpretation of state law is that:
   a. “Construction” is defined as a public works project that creates a new plant, building, structure, highway facility, transit facility, ground facility, or utility system that is intended for public use.
   b. “Maintenance” is defined as a public works project that alters, demolishes, repairs or performs routine, recurring and usual work for the preservation, protection, and keeping of any facility for public use (plant, building, highway, rail, structure, ground facility, utility system or any real property) in a safe and continually usable condition for which it has been designed, improved, constructed, altered, or repaired and includes carpentry, electrical, plumbing, glazing, touchup painting, and other craft work designed to preserve the publicly owned, used, or operated facility in a safe, efficient and continuously usable condition for which it was intended, including repairs, cleaning, and other operations on machinery and other equipment permanently attached to the building or realty as fixtures.

3. All insurance requirements must be met and certificates provided to ICTC prior to a contractor performing any work on ICTC-controlled project or property.

Resource(s)
☐ None

Reference(s)
☐ California Labor Code section 1720
☐ California Labor Code section 1771

SECTION 034 – DELEGATION OF AUTHORITY AND APPROVALS

All procurements must be approved ultimately by the Commission or the Executive Director.

Resource(s)
☐
SECTION 035 – PROCUREMENT CARDS

ICTC will maintain credit cards under the control of the Executive Director, which will allow for cost- and time-effective procurements.

SECTION 036 – CLOSEOUT OF CONTRACTS

At the conclusion of the work assigned to a contractor in a task order, the project manager is responsible for close out. When a contract or task order is being terminated, the project manager also must determine if funds can be liquidated and unencumbered.

Resource(s)

□ None

SECTION 037 – DISADVANTAGE BUSINESS ENTERPRISES AND EQUAL OPPORTUNITY

1. DBEs should have the maximum opportunity to participate in the performance of ICTC’s federally funded procurements and contracts. ICTC will fulfill its DBE obligations in its DBE plan by ensuring fair and full utilization of DBEs in the purchase of equipment, materials, and supplies and in the performance of contracts and subcontracts.

2. The required DBE clauses will be included in any and all DOT-financed agreements executed by ICTC. It is the policy of the DOT and ICTC that DBEs as defined in 49 CFR Part 23 should have the maximum opportunity to participate in the performance of contracts financed in whole or part with federal funds. Consequently, the DBE requirements of 49 CFR Part 23 apply to such procurements. Contractors must agree to ensure that DBEs as defined in 49 CFR Part 23 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds. Contractors must not discriminate on the basis of race, color, national origin, or sex in the award and performance of DOT assisted contracts.

3. DBE Accountability
   a. The project manager has been designated the responsibility of reporting DBE payments under contracts, or any other method used to expend funds with a certified DBE firm to the DBE liaison.
   b. ICTC will monitor contracts on an ongoing basis to assure compliance with the applicable DBE program(s).
   c. The establishment of one or more contract goals for a formalized procurement will be carried out by the project manager based on the availability of the Underutilized DBEs (UDBEs) in the geographical area for the specific type of procurement and the judgment that the goal can reasonably be met by the bidder/proposer.
   d. If at the time of bid or proposal submittal the DBE/UDBE goal is not met and if required by law, the bid or proposal will be reviewed by the project manager to assure that a good faith effort has been met. The project manager will verify that the bidder/proposer was either responsive to the DBE/UDBE requirements of the RFP/IFB or has been deemed non-responsive.
4. DBE Requirements
   a. ICTC has to fulfill the DBE requirements for all DOT-funded projects receiving planning, capital, and/or operating assistance who will award prime contracts (excluding transit vehicle purchases) exceeding $250,000 in funds in a federal fiscal year.
   b. ICTC must submit a DBE program to the concerned operating administration. Once the operating administration has approved the program, the approval counts for all DOT assisted programs (except that goals are reviewed by the particular operating administration that provides funding for DOT-assisted contracts). ICTC also will enter into an implementation agreement for its DBE program when required by a funding agency.
   c. Additional information regarding ICTC’s DBE programs can be found in its FTA and FHWA DBE programs documentation, which is available in the ICTC office.

Resource(s)
☐ None

References
☐ Appendix 1, FTA Circular 4220.1F, Chapter IV-6

SECTION 038 – PURCHASE ORDERS AND REQUISITIONS

Section is under development
SECTION 039 – INDEPENDENT COST ESTIMATE (ICE)

1. In the FTA Circular 4220.1.F, it is specified that grantees should perform a cost or price analysis in connection with every procurement action including contract modifications.

2. The intent of the Circular 4220.1.F, with respect to cost and price analysis (which logically begins with an in-house cost estimate) is to capture procurement. The degree of the analysis and the degree of detail of the in-house cost estimate depend on the size and complexity of the procurement. An ICE should not be developed for every procurement, but the estimate must be documented in some form.

3. A cost analysis should be used when a price analysis will not provide sufficient information to determine the reasonableness of the contract cost. For example, when the offeror submits elements (such as labor hours, overhead, materials) of the estimated cost, (such as professional consulting and A&E contracts); when price competition is inadequate; when only a sole source is available, even if the procurement is a contract modification or; in the event of a change order. ICTC, however, need not obtain a cost analysis if it can justify price reasonableness of the proposed contract based on a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation.

   a. Establishing Indirect Cost Rates. For contracts other than A&E contracts, if the contractor or subcontractor does not have an approved government indirect cost rate agreement, the contract’s dollar value should determine how that rate is verified.

      i. Contracts of $5 million or less. The audit recommendations of the contractor’s certified public accountant or indirect cost information in the contractor’s annual statement to their stockholders, shareholders, or owners or examples of acceptance of their rates by other governmental agencies within the last six months should be used.

      ii. Contracts exceeding $5 million. If federal funding is being used, the Defense Contract Audit Agency, another federal cognizant audit agency, or an accounting firm approved by the federal government to perform audits for the federal government must verify the contractor’s rates.

   b. Profit. Profit should be negotiated as a separate element of the cost for each contract in which there has been no price competition and in all acquisitions in which ICTC performs or acquires a cost analysis. To establish a fair and reasonable profit, ICTC considers the complexity of the work to be performed, the risk undertaken by the contractor, the contractor’s investment, the amount of subcontracting, the quality of the contractor’s record of past performance, and industry profit rates in the surrounding geographical area for similar work.

4. If ICTC determines that competition was adequate, a price analysis (rather than a cost analysis) should be used to determine the reasonableness of the proposed contract price. ICTC may use an abbreviated price analysis for micro and small purchases in most cases. One method to record this price analysis is through the use of a preprinted form on which a project manager can annotate a finding of fair and reasonable pricing and check off the most common reasons why this would be so, such as catalog or market prices offered in substantial quantities to the general public, regulated prices (for example, for many utilities purchases), or a comparison with recent prices for similar goods and services.
SECTION 40 – INSURANCE REQUIREMENTS

It is the policy of ICTC to require that third-party contractors or consultants maintain insurance coverage to meet standards. Any changes to these standards require consultation with the project manager and possibly ICTC’s insurance broker. Changes to the insurance standards in contract boilerplate should not be made without consultation with ICTC’s legal counsel and ICTC’s insurance broker.

SECTION 041 – PROCUREMENT DOCUMENTS

Procurement documents are issued by the project manager. The project manager is responsible for submitting a purchase requisition packet to the project manager for the development of the contract documents. At a minimum the contract folder should include:

1. Solicitation document (IFB, RFQ, or RFQ)
2. Contract (agreement/MOU/lease/letter Agreement/PO/etc.)
3. Amendments
4. Task orders
5. Documentation establishing reasonableness of procurement method (PAD, purchase requisition, Sole Source Approval form, Limited Competition Approval form)
6. Documentation establishing reasonableness of amount paid (ICE, RON, evaluation committee score sheets)

SECTION 042 – REVISIONS TO MANUAL

Unless otherwise noted in this manual, revisions or waivers to any of the procedures in this manual may only be approved by the:

1. ICTC Legal Counsel;
2. The Executive Director; or
3. The Commission
SECTION 043 – ADVERTISING OF SOLICITATIONS

1. All RFPs, RFQs, and IFBs (collectively “solicitations”) will be advertised, at a minimum, as set forth elsewhere in this manual depending on the type and amount of the procurement. The complexity or the specialized nature of the procurement may warrant additional advertising. All solicitations in excess of the applicable small purchase threshold, which are not sole source or limited competition procurements, will be advertised on ICTC’s Web page.

2. A notice of solicitation will be sent to all firms contained in ICTC’s bidders list who have indicated an interest or who have otherwise been identified as interested in the type of project being advertised. If no clear category for the type of project is maintained, then the project manager should use their best judgment in selecting multiple categories to ensure an adequate response to the solicitation.

3. The preferred publication for the advertisement of construction and A&E procurements is the Imperial Valley Press. Additional publications may be used if the complexity of the procurement warrants it and if the budget can absorb the costs.

Resource(s)
☐ None

SECTION 044 – DISTRIBUTION OF ADVERTISED SOLICITATION DOCUMENTS

1. All of ICTC’s solicitation documents for procurements in excess of the applicable small procurement threshold should be made available on its Web site except for map, drawings, and other documents too complex to place on the Web. These documents should be available for review at ICTC’s offices.

2. For construction bids, ICTC staff will add the contractor to the bidders list.

Resource(s)
☐ None
PART II – APPENDICES

This part of the manual contains forms and other referenced procedural or policy documents that relate to Part I.

PROCUREMENT MANUAL APPENDIX

1. FTA Circular 4220.1F – Third Party Contracting Requirements  not attached
   see http://www.fta.dot.gov/documents/FTA_Circular_4220.1F.pdf
2. ICTC Standard of Conduct Policy
3. ICTC Protest Procedures
4. ICTC Consultant/Contractor Evaluation Committee Guidelines
5. ICTC Procurement Credit Card Policy
II. ICTC Standard of Conduct Policy

1. Introduction and Applicability

The ICTC Commission has delegated responsibility and authority for administration of ICTC to the Executive Director. This document establishes the standard of conduct applicable to all ICTC staff and is consistent with Commission policies, rules, and regulations.

2. Definitions

The following definitions apply to this policy:

Compensation: Means the receipt of any monetary or non-monetary payment for the services or time of a person. Compensation includes, but is not limited to, salary, wages, fees, and any discount or economic opportunity not made available in the regular course of business to members of the public.

Confidential Information: (a) At the time of the use or disclosure of the information, the disclosure is prohibited by a statute, regulation, or rule which applies to ICTC; or (b) the information is not general public knowledge and will have, or could reasonably be expected to have, a material financial effect on any source of income, investment, or interest in the real property of ICTC; or (c) the information pertains to pending contract, labor, or real property negotiations and disclosing the information could reasonably be expected to compromise the bargaining position of ICTC; or (d) the information pertains to pending or anticipated litigation and disclosing the information could reasonably be expected to compromise the ability of ICTC to successfully defend, prevail in, or resolve the litigation.

Designated Staff: Any ICTC staff member who is required to file a statement of economic interests pursuant to the California Political Reform Act of 1974 (Form 700), as amended.

ICTC Decision: (a) The drafting, introduction, consideration, reconsideration, adoption, defeat, or repeal of any ordinance or resolution; and (b) the amendment of any ordinance or resolution; and (c) a report by ICTC staff to the Board or a committee; and (d) contracts; and (e) quasi-judicial decisions, including: (1) any decision on a land development permit, map, or other matter; or (2) any declaration of debarment; and (f) any other decision of the Commission or an ICTC committee.

Person: Means any individual, business entity, trust, corporation, association, committee, or any other organization or group of persons acting in concert, whether for profit or not for profit.

Public Agency: Means the United States or any of its agencies; the State of California; a city; any political subdivision of the State, including counties and districts; or any public corporation, agency, or commission.

Position of Substantial Responsibility: Means a position in which a person took part personally and substantially by rendering a decision, approval, or disapproval for a department’s projects; by making a formal written recommendation; by conducting an investigation; by rendering advice on a significant basis; or by using confidential information.

3. Goals And Objectives

In order to assist in fostering the desired ICTC goals, the staff, together with the local community, have a right to expect the business of ICTC to be conducted with efficiency, fairness, impartiality, and
integrity. Employment at ICTC carries with it an obligation to the public interest. It requires standards of professional behavior from staff that promote and maintain public confidence and trust. At the same time, staff should not be subject to unnecessary restrictions simply because they work for . Staff have all the normal rights of persons under state and federal law. Although no one set of rules can answer all ethical questions, this Standard of Conduct provides ICTC staff with an ethical framework for their decisions, actions, and behavior. In this regard, it explains the principles covering appropriate conduct in a variety of contexts and outlines the minimum standard of behavior expected of staff. Staff are expected to comply with this policy as well as all other state and federal laws regarding employment by public agencies including, but not limited to, conflict of interest laws.

4. General Principles

Staff must abide by the following principles when doing their work:

A. Staff are to implement the policies and decisions of ICTC in an impartial manner. In particular, staff shall comply with all applicable laws regarding conflicts of interest, including, but not limited to, the California Political Reform Act, and the provisions of the California Government Code regarding Prohibited Interests in Contracts, as these laws may be amended from time to time.

B. Staff are to treat their colleagues and members of the public fairly and consistently, in a non-discriminatory manner with proper regard for their rights and obligations. In this regard, staff should perform their duties in a professional and responsible manner. They should ensure that their decisions and actions are reasonable, fair, and appropriate to the circumstance, based upon consideration of all the relevant facts and supported by adequate documentation.

C. Staff are to promote confidence in the integrity of ICTC and always act in the public interest and not in their private interest while conducting ICTC business. Staff should protect the reputation of ICTC. They should not engage in activities, at work or outside work, that would bring ICTC into disrepute.

D. Staff are to provide relevant and responsible service to the public and other staff, providing necessary and appropriate assistance. They should provide information promptly and in an appropriate format that is easy for the recipient to understand. The information should be clear, accurate, and complete.

E. Staff should keep up to date with advances and changes in their area of expertise and look for ways to improve performance and achieve high standards of work. They should use their authority, available resources and information only for the work-related purpose intended.

5. Guide to Ethical Decision Making

To assist in fostering a climate of ethical awareness, conduct, and decision making at ICTC, staff may find it useful to refer to or consider, either by themselves or if they are uncertain, in conjunction with the Legal Counsel the following five points:

A. Is the decision or conduct lawful?
B. Is the decision or conduct consistent with ICTC’s policies and goals?
C. What will the outcome be for the staff member, other staff, ICTC; and others?
D. Do these outcomes raise a conflict of interest or lead to private gain to the staff member, the staff member’s family or other member of the Commission at ICTC expense?
E. Can the decision or conduct be justified in terms of public interest, and would it withstand public scrutiny?

6. Recognizing a Conflict of Interest

In addition to the provisions of the Political Reform Act, as enforced by the Fair Political Practices Commission, conflict of interest exists when it is likely that a staff member could be influenced, or could be perceived to be influenced, by a personal interest in carrying out their duties of employment. Conflict of interest that leads to biased decision making may constitute corrupt conduct.

A. No staff member or member of the Commission shall participate in the selection, or in the award or administration of, a contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:
B. The staff member or member of the Commission;
C. Any member of his or her immediate family;
D. His or her partner; or
E. An organization which employs, or is about to employ, any of the above,
F. Has a financial or other interest in the firm selected for award.
G. Some related interests that may give rise to a conflict of interest include:
   1) Personal beliefs or attitudes that influence the impartiality of advice given;
   2) Personal relationships with the people ICTC is dealing with that go beyond the level of a professional working relationship;
H. Secondary employment that compromises the integrity of the employee and ICTC.
I. In all purchases for ICTC, any practices which might result in unlawful activity are prohibited including, but not limited to, rebates, kickbacks, or other unlawful considerations. ICTC staff are specifically prohibited from participating in the selection process when those staff have a close personal relationship, family relationship, or business relationship with a person or business entity seeking a contract. An individual employee may often be the only person aware of the potential for conflict. It is, therefore, their responsibility to avoid any financial or other interest that could compromise the impartial performance of their duties, and disclose any potential or actual conflict of interest to Legal Counsel.
J. If a staff member or member of the Commission is uncertain whether a conflict exists, he/she should discuss the related interest matter with Legal Counsel and attempt to resolve any conflicts of interest that may exist. To resolve any conflict of interest that occurs, or could occur, a range of options is available, depending upon the significance of the conflict. These options include:
   1) Recording the details of the disclosure and taking no further action because the potential for conflict is minimal or can be eliminate by disclosure of effective supervision.
   2) The staff member relinquishing the personal interest;
   3) The staff member being removed from the task/activity/situation where the conflict could occur.
K. Disputes over alleged conflicts of interest should be resolved by the Executive Director.
L. Prohibition Against Financial Interest in a Contract
   1) It is unlawful for any staff or member of the Commission to be financially interested in any contract made by them in their official capacity.
2) It is unlawful for any contract to be made by the ICTC Commission or any committee established by ICTC’s Board or a committee if any individual member of the body has a financial interest in the contract.

3) For purposes of the prohibitions set forth above in subsections 1 and 2 of this section, the term financial interest means any interest, other than a remote interest as prescribed in California Government Code section 1091 or a non-interest prescribed in California Government Code section 1091.5, which would prevent the individual involved from exercising absolute loyalty and undivided allegiance to the best interests of ICTC.

4) Any individual with a remote interest in a prospective contract of ICTC’s must disclose the existence of the remote interest to the committee or other body on which the individual is a member if that committee has any role in creating, negotiating, reviewing, or approving the contract; and the individual must abstain from influencing or anticipating in the creation, negotiation, review, or approval of the contract.

7. Prohibition Against Influencing ICTC Decisions Affecting Economic Interests

1. It is unlawful for any ICTC staff or Commission member to knowingly influence an ICTC decision if it is reasonably foreseeable that the ICTC decision will have a material financial effect on the individual or a member of his or her immediate family, if the material financial effect is distinguishable from its effect on the public generally; or any of the following economic interests:

   1) any business entity in which the ICTC staff or Commission member or a member of the individual’s immediate family has invested $2,000 or more;
   2) any business entity for which the ICTC staff or Commission member or a member of the individual’s immediate family is a director, officer, partner, trustee, employee, or holds any position of management;
   3) any real property which the ICTC staff or Commission member or a member of the individual’s immediate family has invested $2,000 or more;
   4) any person from whom a ICTC staff or Commission member or a member of the individual’s immediate family has received (or by whom you have been promised) $500 or more in income within twelve months prior to the municipal decision;
   5) any person from whom a ICTC staff or Commission member or a member of the individual’s immediate family has received gifts which total $420 or more within twelve months prior to the municipal decision. This gift threshold is subject to adjustment as set forth in Title 2, section18940.2, of the California Code of Regulations;
   6) the personal expenses, income, assets, or liabilities of ICTC staff or Commission member or a member of the individual’s immediate family.

2. For purposes of this section, “material financial effect” has the same meaning as that term is used in Title 2, sections 18705 through 18705.5 of the California Code of Regulations.

8. Prospective Employment of Designated Staff

A. It is unlawful for any ICTC staff or Commission member or a member of the individual’s immediate family to make, participate in making, or use his or her official position with ICTC to influence a ICTC decision involving the interests of a person with whom he or she is seeking, negotiating, or securing an agreement concerning future employment.
B. It is unlawful for any person who has a matter pending before ICTC to negotiate, directly or indirectly, knowingly or willfully, the possibility of future employment of an ICTC staff or Commission member or a member of the individual’s immediate family who is making, participating in making, or using his or her official position to influence, a ICTC decision concerning that matter.

9. Restrictions Concerning Contracts and Procurements by Current and Former Employees

A. Notwithstanding any other section of this Policy, ICTC shall not contract with, and shall reject any bid or proposal submitted by, the persons or entities specified below, unless the Executive Director finds that special circumstances exist which justify the approval of such contract:
   1) Persons employed by ICTC;
   2) Profit-making firms or businesses in which ICTC employees serve as officers, principals, partners, or major shareholders;
   3) Persons who, within the immediately preceding twelve (12) months, were employed by ICTC and
      a. were employed in positions of substantial or management level responsibility in the area of service to be performed by the contract, or
      b. participated in any way in developing the contract or its service specifications; and
   4) Profit-making firms or businesses in which the former employees serve as officers, principals, partners, or major shareholders.

B. Persons leaving’s employment who were employed in positions of substantial responsibility or management level who participated in developing contracts or specifications while at ICTC should avoid participating in developing a proposal or bid document in response to a ICTC solicitation or in negotiating contract terms on behalf of anyone other than a Public Sector employer for a period of twelve (12) months after leaving ICTC’s employment in order to avoid a conflict of interest if the former ICTC employee participated in developing the solicitation or contract specifications.

10. Acceptance of Gifts, Benefits, or Gratuities

In addition to requirements set forth in the Political Reform Act, as enforced by the Fair Political Practices Commission, staff and Commission members should not accept gifts or benefits that are intended to, likely to, or be perceived to cause the individual to act in a partial manner in the course of their duties. Staff and Commission members will neither solicit nor accept gifts, gratuities, favors, or anything of monetary value equal to or in excess of $50 on an annual, aggregate basis from potential or current consultants or contractors, parties to sub-agreements, or other contracting parties. General guidance regarding these limitations may be found below.

A. Gifts: Staff and Commission members are prohibited from accepting gifts from vendors or from representatives of any non-governmental organization that provides, or is desirous of contracting with ICTC if the aggregate annual value of the gift or gifts will equal or exceed $50. This prohibition applies to any gift, gratuity, favor, entertainment, or loan, and includes such items as liquor, lodging, travel, food, and tickets to public functions (sports events, theater, etc.).

B. Business Related Functions: Acceptance of an invitation to join a vendor at a function being attended for official agency business may be permitted by the Executive Director. Included in this
category are luncheon meetings, lunches incidental to a business meeting held before or after the lunch period, and business-related dinners.

C. Industry Meetings: At industry meetings, seminars, or other related functions where the employee’s attendance is being funded by ICTC, it is permissible to accept hospitality at activities that are provided for the benefit of all industry people and are commonly accepted as being a part of the group activities. The maximum annual aggregate amount of gifts an employee may accept from a particular vendor must be less than $50.

D. Entertainment: ICTC staff may not be guests of a vendor, purchaser, contractor or representative of a service organization at a sports event, theater, etc. These activities are not connected with ICTC business and could be criticized by the public or competitors of the host. The reason a company would act as such a host could be because the vendor, purchaser, contractor, etc. wants to solidify its position, influence the decision of the guest, or show its appreciation. When confronted with doubtful situations, ICTC staff and Commission members should refuse the offer. The possibility of placing oneself, or ICTC, in a compromising position is thus avoided.

11. Reporting Corrupt Conduct

Staff is urged to report suspected corrupt conduct to the Executive Director or Legal Counsel.
III. ICTC PROTEST PROCEDURES

ICTC will consider all protests regarding the contracting process or the award of a contract submitted by 3:00 P.M. on the deadlines discussed below. ICTC will only review protests submitted by an actual or prospective proposer. A protest must be made in writing, contain an original signature and must be mailed or hand delivered to ICTC. Protests which do not strictly comply with ICTC’s protest procedures will be rejected.

Protests relating to the content of the RFP package must be filed on or before the date the response is due. Protests relating to the intent to make an award, must be filed within three days before the award. Untimely protests will be rejected.

If deemed necessary, ICTC shall notify all proposers of record that a protest has been filed and that the award has been postponed until further notice. If necessary, proposers will be asked to extend the time for acceptance of their proposal in order to avoid the need for re-advertisement of the solicitation.

A. Protest Contents

A letter of protest must set forth detailed grounds for the protest and be fully supported with technical data, documentary evidence, names of witnesses and other pertinent information related to the subject being protested. The protest must also state the law, rule, regulation or practice on which the protest is based. The protestor must demonstrate or establish a clear violation of a specific law or regulation, e.g., a violation of the Buy America requirements.

If the protestor considers that the protest contains proprietary material which should be withheld, a statement advising of this fact must be affixed to the front page of the protest document, and alleged proprietary information shall be so identified wherever it appears.

Protests shall be addressed to:

Project Manager
Imperial County Transportation Commission
1405 N. Imperial Ave. Suite 1
El Centro, CA 92243

B. Reply to Protest

An ICTC Protest Committee appointed by the Executive Director will review all protests in a timely manner and reply to the protest in writing, within ten (10) business days. All relevant material submitted by the protestor will be considered. Such material will not be withheld from any interested party outside of ICTC or any agency which may be involved with the contract except to the extent that the withholding of information is permitted or required by law or regulation.

C. Request for Protest Reconsideration

Upon receipt of an adverse decision by the Executive Director of the ICTC, the protestor may file a request for protest reconsideration. A request for protest reconsideration must
be directed to the Executive Director in writing and received within ten (10) full business
days from the postmark date of the reply from ICTC. The Executive Director will
respond to the request for protest reconsideration within ten (10) full business days and
schedule a review with the Commission. The decision of the Commission will be final.
No further protests will be heard by ICTC.

D. State Appeal Process

Under certain limited circumstances, and after the protester has exhausted all
administrative protest remedies made available at the local level, an interested party may
protest to the California Department of Transportation (Department) the award of a
contract pursuant to a Federal Transit Administration (FTA) grant.

Department review of any protest will be limited to:

1) Local agency’s failure to have or follow its own protest procedures or its failure to
   review a complaint or protest.
2) Violations of the Federal or State law or regulations.

The protest filed with Department shall include:

1) The name and address of the protester.
2) Clear identification of the local agency responsible for the RFP process.
3) A statement of the grounds for protest and any supporting documentation (the
grounds for protest filed with Department must be fully supported to the extent
feasible. Additional materials in support of an initial protest will only be considered
if authorized by the FTA regulations).
4) A copy of the protest filed with the local agency, and a copy of local agency’s
decision, if any.
5) Indication of the desired ruling or relief from Department.

Such support should be sent to:

The California Department of Transportation
Division of Mass Transportation
P.O. Box 942874 - MS 39
Sacramento, CA 942874-0001
IV. ICTC CONSULTANT/CONTRACTOR EVALUATION/REVIEW COMMITTEE GUIDELINES

ICTC has the periodic need of creating a variety of Evaluation or Review Committees. Evaluation Committees are tasked with assisting ICTC in selecting a consultant or contractor through a competitive process. Non-ICTC members are invited to serve on an evaluation committee when ICTC believes they can provide valuable additional technical experience and input, that will assist in the consultant/contractor selection process. These guidelines are intended to provide information regarding the responsibilities as a member of one of ICTC’s consultant/contractor evaluation committees.

A. Role as an Evaluation or Review Committee Member

An individual may be asked to serve on an ICTC Committee or working group due to experience and/or position as an elected official or as a representative of a public agency, regional interest group, or community stakeholder. The interests of the public may or may not coincide with the interests of the public or private organization represented or with personal interests. Since the funds used by ICTC to pay its consultants and contractors are public funds, however, it is expected that objective standards will be used to evaluate proposals that will best serve the interests of the public.

Participants will be asked to review written proposals from, and/or interview, consultants or contractors who would like to perform work for ICTC using evaluation criteria that vary depending upon the type of contract to be awarded. All of ICTC’s procurements contain a scoring section that sets forth assigned weights for each of the evaluation criteria. Committee members will be provided written proposals, a score sheet and asked to evaluate each proposal based on the criteria in the procurement. Participants must use only the criteria discussed in the procurement when scoring the proposals. Only persons who are members of the evaluation committee may fill out a score sheet and have their scores tabulated as part of the selection process.

Participants may or may not see the costs or bid portion of proposals, depending on the evaluation criteria and selection method determined by ICTC. Participants may or may not be asked to take part in interviewing proposers after the written proposals are reviewed and scored. The weight of the interview portion of the evaluation process will be indicated in ICTC’s Bid or RFP and interviewers will use standardized questions to ensure proposers compete on equal ground.

ICTC staff may carry out additional tasks as part of the evaluation process, such as checking proposers’ references and holding additional meetings among ICTC staff to further evaluate the proposals. After the evaluation process is complete, a recommendation memo will be prepared to ICTC’s Executive Director. Only ICTC’s Executive Director or their designee has authority to approve entry into negotiations with a particular proposer.

From time to time a proposer who is not selected for contract award will file a protest with ICTC. ICTC has protest procedures. If a protest is filed the objectivity of the evaluation committee members and the integrity of the evaluation process may be closely scrutinized by persons outside of ICTC. Additionally, all proposals and evaluation score sheets are potentially public records subject to disclosure to the public. Therefore, evaluation committee members should exercise care so that their score sheets and other evaluation documents are legible and do not contain comments that could be perceived as ambiguous or derogatory.
B. Conflict of Interest

Conflicts of interest may arise as a consequence of the many and varied evaluation and review committee members have in the Community. One of the goals of these Guidelines is to manage real or perceived conflicts of interest.

ICTC has determined that a system of self-disclosure is most effective since conflicts of interest must be dealt with on a case by case basis. Discussion and disclosure generally can resolve issues related to conflict of interest. A conflict of interest occurs when there is a divergence between an individual's professional, private, or personal relationships or interests and his/her obligations to ICTC as an evaluation committee member such that an independent observer might reasonably question whether the member's actions or decisions are determined by considerations of private benefit, gain or advantage.

A conflict of interest or the appearance of it depends on the situation, and not necessarily on the character or actions of the individual. The appearance of a conflict of interest can be as damaging or detrimental as an actual conflict. Potential conflicts of interest are not unusual and must be addressed. For example, sometimes people from the private sector are selected to serve as a member of one of ICTC’s evaluation committees because of their experience in a particular industry. Therefore, it is expected that situations may arise where a person that has served as an evaluation committee member may work for a private sector employer or client that will in the future want to submit a proposal to ICTC in response to an RFP.

In order to prevent an actual or perceived conflict of interest a person serving as an evaluation committee member disqualifies him or herself and the private organization he/she is employed by from submitting a proposal to or receiving a fee from ICTC for a period of one year. This one year bar also applies to persons who were employed in the public sector when serving on ICTC’s evaluation committee, but who eventually take a position as a consultant for, employee of, or owner of, a private sector firm. California law states that certain financial interests are automatically a conflict of interest.

ICTC has listed these prohibited interests as well as others that it chooses to avoid in the attached Declaration Concerning Conflicts. It is wrong for an individual's actions or decisions made in the course of his or her ICTC activities to be determined by considerations of personal financial gain. Such behavior calls into question the professional objectivity and ethics of the individual, and it also reflects negatively on ICTC. ICTC evaluation committee members must respect the status as a recipient of public funds and conduct affairs in ways that will not compromise ICTC’s integrity.

Concerning Conflicts” and return it to ICTC before they begin evaluating any proposals and must report potential conflicts that may arise during the evaluation process. Potential conflicts must be reported up until the time a contract is actually awarded or until an evaluation committee member’s role in the evaluation process is complete, whichever occurs first. If a committee member believes she/he may have a potential conflict and it arises subsequent to submitting the Declaration Concerning Conflicts, the committee member has an affirmative duty to immediately disclose any potential conflict of interest to the ICTC project manager. Evaluation committee members with an actual or potential conflict of interest will be excused from the committee.
3. Confidential Information

Proprietary or other confidential information that an ICTC evaluation committee member may be exposed to at ICTC may never be used in external activities or disclosed to others unless written approval is given in advance by ICTC’s Executive Director.

4. Prohibition Against Discrimination and Harassment

ICTC has a policy of nondiscrimination as required by federal and state law due to ICTC’s use of federal and state money to fund contracts. This policy applies to selection of consultants and contractors. ICTC’s policy prohibits discrimination on the basis of sex, age (over 40), religion, creed, race, nationality, color, disability, sexual orientation, or marital status. All evaluation committee members are expected abide by this policy when evaluating consultants. ICTC’s policies prohibiting harassment, discrimination, or violence when dealing with ICTC’s employees or using ICTC’s facilities or property also apply.
DECLARATION CONCERNING CONFLICTS DIRECTIONS  SAMPLE FORM

Please review the language in this declaration carefully prior to signing below. Once you have signed the declaration, please enclose it in an envelope marked “confidential” and submit it to the ICTC project manager who requested that you serve on ICTC’s evaluation committee or asked you to assist in the evaluation of construction bids.

For purposes of this declaration “interest in a firm” means having a financial interest, either personal or organizational, including but not limited to, owning stock or having an investment or profit-sharing interest in, receiving commissions or fees from, owning property with, or having a management or policy making position with a firm.

For purposes of this declaration “relationship with a firm” means employee, consultant, officer, attorney, agent, broker, supplier of services or goods, landlord or tenant, officer or employee of a firm. For purposes of this declaration “firm” means a person, corporation, or unincorporated association.

DECLARATION
I ___________________________________ have been asked to serve as a member of ICTC’s Review or Evaluation Committee for proposals or to help evaluate bids submitted for ____________________________________ (“the Project”).

I have reviewed ICTC’s Evaluation Committee Guidelines. I understand that I cannot serve as an evaluation committee member or as a bid evaluator if I have an actual or potential conflict of interest.

ICTC has provided me with a list of the firms who have submitted proposals or bids for the Project and any firms that may have assisted ICTC with the preparation of any development criteria, specifications, scope of work, request for proposals or request for qualifications, or bid documents related to the Project.

The name of my employer is ____________________________________.

My employer is:
☐ a public agency
☐ a non-profit corporation
☐ a corporation
☐ a sole proprietorship
☐ an unincorporated association (partnership, joint venture, LLC, LLP, etc.).

Mark the box below that applies:
☐ I do not have an interest in or relationship with any firm awarded a contract by ICTC in the last calendar year; or

☐ I do have an interest in or relationship with a firm awarded a contract by in the last calendar year and the names of those firm are:
_________________________________________________; or

☐ I do not know if I have an interest in or relationship with a firm awarded a contract by ICTC in the last calendar year.

I understand that I must immediately report any potential conflicts of interest that I become aware of after signing this declaration to ICTC’s project manager.
In order to affirmatively establish that I do not have an actual or potential conflict interest, I make the following statements of fact:

1. I do not have an interest in or relationship with a firm that has submitted a proposal or bid to ICTC for the Project.

2. I have not received a gift with a value in excess of $100 during the last calendar year from a firm that has submitted a proposal or bid for the Project.

3. Neither my spouse nor children (if applicable) have an interest in or relationship with a firm that has submitted a proposal or bid to ICTC for the Project.

4. I do not have and do not plan to have a direct or indirect interest in a business, transaction, or professional activity that is in substantial conflict with the proper discharge of my duties as an evaluation committee member to serve ICTC’s best interests in objectively selecting a consultant/contractor for the Project.

5. I have not and do not plan to incur an obligation of any nature in a business or transaction or professional activity that is in substantial conflict with the proper discharge of my duties as an evaluation committee member or bid evaluator to serve ICTC’s best interests in objectively selecting a consultant/contractor for the Project.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct to the best of my knowledge on this _____ day of ______________________, 20____.

Signature of Declarant

Printed Name of Declarant

---

DO NOT WRITE BELOW THIS LINE – FOR ICTC’S USE ONLY

☐ No conflict of interest issues; or

☐ Potential conflict of interest issue – referred to Legal Counsel for review

Signature of Project Manager Date

☐ Conflict of interest confirmed

☐ Potential conflict of interest issue reviewed and no conflict of interest was found.

Notes:

____________________________________________________________________________________

____________________________________________________________________________________

____________________________________________________________________________________

____________________________________________________________________________________

Signature of Legal Counsel Date
V. ICTC Procurement Credit Card Program Policies and Procedures

PURPOSE

To establish procedures for the functional use of a Procurement Credit Card Program, setting guidelines which govern and control the use of procurement cards assigned to and utilized by selected ICTC employees to purchase goods and services on behalf of the company. The policies and procedures are intended to accomplish the following:

- to ensure procurement card purchases are conducted in accordance with ICTC procurement policies;
- to establish appropriate internal controls to ensure the procurement cards are used only for authorized purposes;
- to limit ICTC's liability from inappropriate use of the procurement cards; and
- to provide a fast, convenient, and sound method of procurement in conjunction with the purchase order process.

It is intended these policies and procedures be viewed as minimum standards.

GENERAL OVERVIEW

Your procurement card is issued in your name. All purchases made on the procurement card must be purchased by only you. In addition, the Visa number and expiration date should not be given out to other employees. You are responsible for the security of your card and the transactions made with it. You can use your procurement card at any vendor that accepts Visa. As a Cardholder you may use your card for in-store purchases, fax, internet or telephone orders. Monthly usage must not exceed your Monthly Transaction Limit.

You must reconcile the monthly statements received from US Bank to ensure all charges are accurate. Statement reconciliation with attached receipts must be completed. Failure to complete the reconciliation on time will result in revocation of your card. Your procurement card is not intended to avoid or bypass ICTC’s Procurement Policies and Procedures.

You are not allowed to use the Procurement Card to purchase items listed as restrictions. The list of restrictions is detailed in the Use of Procurement Card Section below. Your procurement card must be returned to the Executive Director upon your separation from employment at ICTC. If you do not follow the guidelines for using the procurement card, your card privileges will be revoked and disciplinary action taken to include possible employment termination. ICTC reserves the right to rescind an issued credit card at anytime for any reason.

PROCUREMENT CREDIT CARD PROCEDURES

The Procurement Card Program is designed to augment other methods of small dollar purchasing and travel expenses that are available to ICTC. Use of the procurement card is intended to facilitate timely purchases with a minimum amount of administrative overhead, while retaining necessary accountability. The ICTC Executive Director will be the only person from whom requests for new procurement cards or modifications to existing cards will be accepted. In addition the Executive Director will:

- Act as a liaison between ICTC and US Bank
- Conduct training as necessary for Cardholders
- Assist with questions, problems, or disputes encountered
• Maintain records of departments and individuals issued procurement cards
• Maintain and review copies of each individuals monthly bank statements and receipts
• Maintain an updated list of Cardholders
• Communicate with individuals to retrieve returned cards for de-activation through the bank
• Make the procurement card payments per the supporting documents received from cardholders

Cardholder

A designated employee who will make small dollar purchases as authorized.

As a designated Cardholder you are responsible for the following:
• The physical security of your card
• Usage in accordance with ICTC’s Procurement Policies and Procedures and the guidelines provided in this ICTC Procurement Credit Card Program Policies and Procedures document
• The reconciliation of all purchases
• Obtaining and maintaining receipts/proper sales documentation for each purchase on a monthly basis
• Verifying goods delivered or services received

As the Cardholder, your name will be imprinted on the card with the account number and expiration date. As the Cardholder’s name is on the procurement card, only that person may use the procurement card. No other person is authorized to use that card. The US Bank will not have access to the individual Cardholder’s personal credit information other than the Cardholder’s work address. No individual credit records will be requested or maintained by the Bank.

USE OF PROCUREMENT CARD

Transaction Limitations

The Executive Director will establish transaction limits based upon the ICTC’s requirements history. If the Cardholder’s limits have been reached, authorization will not be granted by the bank and the purchase cannot be executed. Any need for changes to the procurement card must be requested from the Executive Director.

Restricted Uses

Several types of purchases are restricted from purchase using a procurement card. The procurement card is to be used for ICTC business and travel related purchases only in accordance with current procurement policies. Under no circumstances should the card be used for personal purchases, cash advances, or entertainment related food and beverage.

CARDHOLDER DOCUMENTATION, RECONCILIATION, AND PAYMENT PROCEDURES

Documentation

It is mandatory a Cardholder obtain the proper documentation for each purchase. All paperwork should be kept in an envelope. The following are examples of necessary documentation for monthly reconciliation; the Cardholder will need ONE of the following forms of documentation per purchase:
• Vendor sales receipt
• Credit card slip with itemized description of products purchased
• An invoice

If receipts are lost or cannot be obtained, a memo statement to that effect shall be made and the reasons given. The Cardholder must sign the documentation.

Reconciliation

1. The Cardholder will compare purchase receipts to the transactions listed on the Procurement Credit Card Statement. It is the Cardholder’s responsibility to resolve any purchase exceptions.
2. The Cardholder will tape individual receipts to an 8 ½ by 11 piece of paper.
3. The Cardholder will record all correlating project codes for each purchase, place all backup receipts taped to a piece of paper in an envelope.
4. The Cardholder is responsible for resolving any questionable purchases. Resolution for improper use of the procurement card will be the responsibility of the Executive Director, including any and all disciplinary action which may result.

It is the Cardholder’s responsibility to ensure reconciled statements are promptly submitted every month. Vacation, company travel, and other absences are not excuses. If you know in advance you will not be able to reconcile your statement, please make other arrangements to ensure it gets completed on time.

Errors and Dispute Resolution

If a Cardholder finds an invalid/incorrect entry or if a credit/refund request is required, the Cardholder is responsible for resolution and follow-up to ensure ICTC is given the correct credit. The Cardholder must:

• Contact the Vendor for resolution or credit/refund
• Describe error or reason for refund request; and describe action taken and pending resolution, include dates and vendor point of contact
• Make a copy of the Monthly Transaction Log Sheet for follow-up purposes and annotate actions taken until resolution is complete
• Verify corrected entry and credit on the following month’s reconciliation package
• Contact the Program Administrator if the dispute is unresolved

Lost, Stolen, or Misplaced Procurement Cards

The Procurement Credit Card is the property of ICTC and must be kept secured. If lost or stolen, the Cardholder must immediately contact the Program Administrator at US Bank upon discovery of the loss or theft to reduce the liability of fraudulent activity.
VII. ACTION CALENDAR

B. ICTC DISADVANTAGED BUSINESS ENTERPRISE (DBE) GOAL FOR FY 2011-12 FOR FTA FUNDS
November 1, 2011

ICTC Management Committee  
Imperial County Transportation Commission  
1405 N. Imperial Ave Suite 1  
El Centro, CA  92243  

SUBJECT:  ICTC Disadvantaged Business Enterprise Goal for FY 11-12 for FTA funds  

Dear Committee Members:

As a recipient of Federal Transit Administration (FTA) dollars, the ICTC is required to adopt and implement a Disadvantaged Business Enterprise (DBE) program to provide opportunities to underprivileged firms in the award and administration of contracts utilizing FTA funds. As part of this program, the ICTC must adopt an annual DBE goal. The goal is to be expressed as the percentage of FTA funds awarded to ICTC which ICTC expects to award to certified DBE firms over the fiscal year for which the goal is set.

ICTC staff proposes a FY 11-12 DBE goal of 1.4%. This goal is calculated by examining all the expected contracting opportunities utilizing FTA funds in a given year, determining what proportion of all firms ready, willing and able to bid on those contracts are likely to be DBEs, and then using that information to set a reasonable goal regarding the amount of FTA funds that will actually be awarded to DBEs through contracts with those firms. This methodology is outlined in detail in the attached report.

As an additional requirement in the goal setting process, ICTC must publish its goal for a public comment period of no less than 45 days. After this time, the proposed DBE goal may then be amended or adopted by the ICTC Commission.

ICTC staff requests that ICTC Management Committee forward this item to the ICTC Commission for review and approval:

1. Approve the proposed FY 11-12 DBE goal of 1.4%, for distribution for public comment.

2. Direct staff to return with this item in January 2012 for review and adoption of the proposed DBE goal after the public review process has been completed.

Sincerely yours,

MARK BAZA  
Executive Director

Attachment

MB/ksw/cl

CITIES OF BRAWLEY, CALEXICO, CALIPATRIA, EL CENTRO, HOLTVILLE, IMPERIAL, WESTMORLAND, IMPERIAL IRRIGATION DISTRICT AND COUNTY OF IMPERIAL
Disadvantaged Business Enterprise Plan (DBE)
For Projects Funded Through
the Federal Transit Administration (FTA)

FY 2011-12
IMPERIAL COUNTY TRANSPORTATION COMMISSION

DEPARTMENT OF TRANSPORTATION
DBE PROGRAM – 49 CFR PART 26

POLICY STATEMENT

Section 26.1, 26.23 Objectives/Policy Statement

The Imperial County Transportation Commission has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. The ICTC has received federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the ICTC has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of the ICTC to ensure that DBEs are defined in part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also our policy:

1. To ensure nondiscrimination in the award and administration of DOT-assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in DOT assisted contracts;
6. To assist the development of firms that can compete successfully in the market place outside the DBE Program.

Kathi Williams has been delegated as the DBE Liaison Officer. In that capacity, Kathi Williams is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the ICTC in its financial assistance agreements with the Department of Transportation.

ICTC has disseminated this policy statement to the ICTC Commission and all of the relative components of our organization. We have distributed this statement to DBE and non-DBE business communities that perform, or are anticipated to perform work for our organization on DOT assisted contracts. This distribution is accomplished through 1. Adoption of the program by the Commission 2. Publication available to all interested parties via the Commission’s website 3. Inclusion in all relative competitive bid documents.

Executive Director

Date
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SUBPART A – GENERAL REQUIREMENTS

Section 26.1  Objectives

The objectives are found in the policy statement on the first page of this program.

Section 26.3  Applicability


Section 26.5  Definitions

The ICTC will adopt the definitions contained in Section 26.5 for this program.

Section 26.7  Non-discrimination Requirements

The ICTC will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR part 26 on the basis of race, color, sex, or national origin.

In administering its DBE program, the ICTC will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE program with respect to individuals of a particular race, color, sex, or national origin.

Section 26.11  Record Keeping Requirements

Reporting to DOT: 26.11(b)

We will report DBE participation to DOT as follows:

We will report DBE participation on a quarterly basis, using DOT Form 4630 or through the FTA TEAM website. These reports will reflect payments actually made to DBEs on DOT-assisted contracts.

Bidders List: 26.11(c)

The ICTC will create a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on DOT-assisted contracts. The purpose of this requirement is to allow use of the bidders list approach to calculating overall goals. The bidder list will include the name, address, DBE non-DBE status, age, and annual gross receipts of firms.

We will collect this information in the following ways: requiring prime bidders to report the names/addresses and possible other information, of all firms who quote to them on subcontracts, providing a notice in solicitations and post it on the Commission website.
Section 26.13  Federal Financial Assistance Agreement

ICTC has signed the following assurances, applicable to all DOT-assisted contracts and their administration:

Assurance: 26.13(a)

ICTC shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR part 26. The ICTC shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. The ICTC’s DBE Program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the ICTC of its failure to carry out its approved program, the Department may impose sanction as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

This language will appear in financial assistance agreements with sub-recipients.

Contract Assurance: 26.13b

We will ensure that the following clause is placed in every DOT-assisted contract and subcontract:

The contractor, sub-recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the ICTC deems appropriate.

SUBPART B - ADMINISTRATIVE REQUIREMENTS

Section 26.21  DBE Program Updates

Since the ICTC may receive a grant of $250,000 or more for planning or development, planning capital, and or operating assistance in a federal fiscal year, by the statute we will continue to carry out this program until all funds from DOT financial assistance have been expended. We will provide to DOT updates representing significant changes in the program.

Section 26.23  Policy Statement

The Policy Statement is elaborated on the first page of this program.
Section 26.25 DBE Liaison Officer (DBELO)

We have designated the following individual as our DBE Liaison Officer:

Kathi Williams, Senior Transit Planner
Imperial County Transportation Commission
1405 N. Imperial Ave. Suite 1
EL Centro, Ca, 92243
760-592-4492
kathiwilliams@imperialctc.org

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the ICTC complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the Executive Director of ICTC concerning DBE program matters. An organization chart displaying the DBELO's position in the organization is found in Attachment A to this program.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO has a staff of 0 to assist in the administration of the program. The duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all components within the ICTC to set overall annual goals.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals attainment and identifies ways to improve progress.
6. Analyzes ICTC's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the Executive Director/Commission on DBE matters and achievement.
10. Provides DBEs with information and assistance in preparing bids.
11. Plans and participates in DBE training seminars.
13. Provides outreach to DBEs and community organizations to advise them of opportunities.
14. Maintains the ICTC's updated directory on certified DBEs.

Section 26.27 DBE Financial Institutions

It is the policy of the ICTC to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contract to make use of these institutions. We have made the following efforts to identify and use such institutions: research the credit unions and commercials banks in the community through on site visits and website reviews.

To date we have identified the following such institutions: None
Section 26.29  Prompt Payment Mechanisms

The ICTC will include the following clause in each DOT-assisted prime contract:

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contract receives from ICTC. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the ICTC. This clause applies to both DBE and non-DBE subcontractors.

Any failure to comply with this section by the prime contractor shall be considered as a breach of the contract, subject to the provisions of the agreement. In addition, the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractors ensures that the subcontractors are promptly paid for the work that they have performed.

Section 26.31  Directory

The ICTC maintains a directory identifying all firms eligible to participate as DBEs. The directory lists the firm’s name, address, phone number, date of the most recent certification, and the type of work the firm has been certified to perform as a DBE. We revise the Directory annually.

We make the Directory available online at http://www.dot.ca.gov/hq/bep/find_certified.htm.

Further information may be found about California’s Uniform Certification Program at http://www.dot.ca.gov/hq/bep/ucp.htm.

Section 26.33  Overconcentration

ICTC has not identified that overconcentration exists in the types of work that DBEs perform.

Section 26.35  Business Development Programs

ICTC has not established a business development program.

Section 26.37  Monitoring and Enforcement Mechanisms

The ICTC will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26.

1. We will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.109.

2. We will consider similar action under out own legal authorities, including responsibility determinations in future contracts. Attachment 3 lists the regulation, provisions, and contract remedies available to us in the events of non-compliance with the DBE regulation by a participant in our procurement activities.
3. We will also provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is actually performed by the DBEs. This will be accomplished via a reporting mechanism.

4. We will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

**SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING**

**Section 26.43 Set-asides or Quotas**

The ICTC does not use quotas in any way in the administration of this DBE program.

**Section 26.45 Overall Goals**

A description of the methodology to calculate the overall goal and the goal calculations can be found in Attachment 4 to this program. This section of the program will be updated annually.

In accordance with Section 26.45(f) the ICTC will submit its overall goal to DOT on August 1 of each year. Before establishing the overall goal each year, ICTC will consult with the Chambers of Commerce and CALTRANS Local District Offices to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the ICTC's efforts to establish a level playing field for the participation of DBEs.

Following this consultation, we will publish a notice of the proposed overall goals, informing the public that the proposed goal and its rational are available for inspection during normal business hours at our office for 30 days following the date of the notice, and informing the public that you and DOT will accept comments on the goals for 45 days from the date of the notice. The notice will be available on the Commission's website and the local newspaper of general circulation. We, we will issue this notice by June 1 of each year. The notice must include addresses to which comments may be sent and addresses (including offices and websites) where the proposal may be reviewed.

Our overall goal submission to DOT will include a summary of information and comments received during this public participation process and our responses.

We will begin using our overall goal on October 1 of each year, unless we have received other instructions from DOT. If we establish a goal on a project basis, we will begin using our goal by the time of the first solicitation for a DOT-assisted contract for the project.

**Section 26.49 Transit Vehicle Manufacturers Goals**

ICTC will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, to certify that it has complied with the requirements of this section. Alternatively, ICTC may, at its discretion and with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of the TVM complying with this element of the program.

**Section 26.51(a-c) Breakout of Estimated Race-Neutral & Race-Conscious Participation**

The breakout of estimated race-neutral and race-conscious participation can be found in Attachment 5 to this program. This section of the program will be updated annually when the goal calculation is updated.
Section 26.51(d-g)  Contract Goals

The ICTC will use contract goals to meet any portion of the overall goal. ICTC does not project being able to meet using race-neutral means. Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of our overall goal that is not projected to be met through the use of race-neutral means.

We will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. We need not establish a contract goal on every such contract, and the size of contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBEs to perform the particular type of work.)

We will express our contract goals as a percentage of total amount of a DOT-assisted contract.

Section 26.53  Good Faith Efforts Procedures

Demonstration of Good Faith Efforts (26.53(a) & (c))

The obligation of the bidder/offeror is to make good faith efforts. The bidder/offeror can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts. Examples of good faith efforts are located in Appendix A to 49 CFR Part 26.

The following personnel is responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive:

Kathi Williams, Senior Transit Planner
Imperial County Transportation Commission
1405 N. Imperial Ave. Suite 1
EL Centro, Ca, 92243
760-592-4492
kathwilliams@imperialctc.org

We will ensure that all information is complete and accurate and adequately documents the bidder/offer's good faith efforts before we commit to the performance of the contract by the bidder/offeror.

Information to be submitted (26.53(b))

ICTC treats bidder/offers' compliance with good faith efforts' requirements as a matter of responsiveness.

Each solicitation for which a contract goal has been established will require the bidders/offerors to submit the following information:

1. The names and addresses of DBE firms that will participate in the contract;
2. A description of the work that each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
5. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractors commitment and
6. If the contract goal is not met, evidence of good faith efforts.
Administrative reconsideration (26.53(d))

Within 10 days of being informed by ICTC that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official:

Mark Baza, Executive Director  
Imperial County Transportation Commission  
1405 N. Imperial Ave. Suite 1  
El Centro Ca, 92243  
760-592-4494  
markbaza@imperialctc.org

The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts.

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with our reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. We will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transpiration.

Good Faith Efforts when a DBE is replaced on a contract (26.53(f))

ICTC will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the contract goal. We will require the prime contractor to notify the DBE Liaison officer immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

In this situation, we will require the prime contractor to obtain our prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts.

If the contractor fails or refuses to comply in the time specified, ICTC will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, the contracting officer may issue a termination for default proceeding.

Sample Bid Specification:

The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of the [Name of ICTC] to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this contract will be conditioned upon satisfying the requirements of this bid specification. These requirements apply to all bidders/offerors, including those who qualify as a DBE. A DBE contract goal of ____ percent has been established for this contract. The bidder/offeror shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26 (Attachment 1), to meet the contract goal for DBE participation in the performance of this contract.
The bidder/offeree will be required to submit the following information: (1) the names and addresses of DBE firms that will participate in the contract; (2) a description of the work that each DBE firm will perform; (3) the dollar amount of the participation of each DBE firm participating; (4) Written documentation of the bidder/offeree's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal; (5) Written confirmation from the DBE that it is participating in the contract as provided in the commitment made under (4); and (5) if the contract goal is not met, evidence of good faith efforts.

Section 26.55 Counting DBE Participation

We will count DBE participation toward overall and contract goals as provided in 49 CFR 26.55.

SUBPART D – CERTIFICATION STANDARDS

Section 26.61 – 26.73 Certification Process

ICTC will use the certification standards of Subpart D of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. We will make our certification decisions based on the facts as a whole.

For information about the certification process or to apply for certification, firms should contact:

CALTRANS Civil Rights
ATTN: Certification Unit
1823 14th Street
Sacramento, Ca. 95811
(866) 810-6346
http://www.caltrans.ca.gov/hq/bep/business_forms.htm

SUBPART E – CERTIFICATION PROCEDURES

Section 26.81 Unified Certification Programs

ICTC adopts the California Unified Certification program (CUCP) procedures administered by the Certifying agencies of the CUCP. The ICTC is the member of a Unified Certification Program (UCP)]. The UCP meets all of the requirements of this section. The following is a description of the UCP (as provided on the CUCP website located at http://www.californiaucp.com/index.html)

"The California Unified Certification Program (CUCP) went into effect on January 1, 2002. It is a one stop shopping certification procedure that eliminates the need for Disadvantaged Business Enterprises (DBE) firms to obtain certifications from multiple agencies within the State.

The CUCP is charged with the responsibility of certifying firms and compiling and maintaining a single statewide database of certified DBEs, pursuant to 49 CFR Part 26. The database is intended to expand the use of DBE firms by maintaining complete and current information on those businesses and the products and services they can provide to all DOT assisted grantees in California.
The CUCP has established two regional DBE certification clusters throughout the State, designated by geographical boundaries to effectively facilitate Statewide DBE certification activities. The CUCP certifying agencies are responsible for certifying DBE firms. It is not necessary to apply for DBE certification at more than one agency. If your firm meets the general criteria for DBE certification as provided in the Application package, please submit your completed application, along with the requested documentation to one of the Certifying agencies serving the County where your firm has its principal place of business.

Section 26.83 Procedures for Certification Decisions

Re-certifications 26.83(a) & (c)

We will review the eligibility of DBEs, to make sure that they will meet the standards of Subpart E of Part 26. We will complete this review no later than five years from the most recent certification date of each firm.

For firms that we have reviewed and found eligible under part 26, we will again review their eligibility every five years. These reviews will include the following components: filing out a new application, performing on site visits in the ICTC local area, and reviewing work history, qualifications and equipment of the firm.

“No Change” Affidavits and Notices of Change (26.83(j))

To the extent as required by the CUCP, we require all DBEs to inform us, in a written affidavit, of any change in its circumstances affecting its ability to meet size, disadvantaged status, ownership or control criteria of 49 CFR Part 26 or of any material changes in the information provided with the CUCP’s application for certification.

We also require all owners of all DBEs to submit, on the anniversary date of their certification, a “no change” affidavit meeting the requirements of 26.83(j). The text of this affidavit is the following:

I swear (or affirm) that there have been no changes in the circumstances of [name of DBE firm] affecting its ability to meet the size, disadvantaged status, ownership, or control requirements of 49 CFR part 26. There have been no material changes in the information provided with [name of DBE]’s application for certification, except for any changes about which you have provided written notice to the ICTC under 26.83(j). [Name of firm] meets Small Business Administration (SBA) criteria for being a small business concern and its average annual gross receipts (as defined by SBA rules) over the firm’s previous three fiscal years do not exceed $16.6 million.

We require DBEs to submit with this affidavit documentation of the firm’s size and gross receipts.

We will notify all currently certified DBE firms of these obligations. This notification will inform DBEs that to submit the “no change” affidavit, their owners must swear or affirm that they meet all regulatory requirements of part 26, including personal net worth. Likewise, if a firm’s owner knows or should know that he or she, or the firm, fails to meet a part 26 eligibility requirement (e.g. personal net worth), the obligation to submit a notice of change applies.
Section 26.85 Denials of Initial Requests for Certification

If the CUCP denies a firm’s application or decertify it, it may not reapply until 12 months have passed from the action.

Section 26.87 Removal of a DBE’s Eligibility

In the event the CUCP proposes to remove a DBE’s certification, we will follow procedures consistent with 26.87.

Section 26.89 Certification Appeals

Any firm or complainant may appeal the CUCP decision in a certification matter to DOT. Such appeals may be sent to:

Department of Transportation  
Office of Civil Rights Certification Appeals Branch  
400 7th Street, SW  
Room 2104  
Washington, D.C. 20590

We will promptly implement any DOT certification appeal decisions affecting the eligibility of DBEs for our DOT-assisted contracting

SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 26.109 Information, Confidentiality, Cooperation

We will safeguard from disclose to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law.

Notwithstanding any contrary provisions of state or local law, we will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than DOT) without the written consent of the submitter.

Monitoring Payments to DBEs

We will require prime contractors to maintain records and documents of payments to DBEs for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of the ICTC or DOT. This reporting requirement also extends to any certified DBE subcontractor.

We will perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts states in the schedule of DBE participation.
**ATTACHMENTS**

<table>
<thead>
<tr>
<th>Attachment</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Attachment 1</td>
<td>Organizational Chart</td>
</tr>
<tr>
<td>Attachment 2</td>
<td>DBE Directory</td>
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<td>Attachment 3</td>
<td>Monitoring and Enforcement Mechanisms</td>
</tr>
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<td>Attachment 4</td>
<td>Overall Goal Calculation</td>
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<td>Attachment 5</td>
<td>Breakout of Estimated Race-Neutral &amp; Race-Conscious Participation</td>
</tr>
<tr>
<td>Attachment 6</td>
<td>Forms for Demonstration of Good Faith Efforts</td>
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<tr>
<td>Attachment 7</td>
<td>Certification Application</td>
</tr>
<tr>
<td>Attachment 8</td>
<td>Procedures for Removal of DBE's Eligibility</td>
</tr>
<tr>
<td>Attachment 9</td>
<td>Regulations: 49 CFR part 26</td>
</tr>
</tbody>
</table>
Attachment 1

Organizational Chart

DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM

Commission

Mark Baza
Executive Director

Kathi Williams
Senior Transit Planner
Attachment 2

DBE Directory

See the CUCP directory, found at http://www.dot.ca.gov/ucp/GetLicenseForm.do

ICTC encourages prime contract bidders to search this directory when seeking subcontractors that are certified as a DBE.
Attachment 3

Monitoring and Enforcement Mechanisms

The ICTC has available several remedies to enforce the DBE requirements contained in its contracts, including, but are not limited to, the following:

1. Breach of contract action, pursuant to the terms of the contract;
2. Breach of contract action pursuant to California Civil Code S 3300, et. seq;
3. Any other enforcement mechanism in law or equity allowable in California

In addition, the federal government has available several enforcement mechanisms that it may apply to firms participating in the DBE problem, including, but not limited to, the following:

1. Suspension or debarment proceedings pursuant to 49 CFR part 26
2. Enforcement action pursuant to 49 CFR part 31
3. Prosecution pursuant to 18 USC 1001.
Attachment 4

ICTC Methodology for adopting an FY 2011-12 DBE goal for FTA purposes

Pursuant to Section 49 CFR Part 26, the ICTC present the following information as it relates to the development of the ICTC Methodology for adopting a FY 2011-12 DBE goal for FTA purposes.

Anticipated ICTC contracting opportunities during FY 2011-12 utilizing FTA funds:

1. Two (2) Contracts anticipated for consultant planning studies

   Total FY 11-12 contract cost: 2 @ $100,000 = $200,000

   Total FY 11-12 FTA 5304 funds associated with these contracts: $200,000

   These contracts are for consultant prepared transit planning studies including the design of additional future fixed route services, as well as, a feasibility study for an intermodal transit transfer terminal.

2. One (1) Contract for fixed route transit services and One (1) Contract for ADA paratransit services

   Total FY 11-12 contract cost (including federal and non federal funds): $4,664,314

   Total FY 11-12 FTA funds associated with this contract: $1,803,549

   Total FY 2011-12 FTA 5307 Funds: $1,440,680  5311 Funds: $362,869

   This contract is for turnkey operation of all fixed route transit and ADA paratransit services administered by ICTC (i.e. Imperial Valley Transit). ICTC does not presently own transit vehicles or facilities, therefore only those firms capable of providing facilities and the vehicles needed for operations (at a minimum, ten 40’ buses and eighteen cutaways) will respond to ICTC’s competitive bid processes.

Approximate total amounts were based upon:

1. Yet to be obligated funds based on revenue apportionments as posted by the FTA under the FTA 5307 and FTA 5311 program and documented in the ICTC OWP and Transit Budget.
2. Obligated funds under the FTA 5304 and programmed to be distributed by the MPO, the Southern California Association of Governments (CAG) for two approved planning studies.

Unique factors affecting the development of the DBE Goal for FY 2011-12

1. Recognition and local knowledge that as a small urban turnkey transit system, the majority of the FTA 5307 and FTA 5311 funds are used for direct operating costs in turn key contracts for which limited opportunities exist for DBE participation i.e. salaries and facility lease costs.
2. Recognition and local knowledge that there is limited DBE participation in the immediate geographic area. The area is 84 miles to the south of Riverside and 120 miles to the east of San Diego counties, which represent the closest populated areas. The market area, or region, therefore has been expanded to include the Counties of Imperial, Riverside and San Diego Counties.
3. The DBE firms certified by the California Unified Certification Program with the most appropriate NAICS classification code (485113 – Bus and motor vehicle transit systems) are generally charter services who are not ready, willing, or able to bid on a public fixed route contracts of this size and complexity.
4. There may exist opportunities for the prime contractor (currently First Transit) to utilize outside firms to provide needed services.

Step 1 – Development of the Base Goal Figure

In order to determine an overall goal the first step is to determine a base figure:

Potential funding available for the contacting opportunities

<table>
<thead>
<tr>
<th>Table 1</th>
<th>Amount of DOT Funding</th>
<th>Amount of DOT funds</th>
<th>Percent of Total Weight</th>
</tr>
</thead>
<tbody>
<tr>
<td>NAICS CODE</td>
<td>Description of the Work</td>
<td>$ 90,000.00</td>
<td>0.090</td>
</tr>
<tr>
<td>423120</td>
<td>Parts (general)</td>
<td>$ 15,000.00</td>
<td>0.015</td>
</tr>
<tr>
<td>423130</td>
<td>Tire products</td>
<td>$ 565,000.00</td>
<td>0.562</td>
</tr>
<tr>
<td>424720</td>
<td>Fuel and Oil Suppliers</td>
<td>$ 200,000.00</td>
<td>0.199</td>
</tr>
<tr>
<td>541614</td>
<td>Consulting Services</td>
<td>$ 75,000.00</td>
<td>0.075</td>
</tr>
<tr>
<td>541850</td>
<td>Transit Advertising</td>
<td>$ 60,000.00</td>
<td>0.060</td>
</tr>
<tr>
<td>TOTALS</td>
<td>$ 1,005,000.00</td>
<td>100%</td>
<td></td>
</tr>
</tbody>
</table>
The number of DBE and non DBE firms ready, willing, and able to bid on contracting opportunities

<table>
<thead>
<tr>
<th>Table 2</th>
<th>Relative Availability of DBEs</th>
</tr>
</thead>
<tbody>
<tr>
<td>NAICS CODE</td>
<td>Description of the Work</td>
</tr>
<tr>
<td>423120</td>
<td>Parts (general)</td>
</tr>
<tr>
<td>423130</td>
<td>Tire products</td>
</tr>
<tr>
<td>424720</td>
<td>Fuel and Oil Suppliers</td>
</tr>
<tr>
<td>541614</td>
<td>Consulting Services</td>
</tr>
<tr>
<td>541850</td>
<td>Transit Advertising</td>
</tr>
<tr>
<td>541870</td>
<td>Transit printing</td>
</tr>
<tr>
<td>TOTALS</td>
<td></td>
</tr>
</tbody>
</table>

Local Potential Subcontracting Opportunities

There are currently a total of six certified DBE's in the entire County of Imperial. None perform the services that Imperial Valley Transit needs. Two are general freight trucking companies, two provide engineering services, one is an electrical contractor, and one does fabricated structural metal manufacturing. Therefore, there are no DBE's available in the region to provide printing, advertising, or website services.

<table>
<thead>
<tr>
<th>Table 3</th>
<th>Step One - Base Goal Development</th>
</tr>
</thead>
<tbody>
<tr>
<td>NAICS CODE</td>
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<tr>
<td>423120</td>
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<td>541870</td>
<td>Transit printing</td>
</tr>
<tr>
<td>TOTALS</td>
<td></td>
</tr>
</tbody>
</table>
Step 2: Adjustments to the Base DBE relative Availability Figure

Adjustments to the base figure goal may be necessary and justified for a variety of reasons including: lower or higher than expected past participation by DBE firms, additional evidence from disparity studies, etc. Unfortunately, very little data of this sort is currently available to ICTC. In past years FTA funds were spent solely on the turnkey operations contract. In addition, no comprehensive disparity study has been or is likely to be conducted in Imperial County. Therefore, ICTC cannot identify a valid reason to adjust its base goal upward or downward based on past participation or based upon other available studies.

However, ICTC does recognize that there are many firms within Imperial County currently eligible to be certified as DBE firms that simply have not gone through the application process. Based on recent conversation with potential applicants, this is because of a lack of understanding of said process and/or a lack of monetary incentive to do so. ICTC anticipates encouraging these firms in future contracting opportunities, especially local subcontracting opportunities.

An outreach program may be successful given the large proportion of minority and women owned firms without the County of Imperial. (The numbers reported below are from 2010 Census data.)

<table>
<thead>
<tr>
<th>Hispanic owned firms</th>
<th>44.1%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Women owned firms</td>
<td>25.8%</td>
</tr>
<tr>
<td>Asian owned firms</td>
<td>6.3%</td>
</tr>
<tr>
<td>Black owned firms</td>
<td>1.6%</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Table 4</th>
<th>Historical DBE Participation</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>FFY Goals</td>
</tr>
<tr>
<td>2011</td>
<td>1.40%</td>
</tr>
<tr>
<td></td>
<td>Annual Participation</td>
</tr>
<tr>
<td></td>
<td>0.00%</td>
</tr>
</tbody>
</table>

The median participation FFYs 2012 and Step 2 Goal

DBE Median Participation (2011) 0.00%
Step One Base Goal 0.00%
Total 0.00%
Divided by 2 = 2
0.00 %

However, ICTC feels an adjustment of its DBE goal is warranted. There have been opportunities for non federally funded projects to have DBE/WBE/MDE/UDBE participation. Most recently, two locally funded consultant developed projects were completed in FY 2011:

- Transit Drug and Alcohol Programs Compliance Audit $11,000 DBE participation 100%
- Short Range Transit Plan $14,986 DBE participation 15.4%

There are two planned projects in FY 2012, there for it is anticipated that consultants or subcontractors should be able to attain a DBE goal of 1.4%

FY 2011-12 DBE Goal = 1.4%
Attachment 5

Section 26.51: Breakout of Estimated Race-Neutral & Race Conscious Participation

The ICTC is a small urban organization with the majority of its FTA funding used for operating expenses rather than for capital purchases. ICTC will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation as required in Section 26.51(a). Planned outreach efforts by ICTC are all race/gender neutral and it is anticipated that ICTC will accomplish its DBE goal solely through race/gender neutral means.

ICTC will use the following race neutral means to increase DBE participation:

1. Arranging solicitations, times for the presentations of bids, quantities, specifications and delivery schedules in a manner that facilitate DBE and other small businesses participation, i.e. unbundling large contracts to make them more accessible, requiring large contractors to subcontract portions of the work effort
2. Reducing bonding requirements when possible
3. Providing technical assistance and other services
4. Providing information and communications in a bilingual format
5. Coordinating with resource agencies i.e. workforce development, small business alliance, chambers of commerce and economic development centers
Attachment 6

Forms for Demonstration of Good Faith Efforts

[Forms should be provided as part of the solicitation documents.]
Placeholder for form
Placeholder for form
Attachment 7

Certification Application Forms

The certification application forms for the CUCP are found at:

http://caltrans.ca.gov/hq/bep/downloads/pdf/UCP_application_package_rev_06_2

The application package includes an affidavit of personal net worth.
Attachment 8

Procedures for Removal of DBE's Eligibility

The ICTC is not a certifying agency under the CUCP.

Ineligibility complaints

Any person may file a written complaint alleging that a currently certified firm is not eligible and specifying the alleged reasons why the firm is ineligible. ICTC is not required to accept a general statement or allegation that a firm is ineligible, or an anonymous complaint. The complaint must include information supporting the assertion that the firm is ineligible and should not continue to be certified Complainants identified must be protected as provided in Sec 26.109(b).

ICTC will review its records concerning the firm and any materials provided by the complainant. ICTC may request additional information or conduct any other investigation that ICTC deems necessary.

If the ICTC determines that there is reasonable cause to believe that the firm is ineligible, ICTC will provide written notice to the firm that the ICTC proposes to find the firm ineligible, setting forth the reasons. If ICTC determines that reasonable cause does not exist, the ICTC will notify the complainant and the firm in writing of this determination and the reasons for it. All statement and reasons for findings on the issue of reasonable cause must specifically reference the evidence in the record on which the reason is based.

Recipient initiated

If based on notifications by the firm of a change in its circumstances or other information that comes to ICTC attention, the ICTC determines that there is reasonable cause to believe that a currently certified firm is ineligible, the ICC will provide written notice to the firm that ICTC proposes to find the firm ineligible, setting forth the reasons for the proposed determination. The statement of reasons for the finding of reasonable cause must specifically reference the evidence in the record on which each reason is based.

DOT directive

If the DOT determines that a firm does not meet the requirements for eligibility, the DOT will provide a notice setting forth the reasons for the record with relevant documentation and the ICTC may initiate appropriate actions after consultation with the DOT.
Attachment 9

Regulations: 49 CFR Part 26

Please refer to: http://www.fhwa.dot.gov/HEP/49cfr26.htm