

Los Angeles County Children and Families First Proposition 10 Commission

SUBJECT: Procurement Policy	Policy Number:	A-2100
	Effective Date:	October 1, 2021
	Supersedes:	2/13/14, 11/14/13, 11/29/12, 4/12/12, 6/8/06, Appeals Policy 9/13/12
Initiating Authority: Contract Administration and Procurement	Page	1 of 8

I. PURPOSE

This document establishes a uniform policy for the procurement of goods and services, by the "Los Angeles County Children and Families First – Proposition 10 Commission ("Commission") aka "First 5 LA".

II. APPLICATION

This policy applies to all First 5 LA employees and contractors authorized to do business on behalf of First 5 LA, hereinafter referred to as the “user.” The contract administration and procurement staff (“CAP”) will be responsible for policy implementation. The user team or office shall comply with this policy and the procedures developed by CAP. The user is required to engage CAP for all procurements covered under this policy.

III. OVERVIEW

First 5 LA shall procure goods and services using an accessible, fair, and uniform process, allowing for free and open competition aligned with First 5 LA’s value and investment guideline of diversity, equity and inclusion. Procurement shall be conducted in a manner that delivers quality materials and services from responsible entities¹. First 5 LA shall promote competition for the procurement of goods and services and under certain circumstances, prioritize partnerships that are essential to advance the Strategic Plan. Purchases or procurements shall be consistent with and in support of First 5 LA's Strategic Plan and shall not be divided into smaller units to avoid the requirements of this policy.

IV. PROCUREMENT METHODS

Determination of the procurement method shall consider total cost and project length or timeframe for goods and services needed by First 5 LA. Unless a specific exception to this policy applies, First 5 LA shall procure goods and services as follows:

¹ Responsible and responsive entity is one that has responded appropriately and has the capability to comply with all aspects of the solicitation as defined in California Public Contract Code 1103. In order to be eligible to apply, current and former contractors and grantees must not remain in non-compliant status with any existing and past Commission contracts.

- 1) No bid: For goods and services up to \$10,000, the user may select the provider directly without the need for bids. This process shall not be used when it is reasonably foreseeable that the recurring purchases would exceed the no-bid threshold in the aggregate.
- 2) Informal bid or small purchase: For goods and services between \$10,001 and \$100,000, the user shall comply with the informal bid process to procure goods and services. The user shall collect at least 3 bids from qualified providers, with the award to the responsible entity submitting the lowest bid or best value to F5LA. If less than three responses are received, the user must demonstrate that sufficient outreach and diligence were undertaken and document why the requirement for three bids was not met.
- 3) Formal bid or open solicitation: For goods and services over \$100,000, the user shall competitively procure goods and services from the lowest responsible bidder or the evaluation method set forth in the solicitation, or other method deemed appropriate for a formal bidding process.

There are two means of conducting a competitive, open solicitation:

- a. The first method is to conduct an open competitive solicitation process². The solicitation shall be posted publicly on First 5 LA's website and publicized through other appropriate channels that extend First 5 LA's reach to prospective applicants in alignment with First 5 LA's diversity, equity and inclusion value and investment guideline. Simple or standard solicitations shall be posted for a minimum of 10 business days prior to the submission deadline; complex procurements shall be posted for a minimum of 15 days prior to the submission deadline. Any exceptions to the posting period shall be approved by the Director of CAP (or designee). Open solicitations shall be written to include the scope of work, specifications, and terms and conditions of the proposed purchase or contract. The solicitation shall provide sufficient details to assist prospective applicants in calculating an accurate, unconditioned, and stable bid.
- b. The second method is to establish a pool of qualified providers through an open solicitation. Providers in the pool shall be selected by the evaluation method set forth in the solicitation. Admittance into the pool does not guarantee a contract. Pools shall be refreshed at least once every 2 years. When pools are refreshed, First 5 LA may, at its discretion, allow for existing members to remain in the pool without re-qualifying if there have been no material changes in the qualifications of the pool member.

Each open solicitation shall provide explicitly that First 5 LA reserves the right to reject all bids and re-advertise for bids, and that failure to comply with bid specification may be grounds for disqualification of bids. Each bidder or proposer shall be required to honor the price and specifications quoted for a minimum of ninety (90) calendar days following submission of the bid unless otherwise approved by First 5 LA. The CAP Director, in consultation with legal counsel, may waive any irregularity in bids or proposals if the irregularity does not provide an unfair competitive advantage over other bidders or proposers. CAP shall make the final determination as to which method of solicitation is most effective

² Includes joint solicitations defined as two or more agencies that aggregate their individual product and service needs into a single solicitation effort.

in each given solicitation and shall approve all solicitation methods used prior to issuance.

- 4) Cooperative agreements³ and piggybacking⁴ for goods and services: Cooperative agreements and piggybacking are permissible when a public entity or cooperative purchasing program allows other entities to utilize all or a portion of the goods and services as originally advertised, competed, evaluated, and awarded. Additionally, First 5 LA may include assignability clauses to contracts procured by First 5 LA to allow other public agencies to piggyback on these opportunities. When applicable, First 5 LA may also leverage contracts awarded by the State of California without further competitive bidding (Public Contracts Code Section 10298 *et seq.*).

V. PROCUREMENT EXCEPTIONS

It is acknowledged that in certain circumstances, there will be important business reasons why exceptions to an informal bid or competitive solicitation may be necessary. Those circumstances are described below. Exception requests must be supported by evidence that due diligence has been performed through a market analysis to arrive at the determination. Procurement exceptions described in subsections a-f below shall be justified and well-documented.

Justification for exceptions shall be documented by the user, approved in accordance with section VI(e) Approvals, and maintained in the project file. Lack of planning will not suffice as a justification for these exceptions.

The following circumstances shall allow First 5 LA to issue a sole source contract and the informal and formal bidding requirements of this policy shall not apply:

- a. The supplies, equipment or services to be procured are unique because of their quality, durability, availability, exclusivity, or fitness for a particular use, or are available from only one source.
- b. The offeror has related experience or expertise, techniques, specialized capabilities, or a combination of these are integral factors to the work that no other source can comparably perform.
- c. A strategic partner defined as having an existing infrastructure or substantial investment in a program or project that either cannot be duplicated or would be duplicated at the expense of First 5 LA, and has the demonstrated resources, ability, program reach, or level of expertise to support First 5 LA's systems change work. Strategic Partnerships also include entities that administer jointly funded programs or entities with key relationships⁵ when these are critical to advancing First 5 LA's Strategic Plan. In all instances, the Strategic Partnership must be aligned with First 5

³A cooperative agreement is a competitively bid agreement from a lead public agency established with multiple vendors in which those vendors agree to allow other public agencies to acquire specific goods or services in the future at established prices.

⁴ Piggybacking is a method of procurement whereby an agency uses another agency's contract, even though it was not a party to the original solicitation and contract award.

⁵Proposed strategic partners with key relationships must demonstrate affiliations with key stakeholders needed by the Commission that cannot be achieved through a traditional procurement process.

LA's Strategic Plan.

- d. Emergency purchases defined as time-limited purchases that are essential to the health, safety, and welfare of personnel or for the protection of property, systems and assets and arises from a present, immediate, and existing emergency that could not reasonably be foreseen. These purchases may also include extreme events, as defined in the Fund Balance Policy A-2301.
- e. A follow-on contract for the continued use of a major product or system when it is likely that the award to any other source would result in a substantial duplication of cost to the organization or serious disruption to the operations of the organization. These exceptions shall continue until the organization is prepared to undertake changes to its products or systems.
- f. Circumstances in which competition is deemed to be inadequate after solicitation of a number of sources.
- g. Categorical exemptions defined as purchases that do not lend themselves to a competitive procurement process. CAP shall make a determination of categorical exemptions based on, but not limited to, the following:
 - i. The market for an item or service is regulated by a third party (bus tokens, postage, utilities), or
 - ii. The purchase is governed by another First 5 LA policy (travel policy, conference, and event sponsorship), or
 - iii. An item or service is not possible to be competed (leasing of property, subscriptions, and memberships).

CAP will manage the list of categorical exemptions. A sole source justification is not required for purchases under categorical exemptions.

VI. APPROVALS

- a. All First 5 LA contracts and amendments over \$150,000 in the aggregate shall be presented to the Board of Commissioners as an item under Consent for approval prior to execution on behalf of the First 5 LA. To comply with First 5 LA's Governance Guidelines, the annual budget shall serve as information for contracts presented to the Board for approval if the resources for those contracts are included in the board approved budget.
- b. The Executive Director (or designee) may approve any contract or amendment up to \$150,000 in the aggregate and will establish appropriate internal procedures and controls for those awards. Contracts that are executed under the Executive Director (or designee) between \$10,000-\$150,000 will be presented as information at the next Board of Commissioners meeting. The Executive Director (or designee) has authority to extend contracted timeframes without cost referred to as "no-cost contract extensions.
- c. The Executive Director (or designee), with concurrence of the Board Chair, may approve contracts between \$150,001 and \$300,000 in cases of an emergency as defined by Section V.d, or when the Board is not in session and an immediate need is identified by the Executive

Director as being critical to operations. These actions shall be reported to the board as information at the next meeting.

- d. The CAP Director (or designee) shall determine if a proposed exception complies with Section V of this policy. The Executive Director (or designee) shall provide final approval of all exceptions.

VII. DIVERSITY, EQUITY, AND INCLUSION

In alignment with the organization's value of diversity, equity and inclusion, First 5 LA is committed to accessible and fair procurement practices. First 5 LA shall address barriers to participation in procurement to make contract opportunities more accessible to all businesses, including but not limited to, local small business enterprises, social enterprises, and community business enterprises⁶ (includes minority, women, disabled veterans, disadvantaged, and LGBTQ owned enterprises). Selection and final consideration of awards shall be determined by the evaluation criteria established by First 5 LA. First 5 LA shall not discriminate against or grant preferential treatment on the basis of race, sex, color, ethnicity, or national origin. Strategies and practices to support diversity, equity, and inclusion shall be documented in First 5 LA's procedures' manual. First 5 LA shall collect, monitor, and use data on diversity, equity, and inclusion to inform and adjust First 5 LA's procedures to ensure continuous alignment with this policy.

VIII. PUBLIC CONTRACTS CODE AND PUBLIC WORKS

- a. Pursuant to Public Contracts Code Section 3410, when purchasing food, First 5 LA shall give preference to United States-grown produce and United States processed foods when there is a choice and when it is economically feasible to do so, at the discretion of the Executive Director (or designee).
- b. First 5 LA shall purchase recycled products whenever recycled products are available at the same or lesser price and shall require contractors to comply with Public Contracts Code Sections 22150-22154 regarding the use and reporting of post- consumer materials.
- c. First 5 LA shall comply with the provisions of the California Public Contract Code for all applicable public works projects.

IX. REGRANTING

If First 5 LA is the recipient of non-First 5 LA Proposition 10 funds and is required to regrant to specific organizations, these funds shall be regranted to the recipient organization without the application of the procurement policy. In the event that First 5 LA is required to include specific subcontractors in its proposals and selected for award of funds, the requirements of this policy shall not apply. If First 5 LA receives unallocated funds or funds that are not dedicated to a specific sub-recipient, the requirements of the policy will apply for use of those funds.

⁶The Community Business Enterprise (CBE) Program was established by Los Angeles County Consumer and Business Affairs and encourages minority, woman, disabled veteran or disadvantaged business owners to capitalize on opportunities in government and private-sector procurement programs.

X. CONFLICT OF INTERESTS

First 5 LA shall not contract with, or provide contract or grant funds to, a person or entity who has a conflict of interest, or with whom a Commissioner or staff member has a conflict of interest, except as permitted by applicable law. A conflict of interest exists when one has the opportunity to advance or protect one's own interest or private interest of others, with whom one has a relationship, detrimental to the interest, or potentially harmful for the integrity or fundamental mission of First 5 LA. No Commissioner, staff member, or consultant shall make, participate in making, or in any way use his or her official position to influence the making of a decision of hiring services for First 5 LA when he or she knows or has reason to know he or she has a financial interest. Decision-makers must recognize that even the perception or temptation of a conflict of interest may give rise to the disqualification of a proposer or the termination of an agreement. First 5 LA shall determine potential conflicts of interest at the earliest opportunity. Contractors and Grantees are expected to comply with these provisions as a material part of any Contract or Grant agreement. A Contractor's or Grantee's failure to promptly disclose known conflicts of interest shall be grounds for disqualification or termination. First 5 LA's "*Conflict of Interest*" policy applies to all methods of procurement.

XI. APPEALS

Unsuccessful bidders, proposers or applicants for First 5 LA contracts or grants shall have the ability to appeal an unfavorable decision of First 5 LA on that matter subject to the limitations and procedures established in this policy. Such an appeal shall be permitted only on the grounds that the decision violated applicable law, First 5 LA policies and procedures, or the terms of the solicitation. Appeals challenging First 5 LA's decisions on the merits or qualifications of bidders or proposers, or the scoring of proposals shall not be permitted. Appeals regarding First 5 LA's decisions on procedural or formatting errors, such as failure to include required documentation or failure to comply with page limits, shall not be permitted. This appeal policy does not apply to operational or monitoring decisions made during the course of awarded contracts and grants. The Executive Director (or designee) may establish further rules and procedures consistent with this policy to assist in the implementation of the appeals process. First 5 LA staff may offer debriefings, at their discretion, to unsuccessful proposers after the appeals period has passed and after the resolution of any appeal.

This appeal policy does not apply to informal bids or operational and monitoring decisions made during the course of awarded contracts and grants.

PROCEDURE

- a. Any appeal of a decision by First 5 LA shall be in writing and filed within ten (10) business days following the date the notification of decision is made by First 5 LA. The appeal must be filed by email to the designated contact person on the solicitation or other method described in the solicitation. An appeal shall be deemed filed on the date it is received by First 5 LA. Any appeal received by First 5 LA after the close of business on the tenth (10th) business day following the date the notification of decision is issued shall be rejected.
- b. The written appeal shall include the following information:
 - i. The specific contract, solicitation or other decision being appealed.
 - ii. The name, address, telephone numbers and email address of the appellant.

- iii. A detailed description of the specific legal and factual grounds for the appeal, stating specifically the violation of applicable law, First 5 LA's policies and procedures, or the terms of the solicitation.
- c. New grounds for appeal raised by the appellant after the appeal is filed shall not be considered.
- d. In any appeal filed pursuant to this policy, the burden shall be on the appellant to demonstrate the violation of applicable law, First 5 LA policies and procedures, or the terms of the solicitation.
- e. Upon receipt of a timely appeal, the Executive Director (or designee) shall review the appeal to determine if it is permitted by this policy. If the appeal is rejected as improper, the Executive Director (or designee) shall provide a prompt written notification to the appellant with an explanation for this decision.
- f. When a timely and proper appeal is submitted, First 5 LA shall not execute a contract with another party during the pendency of an appeal. First 5 LA reserves the right at its sole discretion to bifurcate solicitations.
- g. If the appeal is timely and proper, the Executive Director (or designee) shall investigate the appeal and render a decision within 20 business days upon receipt of the appeal. At the discretion of the Executive Director (or designee), a meeting may be held with the appellant and staff to investigate the grounds for the appeal.
- h. If the Executive Director (or designee) believes that he or she is unable to make an impartial decision on the appeal, the appeal shall be referred to an *ex officio* member of the Board who has no interest in the matter for investigation and decision.
- i. The Executive Director (or designee) shall render a written decision to the appellant. The decision may direct any of the following actions:
 - i. Deny the appeal and proceed with award of the contract with the selected proposer.
 - ii. Refer the results of the appeal back to First 5 LA staff for further review and selection based on the results of the appeal.
 - iii. Overturn the results of the selection process and designate a new successful proposer if clearly dictated by the findings of the appeal.
 - iv. Refer the matter to the full Board of Commissioners.
 - v. Cancel the procurement and resolicit.




The decision of the Executive Director (or designee) shall be final.

- j. The Executive Director (or designee) shall have authority to temporarily extend existing contracts where the goods and/or services provided under the existing contract are the subject of an ongoing procurement and the results of that procurement have been appealed in accordance with this policy until such time as the appeal has been decided.

XII. REFERENCES/LEGAL AUTHORITY

Health & Safety Code Sections 130140, 130150. Government Code Section 54201, et seq.

XIII. APPROVALS

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<p>Jennifer Eckhart, Director of Contract Administration and Purchasing, Initiating Authority</p>	<p>Date</p>
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<p>Jasmine Frost, Interim Chief Operating Officer</p>	<p>Date</p>
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<p>Kim Belshé, Executive Director</p>	<p>Date</p>