

22nd District Agricultural Association

Contracting and Formal Protest Policies and Procedures

(Updated March 16 2018)

These Contracting Policies and Procedures are adopted by the 22nd District Agricultural Association (“22nd DAA”) in compliance with Food & Agricultural Code section 4051, and are effective February 11, 2015.

Policy

The 22nd DAA shall procure goods, services, and information technology goods and services through a competitive procurement process specified in these Contracting Policies and Procedures unless the goods, services, or information technology goods and services are entitled to an exemption or exception as defined in these Contracting Policies and Procedures.

Section I. Definitions

- A. “Goods” means all types of tangible personal property, including materials, supplies, and equipment, as defined in Public Contract Code section 10290, subdivision (d).
- B. “GM” shall mean and refer to the 22nd DAA’s Secretary General Manager.
- C. “DGM shall mean and refer to the 22nd DAA’s Deputy Secretary General Manager
- D. “Board” shall mean and refer to the Board of Directors of the 22nd DAA.
- E. “Personal Service Contracts” shall have the same meaning as set forth in California Code of Regulations, title 2, § 547.59.
- F. Public Exigency shall mean and refer to an emergency situation when the health and safety of the public property or guests in the custody or care of the 22nd DAA are at risk if immediate measures are not taken to resolve the problem situation and it is not possible or practical to convene a Regular, Special, or Emergency Meeting of the 22nd DAA Board as those terms are defined in the Bagley Keene Open Meeting Act. (Govt. Code, § 11120, et seq.)
- G. Sole Source shall mean and refer to a procurement process in which item(s) or service(s) are procured from, or are a product of either:
 - 1. Emergencies, where immediate acquisition is necessary for the protection of the public health, welfare, or safety or
 - 2. The proposed acquisition of goods are the only goods and services meeting the 22nd DAA’s needs, and the vendor is the only available vendor.

Section II. Competitive Bidding Procedures

- A. All purchases of goods or information technology goods and services, including subcontracts, and involving an expenditure in excess of \$100,000.00; all personal services contracts involving an expenditure in excess of \$5,000 and governed by Government Code section 19130, subdivision (a); and, all other contracts required by law to be subject to

competitive bidding procedures will be awarded to pursuant to one of the competitive bidding procedures described below; subject to any categorical exemptions (Section III, *infra*) or exceptions. (Section IV, *infra*.)

B. Competitive Bidding Process:

1. Invitation for Bid. An invitation for bid (IFB) is a public request for bids to provide a specific service or goods, and the contract will be awarded to the qualified bidder with the lowest responsive and responsible bid, unless all bids are rejected. The 22nd DAA Contract and Purchasing Office will provide additional details and definitions for each IFB issued to the extent necessary. When a contract is awarded, a Notice of Award shall be posted in a public place in the 22nd DAA's Contracts and Purchasing Office.
2. Two Tier Requests for Proposals. A Request for Proposal (RFP) will be issued seeking proposals to provide technical services or a specified product, or to solve a defined problem. The contract award will be based upon the lowest cost *and* evaluation of the proposers' technical proposals submitted in response to the RFP. Two Tier RFPs require the submission of technical proposals for evaluation by a selection committee using objective criteria specified in the RFP. Bidders must submit cost proposals in a separate sealed envelope. Proposals will first be evaluated on a technical basis by the selection committee. Bidders whose Proposal receive the required minimum score during the technical evaluation will have the cost envelope opened. When a contract is awarded, a Notice of Award will be posted in a public place in the 22nd DAA's Contracts and Purchasing Office.
3. Competitive Negotiated Procurements are initiated by the issuance of: (i) a RFP, (ii) a Request for Expression of Interest (RFEI), or (iii) a letter invitation to pre-qualified proposers (collectively, "Solicitation".) Competitive Negotiation Procurements require the submission of technical proposals for evaluation by a selection committee using objective criteria specified in the Solicitation; and price is not the primary or sole selection factor. Bidders must submit *preliminary* cost proposals in a separate sealed envelope. All proposals submitted in response to the Solicitation must comply with the Solicitation's terms and conditions. After receipt of proposals and completion of an evaluation or selection process, the District may conduct negotiations with one or more proposers with the required qualifications and the most competitive preliminary financial proposals. Best and Final Offers (BAFOs) will be requested from the selected qualified proposers upon the conclusion of any negotiations. The contract will be awarded on the basis of a consideration of a combination of technical evaluation and price factors. When a contract is awarded, a Notice of Award will be posted in a public place in the 22nd DAA's Contracts and Purchasing Office.

Section III. Categorical Exemptions from Competitive Bidding Procedures

The following are categorically exempt from competitive bidding procedures. Before a purchase may be made on the basis of a categorical exemption, the Manager of the Contracts and Purchasing Department must approve and confirm the applicable categorical exemption.

- A. Utility Services: The item or service to be procured is from a utility company or wholesale utility provider where service connections are allowed only in geographically defined service territories, or a competitively limited wholesale provider market, or where the work involves a utility system and only the utility company itself is allowed to perform the work.

- B. Standard Commercial Off-the-Shelf Software Packages (COTS) or Hardware Products: Procurement of software or hardware products which are ready-made, available for sale to the government and to the general public, and designed to be easily integrated into existing systems without the need for extensive customization. COTS software can either be installed on the 22nd DAA computers or delivered over the Internet. COTS include, but are not limited to, those items approved by the 22nd DAA Technology Office.
- C. Equipment Maintenance Services: Maintenance Services Agreements provided by the equipment manufacturer or dealers / distributors as a result of a Life Cycle Cost Purchase determination or which are not available from a satisfactory alternate source as determined by the Manager of the 22nd DAA Contract and Purchasing Office.
- D. Software, Software Licenses and Operating System Maintenance Services: Where the 22nd DAA has procured software and operating systems for its use, procurement of the continuing maintenance and upgrades of the software and operating systems, training and renewal of software licenses, from the developer or manufacturer.
- E. Small Business (SB), Micro Business (MB), and Disabled Veteran Business Enterprises (DVBE): In compliance with Government Code section 14838.5, procurements in an amount between \$5,000.00 and \$281,000 (or any other amount established by a Budget Letter from the Department of Finance), in goods and services from a DVBE, SB or MB certified by the State of California; provided the Manager of the 22nd DAA Contract and Purchasing Office obtains at least two price quotations from two or more certified small businesses, including microbusinesses, or from two or more DVBEs.
- F. Revenue Generating Events and 22nd DAA Facility Rentals: Professional and amateur entertainment of all kinds; agricultural and equestrian events; entertaining, educational and competitive exhibits of all kinds; public and private interim events of all kinds; short and long term rentals of 22nd DAA facilities; short and long term concessions; all entertainment and exhibits related to the San Diego County Fair, and any revenue generating enterprise or event contributing to the success of fairground operations.
- G. Procurements of any goods or services with a value less than \$5,000 may be purchased with or without using an Informal Procurement Process. If the procurement is conducted without using the Informal Procurement Process the 22nd DAA Contract and Purchasing Office must determine that the price or cost to the 22nd DAA is fair and reasonable.
- H. Informal Procurement Process: Procurements of goods or information technology goods and services in an amount greater than \$5,000 and less than \$100,000, may be purchased using an Informal Procurement Process by obtaining multiple informal telephone, written and or internet quotes and in accordance with the policies and procedures established by the Manager of the 22nd DAA Contract and Purchasing Office.
- I. Newspapers and Publications Services: Notices and publication services used to post notices required by law or policy, and subscriptions to newspapers, journals, and other periodicals.
- J. Contract extensions during Pending Protest or Ongoing Procurement Process: Extension of existing contracts where the goods or services provided under the existing contract are the subject of an ongoing procurement and the results of that procurement have been delayed or protested in accordance with the 22nd DAA's Bid Protest Procedures set forth in Section 8 below or otherwise delayed"

- K. Non-Profit Community Services Agreements: Procurement of services acquired from not-for-profit organizations to provide services including, but not limited to, clean up, weed abatement, habitat restoration, maintenance and other similar work within or adjacent to 22nd DAA jurisdiction and the Manager of the 22nd DAA Contract and Purchasing Office determines that the price or cost to the 22nd DAA is fair and reasonable.
- L. Sponsorship Acquisitions: The 22nd DAA Board shall establish policies and procedures for sponsorships and naming rights.
- M. Educational Services: Procurement of educational or specialized training services from a nonprofit institution or a competitively limited market.
- N. Inter-Agency Agreements: Services and Goods Acquired from Other Governmental Agencies, Districts, Institutions and or Municipalities or through Competitive Contracts Awarded by Other Governmental Agencies Districts, Institutions and or Municipalities: Services and Goods that are acquired directly from another governmental agency, or under a contract awarded by the federal government or the State or another state government, or competitively by any governmental agency to a third party, when the price can be determined to be fair and reasonable.
- O. Architectural, Engineering and Related Professional Services: Professional services procured in accordance with the policy or policies adopted by the Board unless otherwise specified, applicable laws of the State of California and the 22nd DAA procedures apply.
- P. Legal Services: Subject to the applicable provisions of the Government Code, legal services, legal consultation, representation, research and analysis to support the Board of Directors, executive staff, and staff of the 22nd DAA.
- Q. Highly Specialized Consultants: Consultants whose expertise in a particular field is critical to the success of the 22nd DAA. The 22nd DAA's General Manager may determine that specialized consultants services are critical to the 22nd DAA's success and the General Manager may authorize, without a competitive procurement, a consulting contract, not to exceed an annual value of \$100,000. Contracts greater than \$50,000.00 must be approved by the Board.
- R. Marketing and Media Services and Products: Marketing services and products in the form of print material, promotional material, radio and television airtime, internet, cable and other forms of media advertising.

Section IV. Exceptions to Competitive Bidding Procedures

The competitive procurement requirements of this policy may not apply if, under the particular circumstances of the procurement, an exception is warranted. The following are examples of circumstances that may be considered in authorizing case-by-case exceptions to this policy.

- A. Sole Source: Only one person, firm or manufacturer exists that can provide the needed goods, and no equivalent person, firm or manufacturer is available that would meet the 22nd DAA's minimum needs.
- B. Competition is precluded because of the existence of patent rights, copyrights, secret processes, controlled or limited market or distribution, restricted or limited availability of the basic raw material(s) or similar circumstances, and there is no equivalent item or service.

C. Absolute Compatibility:

1. The procurement is for replacement parts or components for equipment, and no information or data is available to ensure that the parts or components obtained from another supplier will perform the same function in the equipment as the part or component to be replaced;
2. The procurement is for replacement parts or components for equipment, and the replacement parts or components would compromise the safety or reliability of the product, or would void or invalidate a manufacturer's warranty or guarantee; or
3. The procurement is for upgrades, enhancements or additions to hardware or for enhancements or additions to software, and no information and data is available to ensure that equipment or software from different manufacturers or developers will be as compatible as equipment or software from the original manufacturer(s) or developer(s).

D. Opportunity Purchases:

1. Opportunity purchases from local businesses that, for similar things available through the state purchasing program, may be purchased locally at a price equivalent to or less than that available through the state purchasing program. (Food & Agr. Code, § 4051, subd. (b)(1).)

E. Threshold Amounts and other Requirements for Approving Contracts or Exceptions to Competitive Procurement:

Unless otherwise allowed under this Policy, Contracts or Exceptions to the Competitive Bidding Procedures with an estimated annual value (expenditure or revenue) may be approved as follows:

1. Contracts or Exceptions up to \$10,000 – Manager of 22nd DAA Contract and Purchasing Office.
2. Contracts or Exceptions between \$10,000 - \$50,000 – 22nd DAA GM or DGM
3. Contracts or Exceptions over \$50,000 – Board.
4. In cases of Public Exigency as defined under "Definitions" above, the 22nd DAA GM may approve Sole Source Procurements above the \$50,000 threshold without 22nd DAA Boards' approval.
5. If a Contract was previously approved by the Board, any Amendment to that Contract must also be approved by the Board regardless of value.
6. Any Contract of a controversial nature or that may be of great public interest must be presented to the Board's Contracts Oversight Committee to determine whether the Contract should be presented to the Board for consideration and approval during a 22nd DAA Board Meeting.

F. Requests for Exceptions:

Whether requesting approval by the Manager the 22nd DAA Contract and Purchasing Office, the 22nd DAA GM, or the 22nd DAA Board, requests for exceptions to the 22nd DAA's Contracting Policies and Procedures must be in writing or in electronic format. Requests for Exceptions must, conform to the following format, and include the following information:

1. Description of and necessity for the procurement.
 2. Items and the term period.
 3. Benefits to the 22nd DAA.
 4. The factual basis for the claimed exception.
 5. The requesting party's Determination of Fair and Reasonable Price.
- G. In the event a request for an Exception to Competitive Bidding Procedures is denied, one of the procedures specified in Section II (B) above must be utilized.

Section V. Advertising:

For personal service contracts (Govt. Code, § 19130, subd. (a)) in excess of \$5,000, contracts in excess of \$ 100,000, and any and all other contracts required by law to be subject to competitive bidding procedures, the 22nd DAA Contract and Purchasing Office shall place and advertisement in an appropriate business newspaper, and post the proposed procurement on the 22nd DAA website and/or the Internet.

Section VI. Small Business (SB), Micro Business (MB) and Disabled Veteran Business Enterprise (DVBE)

It is the policy of the 22nd DAA to encourage SB, MB and DVBE prime contractors to participate in the competitive procurement process. SB, MB and DVBE prime contractors, certified by the State may receive a 5% preference up to \$50,000 or in some instances a pre-determined scoring incentive on applicable solicitations to be applied when determining and award. As described in 2.E. above, they may also be exempted from the competitive process. In addition, non-certified prime contractors are encouraged to sub contract with certified SB, MB and DVBE firms. In some instances, the 22nd DAA may offer predetermined incentives for sub-contractor participation on selected solicitations.

Section VII. Protest Procedures

- A. Standing and Grounds for Protests:
1. Protests can be filed only by a Proposer or Bidder submitting a bid or proposal in response to one of the Competitive Bidding Procedures (IFB, RFP, or Solicitation) described in Section II.
 2. All protests will be reviewed and decided on written submissions only.
 3. Protests must be based only upon one or more of the following grounds:
 - a) The 22nd DAA violated a law or regulation.
 - b) The 22nd DAA failed to follow the procedures and adhere to requirements set forth in the solicitation or any addendum thereto.
- B. Jurisdiction for Consideration of Protests

1. There is no jurisdiction for the 22nd DAA to consider a protest if:
 - a) The 22nd DAA rejects all bids or proposals.
 - b) The protestant does not meet the requirements of Section VII (A) above.
 - c) The protest was not submitted timely.
 - d) The contract award is for a type of contract not subject to the protest procedures.

C. Procedural Requirements for Protests:

1. A protest must be initiated by filing the Initial Protest in writing with the 22nd DAA's Contract and Purchasing Office by 4:00 p.m. not later than five business days after the posting of a Notice of Intent to Award. The written Initial Protests must be physically delivered to the 22nd DAA's Contracts and Purchasing Office in hard copy. Emailed protests and fax protests are NOT acceptable and will not be considered. The failure to timely file a protest shall constitute an irrevocable waiver of the Bidder or Proposer's right to protest
2. The Initial Protest must include the name, address, and telephone number of the protestant and of the person representing the protesting party, if any, and must be signed by the protestant or the protestant's representative. The Initial Protest may, but is not required to, contain the information described in Paragraph C (3) below.
3. After filing an Initial Protest, the protestant has five calendar days to file a detailed written statement of the protest grounds if, the Initial Protest did not contain the complete grounds for the protest. The detailed written statement must be physically delivered in writing to the 22nd DAA's Contract and Purchasing Office by 4:00 p.m. not later than five calendar days after the Initial Protest is filed. Emailed and/ or faxed detailed written statements are NOT acceptable and will not be considered. The detailed written protest must contain a complete statement of any and all bases for the protest, including, without limitation, all facts, supporting documentation, legal authorities and argument in support of the grounds for the bid protest. The detailed written protest must refer to the specific portions of all documents which form the basis for the protest.
4. Any protest not conforming to Paragraphs C (1) through (4), inclusive, shall be rejected by the 22nd DAA as invalid. The procedures and time limits set forth in this Section VII© are mandatory and are the protestant's sole and exclusive remedy in the event of any protest. Failure to comply with these procedures shall constitute a waiver of any right to further pursue the protest, including filing a Government Code Claim or judicial or other legal proceedings.
5. During the pendency of a valid protest, the contract may not be awarded until the protest is withdrawn or the 22nd DAA has rendered a decision.
6. The Manager of the Contracting and Purchasing Office shall determine if the protest is in conformance with Paragraphs C (1) through (3), inclusive. The Manager of the Contracting and Purchasing Office will attempt to resolve protests to the satisfaction of all parties before forwarding the protest to the 22nd DAA GM. Following confirmation that the protest is based on permissible grounds and filed in strict conformity with this Section 8(C), the 22nd GM shall appoint a hearing officer. The hearing officer may request additional information and specify a time limit for submission of the information. The hearing officer will determine the matter on all written submissions and submit a

recommended written decision to the Board within thirty days of the final submission of evidence.

7. The 22nd DAA's Board will render a final determination and disposition of a protest by taking action to adopt, modify, or reject the hearing officer's recommended written decision. Action by the Board relative to a protest shall be final and not subject to appeal or consideration.