

ORDINANCE No. 85

AN ORDINANCE OF THE BOARD OF DIRECTORS OF THE INLAND EMPIRE UTILITIES AGENCY* (“AGENCY”), ESTABLISHING AND SETTING FORTH THE POLICIES GOVERNING AGENCY AUTHORITY AND DOLLAR LIMITS FOR **BEST VALUE PROCUREMENTS AND PROCUREMENT-RELATED ACTIVITIES.**

BE IT ORDAINED BY THE BOARD OF DIRECTORS OF THE AGENCY AS FOLLOWS:

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- SECTION 1 - PROCUREMENT DEFINITIONS AND INSTRUMENTS
 - SECTION 2 - EXPENDITURE APPROVALS & REQUIREMENTS
 - SECTION 3 - SOLICITATIONS AND TERM LIMITS
 - SECTION 4 - TRADES AND EXCHANGES
 - SECTION 5 - EMPLOYMENT CONTRACTS
 - SECTION 6 - REAL PROPERTY ACQUISITION
 - SECTION 7 - DISPOSAL OF SURPLUS
 - SECTION 8 - POLICIES AND PROCEDURES
 - SECTION 9 - PROHIBITION OF UNAUTHORIZED PROCUREMENT COMMITMENTS AND REQUIREMENTS FOR PROCUREMENT FUNDING
 - SECTION 10 - DEPARTMENT COOPERATION
 - SECTION 11 - EXCEPTION TO THIS ORDINANCE
 - SECTION 12 - VOIDABLE
 - SECTION 13 - SEVERABILITY
 - SECTION 14 - REPEAL
 - SECTION 15 - EFFECTIVE DATE AND EXECUTION
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SECTION 1: PROCUREMENT DEFINITIONS AND INSTRUMENTS

1. **Definitions:** The following definitions shall apply as relates to this Ordinance:
 - A. “Appropriated Funding” shall mean that funding which has been authorized by the Board as part of the fiscal year budget, or as a respective augmentation thereto.
 - B. “Authority to Approve” shall mean authority to designate appropriated funding for a specific procurement.
 - C. “Authority to Commit” shall mean authority to effect and bind a procurement commitment, including contractual document execution, for a specific designated procurement.
 - D. “Best Value Procurements” for procurements other than public works, shall mean an award based on the best overall value to the Agency including, but not limited to: cost; ability, capability, and skills (e.g., experience) of supplier/contractor; ability of supplier/contractor to meet the project schedule; character, integrity, reputation and judgment of

supplier/contractor (i.e., from reference checks, site visits, and background checks); quality of previous work with Agency or other public entities; warranty or other documented considerations of value (e.g., spare parts) offered to the Agency.

- E. “Budgeted Procurements” shall mean capital projects and operations and maintenance items that have been included as part of the fiscal year budget, or as a respective augmentation thereof, and authorized by the Board.
- F. “Change Order and Amendment” shall mean any respective modification to an existing procurement or respective contractual document.
- G. “Contractual Document” shall mean the document which binds Agency commitment of a procurement, such as a contract, agreement, lease, purchase order, change order, or amendment thereto.
- H. “Cooperative Procurement” shall mean a procurement (combining of requirements) conducted on behalf of two or more public procurement units in order to obtain the benefit of volume purchasing and/or reduction in administrative expenses.
- I. “Delegate Authority” shall mean authority to assign authority, at specified limits, to respective subordinate staff.
- J. “Emergency Procurement” shall mean any procurement required for the prevention against imminent danger, or to mitigate the loss or impairment of: (1) life, health, or public safety of Agency employees, suppliers, contractors; or (2) public or private property; or (3) any other valid danger/situation which cannot reasonably be foreseen and would have a significant effect on the public’s health/safety or that could have an adverse financial impact on the Agency.
- K. “Formal Solicitation” shall mean the issuance of a written request for sealed bids, proposals, or quotations.
- L. “Informal Solicitation” shall mean the verbal or written request for a verbal or written bid, proposal, or quotation.
- M. “Master and Rotating Contracts” shall mean competitively let contracts where work shall be performed by task orders. Task orders under the Master or Rotating Contract have a Board approved expenditure limit, unless specifically approved otherwise by the Board of Directors. A master contract is issued to one or more qualified suppliers/contractors where work is issued by task order. Rotating Contracts are issued to a list of qualified suppliers where request for proposals are issued on a rotational basis.

- N. "Non-Fiscal" shall mean having no direct impact on appropriated budgets, or otherwise requiring financial commitment of the Agency.
 - O. "Piggyback Procurement" shall mean utilizing another public agency's contract or agreement to obtain more advantageous prices and terms than can be otherwise obtained on the open market.
 - P. "Public Works" shall mean the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other improvement as specified in the California Public Contract Code; specifically, Article 40, sections 20640-20644, and Article 72, sections 21050-21051.
 - Q. "Procurement" shall mean the purchase or otherwise compensatory securing of materials, supplies, services, leases, equipment, real property, or public works services.
 - R. "Procurement Aggregate" shall mean the total of the initial procurement and all respective change orders and amendments thereto.
 - S. "Professional Services" shall mean any specially trained and experienced person, firm or corporation, providing services and advice in financial, economic, accounting, engineering, information services, technical, architectural, or other administrative/professional matters.
 - T. "Single Source" shall mean a procurement action where there is a compelling reason for only a preferred brand, standardization; time schedule; technical expertise; and follow on work to existing contract to be procured.
 - U. "Sole Source" shall mean a procurement action where only one viable source exists. This is usually due to legal restrictions of patent rights, a proprietary process, warranty issues, original equipment manufacturer, and copyrights.
 - V. "Trades and Exchanges" shall mean authorized surplus items used for the acquisition of materials, supplies, services, leases, and/or equipment.
 - W. "Where possible and practical" shall mean CAP discretion to make a documented decision in the best interest of the Agency.
2. Procurement Instruments: All procurement actions, shall be effected by and at the discretion of the Board of Directors ("Board"), or the Chief Executive Officer/General Manager ("CEO/GM"), the Chief Financial Officer,(CFO) the Manager of Contracts and Procurement, or as authorized by one of the

aforementioned, as authorized designees, using one of the following respective instruments:

- A. Petty Cash (for limited amount cash advance or reimbursement); or,
- B. Agency Check – A draft drawn on an Agency bank account for the procurement of goods and services; or,
- C. Blanket Purchase Agreement (BPA) – Simplified acquisition method to fill anticipated repetitive needs for supplies or services; or
- D. Contractual Document – either a Purchase Order, or Contract; or,
- E. Credit/Procurement Card (For procurements under \$2,500 in accordance with the individual Credit/Procurement Card restrictions).

SECTION 2: EXPENDITURE APPROVALS AND REQUIREMENTS

1. All purchases, agreements, services, leases, and/or contracts including construction contracts, for materials, supplies, equipment, and other personal property shall be made in accordance with this Ordinance.
2. Splitting or separating of material, supply, service, lease, and equipment orders or projects for the expressed purpose of evading the requirements of this Ordinance, is strictly prohibited. Splitting is defined as a series or more than one purchase request transaction for the same project requested separately in order to evade either the solicitation requirements or the higher approval thresholds. Discrete subsequent amendments or change orders that are for separate subprojects or discipline (e.g., structural or electrical design of a larger project) under the same contract do not apply to this provision. Subsequent follow on requests, at the discretion of the Manager of CAP, may require inclusion in General Manager's Report to the Board. Construction contracts may have subsequent change orders in accordance with the requirements of the Public Contract Code. Task Orders under the Master or Rotating Contracts do not fall under the provision of this requirement.
3. Procurement authorization parameters and limits are as follows:
 - A. Approval and execution of original procurements
 1. Board approval is required for competitively-let procurements greater than \$100,000.
 2. Board approval is required for single or sole source procurements greater than \$50,000.
 3. The Chief Executive Officer/General Manager (CEO/GM) is authorized to approve and execute competitively-let

procurements less than or equal to \$100,000, and single or sole source procurements less than or equal to \$50,000, respectively.

4. The CEO/GM is authorized to delegate authority to approve and execute procurements less than or equal to the limit established for the CEO/GM.
 5. In the absence of the CEO/GM, the Chief Financial Officer (CFO) is authorized to approve and execute procurements less than or equal to \$100,000, and single or sole source procurements less than or equal to \$50,000, respectively.
 6. The Chief Financial Officer (CFO) is authorized to delegate that authority to approve and execute procurements, less than or equal to that limit which has been established for the Chief Financial Officer (CFO).
 7. In the absence of the CEO/GM and the Chief Financial Officer (CFO), the Manager of Contracts and Procurement ("CAP") is authorized to approve and execute procurements less than or equal to \$100,000, and single or sole source procurements less than or equal to \$50,000, respectively.
- B. Change order and amendment authorization parameters and limits are as follows:
1. Board approval is required for any single change order or amendment greater than \$40,000. However, for public works project change orders, Board approval and execution is required for requests exceeding \$100,000.
 2. The CEO/GM is authorized to approve and execute respective change orders and amendments less than or equal to \$40,000, or less than or equal to \$100,000, for public works projects. The CEO/GM may delegate this authority up to the limits established for the CEO/GM.
- C. The Manager of CAP is authorized to execute all approved and budgeted procurements made by Purchase Orders.
- D. The Manager of CAP is authorized to establish and approve all Blanket Purchase Agreements, in the best interest of the Agency.
- E. The CEO/GM is authorized to terminate any procurement or contractual obligation less than or equal to \$500,000, in the best interest of the Agency.

SECTION 3: SOLICITATIONS AND TERM LIMITS

1. Solicitations for best value to the Agency; parameters and limits (subject to other provisions of this section) are as follows:
 - A. Formal Competitive Solicitations
 1. Shall be required for Agency procurements estimated to be greater than \$50,000, or for Public Works Projects, as set forth and adjusted by applicable Public Contract Code (“PCC”) (i.e., PCC 20642 – Bidding Requirements). The use of the online solicitation system is acceptable for formal solicitations; as well as the receipt of formal solicitations (unless specifically stated otherwise within the solicitation documents). Public works construction shall be advertised in the Green Sheet.
 2. Shall, at a minimum, be advertised in one general circulation newspaper within the Agency’s geographic boundaries or advertised on either the Agency’s website or a regional purchasing website as determined by the Manager of CAP.
 3. Shall, whenever possible and practical, provide a minimum of fourteen (14) calendar days for response.
 4. Shall require the receipt of a minimum of two (2) competitive responses; or, have been directed to a minimum of five (5) qualified potential respondents, when available.
 5. Public Work bids shall be publicly unsealed, and respective dollar amount(s) announced.
 6. Proposals and quotations may be publicly unsealed, and respective dollar amount(s) announced.
 7. For procurements funded by a Federal grant, no award shall be permitted to any vendor for any contract or sub-contract at any tier level for a vendor which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, “Debarment and Suspension.
 8. Award details shall be made available following the award.
 9. The formal competitive solicitation process may be waived at the discretion of the CEO/GM or his/her designated representative, when there is a compelling reason; e.g., public safety, prevent loss of life, imminent danger, or other valid

reason. The CEO/GM shall document the reason and present it to the Board of Directors at the next regularly scheduled meeting.

B. Informal Solicitations

For procurements estimated to be greater than \$5,000 and less than or equal to \$50,000, a minimum of two (2) competitive written or electronic responses shall be solicited, where possible and practical.

C. For procurements, other than the Procurement Card or BPA, (e.g., services, specialized items requiring warranty, and small equipment) estimated to be greater than \$2,500 and, less than or equal to \$5,000, a minimum of two (2) competitive documented verbal or written responses shall be solicited, where possible and practical. For procurements less than \$2,500, one written quote may be sufficient.

2. Multi-year procurement terms and extension limits are as follows:

A. The term for initial procurements may not exceed five (5) years.

B. The aggregate term of all extensions for initial procurements may not exceed two (2) years, as determined by the CEO/GM.

C. Exceptions to the term limits, as determined by the CEO/GM, shall be compelling, in the best interest of the Agency, and documented accordingly.

3. Negotiated procurement parameters and limits (subject to other provisions of this Ordinance) are as follows:

A. Negotiated procurements shall be authorized in writing by the respective Department Manager, and approved by the Manager of Contracts and Procurement for documented circumstances where there exists a single or sole-source supplier, or unusual time or other constraint (e.g., power and energy; emergency communications; insurance; specialized materials, services or equipment; information technology equipment, limited-time discount opportunities, and other unique opportunity).

B. Negotiated procurements shall not require any formal or informal solicitation. However, written and compelling documentation as to the benefit of the non-competitive procurement shall be provided by the requestor for audit purposes and included in the CEO/GM Report to the Board at the next regularly scheduled Board meeting following the procurement. The aggregate term, including all extensions thereof, of any negotiated procurement may not exceed five (5) years.

- D. Exceptions to the term limits shall be compelling, in the best interest of the Agency, and documented accordingly in the CEO/GM Report to the Board.
4. Cooperative and piggyback procurement parameters and limits (subject to other provisions of this Ordinance) are as follows:
- A. Single-occurrence cooperative and piggyback procurements shall not require formal solicitation. However, written documentation shall be provided as an audit trail on the benefit of the procurement and included in the CEO/GM Report to the Board at the next regularly scheduled Board meeting following the procurement.
 - B. The aggregate term, including all extensions, of any cooperative or piggyback procurement, may not exceed five (5) years.
 - C. Exceptions to the term limits, as determined by the Manager of CAP, shall be compelling, in the best interest of the Agency, and documented accordingly.
5. Government procurement parameters and limits (subject to other provisions of this section), are as follows:
- A. Materials, supplies, services, leases, and equipment, may be procured from other government agencies, when doing so would be in the best interest of the Agency, as determined by the CEO/GM.
 - B. When government agency procurement is greater than \$50,000, formal and competitive bids, proposals, or quotations, may be solicited from open market sources, as determined by the CEO/GM.
 - C. Professional services may be procured from other government agencies, when doing so would be in the best interest of the Agency, as determined by the CEO/GM.
6. Petty Cash procurement parameters and limits are as follows:
- A. A fund of sufficient amount shall be established by Resolution of the Board, to support petty cash disbursements for authorized advances and reimbursements.
7. Procurement Card requirements and limits are as follows:
- A. Procurement Cards are used for materials, supplies and equipment for single-transactions less than or equal to \$2,500 unless otherwise authorized by the Manager of CAP.
 - B. Procurement Cards may **not** be used for services.

8. Board approval is required for rejection of offers, where the lowest bid, proposal, or quotation, **is greater than \$250,000**.
 - A. The CEO/GM is authorized to reject same, where the lowest bid, proposal, or quotation, **is less than or equal to \$250,000**.
 - B. The CEO/GM is authorized to delegate authority to reject any and all bids, proposals, and quotations, less than or equal to the limit established for the CEO/GM.
9. Emergency procurements of materials, supplies, services, rentals, leases, equipment, and public works services, may be effected, notwithstanding respective provisions of this Ordinance.
 - A. The CEO/GM is authorized to approve and execute emergency procurements, for any amount.
 - B. The CEO/GM is authorized to delegate authority to approve and execute emergency procurements, up to any amount.
 - C. The CEO/GM or designee shall report emergency procurements, including details of the circumstances, respective dollar amounts expended, and cause of the emergency at the next regularly scheduled Board meeting.

SECTION 4: TRADES AND EXCHANGES

1. Acquisition of materials, supplies, services, leases, and equipment, may be made by trade or exchange.
2. Authorized surplus items, only, may be used for trade and exchange acquisitions.
3. Acquisition items must be of same or similar-type to respective surplus items.
4. Board approval is required for trade and exchange acquisitions with a current market value greater than \$100,000.
5. The CEO/GM is authorized to approve trade and exchange acquisitions with a current market value less than or equal to \$100,000.
6. The CEO/GM is authorized to delegate authority to approve trade and exchange acquisitions less than or equal to the limit established for the CEO/GM.

SECTION 5: EMPLOYMENT CONTRACTS

1. Board approval is required for any employment contract with the CEO/GM.
2. The CEO/GM is authorized to approve and execute all employment contracts, except the CEO/GM contract, as follows:
 - A. Limited to contracts with a term of 3 years or less.
 - B. Compensation not to exceed \$175,000 annually.
 - C. Severance not greater than 6 months.
 - D. Benefits similar to employees in similar classifications/groups/units.
3. The CEO/GM is authorized to delegate authority to approve and execute employment contracts, except the CEO/GM contract.

SECTION 6: REAL PROPERTY

1. Board approval and authority to execute contractual documents is required for **the sale**, procurement, trade, exchange, surplus or otherwise acquisition, of any and all real property with a value greater than \$100,000. The Board may delegate this authority when it is in the best interest of the Agency.
2. The CEO/GM is authorized to execute contractual documents, including **sale**, purchase agreements and escrow instruments, for the authorized **sale**, procurement, trade, exchange, or otherwise acquisition, of real property with a value less than or equal to \$100,000.
3. The CEO/GM is authorized to delegate authority to execute contractual documents, including purchase agreements and escrow instruments, for authorized sale, procurement, trade, exchange, or otherwise acquisition, of real property less than or equal to the limit established for the CEO/GM.

SECTION 7: DISPOSAL OF SURPLUS PROPERTY/EQUIPMENT

1. Board approval is required for the disposal of single-item surplus personal property or equipment with a current market value greater than \$100,000.
2. Board approval is required for the disposal of any multiple-items (lot) of surplus personal property or equipment with a current market value greater than \$200,000.
3. Professional or contract services may be used for the disposal of surplus items, and a formal solicitation shall not be required for said services. Fees for said services shall be paid from respective surplus disposal proceeds.

4. Any surplus item(s) may be:
 - A. Sold for cash.
 - B. Used for trade or exchange.
 - C. Sold for a nominal sum to a non-profit charitable organization, school, or other government agency.
5. Board approval is required to declare any and all real property as surplus and/or to sell any and all surplus real property, as provided for under California law (i.e., Government Code Section 54221 et. Seq.).
6. Board approval is required to authorize the CEO/GM to negotiate any and all sale prices and terms for the sale of surplus real property.
7. All net proceeds received from surplus activities shall be deposited in the appropriate Agency Fund Reserves.

SECTION 8: POLICIES AND PROCEDURES

The CEO/GM is authorized to establish, develop, and/or revise any and all Agency policies and procedures necessary, to implement and administer the provisions of this Ordinance.

SECTION 9: PROHIBITION OF UNAUTHORIZED PROCUREMENT COMMITMENTS AND REQUIREMENTS FOR PROCUREMENT FUNDING

1. No work or services, except in emergency situations, shall be authorized or accepted, until an appropriate and approved procurement instrument has been fully secured or executed, as required pursuant to this Ordinance. **If work or services are procured in violation of this provision, and the value of the procurement is \$5,000.00 or less, then the employee securing the unauthorized procurement shall obtain the written approval of the Manager of Contracts and Procurement to secure the purchase requisition documents necessary to generate the appropriate purchase order or contract for payment. Unauthorized procurements with a value in excess of \$5,000.00 shall require approval from the Agency's Board of Directors. Public works field change orders do not fall under the provision of this section. A violation of this provision shall be cause for disciplinary action against the violator. The Manager of Contracts and Procurement shall retain the discretion to refer any violation of this provision to the Department of Internal Audit for investigation.**

2. No procurement instrument, except in emergency situations, shall be used, which commits Agency funds or other financial obligations thereof, unless and until such unencumbered funding has been identified, authorized, and appropriated for said procurement.

SECTION 10: DEPARTMENT COOPERATION

All Agency employees shall comply with the provisions of this Ordinance to ensure the responsible and prudent expenditure of public funds, and that the preservation of the public trust is maintained.

SECTION 11: EXCEPTION TO THIS ORDINANCE

The Board may authorize the CEO/GM to effect procurements or other respective activities free of this Ordinance, when the Board has determined that such would be in the best interest of the Agency, and when such is not in conflict with applicable State or Federal law.

SECTION 12: VOIDABLE

The Board may void any and all transactions not consistent with the provisions of this Ordinance.

SECTION 13: SEVERABILITY

If any section, subsection, sentence, clause, or phrase of this ordinance shall, for any reason, be declared unconstitutional or otherwise invalid, such adjudication shall in no manner affect any other section, subsection, sentence, clause, or phrase of this ordinance, or portions thereof. The Agency's Board of Directors hereby declares that they would have approved this Ordinance, and each section, subsection, sentence, clause, and phrase hereof, irrespective of any portion thereof which may be declared invalid or unconstitutional.

SECTION 14: REPEAL

Ordinance Number 81 is hereby repealed in its entirety. All portions of other respective Ordinances, Resolutions, and/or motions related thereto and in conflict with the provisions of this Ordinance, are hereby rescinded and made of no further effect.

SECTION 15: EFFECTIVE DATE AND EXECUTION

This Ordinance shall take effect immediately upon adoption by the Agency's Board of Directors, and execution of said Ordinance by the President and Secretary/Treasurer thereof.

President of Inland Empire
Utilities Agency*, and of the
Board of Directors thereof.

