



## Executive Committee Agenda

Friday, March 14, 2025

9 a.m.

Welcome to SANDAG. The Executive Committee meeting scheduled for Friday, March 14, 2025, will be held in person in the SANDAG Board Room. While Committee members will attend in person, members of the public will have the option of participating either in person or virtually.

For public participation via Zoom webinar, click the link to join the meeting: <https://us02web.zoom.us/j/81502714242>

Webinar ID: 815 0271 4242

To participate via phone, dial a number based on your current location in the US:

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**Public Comments:** Members of the public may speak to the Executive Committee on any item at the time the Committee considering the item. Public speakers are generally limited to three minutes or less per person.

Persons who wish to address the members on an item to be considered at this meeting, or on non-agendized issues, may email comments to the Clerk at [clerkoftheboard@sandag.org](mailto:clerkoftheboard@sandag.org) (please reference Executive Committee meeting in your subject line and identify the item number(s) to which your comments pertain). Comments received by 4 p.m. the business day before the meeting will be provided to members prior to the meeting. All comments received prior to the close of the meeting will be made part of the meeting record.

If you desire to provide in-person verbal comment during the meeting, please fill out a speaker slip, which can be found in the lobby. If you have joined the Zoom meeting by computer or phone, please use the "Raise Hand" function to request to provide public comment. On a computer, the "Raise Hand" feature is on the Zoom toolbar. By phone, enter \*9 to "Raise Hand" and \*6 to unmute. Requests to provide live public comment must be made at the beginning of the relevant item, and no later than the end of any staff presentation on the item. The Clerk will call on members of the public who have timely requested to provide comment by name for those in person and joining via a computer, and by the last three digits of the phone number of those joining via telephone. Should you wish to display media in conjunction with your comments, please inform the Clerk when called upon. The Clerk will be prepared to have you promoted to a position where you will be able to share your media yourself during your allotted comment time. In-person media sharing must be conducted by joining the Zoom meeting on the personal device where the content resides. Please note that any available chat feature on the Zoom meeting platform should be used by panelists and attendees solely for procedural or other "housekeeping" matters as comments provided via the chat feature will not be retained as part of the meeting record. All comments to be provided for the record must be made in writing via email or speaker slip, or verbally per the instructions above.

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To hear the verbatim discussion on any agenda item following the meeting, the [audio/video](#) recording of the meeting is accessible on the SANDAG website.

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**Message from the Clerk:** In compliance with Government Code §54952.3, the Clerk hereby announces that the compensation for legislative body members attending the following simultaneous or serial meetings is: Executive Committee (EC) \$100, Borders Committee (BC) \$100, Board of Directors (BOD) \$150, and Regional Transportation Commission (RTC) \$100. Compensation rates for the EC, BC, and BOD are set pursuant to the SANDAG Bylaws, and the compensation rate for the RTC is set pursuant to state law.



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 ផ្អែមភាសាឥតគិតថ្លៃ | ఉచిత భాషా సహాయం | ການຊ່ວຍເຫຼືອດ້ານພາສາຟຣີ | Kaalmada Luqadda ee Bilaashka ah |  
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**Vision Statement:** *Pursuing a brighter future for all*

**Mission Statement:** *We are the regional agency that connects people, places, and innovative ideas by implementing solutions with our unique and diverse communities.*

**Our Commitment to Equity:** *We hold ourselves accountable to the communities we serve. We acknowledge we have much to learn and much to change; and we firmly uphold equity and inclusion for every person in the San Diego region. This includes historically underserved, systemically marginalized groups impacted by actions and inactions at all levels of our government and society.*

*We have an obligation to eliminate disparities and ensure that safe, healthy, accessible, and inclusive opportunities are available to everyone. The SANDAG equity action plan will inform how we plan, prioritize, fund, and build projects and programs; frame how we work with our communities; define how we recruit and develop our employees; guide our efforts to conduct unbiased research and interpret data; and set expectations for companies and stakeholders that work with us.*

*We are committed to creating a San Diego region where every person who visits, works, and lives can thrive.*





# Executive Committee

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## MEMBERSHIP

The Executive Committee is composed of elected officials responsible for setting the monthly SANDAG Board of Directors agenda, reviewing grant applications, reviewing legislative proposals, preparing the Overall Work Program and Budget, and providing direction to staff in preparing items for Board consideration. The Executive Committee consists of six voting members representing East County, North County Coastal, North County Inland, South County, the City of San Diego, and the San Diego County Board of Supervisors. The SANDAG Chair is one of the six voting members. The SANDAG Vice Chair also is on the Executive Committee, as long as he/she represents an area of the region that is different from the area of the region represented by the Chair.

The Executive Committee generally meets at 9 a.m., on the second Friday of the month.

Staff contact: Ariana Galvan, (619) 699-1977, [ariana.galvan@sandag.org](mailto:ariana.galvan@sandag.org)

### MEMBERS

#### **Vacant**

Supervisor, County of San Diego

#### **Joe LaCava, Vice Chair**

Council President, City of San Diego

#### **Lesa Heebner, Chair**

Mayor, City of Solana Beach  
(Representing North County Coastal)

#### **Rebecca Jones**

Mayor, City of San Marcos  
(Representing North County Inland)

#### **John Minto, 2nd Vice Chair**

Mayor, City of Santee  
(Representing East County)

#### **John Duncan**

Mayor, City of Coronado  
(Representing South County)

### EX-OFFICIO MEMBERS

#### **David Zito**

Councilmember, City of Solana Beach  
(Chair, Transportation Committee)

#### **Ed Musgrove**

Councilmember, City of San Marcos  
(Chair, Public Safety Committee)

#### **Carolina Chavez**

Councilmember, City of Chula Vista  
(Chair, Borders Committee)

#### **Jack Fisher**

Councilmember, City of Imperial Beach  
(Chair, Audit Committee)

#### **Carrie Anne Downey**

Councilmember, City of Coronado  
(Chair, Regional Planning Committee)

### ALTERNATES

#### **Monica Montgomery-Steppe**

Supervisor, County of San Diego

#### **Vivian Moreno**

Councilmember, City of San Diego

#### **Sean Elo-Rivera**

Councilmember, City of San Diego

#### **Esther Sanchez**

Mayor, City of Oceanside  
(Representing North County Coastal)

#### **Steve Vaus**

Mayor, City of Poway  
(Representing North County Inland)

#### **Alysson Snow**

Mayor, City of Lemon Grove  
(Representing East County)

#### **Luz Molina**

Councilmember, City of National City  
(Representing South County)

# Executive Committee

Friday, March 14, 2025

## Comments and Communications

### 1. Non-Agenda Public Comments/Member Comments

Members of the public shall have the opportunity to address the Executive Committee on any issue within the jurisdiction of the Executive Committee that is not on this agenda. Public speakers are limited to three minutes or less per person. Public comments under this agenda item will be limited to eight public speakers. If the number of public comments under this agenda item exceeds eight, additional public comments will be taken at the end of the agenda. Executive Committee members and SANDAG staff also may present brief updates and announcements under this agenda item.

## Consent

### +2. Approval of Meeting Minutes

Approve

*Francesca Webb, SANDAG*

The Executive Committee is asked to approve the minutes from its February 14, 2025, meeting

[Meeting Minutes](#)

### +3. Review of Draft Board Agendas

Approve

*Ariana Galvan, SANDAG*

The Executive Committee is asked to approve the draft agendas for the March 28, 2025, and its April 11, 2025, Board of Directors meetings.

[Draft Board Agenda 3.28.25](#)

[Draft Board Agenda 4.11.25](#)

### +4. Legislative Status Report

Information

*Ryan Williams, Jose Alvarez, SANDAG*

This report provides an update on SANDAG legislative and policy activities.

[Legislative Status Report](#)

[Att. 1 - Report - Ellison Wilson Advocacy LLC](#)

[Att. 2 - Report - Peter Peyser Associates LLC](#)

## Reports

### +5. Draft FY 2026 SANDAG Program Budget

Recommend

*Susan Huntington, SANDAG*

The Executive Committee is asked to:

1. Authorize distribution of the Draft FY 2026 Program Budget to member agencies and other interested parties for review and comment; and
2. Recommend the Board of Directors approve the Draft FY 2026 Program Budget.

[Draft FY 2026 SANDAG Program Budget](#)

[Att. 1 - FY26 Budget In Brief](#)

[Att. 2 - Draft FY 2026 SANDAG Program Budget](#)

[Att. 3 - Overall Authority Responsibilities and Mandates](#)



Att. 4 - Strategic Planning Framework  
Att. 5 - Current Funding Environment  
Att. 6 - FY 2026 Program Budget Staffing Resources Comp Programs Employee Benefits Presentation

## 6. Proposed Board Policy Amendments

- +6A. Proposed Board Policy Changes to Address Previous OIPA and TransNet Findings and Related Recommendations** Discussion/  
Possible Action  
*Julie Wiley, SANDAG*

The Executive Committee is asked to provide feedback on amendments to SANDAG Board Policies proposed to address findings and recommendations from OIPA audits and investigation outcomes from 2024.

[Proposed Board Policy Changes to Address Previous OIPA and TransNet Findings and Related Recommendations](#)

[Att. 1 - Proposed Board Policy No. 011 with Redline Changes](#)  
[Att. 2a - Proposed Board Policy No. 16 with Redline Changes](#)  
[Att. 2b - Proposed Board Policy No. 23 with Redline Changes](#)  
[Att. 2c - Proposed Board Policy No. 24 with Redline Changes](#)  
[Att. 3 - Proposed Board Policy No. 17 with Redline Changes](#)

- +6B. Proposed Amendments to Board Policy No. 008 and General Counsel Hiring Options** Discussion/  
Possible Action

*Julie Wiley, SANDAG*

The Executive Committee is asked to consider the information in the report and if it is prepared to do so recommend that the Board:

1. Approve the changes to Board Policy No. 008; and
2. Direct staff to prepare a recruitment and/or Request for Proposals for the General Counsel role.

[Proposed Amendments to Board Policy No. 008 and General Counsel Hiring Options](#)

[Att. 1 - Draft Amended Board Policy No. 008](#)  
[Att. 2 - General Counsel Survey Interview Results Presentation](#)

## Adjournment

## 7. Adjournment

The next meeting of the Executive Committee is scheduled for Friday, April 11, 2025, at 9 a.m.

+ next to an agenda item indicates an attachment

March 14, 2025

## **February 14, 2025, Meeting Minutes**

[View Meeting Video](#)

Chair Lesa Heebner (North County Coastal) called the meeting of the Executive Committee to order at 9:01 a.m.

### **1. Public Comments/Communications/Member Comments**

Public Comments: Bryant Rumbaugh, Allegedly Audra, Truth, Blair Beekman, Purita Javier, Cesar Javier, Michael Brando, L. Robin, Paul the Bold.

Member Comments: None.

### **Consent**

### **2. Approval of Meeting Minutes**

The Executive Committee was asked to approve the minutes from its December 6, 2024, meeting.

### **3. Review of Draft Board Agendas**

The Executive Committee was asked to approve the draft agendas for the February 28, 2025, and March 14, 2025, Board of Directors meetings.

Public Comments: Allegedly Audra, Truth, Bryant Rumbaugh, Blair Beekman, Paul the Bold.

Action: Upon a motion by Second Vice Chair John Minto (East County), and a second by Mayor John Duncan (South County), the Executive Committee voted to approve the Consent Agenda.

The motion passed.

Yes: Chair Heebner, Vice Chair Joe LaCava (City of San Diego), Second Vice Chair Minto, Mayor Rebecca Jones (North County Inland), and Mayor Duncan.

No: None.

Abstain: None.

Absent: County of San Diego.

### **Reports**

### **4. Proposed 2025 Legislative Program**

Senior Government Relations Analysts Ryan Williams and Jose Alvarez presented the proposed 2025 Legislative Program.

Public Comments: Allegedly Audra, Truth, Bryant Rumbaugh, Cesar Javier, Blair Beekman, Paul the Bold.

Action: Upon a motion by Vice Chair LaCava and a second by Mayor Jones, the Executive Committee recommended that the Board of Directors approve the proposed 2025 Legislative Program.

The motion passed.

Yes: Chair Heebner, Vice Chair LaCava, Second Vice Chair Minto, Mayor Jones, and Mayor Duncan.

No: None.

Abstain: None.

Absent: County of San Diego.

## **5. SANDAG Policy Advisory Committees Advisory Membership Request by the Association of Planning Groups - San Diego County**

Legal Counsel Alfred Smith provided comments on the membership request by the Association of Planning Groups – San Diego County.

Public Comments: Cesar Javier, Allegedly Audra, Truth, Blair Beekman, Bryant Rumbaugh, Paul the Bold, Kathryn Rhodes.

Action: Upon a motion by Mayor Jones and a second by Vice Chair LaCava, the Executive Committee recommended that the Board of Directors approve the request by the Association of Planning Groups – San Diego County to be appointed as regular advisory members of the Regional Planning Committee, Transportation Committee, Borders Committee, and the Public Safety Committee.

The motion passed.

Yes: Chair Heebner, Vice Chair LaCava, Second Vice Chair Minto, Mayor Jones, and Mayor Duncan.

No: None.

Abstain: None.

Absent: County of San Diego

### **Adjournment**

## **6. Adjournment**

The next meeting of the Executive Committee is scheduled for Friday, March 14, 2025, at 9 a.m.

Chair Heebner adjourned the meeting at 10:21 a.m.

## Confirmed Attendance at Executive Committee Meeting

February 14, 2025

Jurisdiction	Name	Member/ Alternate	Attend
City of San Diego	Council President Joe LaCava, Vice Chair	Primary	Yes
	Councilmember Vivian Moreno	Alternate	No
	Councilmember Sean Elo-Rivero	Alternate	No
County of San Diego	Vacant	Primary	No
	Supervisor Monica Montgomery Steppe	Alternate	No
East County	Mayor John Minto, 2nd Vice Chair	Primary	Yes
	Mayor Alysson Snow	Alternate	No
North County Coastal	Mayor Lesa Heebner, Chair	Primary	Yes
	Mayor Esther Sanchez	Alternate	Yes
North County Inland	Mayor Rebecca Jones	Primary	Yes
	Mayor Steve Vaus	Alternate	Yes
South County	Mayor John Duncan	Primary	Yes
	Councilmember Luz Molina	Alternate	Yes
Ex-Officio Members	Name		Attend
Chair, Transportation Committee	Councilmember David Zito		No
Chair, Public Safety Committee	Councilmember Ed Musgrove		No
Chair, Borders Committee	Deputy Mayor Carolina Chavez		No
Chair, Audit Committee	Councilmember Jack Fisher		No
Chair, Regional Planning Committee	Councilmember Carrie Downey		No

# Board of Directors

Friday, March 28, 2025

## Comments and Communications

### 1. Non-Agenda Public Comments/Member Comments

Members of the public shall have the opportunity to address the Board of Directors on any issue within the jurisdiction of SANDAG that is not on this agenda. Public speakers are limited to three minutes or less per person. Public comments under this agenda item will be limited to eight public speakers. If the number of public comments under this agenda item exceeds eight, additional public comments will be taken at the end of the agenda. Board members and SANDAG staff also may present brief updates and announcements under this agenda item.

## Consent

### +2. Approval of Meeting Minutes

Approve

*Francesca Webb, SANDAG*

The Board of Directors is asked to approve the minutes from its March 14, 2025, meeting.

### +3. Chief Executive Officer Delegated Actions\*

Information

*Jennie Sharp, SANDAG*

In accordance with various board policies, this report summarizes delegated actions taken by the Chief Executive Officer.

### +4. ATGP Carlsbad and Tamarack Pedestrian Improvement Project Grant Amendment Request and Scope of Work Change

Approve

*Benjamin Gembler, SANDAG*

The Board of Directors is asked to consider the request by the City of Carlsbad for a 24-month time extension and removal of the Construction phase of the Project Scope of Work.

### +5. Regional Active Transportation Program Funding Recommendations

Approve

*Jenny Russo, SANDAG*

The Transportation Committee recommends that the Board of Directors (1) adopt Resolution No. 2025-XX, certifying the results of the San Diego Regional Active Transportation Program (ATP); and (2) recommend that the California Transportation Commission fund the San Diego Regional ATP projects consistent with Attachment 3.

### +6. Master Agreement for Transit and Intercity Rail Capital Program (TIRCP) with Caltrans

Adopt

*Adrian Paniagua, SANDAG*

The Transportation Committee recommends that the Board of Directors adopt Resolution No. 20XX-XX, authorizing the Chief Financial Officer to execute the Master Agreement for Transit and Intercity Rail Capital Program with Caltrans.

### +7. Policy Advisory Committee Actions

Approve



*Francesca Webb, SANDAG*

The Board of Directors is asked to ratify the actions taken by the Policy Advisory Committees as noted in the report.

### **Reports**

**+8. Draft FY 2026 Program Budget\***

Approve

*Susan Huntington, SANDAG*

The Executive Committee recommends that the Board of Directors approve the Draft FY 2026 Program Budget as presented, or direct staff to either make specified revisions to the draft budget or provide the Board with additional information regarding projected revenues or proposed expenditures in the draft budget.

**+9. Proposed Board Policy Amendments to Address OIPA and TransNet Findings and Related Recommendations\***

Approve

*Julie Wiley, SANDAG*

The Executive Committee recommends that the Board of Directors approve the proposed Board Policy amendments to address previous findings from several OIPA and TransNet Performance audits as well as other related recommendations.

### **Adjournment**

**10. Adjournment**

The next Board of Directors meeting is scheduled for Friday, April 11, 2025, at 10:30 a.m.

+ next to an agenda item indicates an attachment

\* next to an agenda item indicates that the Board of Directors also is acting as the San Diego County Regional Transportation Commission for that item

# Board of Directors

Friday, April 11, 2025

## Comments and Communications

### 1. Non-Agenda Public Comments/Member Comments

Members of the public shall have the opportunity to address the Board of Directors on any issue within the jurisdiction of SANDAG that is not on this agenda. Public speakers are limited to three minutes or less per person. Public comments under this agenda item will be limited to eight public speakers. If the number of public comments under this agenda item exceeds eight, additional public comments will be taken at the end of the agenda. Board members and SANDAG staff also may present brief updates and announcements under this agenda item.

## Consent

### +2. Approval of Meeting Minutes

Approve

*Francesca Webb, SANDAG*

The Board of Directors is asked to approve the minutes from its March 28, 2025, meeting.

### +3. Meetings and Events Attended on Behalf of SANDAG

Information

*Francesca Webb, SANDAG*

This report provides an update on meetings and events attended by Board members.

### +4. Policy Advisory Committee Actions

Approve

*Francesca Webb, SANDAG*

The Board of Directors is asked to ratify the actions taken by the Policy Advisory Committees as noted in the report.

### +5. Approval of Proposed Solicitations and Contract Awards

Approve

*Kelly Mikhail, SANDAG*

The Board of Directors is asked to authorize the Chief Executive Officer to conduct the proposed solicitation(s) and contract awards as identified in this report.

## Reports

### +6. Coordinated Plan Update

Discussion

*Rubi Morales, Tim Garrett, SANDAG*

The Board of Directors is asked to provide feedback on the development of the Coordinated Plan, including preliminary results from the recently completed survey.

## Adjournment

### 7. Adjournment

The next Board of Directors meeting is scheduled for Friday, April 25, 2025, at 9 a.m.

+ next to an agenda item indicates an attachment

March 14, 2025

## Legislative Status Report

### Overview

Status reports on SANDAG legislative activities are provided to the Executive Committee on a regular basis.

Attachment 1 includes a summary from Ellison Wilson, LLC on state legislative activity related to SANDAG for February 2025.

Attachment 2 includes a summary from Peyser Associates, LLC on federal legislative activity related to SANDAG for February 2025.

#### Action: **Information**

This report provides an update on SANDAG legislative and policy activities.

#### **Fiscal Impact:**

None.

#### **Schedule/Scope Impact:**

None.

### ***Hannah Stern, Acting Director of Public Affairs***

- Attachments:
1. Report from Ellison Wilson Advocacy, LLC
  2. Report from Peter Peyser Associates, LLC



**TO:** SANDAG BOARD OF DIRECTORS  
**FROM:** ELLISON WILSON ADVOCACY, LLC  
**SUBJECT:** SANDAG LEGISLATIVE REPORT – FEBRUARY 2025

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### **Legislative Overview**

February 21<sup>st</sup> was this year's deadline to introduce all bills. Despite recently capping each Assembly Member and Senator to 35 bills each, there were still 2,350 bills introduced in 2025 prior to the bill introduction deadline (plus nearly another 150 in resolutions, constitutional amendments, and extraordinary session bills). This number includes 1,500 Assembly bills and 850 Senate bills. Of the 2,350 bills introduced, nearly 900 (almost 40%) of which are either spot or intent bills currently devoid of substantive language. Over half of all bills introduced were introduced in the final week prior to the deadline. Last year only slightly more than 2,100 bills were introduced prior to the February 2024 bill introduction deadline.

The remaining legislative calendar for 2025 includes:

- May 2: Last day for policy committees to hear first house fiscal bills
- May 23: Last day for fiscal committees to hear first house bills
- June 6: Last day for each house to pass first house bills
- June 15: Last day for Budget bill to be passed
- July 18: Last day for policy committees to hear all bills
- July 18-August 18: Summer Recess
- August 29: Last day for fiscal committees to hear all bills
- September 5: Last day to amend bills on the Floor
- September 12: Last day for each house to pass bills
- October 12: Last day for the Governor to sign or veto all bills

### **SANDAG Leadership Meets with Key Policymakers in Sacramento in February**

On February 4<sup>th</sup> and 5<sup>th</sup>, SANDAG Chair Lesa Heebner joined SANDAG staff, including CEO Mario Orso, in Sacramento to participate in a series of meetings in and around the Capitol with key state officials. This included high-level meetings with: Lt. Governor Eleni Kounalakis; CalSTA Secretary Toks Omishaskin; California Transportation Commission (CTC) Executive Director Tanisha Taylor; Caltrans CFO Steven Keck and Chief Deputy Director Mike Keever; Governor's Office Deputy Cabinet Secretary James Hacker; Department of Housing and Community Development (HCD) Chief Deputy Director Zack Olmstead and Deputy Director Megan Kirkeby; as well as legislators Senator Steve Padilla, Senator Catherine Blakespear, Senate Minority Leader Brian Jones, Senate Transportation Committee Chair Dave Cortese, and Assembly Member Chris Ward. In addition to an introduction to Chair Heebner, the SANDAG team had the opportunity to discuss several SANDAG transportation projects and policies, as well as housing issues and SANDAG's RHNA legislative principles as outlined in the agency's letter to HCD and the legislature from October 2024.

While in Sacramento, the SANDAG team was also able to participate in several events held by the San Diego Regional Chamber of Commerce during its 2025 Leadership Delegation to Sacramento trip.

### **Assembly Housing Committee Holds Informational Hearing on Housing Production**

On February 13<sup>th</sup>, the Assembly Housing & Community Development Committee held an informational hearing on “State Housing Production Legislation: Actions, Outcomes, and Opportunities.”

At the outset, new Committee Chair Matt Haney reiterated that the state is still in a housing crisis (“we need millions of new homes and we need them urgently”) and couched the meeting as an opportunity for Committee Members and the Legislature to take stock of previous housing production legislation in order to determine what’s working, what’s not, and why. In his concluding remarks, he invited legislative proposals to solve the problems identified and noted that he will have his own legislative package to do so.

Several Committee Members (namely, Assembly Members Anamarie Avila Farias (D-Concord) and Sharon Quirk-Silva (D-La Palma)) throughout the hearing criticized cities for a lack of action to increase housing and encouraged the state to continue to enforce laws/punish cities for non-compliance. However, San Diego was touted on several occasions as doing comparatively well compared to other regions when it comes to new housing development (with Assembly Member Buffy Wicks even stating San Diego is “very quick” and “a model for the rest of the state.”)

The first panelist – Ben Metcalf of the UC Berkeley Turner Center for Housing Innovation – cited two success stories, the increase the number of ADUs (raising from 8,900 in 2018 to 28,210 in 2023) and the positive effect of streamlining (i.e. SB 35/423) on housing production. Otherwise, he indicated that the effect of other housing production legislation is still to be determined. He also acknowledged that CEQA reforms in this area are likely warranted. Megan Kirkeby of HCD was the second panelist, who reinforced that “the point of housing laws is that they are followed” and noted that HCD is focused on education in order to ensure compliance. As far as successes, she stated that recent legislation has resulted in faster development timelines (specifically noting that, on average across all types of housing, the application submittal to entitlement process has been reduced from 145 days (in 2018) to 64 days (in 2023)). The third panel included developers and the City of Sacramento’s Director of Community Development, who concurred that the increased production of ADUs was a success story, as well as the increased efficiency and certainty when developing housing that they are seeing from recent housing legislation.

### **Affordable Housing Bond Bills Introduced**

Assembly Member Buffy Wicks (D-Oakland) and Senator Christopher Cabaldon (D-Napa) introduced two companion bills, AB 736 and SB 417, dubbed the Affordable Housing Bond Act of 2026, to place a \$10 billion housing bond on the 2026 ballot for voter approval. The measure would enable the state to borrow money to support its affordable housing rental program, farmworker housing and homeownership assistance, among other items. According to the authors, a recent impact analysis found the bonds would result in more than 35,000 new homes affordable to very-low income, extremely-low income, and homeless families, including set-asides for farmworker and tribal housing. Bond funds would also preserve and rehabilitate tens of thousands of homes and assist over 13,000 families in becoming homeowners.

Wicks proposed a similar measure, AB 1657, in 2023, but it eventually failed after being held by the Senate Appropriations Committee. Ultimately, two alternate bond measures dedicating \$10 billion each to support the renovation of K-12 schools and to help the state prepare for climate change won spots on the November ballot instead.



PEYSER ASSOCIATES  
LLC

Peter A. Peyser

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February 28, 2025

**Transportation Update from Peyser Associates**

**Full-Year CR Emerges as Leading Option for FY 2025 Appropriations**

This was the week when GOP congressional leaders, particularly on the House side, began to back publicly the idea of a full-year Continuing Resolution as the best path forward to complete work on the fiscal 2025 appropriations process.

In a critical meeting at the White House on Wednesday, House Speaker Mike Johnson (R-LA) and Senate Majority Leader John Thune (R-SD) suggested to President Trump that a full-year CR might be the best way to clear the spending bills from the agenda and focus on the Budget Reconciliation bill that would extend the tax cuts enacted in his first Administration, increase defense and border spending, and cut entitlement programs such as Medicaid and SNAP. According to reports coming out of that meeting, the President had no objection to that approach.

Even some leading House appropriators, such as Appropriations Committee Chair Tom Cole (R-OK) and Rep. Mario Diaz-Balart (R-FL) expressed support for a full-year CR. That is unusual for appropriators, who usually want to gain approval of full-year spending bills. Cole said the full-year CR should be considered a stopgap measure to avoid a government shutdown, but that Congress should continue working on full-year spending bills after March 14. It is hard to imagine that scenario would play out once the threat of a shutdown has been removed.

On the Senate side, despite Thune's apparent comfort with the full-year CR option, Appropriations Committee Chair Susan Collins (R-ME) indicated she wants to continue working to find agreement on top-line spending for defense and non-defense spending that would allow the regular spending bills to be completed.

A full-year CR would require Democratic support in both the House and the Senate to pass. Democratic leaders kept their powder dry on the issue this week while Johnson made an indirect bid for their support by saying that CR's are normally bipartisan measures. While some Democrats are in a place now where they are reticent to help the GOP pass anything at all, there are probably enough who believe a shutdown is intolerable to advance the CR option.

If a full-year CR is enacted, earmarks included in House and Senate appropriation bills for fiscal 2025 will likely fall by the wayside. If that happens, the Appropriations Committees will need to decide whether to roll those earmarks right into the fiscal 2026 process or have a completely new round of earmarks for the coming year.

## **Bradbury Nomination for DOT Deputy Secretary Advances**

The nomination of Stephen Bradbury to be Deputy Secretary of Transportation was approved Wednesday for the Senate Commerce Committee on a straight party line vote of 15-13. Ranking Member Maria Cantwell (D-WA) led the Democratic resistance to the nomination based on Bradbury's role in holding up aircraft safety regulations in the first Trump Administration.

The nomination will likely get a floor vote next week and is expected to pass.

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February 21, 2025

## **Transportation Update from Peyser Associates**

### **Senate Pushes Ahead with Budget Reconciliation Even After Trump Criticism**

With the House in recess this week, the Senate has taken center stage. As noted in last week's report, Senate GOP leadership believes the best approach is to start with a budget reconciliation package focused on border issues and national security. They believe it is best to wait until later to advance a package of tax cuts balanced, at least to a degree, by spending cuts. Last night, the Senate adopted a budget that calls for \$175 billion in additional border security and immigration funds and \$150 billion in additional defense spending. The vote on the budget resolution was 52-48. The only GOP Senator to vote against it was Sen. Rand Paul (R-KY), who routinely votes against all budgets and appropriations bills. All Democratic Senators voted against.

The Senate took this action in the face of criticism from President Trump, who on Wednesday endorsed the House leadership's position that his agenda should be accomplished in "one, big, beautiful bill." To finesse any perception that they are going opposite to the President's wishes, Senate GOP leaders this week referred to their package as "Plan B" and said they would be happy to advance the one bill approach if the House can pass it. They have made it clear, however, they do not believe the House can do so.

Senate Democrats are using the floor consideration of the leadership's slimmed-down package as an opportunity to debate issues not actually on the table in this legislation – namely the continuation of tax cuts for the wealthy and potential cuts to entitlement programs such as Medicaid and SNAP. Last night they forced the Senate into a "vote-a-rama," Senate-speak for a process of stacking up a long list of amendments, debating them all and then staging a rapid series of votes on them.

When the House returns next week, they will turn their attention to committee work to develop the details of their reconciliation package. It is expected that package will include significant cuts to future growth in the Medicaid and SNAP programs and other spending reductions. As noted last week, the House plan does not call for significant cuts in transportation spending as part of the reconciliation process.

### **Appropriations Work Awaits the House's Return and Final Agreement on Spending Levels**

There is little new to report this week on the fiscal year 2025 appropriations. No discernable progress was made this week in arriving at an agreement for top-line spending amounts for defense and non-

defense discretionary spending. Congress has three weeks to pass either full-year appropriation bills, a full-year continuing resolution or another short-term CR. It is too early to predict whether or when House Speaker Mike Johnson (R-LA) will get into deal-making mode with the Democratic leadership in the House as he did to pass the current CR. As of now, he is working to find a spending formula he can pass only with GOP votes – a herculean task given that he only has one vote to spare.

### **DOT Action on California High Speed Rail May be a Harbinger of Things to Come**

Transportation Secretary Sean Duffy yesterday held a press conference in Los Angeles to say he is starting an evaluation of the performance of the California High Speed Rail Authority under its major FRA grants and raised the specter of amending or even cancelling up to \$4 billion in funding for the project.

The Trump Administration in 2019 tried to cancel a \$929 million FY 2010 grant to the project within weeks of a State of the State Speech by Gov. Gavin Newsom that many interpreted as a backing away from the state's commitment to the project. When the state sued the Department in federal court, a judge swiftly ordered the Department not to re-allocate those funds elsewhere while the case was pending. The case was never adjudicated because the Biden Administration came to power, reinstated the grant and settled the case.

This time around, the Trump Administration is taking a more deliberative approach to its review and will focus on the Authority's compliance with the terms of their grants in search of a solid legal basis for a decision to take action. This more deliberative approach may make any action the Department will take more difficult for a court to overturn.

The California rail grants are from programs unlikely to feel the sting of program-level actions to sweep away grants in programs that are in conflict with Trump Administration priorities. For grants in those types of programs, the action this week may indicate that project-by-project reviews will at least have a veneer of rigor around them.

However, the risk remains that grants in programs that DO run counter to Trump priorities (e.g. Reconnecting Communities, Low-No Buses and various climate related programs) could still be swept up in broad actions to cancel or amend grants.

### **Deputy Secretary Nominee Clears A Hurdle with Hearing**

President Trump's Nominee for Deputy Secretary of Transportation, Stephen Bradbury, yesterday sailed through a confirmation hearing at the Senate Commerce Committee under fairly gentle questioning.

The hearing was dominated by discussions of aviation safety issues, as one might imagine given recent accidents. Questions on Amtrak were raised by Sens. Deb Fischer (R-NE) and Andy Kim (D-NJ). In response to both of them, Bradbury emphasized that "there's a lot of money in the system" for Amtrak and that the Department needs to take a "hard look" at whether it's being spent well. He also made clear that Amtrak should not be awarding "unnecessary bonuses." Senator Lisa Blunt Rochester (D-DE) asked Bradbury whether the recent cancellation of funding for the EV Charging Infrastructure program was legal. Bradbury indicated he was not aware of all the details of the decision, but he does believe it is appropriate to "pause" program funding so the Administration can make sure it is being spent appropriately. He cited the statutory rescission process, which requires a president to ask Congress for

permission to stop funding an appropriated program, as the right way to permanently pull back funding.

The Commerce Committee has not yet posted a date for a meeting to vote on moving Bradbury's nomination to the floor. It is likely that would take place the week of March 3 with a full Senate vote on his confirmation shortly thereafter.

### **Hydrogen Hub Funding May be in Jeopardy**

The public transit industry's potential adoption of hydrogen fuel cell buses received a boost when the Inflation Reduction Act made available \$7 billion to fund seven hydrogen hubs across the country. The purpose of the hubs is to accelerate the development of the market for "green" hydrogen. In addition to the spending in the IRA, the bill created the "45v" tax credit program for which final rules were just published by the Department of Treasury in December.

Hydrogen hub developers and the industry groups associated with them are sounding the alarm that full funding of the hubs may be in jeopardy. Only about \$170 million of the \$7 billion has gone out to the hubs so far and their sponsors are concerned that the Administration may do to this program what they did to the EV Charging Infrastructure Program – stop the flow of already appropriated funds. The tax credit program – which provides significant benefits to producers – appears to have more support from the industry and GOP Members of Congress than the funding. But if the funding disappears, the industry may find that while they can get financing for production the supply chain and demand is not there for the product.

This adds additional uncertainties to an already uncertain picture for fleet conversion of public transit fleets. This report will track this issue in the months ahead.

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February 14, 2025

### **Transportation Update from Peyser Associates**

#### **Fiscal Year 2025 Appropriations Process Remains Boggled-Down**

As this week comes to an end, there is still no clear path to completing appropriations bills for the current fiscal year. While senior House Appropriations Committee Members from both parties have said there are good conversations going on to arrive at a top-line spending agreement, there is still a potential that an agreement will prove elusive.

The wild card in this process appears to be Speaker Mike Johnson (R-LA). On Wednesday, House Appropriations Committee Chair Tom Cole (R-OK) told reporters his leadership may yet decide that a full-year Continuing Resolution – which would keep federal programs at fiscal year 2024 levels – might be the preferred route. Separately on Wednesday, Johnson refused to rule out such an option. The current CR expires on March 14.

Trying to get approval for a full-year CR in the House will be a challenge. There is a group of House GOP Members who have frequently said they will not vote for a long-term CR. In addition, defense hawks may have a problem with a full-year CR because it would leave in place automatic defense spending cuts

that go into effect on April 30 under the 2023 debt limit extension deal. The presence of those cuts was thought to be a mechanism to ensure regular appropriations bills with higher defense spending would be passed to head them off. Compounding Johnson's problems is that he would likely have to pass the CR with no votes from the Democratic side. Democrats, who previously have bailed the Speaker out from potential government shutdowns, appear to be in no mood to do that again in the current environment.

Johnson could overcome the defense spending problem by including "anomalies" in the CR, i.e. provisions that deviate from current spending levels. But once he opens that can of worms, his caucus may seek other concessions to ensure passage. At that point, passing a CR may become as difficult as passing regular spending bills.

As the debate over a full-year CR continues, it is important to keep in mind that congressional earmarks for specific projects would not be included in the legislation, unless they are part of a package of anomalies.

All of this has Washington on shutdown watch again. Given the current state of play in terms of disputes over executive branch authority over spending, it is fair to ask if the Trump Administration might want to see a shutdown to illustrate their point that the Administration needs to play a stronger hand in ensuring responsible fiscal policy takes hold.

### **House Advances Budget Reconciliation – But There's Still a Long Road Ahead**

The House Budget Committee yesterday approved a budget resolution for the current fiscal year that includes instructions to House committees to cut taxes, decrease spending on entitlement and other programs by \$2 trillion over ten years, increase defense spending and increase border and immigration funding.

The House is not in session next week for a President's Day break. Speaker Johnson hopes to bring this resolution to the floor the week of February 24. If it passes, House committees would get to work drafting legislation to comply with the instructions in it. Their work product would be wrapped into a single reconciliation bill which might come to the floor right around the time of the current deadline for a government shutdown.

For its part, the Senate GOP leadership favors a different approach. Budget Committee Chair Lindsay Graham (R-SC) favors moving first on a reconciliation bill that would only include increases in border and immigration funding. In his mind, this is the quickest way to respond to what he and the Trump Administration see as an emergency at the border. He would take up tax and other spending measures in a separate bill later in the year. Graham indicated this week that if the House can pass its larger bill quickly, he would consider adopting their approach. But clearly, he doesn't think that's a likely outcome.

To this point neither the House nor the Senate appear to be targeting transportation programs for any significant cuts in transportation programs under the reconciliation process.

### **Deputy Transportation Secretary Nominee Slated for Confirmation Hearing**



The Senate Commerce Committee will hold a hearing next Thursday to consider the nomination of Stephen Bradbury to be Deputy Secretary. As reported here when his nomination was first announced, Mr. Bradbury served in the first Trump Administration as General Counsel for US DOT and as Acting Deputy Secretary.

It is likely Bradbury will be in his job at DOT by mid-March.

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February 7, 2025

## **Transportation Update from Peyser Associates**

### **DOT Agencies Struggling to Meet Policy Review Deadlines**

Last week's order from Secretary of Transportation Sean Duffy to his department's offices requiring a review of all DOT programs, policies and grants for their compliance with new executive orders from the Trump White House started a ten-day clock for that review to be completed. As this is written, day 6 or 7 (depending on how you count) is under way. Based on conversations with senior career officials at DOT, it seems unlikely the review will be complete by the deadline. As per the Duffy order, the initiation of actions to remedy any divergence from the executive orders is to begin the week of February 17.

In terms of early action on policies found to be non-compliant with executive orders, there certainly is a good potential that would occur on the original Duffy deadline for departmental policies and guidance issued by the Biden Administration that can be easily changed. In that way, the Department can meet the deadline to initiate action under the order while the full review of ALL departmental activities is still underway.

Readers of this update are certainly concerned about policy changes that will emerge from this review and compliance effort. But top of mind for most in the short term is the impact of this process on pending and existing grants. The Duffy order implied that a freeze on grantmaking activity may be in effect for some period of time. What has become clear this week is that the freeze is on grant execution itself, not on the work required to bring awards up to the point of execution. While the work on grants may be of different intensity at different modal agencies, there is work going on to keep projects moving towards an eventual grant award. Concerning the fate of existing grants, while there is a general belief at DOT that there will be some grants the Administration will seek to cancel or amend, the process of identifying the specific grants subject to such action is not far advanced.

### **Fiscal Year 2025 Spending Bill Outlook Gets Murkier**

Over the past week, there has been a notable decrease in the level of optimism among key Members of Congress, staff members, and lobbyists concerning the potential for enactment of full-year appropriations bills before the expiration of the current Continuing Resolution on March 14 – or ever. The potential for a full-year CR appears to be growing.

The reason for the shift in the prospects spending bills does not relate to the particulars of any one spending bill. It is more related to the growing sense among Members of the Democratic caucuses – particularly in the House – that the only response to the flurry of actions by the Trump Administration that they see as objectionable is obstruction.

As readers of this report know, House Democrats over the past year provided large numbers of votes to pass continuing resolutions and appropriation bills. This has been crucial because the GOP caucus has been unable to make majorities with their own Members alone. The difficulties for the House leadership in this regard have only increased in this Congress with the diminished size of the GOP majority. Given that there is a coterie of House GOP Members who vote against virtually all spending bills, it will be very challenging to pass any full-year spending bills without Democratic votes.

If this trend towards resistance continues to build in the coming weeks, the potential for a full-year CR will grow. If that were to be the outcome of the fiscal 2025 process, any earmarks approved in either the House or Senate THUD appropriation bills and any funding for projects or programs not included in the fiscal year 2024 bill would likely be wiped out.

House and Senate GOP Leaders will continue to seek agreement on top-line spending amounts for domestic discretionary and defense spending in coming days. Their difficulty in agreeing to top-line amounts thus far is further evidence of the challenges ahead.

### **Reconciliation Package Process and Schedule Uncertainty Grows**

President Trump and GOP congressional leaders are struggling to develop a plan for legislation to extend the 2017 tax cuts, add additional tax cuts, lift the debt ceiling, cut entitlement spending, secure the nation's borders and address illegal immigration. The discussions underway are dealing with the scope of tax cuts, the duration for a debt limit suspension, the amount of spending cuts and increases and whether to assemble these items into one package or two. In short, there is not agreement yet among Republican Members on any key issue, except perhaps that the Trump 2017 tax cuts should be extended. While this dispute may not touch directly on transportation policy and spending, the bandwidth it claims among congressional leaders will affect the timing or work on appropriations matters for both the current fiscal year and the next one.

House Speaker Mike Johnson (R-LA) has been in intense discussions with his own caucus and the White House this week in search of a plan to move a single reconciliation package to accomplish all the President's goals. As of last night, he was evincing some optimism that these talks would produce a package that could pass the House. While that represents some progress, the Senate GOP leadership is not yet on board with moving such a large package through their chamber. Their approach appears to be to seek early action on a package focused on the border and immigration issues and then take up tax and spending issues in a second reconciliation package. Using the budget reconciliation process to pass such major legislation is particularly important to gain Senate passage because such legislation requires only 51 votes to pass the Senate, not the 60 votes required for other legislation. This fact tends to give the Senate an upper hand in determining the contours of reconciliation packages.

An agreement between the White House and the House GOP on a package could come as early as this weekend, if comments from some House GOP Members are to be believed. But the prospects of that package in the Senate are still unclear as is the schedule on which it would proceed to action in the House.

March 14, 2025

## Draft FY 2026 SANDAG Program Budget

### Overview

The annual budget is the document that authorizes and provides funds for the work that SANDAG does. Development of the [FY 2026 Program Budget](#) is under way. As part of the budgeting process, staff considers work elements related to meeting federal, state, and local mandates (Attachment 3); the strategic direction of the agency (Attachment 4); and the funding environment and economic outlook for the region, state, and nation (Attachment 5); as well as recent legislative developments related to transportation funding.

The Draft FY 2026 SANDAG Program Budget, totaling \$1.3 billion, reflects comments received from the Board of Directors during the last year, and is summarized in Attachment 1.

### Key Considerations

The [FY 2026 Program Budget](#) allocates funding for the programs, projects, services, and activities that SANDAG intends to carry out in the upcoming year to support implementation of the agency's Strategic Planning Framework and the approved 2021 Regional Plan.

There are three primary components of the Program Budget: Overall Work Program (OWP), Regional Operations, and the Capital Budget.

### Action: Recommend

The Executive Committee is asked to:

1. Authorize distribution of the Draft FY 2026 Program Budget to member agencies and other interested parties for review and comment; and
2. Recommend the Board of Directors approve the Draft FY 2026 Program Budget.

### Fiscal Impact:

The [Draft FY 2026 Program Budget](#) includes \$1.3 billion in local, state, and federal funding for SANDAG activities, including \$685 million of capital project delivery and \$233 million of TransNet revenue which is passed through as Local System Improvement (\$133 million) and transit operation (\$100 million) allocations.

### Schedule/Scope Impact:

SANDAG Bylaws require Board of Directors to consider a draft budget no later than April 1 of each year, and again during the month of May, with the final budget adopted no later than June 30.

Budget Comparison	Draft FY 2026 (in \$millions)	FY 2025 (in \$millions)
Overall Work Program (Chapter 2)	\$105.3	\$80.9
Regional Operations and Services (Chapter 3)	\$86.0	\$79.9
Capital Budget (Chapter 5)*	\$685	\$683.2

\*The FY 2026 multi-year capital budget is \$9.2 billion.

Comparing year over year budgets, the \$24.4 million net increase in the OWP budget is primarily attributable to a \$21 million increase in state grant awards to local jurisdictions for planning and capital projects from the Regional Housing Acceleration Program (3321901 and 3321902). Additionally, \$4.5

million is budgeted for awarding and executing Flexible Fleet grants (3501000) to local jurisdictions through a competitive process in the next grant program cycle. Similarly, \$3.2 million is allocated in the FY 2026 budget for the Cycle 13 Specialized Transportation Grant Program (3321400), which provides funding to enhance mobility for seniors and individuals with disabilities. Updates will be made in the proposed Final FY 2026 Budget as more information becomes available.

The annual spending for the Capital Program remained relatively flat; however, the multiyear capital budget net increased by \$255 million due to new state and federal funding allocations:

1. Otay Mesa East Port of Entry (1201101) – \$119 million
  - State and federal grants for the construction early work package.
2. I-805 South: HOV Conversion to Express Lanes (1280521) – \$80 million
  - Federal funding to partially support future construction.
3. Eastbrook to Shell Double Track (1239809) – \$27 million
  - State Transit and Intercity Rail Capital Program (TIRCP) grant funding for the future construction phase.
4. Del Mar Bluffs V Stabilization (1147100) – \$13 million
  - State TIRCP grant funding for ongoing construction costs.
5. Bike Program – \$9 million
  - Additional funding to cover inflation-related cost increases for projects entering the construction phase.
6. SR 52 Improvements/Transit Priority (1205204) – \$7 million
  - Federal earmark funding to complete the environmental phase.

This additional funding supports critical regional infrastructure improvements, leveraging state and federal resources to advance key projects.

Attachment 6 provides an overview of the Staffing Resources, Compensation Program, and Employee Benefits.

### **Next Steps**

Upon action by the Executive Committee, the Board will be asked to approve the [Draft FY 2026 Program Budget](#) on March 28, 2025. The proposed Final FY 2026 SANDAG Program Budget is scheduled for review and adoption by the Executive Committee and Board in May 2025.

### ***Susan Huntington, Director of Financial Planning, Budgets, and Grants***

- Attachments:
1. Budget in Brief
  2. [Draft FY 2026 SANDAG Program Budget](#)
  3. Overall Authority, Responsibilities, and Mandates
  4. Strategic Planning Framework
  5. Current Funding Environment
  6. FY 2026 Program Budget: Staffing Resources, Compensation Program, and Employee Benefits



FISCAL YEAR

2026

# PROGRAM BUDGET

SANDAG has several federal, state, and local designations that form the framework for what we do. Our annual Program Budget reflects the investments SANDAG is making in the San Diego region in FY 2026, and it includes three primary components: the Overall Work Program, Regional Operations and Services, and the Capital Program. Our projects and programs help to improve transportation, air quality, equity, the economy, public health, public safety, housing, and more. For more than three decades, TransNet has been the driving force for improving transportation infrastructure in the San Diego region. This revenue is crucial when competing for state and federal grant programs when a funding match is required.

## Overall Work Program

An inventory of regional planning projects and programs



Regional Plan

## Regional Operations and Services

Management of ongoing operational programs and customer services



Data Services

## Capital Program

Near-term and long-term infrastructure building, improvement, and maintenance projects



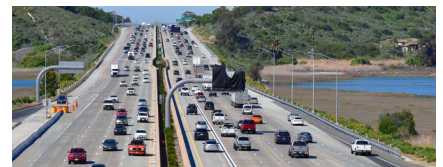
Regional Bikeways



Grants



Toll Operations



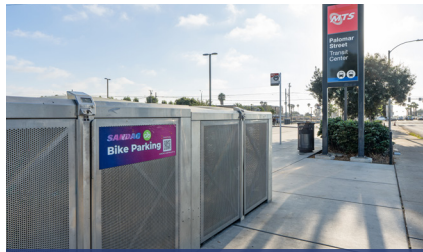
Major Corridors



Environmental Mitigation



Transit Planning



Transportation Services



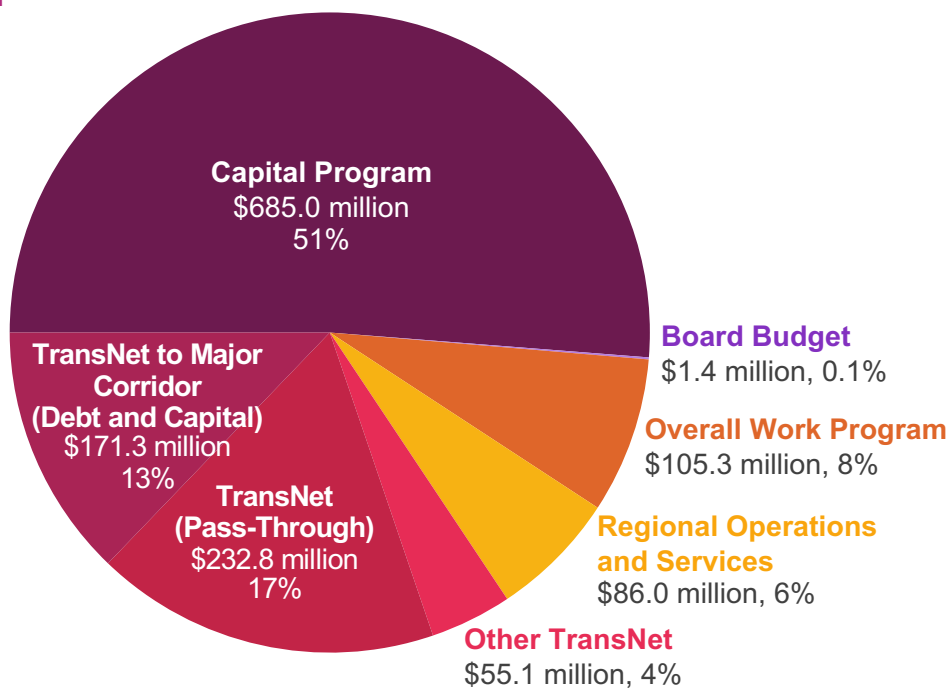
Rail Projects



# Budget Overview

## Total Budget Breakdown

SANDAG adopts the annual Program Budget, which is a comprehensive financial summary of the agency's activities and includes three primary components: the Overall Work Program, Regional Operations and Services, and the Capital Program. The budget sets out our planned activities, illustrates how our work aligns with the priorities of our member agencies, and positions us to serve the region through the delivery of major infrastructure projects, policy initiatives, and regional services. The administration budget is included in the totals for each budget component above. The Board budget stands alone.



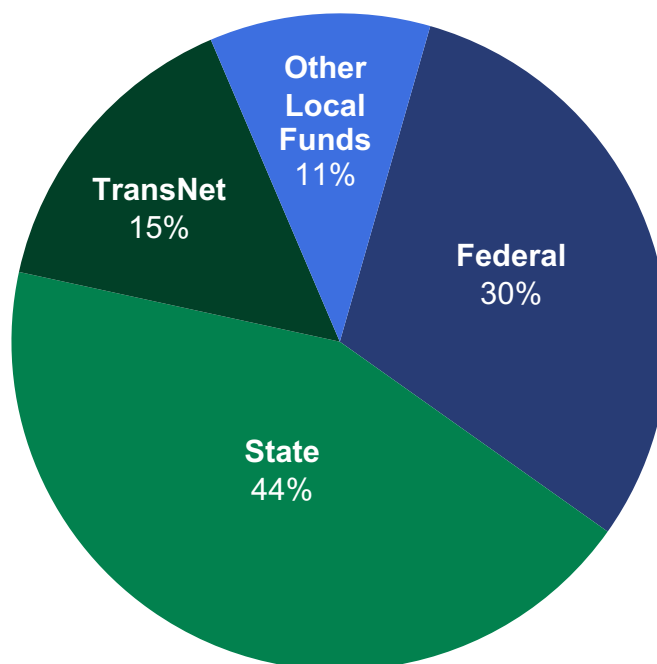
\* Pass-through funds go to local jurisdictions and transit operators.

NOTE: Totals include administration budget which is allocated to the above programs/projects.

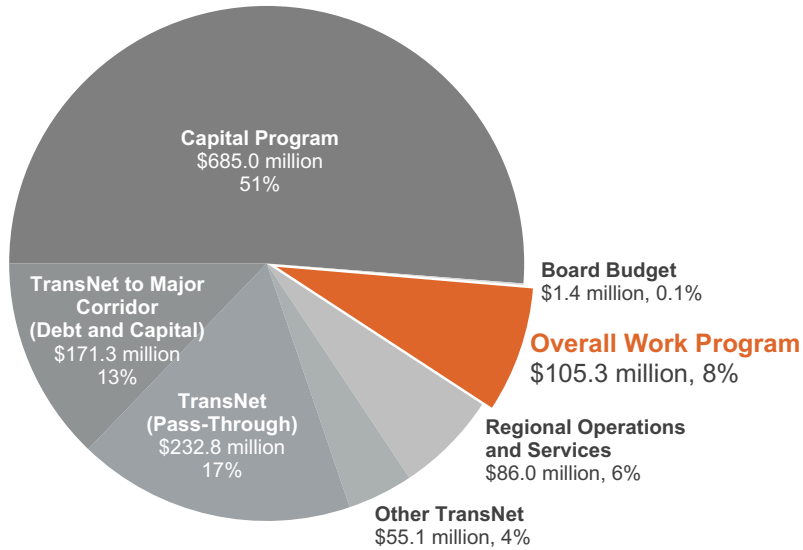
## Budget Revenue

*for Overall Work Program, Regional Operations and Services, and Capital Program*

State, federal, and local revenues represent the majority of the budget for the three primary budget components, with TransNet sales tax accounting for 15%. Most annual TransNet revenue flows directly through SANDAG to transit operators and local jurisdictions. Additionally, the 19 SANDAG member jurisdictions are assessed a fee according to population. Member agency assessments will account for \$1.7 million in FY 2026.



# Overall Work Program Projects

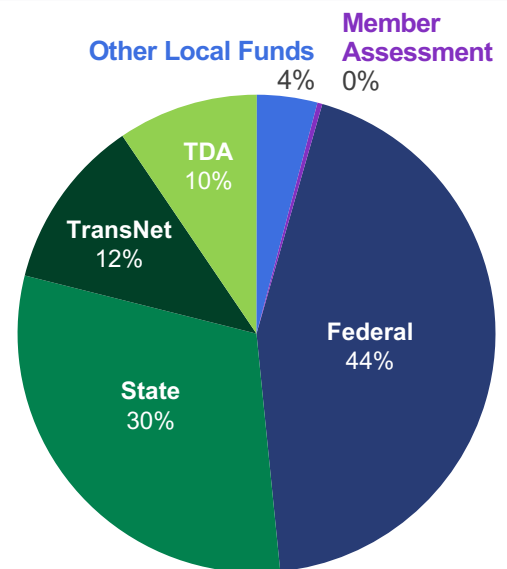


The Overall Work Program (OWP) is an inventory of the regional planning projects and programs that will be undertaken during the fiscal year. Planning, our core responsibility, is where everything begins. It encompasses budgeting, data and research, community engagement, and more. Examples of this work include the Regional Plan, transit planning, and grants. All of the OWP projects aim to improve quality of life for residents and visitors. TransNet is an important funding source for many grants, projects, and programs in the OWP.

**55 Total OWP Projects**

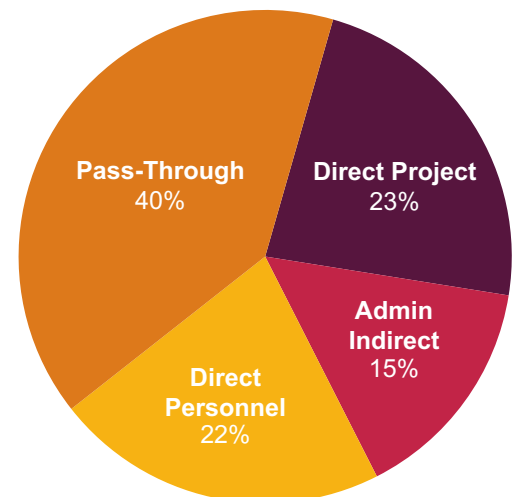
## Revenue

Federal	\$46,296,404
State	\$32,114,346
TransNet	\$12,218,483
TDA	\$10,008,021
Other Local Funds	\$4,302,362
Member Assessment	\$352,958
<b>TOTAL OWP Revenue</b>	<b>\$105,292,574</b>

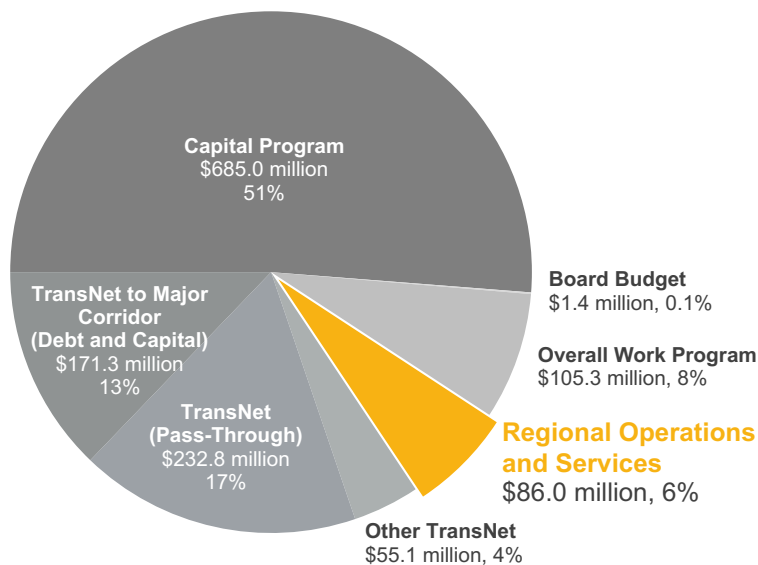


## Expenses

Direct Project	\$24,297,951
Admin Indirect	\$15,791,514
Direct Personnel	\$23,035,755
Pass-Through	\$42,167,354
<b>TOTAL OWP Expenses</b>	<b>\$105,292,574</b>



# Regional Operations and Services

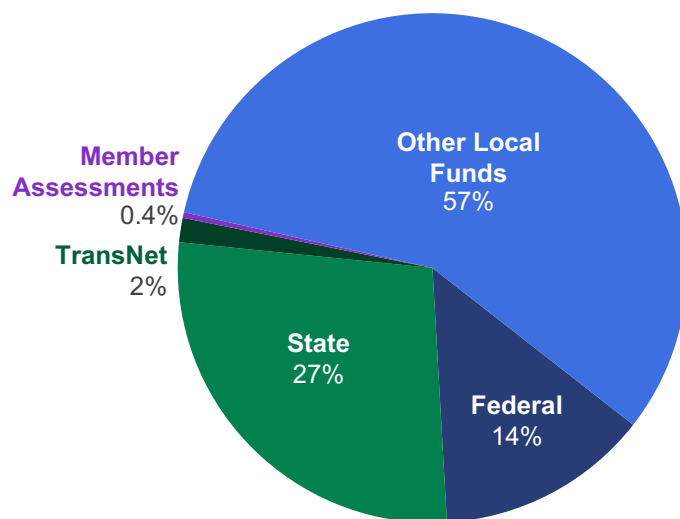


This component of the budget covers management of ongoing operational programs and customer services that deliver enhanced mobility and public safety services. It provides for maintenance and support of intelligent transportation and regional law enforcement data systems that support travelers and public safety agencies in the San Diego region.

**32** Total Regional Operations and Services Projects

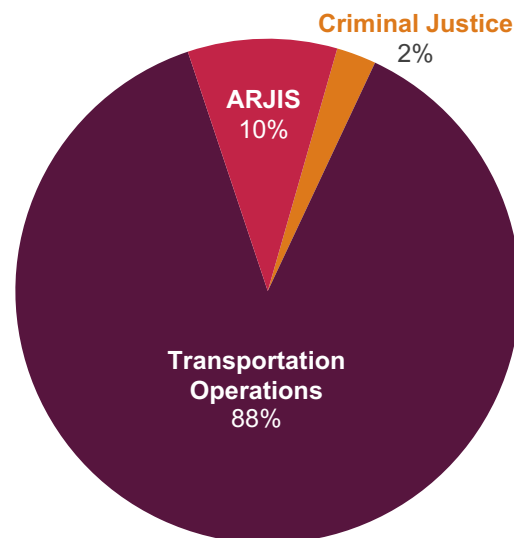
## Revenue

Federal	\$11,643,027
State	\$23,665,393
TransNet	\$1,323,887
Member Assessments	\$308,380
Other Local Funds	\$49,054,523
<b>TOTAL Operations Revenue</b>	<b>\$85,995,210</b>

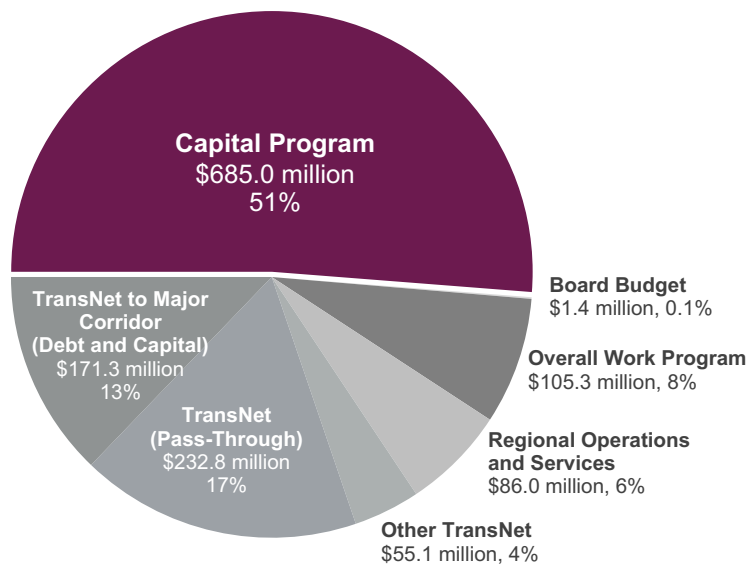


## Expenses

Criminal Justice	\$2,190,481
Transportation Operations	\$75,569,273
ARJIS	\$8,235,456
<b>TOTAL Operations Expenses</b>	<b>\$85,995,210</b>



# Capital Program

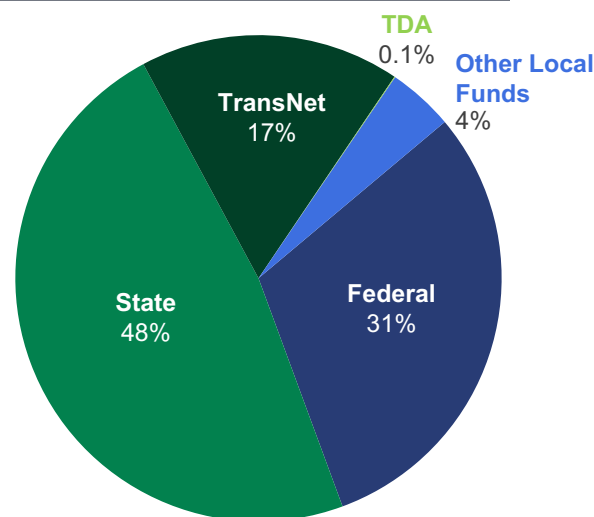


The Capital Program budget is the largest component of the SANDAG Program Budget. It includes the multiyear TransNet Major Corridors and Regional Bikeway Program and other transit and capital improvements. Capital projects include near-term and long-term infrastructure projects and encompass activities such as environmental clearance efforts, design, outreach, engineering, and construction. In addition to major corridor and bikeway projects, this component of the budget includes rail projects, mobility improvements at the border, environmental mitigation, and more.

## 112 Total Capital Projects

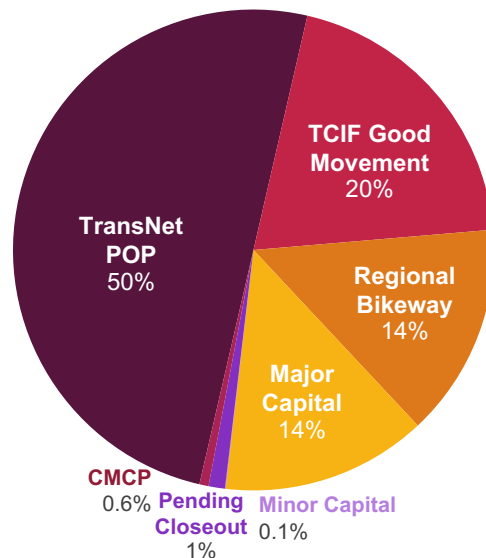
### Revenue

Federal	\$208,888,000
State	\$327,195,000
TransNet	\$118,508,000
TDA	\$396,000
Other Local Funds	\$30,038,000
<b>TOTAL Capital Revenue</b>	<b>\$685,025,000</b>



### Expenses

TransNet Program of Projects (POP)	\$342,471,000
TCIF Good Movement	\$137,321,000
Regional Bikeway	\$98,467,000
Major Capital	\$94,719,000
Minor Capital	\$277,000
Pending Closeout	\$7,565,000
CMCP	\$4,205,000
<b>TOTAL Capital Expenses</b>	<b>\$685,025,000</b>



# SANDAG

## Overall Authority, Responsibilities, and Mandates

SANDAG has several federal, state, and local designations that form the framework for what we do. Below are some of SANDAG's most important designations and critical responsibilities. You can find SANDAG's governing legislation and a complete list of our mandates and designations on our website at [SANDAG.org/bylaws](http://SANDAG.org/bylaws).

### Federal Designations

**Metropolitan Planning Organization (MPO):** Every major region throughout the country is required to have an MPO. As the San Diego region's MPO, SANDAG is one of 18 in California. In this role, we are required to have a long-range, comprehensive Regional Transportation Plan (RTP) and Regional Transportation Improvement Program (RTIP). This role also allows us to receive formula federal funds.

**Some of SANDAG's other federal designations include:**

- Co-Lead Agency for Air Quality Planning (federal and state)
- Area-Wide Clearinghouse (federal and state)

The Federal Land Management Agencies (FLMAs) in our region include the Bureau of Indian Affairs, U.S. Forest Service, National Park Service, U.S. Fish and Wildlife Service, Bureau of Land Management, Bureau of Reclamation, and the Department of Defense (including the U.S. Army Corps of Engineers and Military Surface Deployment and Distribution Command). SANDAG and its member agencies coordinate with all applicable FLMAs in the San Diego region affected by the various transportation projects included in this budget. We anticipate that the Department of Defense and U.S. Fish and Wildlife will be contacted most frequently.

### State Designations

**Regional Transportation Planning and Fund Allocation Agency:** As the regional transportation planning agency, SANDAG adopts the RTP and RTIP, the five-year programming of state and federal transportation funds. The agency also allocates Transportation Development Act funds (local quarter-percent sales tax collected statewide and returned to the county based on the amount collected).

**San Diego Regional Consolidated Agency:** This designation consolidated regionally significant transit planning, programming, project development, and construction into SANDAG. Day-to-day operations responsibilities remain with the existing transit operators. SANDAG is also authorized by statute to place a ballot measure before the voters and use revenues from the sales tax to provide infrastructure that maintains and improves the region's quality of life. Examples include habitat conservation, shoreline preservation, water quality enhancement, and public transit.

**Some of SANDAG's other state designations include:**

- Co-Lead Agency for Air Quality Planning (federal and state)

- Area-Wide Clearinghouse (federal and state)
- Housing
- Otay Mesa East Toll Facility Act
- Congestion Management Agency (state and local)

## **Local Designations**

**Council of Governments:** This designation makes SANDAG the public forum for regional decision-making among the area's 18 cities and county government relating to a broad range of topics pertinent to the region's quality of life. Some of the regional topics include strategic planning, allocation of resources, and the creation of accurate, timely, and useful demographic, economic, transportation, planning, borders, environmental, and public safety information.

**San Diego County Regional Transportation Commission (Local and Voter Approval):** In this role, SANDAG administers the local half-cent sales tax, TransNet, for transportation purposes including oversight and funding.

**Regional Toll Authority (Congestion Management and Infrastructure Financing):** In this role, SANDAG is responsible for the delivery and operation of pricing programs such as the Interstate 15 Express Lanes and future managed lanes. Fees support the operation and maintenance of the program and provide additional funding for Rapid transit and vanpool services in the corridor.

**Automated Regional Justice Information System (ARJIS):** The purpose of the ARJIS Joint Powers Agency is to develop and maintain state-of-the-art criminal justice information technology that provides its members with seamless, cross-jurisdictional access to essential, accurate, real-time data via a secure criminal justice enterprise network. As the convening agency for regional justice technology, ARJIS enhances officer and public safety.

**Freeway Service Patrol Administration:** In this capacity, SANDAG provides rapid assistance to stranded motorists during peak traffic periods on various highways. This service reduces congestion and increases safety.

**Some of SANDAG's other local designations include:**

- Congestion Management Agency (state and local)
- Regional Census Data Center
- Regional Criminal Justice Clearinghouse

**Other designations:**

- North County Multiple Habitat Conservation Program
- Successor Agency for the San Diego Service Authority for Freeway Emergencies
- Regional Transportation Demand Management Program Administration
- State Route 125 Toll Facility
- Intergovernmental Review
- Regional Information System
- SANDAG Service Bureau
- Fee-for-Services
- Master Agreement with Caltrans
- Memoranda of Understanding with Member Agency(ies)
- Memoranda of Understanding with Metropolitan Transit System and North County Transit District
- Local, State, or Federal Grant Conditions
- Regional Beach Sand Replenishment Program

## Strategic Planning Framework

### Vision

*Pursuing a brighter future for all*

### Mission

*We are the regional agency that connects people, places, and innovative ideas by implementing solutions with our unique and diverse communities.*

## Strategic Initiatives

The following strategic initiatives establish a strong foundation to ensure our success as an organization, and build the capacity needed to effectively deliver projects.

Earning and maintaining the confidence of our residents and partners is the key to successfully bringing projects to life. Underlying this collaboration, three pillars serve as the foundation for our work:

- Oversight and Transparency: We are committed to strengthening public trust by being good stewards of taxpayer dollars and communicating clearly.
- Leadership and Structure: We are committed to making sure the organization of the agency sets us up to be efficient, agile, and aligned with our mandates.
- Focus on Fundamentals: We are committed to planning and delivering meaningful results through quality projects and programs.



# SANDAG

## Funding Sources

SANDAG's Program Budget has many revenue sources including those detailed below. Revenue estimates used in the Draft FY 2026 Program Budget are developed and updated between November 2024 and the end of January 2025.

About three-quarters of the revenue used to support the projects and programs in the budget comes from state and federal sources. Most of this money is in the form of dedicated grants for specific work efforts. Local TransNet revenue and other local sources, including member assessments, make up the remaining revenue which supports the agency's primary budget components: planning, delivery, operations and administration.

### Local Sales Tax Revenue

SANDAG has two revenue streams that are based on general sales tax – the Transportation Development Act (TDA) and TransNet. Each year, SANDAG updates its forecasts of these two revenue sources to reflect the latest data and economic conditions. The data reveal weakness in sales tax revenue growth despite a healthy economy. As a result, we downgraded our projections for both TDA and TransNet revenue. The update impacts expectations for the current year (FY 2025), as well as our short-term outlook (FY 2026 to FY 2030).

After experiencing extraordinary growth in the three years following the onset of the COVID-19 public health emergency (FY 2021–FY 2023), sales tax revenue recorded negative growth in FY 2024. TransNet collections were \$426.7 million (\$3 million—or 0.7%—lower than FY 2023). SANDAG initially anticipated the dip in FY 2024 to be a one-time occurrence. However, sales tax data in the first half of FY 2025 point to another year of negative growth. TransNet revenue in FY 2025 is predicted to be \$420.1 million (nearly \$14 million less than initially projected in the previous budget), so we have lowered our FY 2026 revenue projection to \$421 million. After FY 2026, TransNet revenue is forecast to gain momentum and converge on a long-term growth average that is slightly above 3% by FY 2029. TDA revenue generally follows a similar trajectory to TransNet. Its growth is more modest, with smaller up and down changes. As a result, TDA revenue is projected to be flat from FY2025 to FY2027, before returning to slow but positive year-over-year growth.

### Federal and State Revenue

SANDAG's revenue is subject to both the state and federal governments approving their annual budgets. Actual appropriation of metropolitan planning organization (MPO) planning funds will be announced in subsequent notices appearing in the Federal Register.

These funds flow to SANDAG through federal formulas that have historically been based on a combination of factors, such as population and air quality designation. Federal formula funds for capital projects increased in FY 2024 and FY 2025, because of the Infrastructure Innovation and Jobs Act (IIJA). The IIJA bill expires in 2026. SANDAG is currently expecting revenues to remain flat.

SANDAG and the transit agencies are also eligible for formula funds under several state programs that include planning, operations, and capital funding. Additional funds may become available through formula appropriation in FY 2026 depending on how the State of California decides to distribute them.

## **Other Revenue and Grants**

Dedicated grants, enterprise revenue, and ongoing multiyear state and federal grant programs provide funding for projects and programs in the OWP, Capital Program, and Regional Operations and Services budget components. In particular, SANDAG and local transit agencies are eligible for discretionary funds under many federal and state programs with awards continuing into FY 2026. We continuously compete for discretionary grants for our planning and capital projects. These revenues are added to the Program Budget as they are awarded.

The revenue generated on the SR 125 Toll Road and the I-15 Express Lanes has continued to show positive growth. Traffic and revenue on both roads increased during FY 2024 and the first half of FY 2025. Toll and Express Lane revenues will be updated for the Draft 2026 Program Budget along with the rest of the revenues discussed above.

## FY 2026 Program Budget: Staffing Resources, Compensation Program, and Employee Benefits

Two of the agency's FY 2026 strategic initiatives tie directly to ensuring that SANDAG has a strong team of dedicated employees, capable of delivering the work program commitments.

- **Leadership and Structure:** *redefining our organizational structure and systems to allow us to streamline work products and **resource teams appropriately** to advance and complete programs and projects effectively and efficiently.*
- **Focus on Fundamentals:** *continue practices that **attract and retain** highly qualified and motivated staff. Invest in training staff and succession planning.*

The focused evolution of policies, practices, and programs that establish SANDAG as a highly desirable employer of choice and improve the employee experience with elements such as competitive pay, benefits, and rewards, flexibility in work arrangements and schedules, an optimized work environment, and opportunities for professional development and advancement are among the highest priority goals. Organizationally, this work is underpinned with a team of effective leaders and managers, and strong performance management practices that establish priorities, provide clarity to each employee about their role and contributions, and support a work environment where innovation, collaboration, teamwork, and accountability are essential for success. The Draft Budget contains resources to support this priority.

### Staffing Resources

SANDAG relies on its talented and highly engaged team of planners, engineers, modelers and data scientists, finance, communications, and business professionals, and administrative and technical support staff to successfully deliver the agency's projects, programs, and services. Throughout the year and during development of the Draft FY 2026 Program Budget, staffing resources have been considered strategically in the context of program and project priorities. SANDAG has been successful in its staffing efforts, filling positions at all levels of the organization – through promotions and reclassifications of existing employees, and through recruitment activities that have brought new skills and experiences to the organization. The turnover rate in FY 2024 was 12% and is trending downward for this year. This is an indication that ongoing efforts have had a positive shift in employee retention. Management will continue a broad range of initiatives in FY 2026 to drive and support a high-performing culture.

The Draft FY 2026 Budget proposes three new full-time staff positions – two for the Office of the Independent Performance Auditor, and one for the agency.

### Compensation Program

SANDAG's goal is to maintain a fair, effective, and market-competitive compensation program to attract qualified candidates for job openings, minimize organizational disruption due to unwanted turnover, and retain the team of employees who are essential to the agency's success. The Draft Budget includes two preliminary recommendations that reflect current market and economic conditions; one pertains to maintenance of the agency's salary range structure, the other is a pool of resources to provide pay increases.

The SANDAG salary range structure is proposed to increase by 3% in FY 2026; this means the minimum and maximum of each salary range will increase by 3% at the beginning of the new fiscal year. This recommendation aligns with trends reported by compensation consultancies for the year ahead and will ensure the agency remains competitive with respect to the market. There are no costs associated with this action; the change in salary ranges does not translate to automatic increases to employee salaries. The proposed FY 2026 Classification/Salary Range Table can be found in Chapter 8: Personnel.

The Draft FY 2026 Budget includes a preliminary recommendation for a 3% compensation adjustment pool. The anticipated cost of the proposed 3% pool is approximately \$2,012,886. This includes \$1,539,089 in salary expenses and a corresponding increase to the benefits budget of \$473,797 due to

increased costs for salary-based benefits such as the agency's contribution to the CalPERS pension plan, workers compensation, and Medicare taxes.

### *Employee Benefits*

SANDAG intends to maintain the employee benefits program in FY 2026. No new benefits are being added. Costs for pension plan contributions and health insurance benefits have increased; costs for other benefits have remained reasonably stable. As discussed above, the Draft Budget also includes an increase of approximately \$473,797 for salary-based benefits associated with the proposed compensation adjustment pool.

The benefits budget also includes contributions to two IRC Section 115 tax-exempt trusts established as a means for saving for future pension costs and OPEB (Other Post-Employment Benefits/retiree health insurance contributions) obligations. The pension pre-funding trust was established in FY 2017 with an initial contribution of \$3.5 million. A \$1 million contribution has been made in each subsequent fiscal year, and as of December 31, 2024, the Trust had a balance of approximately \$17,300,000. In keeping with the commitment to contribute funds to this trust each year, a \$1,000,000 contribution is recommended as part of the FY 2026 Draft Program Budget. SANDAG also participates in the CERBT (California Employers' Retiree Benefit Trust), administered by CalPERS to fund its OPEB obligations. Since joining the CERBT in 2009, SANDAG has made the full, actuarially determined contribution each year. As of December 31, 2024, SANDAG's balance in the CERBT was approximately \$8,531,471.10; the recommended contribution for FY 2026 is \$391,647.



# Draft Program Budget FY 2026

Dawn Vettese, Chief Financial Officer  
Susan Huntington, Director of Financial Planning, Budgets and Grants  
Antoinette Meier, Senior Director of Regional Planning  
Clint Peace, Director of Program/Project Management  
Lucinda Broussard, Director of Regional Transportation Services  
Josh Golter, Director of Human Resources  
Robyn Wapner, Acting Senior Director  
Executive Committee | Item 5  
Friday, March 14, 2025

1

## Planning and Budgeting Efforts

### Regional Plan

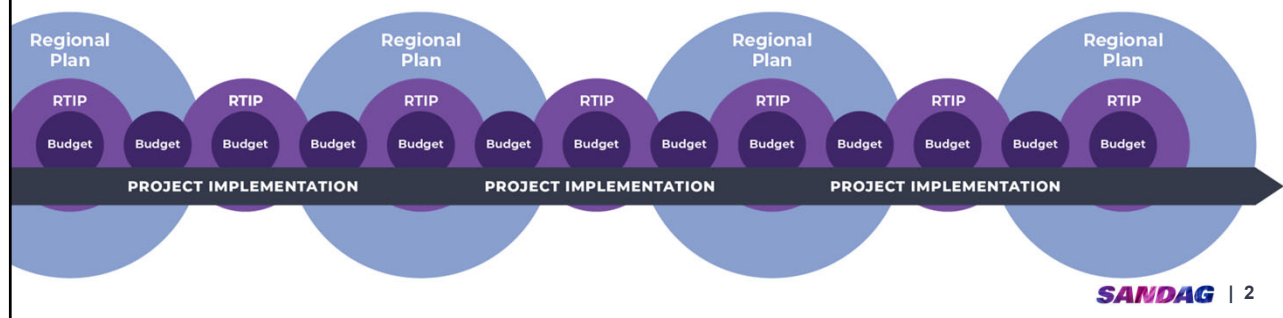
- Conceptual long-term vision (30 years); Updated every 4 years

### Budget

- Financial plan for projects with identified funding (planning projects: 1 year, capital projects: 10 years); Updated annually (fiscal year spans July 1 to June 30)

### Regional Transportation Improvement Program (RTIP)

- Near-term investment plan (5 years); Projects and programs that were identified through Regional Plan and Budget process with committed funding; Updated every 2 years



2

# SANDAG Mandates

## FEDERAL

### Metropolitan Planning Organization

- Regional Plan

## STATE

### Regional Transportation Planning Agency

- Regional Plan

### Council of Governments

- Regional Housing Needs Assessment (RHNA)

### Consolidated Agency

- Plan and build transportation projects

## TRANSNET

### Regional Transportation Commission

- TransNet program, oversight, and funding

## LOCAL

### Automated Regional Justice Information System (ARJIS)

- Cross-jurisdictional criminal justice data

**SANDAG**  
TransNet Program



**SANDAG** | 3

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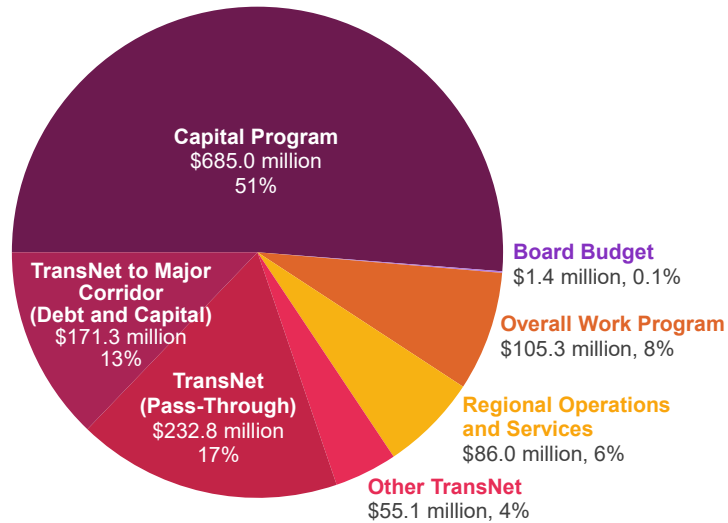
**SANDAG**

## CHAPTER 1

# Budget Overview

4

## FY 2026 Draft Program Budget – \$1.3 Billion



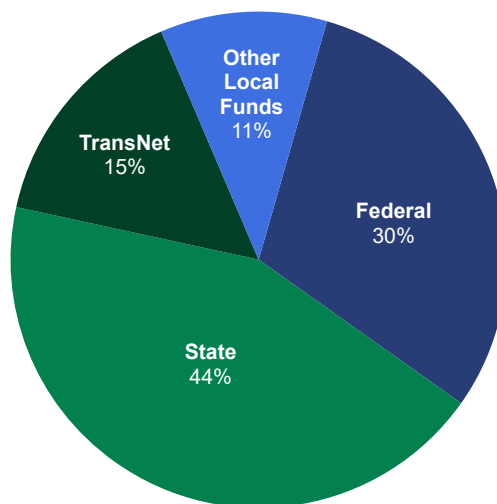
\*Pass-through funds go to local jurisdictions and transit operators

NOTE: Administration, Information Technology and Office of Independent Performance Auditor's budget of \$35 million is allocated to all major programs

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## FY 2026 Major Program Revenue (OWP, Capital, Operations)



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## CHAPTER 2

# Overall Work Program

7

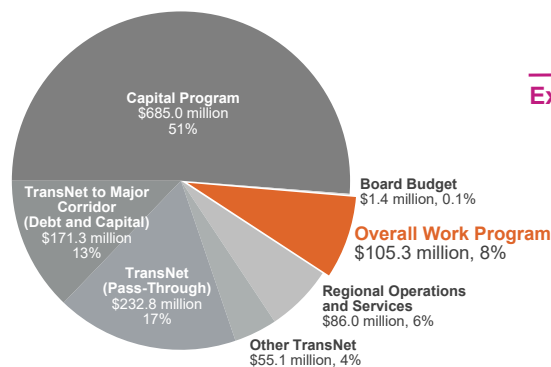
## Overall Work Program

- Regional planning
- Project implementation
- Data and analytics
- Community engagement
- Financial management and grant programs

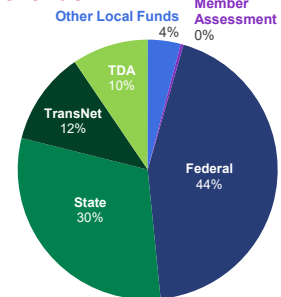
**55** Total OWP Projects

### OWP Budget Comparison

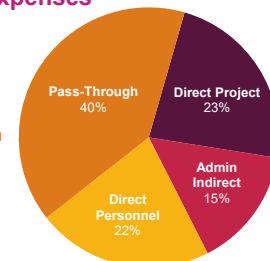
Draft FY 2026 (in \$millions)	<b>\$105.3</b>
FY 2025 (in \$millions)	<b>\$80.9</b>
Dollar Change	<b>\$24.4</b>
% Change	<b>30%</b>



### Revenue



### Expenses



8



CHAPTER 3

# Regional Operations and Services

9

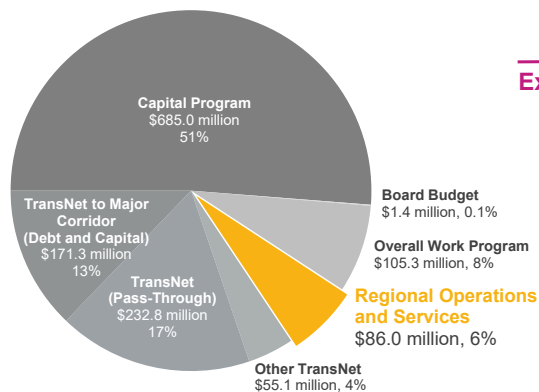
## Regional Operations and Services

- SR 125 FasTrak toll facilities
- I-15 FasTrak Managed Lanes
- Freeway Service Patrol
- ARJIS
- Criminal Justice

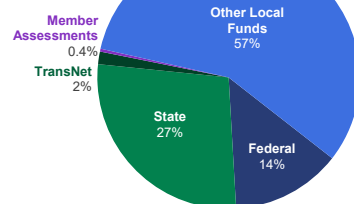
**32** Total Operations Projects

### Operations Budget Comparison

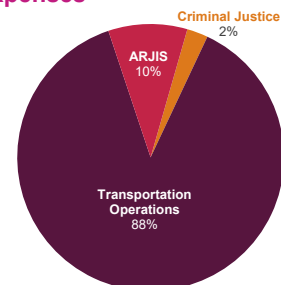
Draft FY 2026 (in \$millions)	<b>\$86.0</b>
FY 2025 (in \$millions)	<b>\$79.9</b>
Dollar Change	<b>\$6.1</b>
% Change	<b>8%</b>



### Revenue



### Expenses



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## CHAPTER 5

# Capital Program

11

## Capital Program

Capital projects encompass activities like environmental clearance, design, outreach, engineering, and construction.

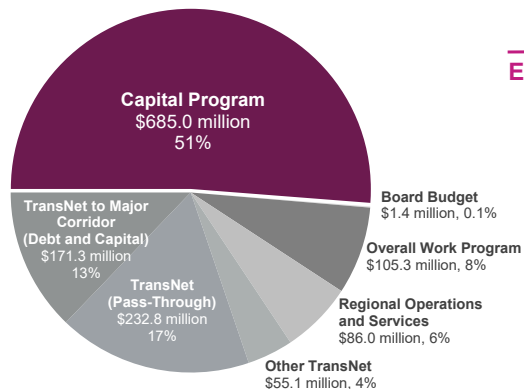
Projects include:

- TransNet Major Corridors
- Regional Bikeway Program
- Transit improvements
- Rail projects
- Mobility improvements at the border
- Environmental mitigation

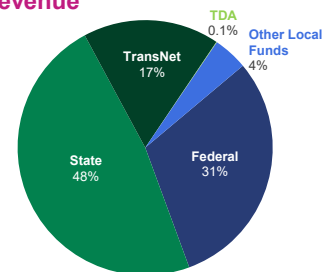
**112** Total Capital Projects

### Capital Budget Comparison

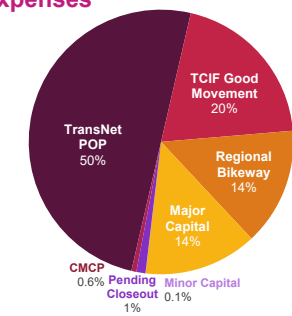
Draft FY 2026 (in \$millions)	\$684.2
FY 2025	\$683.2
Dollar Change	\$1
% Change	0%



### Revenue



### Expenses



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CHAPTERS 6 - 8

# Internal Operations, Office of the Independent Performance Auditor, and Human Resources

13

## Vision and Priorities



14

## Human Resources Budget

- Staffing: 3 new positions
  - 2 OIPA
  - 1 within the agency
- Position Classification Table: 3% range adjustments (no associated costs)
- 3% Compensation Adjustment Pool
- Benefits: No changes

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## Administration and Board Budgets

Day-to-day operational costs: rent, insurance, computer equipment, network services

Support for regular Board and Policy Committee meetings including:

- Stipends
- Mileage reimbursements
- Interpretation services
- Security services
- Technology equipment and maintenance

- Office of the Independent Performance Auditor
- Office Move
- Outside Legal Counsel Services for Agency and Board
- ADA Compliance
- Finance Department Audit Implementation

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## Budget Meeting Schedule



### Board of Directors

Preliminary Budget Discussion  
February 14, 2025



### ITOC

Draft FY 2026 Budget  
March 12, 2025



### Executive Committee

Draft FY 2026 Budget  
March 14, 2025



### Social Equity Working Group

Draft FY 2026 Budget  
March 27, 2025



### Board of Directors

Draft FY 2026 Budget  
March 28, 2025



### Mobility Working Group

Draft FY 2026 Budget  
April 10, 2025



### Board of Directors

Proposed Final FY 2025 Budget  
May 2025

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## Recommendation

The Executive Committee is asked to:

1. Authorize distribution of the Draft FY 2026 Program Budget to member agencies and other interested parties for review and comment; and
2. Recommend that the Board of Directors approve the Draft FY 2026 Program Budget.

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March 14, 2025

## **Proposed Board Policy Changes to Address Previous OIPA and TransNet Findings and Related Recommendations**

### **Overview**

The Executive Committee is asked to consider proposed amendments to Board Policies resulting from previous OIPA and TransNet Performance Audit recommendations as well as related recommendations stemming from prior Board direction and the Grand Jury report from 2024.

#### **Action: Discussion/Possible Action**

The Executive Committee is asked to provide feedback on amendments to SANDAG Board Policies proposed to address findings and recommendations from OIPA audits and investigation outcomes from 2024.

### **Key Considerations**

#### ***Travel – Board Policy No. 11***

The OIPA audit entitled Board Member and Employee Travel and Other Reimbursements Report, contains recommendations to add language to Board Policy No. 11 and administrative policies and forms concerning travel to enhance internal controls and recordkeeping. The majority of the changes will be made to the administrative policies and forms and combined with additional staff training. The modifications proposed in Attachment 1 are intended to provide a framework for the implementation of those activities.

#### **Fiscal Impact:**

None.

#### **Schedule/Scope Impact:**

None.

#### ***Procurements - Board Policy Nos. 016, 023, and 024***

Several audits have been performed by OIPA in the last few years with recommendations that have been accepted and require implementation via significant changes to Board Policies regarding procurement. These audits include the following reports: Contracts Invoicing and Payment Process Report, Investigation Report on SANDAG's State Route 125 Toll Operations, Contracts and Procurement Operational and System Control Audit Report (Parts I and II), and Whistleblower Investigation Report on SANDAG's New Tolling Back-Office System Implementation. Based on observations noted from Grand Jury and Board direction in 2024, other changes are proposed to Board Policy to enhance procurement practices for the agency.

Board Policies 016, 023, and 024 respectively concern procurements of services, equipment, and construction. These policies were originally drafted many years ago when SANDAG authority for these three categories of procurement varied considerably more. Due to legislation that went into effect on January 1, 2023 (AB 1833), and changes in internal procedures at the agency over the past 20 years, many of these variances no longer exist. To reduce duplicative language in the policies and simplify ease of reference, staff recommend consolidating all procurement-related matters into a single policy using Board Policy No. 016. This means Board Policy Nos. 023 and 024 will be superseded and could be used for other purposes in the future at the Board's direction. Pending Executive Committee recommendation, the changes proposed in Attachment 2 for Board Policy No. 016 will update the policy to align it with current law and make modifications to address 45 OIPA recommendations in whole or in part.

### ***Delegation of Authority - Board Policy No. 017***

Six of OIPA's recommendations from the above-referenced audits require modifications to Board Policy No. 017, Delegation of Authority. In addition, the 2024 *TransNet* Performance Audit contains one recommendation that can be implemented with an amendment to Board Policy No. 017. The proposed amendments to Board Policy No. 017 are in Attachment 3. The amendments add language to allow other Board Policies to carve out staff positions that the Board of Directors may want to appoint directly instead of delegating that authority to the Chief Executive Officer (CEO). The modifications also add requirements to the CEO's role with regard to internal controls and project oversight as recommended by OIPA.

### **Next Steps**

Pending a recommendation from the Executive Committee, the proposed amendments will be taken to the March 28, 2025, Board of Directors meeting for approval. Staff believe it will take three to six months to institute the necessary infrastructure to implement the proposed policy changes if they are approved by the Board. Activities will include the development of new templates for reporting of vendor performance problems, modified forms, tracking systems, and staff education and training.

Options for modifications to Board Policy No. 008: Legal Matters will be discussed as a separate agenda item at the March 28 Board meeting to respond to requests from the Board to review and modify the hiring and reporting relationship between the Board and the General Counsel for the agency. All other Board Policies with proposed amendments will be brought to the Executive Committee for consideration in May 2025.

### ***Mario Orso, Chief Executive Officer***

Attachments:    1. Proposed Board Policy No. 011 with Redline Changes  
                      2a Proposed Board Policy No. 016 with Redline Changes  
                      2b. Proposed Board Policy No.023 with Redline Changes  
                      2c. Proposed Board Policy No. 024 with Redline Changes  
                      3. Proposed Board Policy No. 017 with Redline Changes



## BOARD POLICY NO. 011

### TRAVEL EXPENSES

This policy is intended to establish processes and procedures regulating Out-of-Town Travel by SANDAG Board and Committee members and employees while on SANDAG business, and to provide a basis for budgeting Board member and employee attendance at conferences, training, seminars, or other meetings. Employees should refer to the Administrative Guidelines/Procedures for Employee Business Travel for Additional Information.

It is desirable and beneficial to SANDAG and its constituents to have Board and Committee members and employees participate in state and national activities, training, and conferences related to SANDAG's subject matter jurisdiction.

#### 1. Definitions Applicable to Policy

- 1.1 Out-of-Town Travel – Any travel outside San Diego County.
  - 1.1.1 One-day trips within San Diego County will be treated as in-town expenses and not *Out-of-Town Travel*.
- 1.2 Authorizing Authority – SANDAG Board Chair for Board and Committee member travel, or SANDAG Chief Executive Officer (CEO) and those delegated authority by the CEO to ensure SANDAG compliance with this Policy, but do not include positions lower than a Director for SANDAG employee travel.
- 1.3 U.S. General Services Administration (GSA) – GSA establishes the per diem rates for the lower 48 Continental United States (CONUS), which are the maximum allowances that federal employees are reimbursed for expenses incurred while on official travel. (See [www.gsa.gov](http://www.gsa.gov).) The GSA's Federal Travel Regulation shall be used in interpreting this Policy.

#### 2. Budgeting

- 2.1 Each year the CEO will survey the Board and Committee members to ascertain their interest in attending upcoming conferences and meetings. These conferences may include legislative and annual meetings for the California Transit Association, the American Public Transit Association, and the National Association of Regional Councils, as well as California Transportation Commission meetings and legislative hearings. The Chair of the Board will make the final decision regarding which Board and Committee members should attend all conferences and meetings. Upon return, Board members will be asked to present their experiences to the Board in order to share the knowledge obtained from their attendance.
- 2.2 Employees may attend conferences related to their respective disciplines consistent with this Policy's procedures. The CEO or his/her designee will make the final decision regarding which employees should attend conferences and meetings.



within the adopted budget. Upon return, employees will submit a report to their Director in order to share the knowledge obtained from their attendance.

- 2.3 Board and Committee member and employee attendance will be funded in the annual budget subject to the availability of funds and based on the results reported by previous attendees. As part of the budgeting process, the CEO or their designee will set objectives to ensure minimum representation at key conferences, and to make sure that cumulative attendance by Board and Committee members and employees at any one conference is not excessive.

### **3. Procedures**

- 3.1 Requests for Out-of-Town Travel in all cases shall be limited to SANDAG business, conferences, and meetings, legislative hearings, and training classes from which SANDAG will derive a specific benefit through the attendance of a representative and must be approved in advance by an Authorizing Authority.
- 3.2 Out-of-Town conference Travel by SANDAG employees shall be limited to positions of a highly technical or professional nature as designated by the Authorizing Authority.
- 3.3 Any reimbursable Out-of-Town Travel expenses must be properly documented in accordance with a travel request form and shall be submitted for reimbursement within 10 (ten) business days following the completion of travel.
- 3.4 Employees must fill out a travel request form prior to traveling out of San Diego County on SANDAG business. The project code, purpose of travel, and trip budget must be filled in on the form. The form must be approved by the Authorizing Authority prior to travel arrangements being made.
- 3.5 For Board and Committee member travel, the Clerk of the Board or Executive Assistant will fill out ~~the top portion of~~ the travel request form and the Chair of the Board, or upon their written delegation the CEO, shall determine whether to approve it based upon the standards in this Policy.
- 3.6 Basic travel arrangements for flights, hotels, and rental cars will be made by the Clerk of the Board, Executive Assistant, or other designated staff. Board and Committee members and employees are responsible for contacting the Clerk of the Board, Executive Assistant, or other designated staff if itinerary changes are needed. Board and Committee members or employees desiring different travel arrangements will contact the Clerk of the Board or other designated staff to place them on notice and will be financially responsible for any costs over and above those costs for the basic trip.
- 3.7 If a Board or Committee member or employee initiates a change in travel plans that is not due to a medical/death emergency by the Board or Committee member or employee, or his/her immediate family, then the Board or Committee member or employee will be responsible for the cost impacts of those changes.
- 3.8 Use of air, train, private vehicle, bus, SANDAG vehicle, or other travel mode shall be selected on the basis of the lowest reasonable cost to SANDAG after all expense items are tabulated, including but not limited to travel time salary costs. The

responsibility for this consideration rests with the respective Authorizing Authority in approving the proposed travel and may be based upon the assessment of the Clerk of the Board, Executive Assistant, or other staff member or agency charged with making travel arrangements.

- 3.9 When the use of public air carrier transportation is approved, the travel expense will only be reimbursed for the equivalent of reserved coach class service. Airfare will be reimbursed for actual expenses; the use of personal mileage or vouchers for airfare will not be reimbursed.
- 3.10 Authorized travel time shall be based on that required by the most appropriate mode of transportation. Should an employee desire travel time in excess of the above, such time must be approved by the respective Authorizing Authority.
- 3.11 Additional fees such as luggage fees will be reimbursed on the basis of one bag fee per traveler. Extended travel that requires extra luggage may be approved by the respective Authorizing Authority.
- 3.12 Board and Committee members and employees will be reimbursed for meals and incidentals using the per diem rates established by the GSA. There are circumstances where these guidelines may not be appropriate. Examples of these circumstances include, but are not limited to the following, and such exceptions must be approved by the Authorizing Authority for reimbursement at actual expense:
  - 3.12.1 Meal costs incurred in connection with training, travel, civic/professional group meetings, etc., which have a set price and for which the individual has little or no choice in the amount paid. These costs usually include speaker, facility, and meal costs.
  - 3.12.2 Circumstances specifically identified in the GSA's Federal Travel Regulation as allowing actual expense reimbursement instead of per diem rates.
- 3.13 Lodging will be reimbursed at actual expenses, not to exceed the guidelines set by the GSA. (See [www.gsa.gov](http://www.gsa.gov).) Exceptions will be granted at the discretion of the Authorizing Authority for hotels included with training, travel, civic/professional group meetings, etc., which have a set price and for which the individual has little or no choice in the amount paid, or where specifically allowed in the GSA's Federal Travel Regulation. The use of personal mileage/points or vouchers for lodging will not be reimbursed.
- 3.14 It is the responsibility of Board and Committee members and employees to ensure that expenses are within the guidelines of this Policy.
- 3.15 The number of Board members or Committee members attending any conference or meeting should not exceed a quorum unless this provision is specifically waived by the Board after seeking advice from legal counsel.
- 3.16 The CEO shall develop and implement administrative travel policies and procedures consistent with this policy. Among the requirements in those policies and procedures, the following shall be mandated:

3.16.1 The travel request form used to approve travel must be documented separately from the travel expenses report used to reimburse travel; and

3.16.2 Only those executive assistants and other staff who have received training and are sufficiently familiar with the requirements for reimbursement and supporting documentation may process or submit travel requests and/or travel expense reports for final approval; and

3.15.13.16.3 Travel request and reimbursement approvals shall be documented by handwritten signature unless a signature cannot be acquired in a timely manner, in which case a text message or email may be used. The record of emailed or texted approval and documentation for the exception to the signature requirement shall be included with the approval.

3.16.3.17 The CEO shall report any exceptions granted under this Policy to the Board of Directors on a regular basis.

Adopted June 2003

Amended January 2006

Amended December 2006

Amended December 2008

Amended January 2010

Amended November 2012

Amended November 2015

Amended February 2018

Amended June 2021

Amended November 2022

Amended March 2025



## BOARD POLICY NO. 016

### **PROCUREMENT AND CONTRACTING**

#### **Purpose and Applicability**

This policy establishes rules for procurement and contracting approved by the Board of Directors based on applicable laws and Board directives to staff. Primary procurement authority for SANDAG is derived from Public Utilities Code (PUC) section 132352.4. As stated in PUC section 132352.4(b)(7), with Board approval, the agency may may use any procurement method authorized for state or local agencies by state or federal law.

Detailed procedures for carrying out this policy are described in the Procurement Manual, the Construction Manual, and standard operating procedures approved by the Chief Executive Officer (CEO) and Office of General Counsel (OGC). Code of Federal Regulations, Volume 2, Part 200, Federal Transit Administration Circular 4220.1G, and the Caltrans Local Assistance Procedures Manual also establish rules and guidance that SANDAG must consider when administering procurements and contracts using federal or state Department of Transportation (DOT) funds. All references to the CEO in this policy also apply to the CEO's delegates to the extent permitted by Board Policy No. 017 and as set forth in the Delegation of Authority policy approved by the CEO.

#### **Definitions**

Best Value Selection: "Best value" means the contract award is made to the highest ranked responsive and responsible offeror(s) as a value determined by objective criteria, which-and may include, but is not limited to, price, features, functions, life-cycle costs, and other criteria deemed appropriate by SANDAG. Price must be a significant evaluation factor, but SANDAG is not required to award to the lowest price offeror.

Cardinal Change: A cardinal contract change is work added that is outside of the scope of what offerors could have reasonably expected the work to include at the time of the original solicitation. A cardinal contract 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. Relevant factors include the nature and extent of the changed work to be performed, the amount of effort involved, whether the change was originally contemplated at the time the original solicitation was issued and/or contract was entered into, and/or the cumulative impact on the contract's quantity, quality, costs, and delivery terms. Generally, an amendment or change order that is either outside of the original contract scope, or greater than 25 percent of the price of the original solicitation value should be documented as a noncompetitive procurement (sole source).

Contract: Any binding written document, whether or not it contains a dollar amount, that states that SANDAG agrees to carry out or refrain from one or more actions. Contract documents include, but are not limited to, Memoranda of Understanding, agreements for services, sponsorship agreements, purchase orders, task orders, amendments, change orders, job orders, nondisclosure agreements, letters of intent regarding future transactions, and real property purchase agreements.

Contractor: A person or entity contracting directly with SANDAG to provide goods or services. Sometimes also referred to as a consultant or vendor.

Exigency or emergency: A situation that will not permit a delay resulting from carrying out the typically required competitive procurement or amendment requirements for the supplies or services due to the serious injury that would be caused to SANDAG or the public if delay occurs.

Limited Competition: Use of the small purchase procedures when formal purchase procedures are otherwise warranted to avoid a noncompetitive sole source. Permitted only under the limited conditions described in this policy.

Lowest Bidder Selection: Means the contract is awarded to the lowest priced responsive and responsible bidder meeting specifications for award, not including sales tax.

Micro Purchase Amount: An amount that will not exceed the ceiling amount for micro purchases set by the Board of Directors or the applicable funding agency(ies) for the procurement, whichever is lower.<sup>1</sup>

Mini Brooks Act Services: Services described in Government Code section 4525 et seq. Those services include: architectural, landscape architectural, engineering, environmental, land surveying, construction engineering, or program management, construction management, feasibility studies (includes environmental studies and analysis), preliminary engineering, design, engineering, surveying, mapping or architectural related services, as those terms are defined in the Government Code.

Noncompetitive Procurement (Sole Source): A procurement leading to award of a contract to a contractor or entity that was not required to compete against other potential contractors.

Qualifications Based Selection: Means the contract award is made to the highest ranked responsive and responsible offeror(s) as determined solely by offeror qualifications. An offeror's price proposal is not reviewed unless the offeror is determined to be most qualified. This selection method is only used for Mini Brooks Act Services.

Small Purchase Amount: An amount that is higher than the Micro Purchase Amount but lower than the amount set in PUC section 132352.4 requiring formal procurement procedures.<sup>2</sup>

Subcontractor: A person or entity hired by a SANDAG contractor at any tier with no direct contractual relationship with SANDAG. Sometimes also referred to as a subconsultant or supplier.

## **Rules**PROCUREMENT OF SERVICES

### **1.—Rules for Procurement of Services -**

<sup>1</sup> As of March 2025, the Board of Directors approved micro purchase amount is \$10,000.

<sup>2</sup> As of March 2025, this amount is \$150,000.

1. ~~Pursuant to Public Utilities Code section 132352.4, the following statutory requirements apply to procurements of services, including Mini Brooks Act Services, unless a justification in Section 5 of this policy applies:~~

~~Micro Purchases. If the estimated total cost of required services exceeds the thresholds established by the Public Utilities Code, as amended by AB 1833, SANDAG must solicit bids in writing and award the work in a competitive procurement process that is in the best interest of SANDAG. Exceptions to this requirement include when services will be performed by another government entity or when the services are within the category of services defined in Section 4525 of the Government Code. If the estimated total cost of required services exceeds one hundred thousand dollars (\$100,000), the services will not be performed by another government entity, and the services are not within the category of services defined in Section 4525 of the Government Code, SANDAG must solicit bids in writing and award the work in a competitive procurement process that is in the best interest of SANDAG. Services defined in Section 4525 include: architectural, landscape architectural, engineering, environmental, land surveying services, and construction project management services, as those terms are defined in Government Code section 4525 (hereinafter "Section 4525 Services"). If Section 4525 Services with a contract value in excess of the thresholds established by the Public Utilities Code, as amended by AB 1833, \$50,000 must be procured or the contract will be funded with federal money SANDAG will make the procurement pursuant to the provisions of Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code. SANDAG must use the procedures of the Brooks Act if federal funds are used and the services are architectural or engineering in nature (hereinafter "A&E Services"). Contracts that do not exceed these statutory limitations may be procured using simplified procedures. All references to the Chief Executive Officer in this policy also apply to the Chief Executive Officer's designees.~~

## **Procedures**

- 1.1 ~~Micro Purchase Agreements. For purposes of this policy, the term "micro purchase amount" shall mean an amount that will not exceed the ceiling amount for micro purchases set by the applicable funding agency(ies) for the procurement. These procedures apply to the procurement of all services at or below the Mmicro Purchase Amount.~~

### 1.1

- 1.1.1 ~~For purchases at or below the Mmicro Purchase Amount, a micro purchase procurement method may be used.~~ A micro purchase procurement is a noncompetitive purchase technique; however, the price of the service must still be fair and reasonable.
- 1.1.2 There should be equitable distribution of contract awards among qualified service providers in the local area and no splitting of procurements to avoid competition.
- 1.1.3 An offer is only required from the contractor ~~vendor~~ of choice and a purchase order, invoice, or simple letter agreement may be used instead of ~~the~~ SANDAG standard contract languageservices agreement template. -when the risk to SANDAG is considered low, in the discretion of the Director or Manager of Contracts and Procurement or the OGC.

~~1.1.3.1.4~~ If it is reasonably possible that the amount awarded will need to be amended to exceed the Micro Purchase Amount, the procedures in Section 1.2 or 1.3 of this policy, as applicable, shall be utilized.

~~1.2~~ Small Purchases. These procedures apply to procurements at or below the Small Purchase Amount that exceed the Micro Purchase Amount. ~~Agreements (in excess of micro-purchase amount—amount not to exceed the ceiling threshold set by the Public Utilities Code, as amended by AB 1833 (\$100,000)).~~ These procedures apply to the procurement of all ~~services~~ Small Purchases of services excluding Mini Brooks Act ~~Section 4525~~ Services with federal funding. All procurements that are predominantly Mini Brooks Act services and that will be funded in whole or in part with federal or state DOT funds, shall be procured using the procedures in Section 1.3.2 and 1.6 of this policy.

## 1.2

1.2.1 If the final estimated value of the contract is expected to be less than the stated threshold ~~\$100,000 or less, Small Purchase Amount,~~ staff may select a qualified proposer whose proposal is most advantageous to ~~SANDAG the Board,~~ price and all other factors considered, using an informal competitive process with the approval of their division director or department director. The CEO shall determine the selection procedure for this informal process, to distribute work in a fair and equitable manner. Prior approval of the selection procedure shall be obtained from the CEO via approval of the small purchase procedures in the Procurement Manual.

1.2.2 ~~The Chief Executive Officer shall determine the selection procedure for contracts valued in excess of the micro-purchase amount and no more than \$100,000 the stated threshold, to distribute work in a fair and equitable manner. Prior approval of the selection procedure shall be obtained from the applicable level of management.~~ An informal competitive process shall be followed with price or rate quotations ~~or best value~~ obtained from an adequate number of qualified sources to ensure ~~that~~ SANDAG is obtaining a fair and reasonable price. The informal competitive process must be documented by staff. In obtaining price or rate quotations for Mini Brooks Act Services or goods or services with complex descriptions, a written scope of work or specifications shall be developed and supplied to all ~~proposers~~ bidders.

1.2.3 Selections will be made on a best value basis unless the procurement is not federally funded and is for Mini Brooks Act Services. For such services, selections shall be qualifications based. Procurements of Mini Brooks Act Services with federal funds must use the formal processes in Sections 1.3.2 and 1.6.

~~1.2.2.1.2.4~~ If it is reasonably possible that the amount awarded will need to be amended to exceed the Small Purchase Amount, the procedures in Section 1.4 of this policy shall be utilized.

1.3 Formal Procurements. If the estimated total cost of required services will exceed the Small Purchase Amount, SANDAG must solicit proposals in writing and award the work in a formal, competitive procurement process that is in the best interest of SANDAG and applicable to the type of services to be procured as set forth in the



Procurement Manual. Exceptions to this requirement include when services will be performed by another government entity or when a justification for noncompetitive procurement applies.

~~1.2.31.3.1~~ Solicitation Process for Formal Major Service Procurements ~~Agreements (amount exceeding the ceiling threshold set by the Public Utilities Code, as amended by AB 1833 (\$100,001 and greater). These procedures apply to the procurement of all services, except Section 4525 Services, of \$100,001 or more that exceed the stated threshold and procurement of Section 4525 Services in excess of the micro-purchase amount.~~

~~1.2.4~~ Normally, a "one-step" procurement selection procedure is typically will be used for service contracts in excess of \$100,000 the Small Purchase Amount current stated threshold. The "one-step" competitive process is as follows:

1.3.1.1

~~1.2.4.1~~ Proposers Firms shall submit a response to a SANDAG Request for Proposals (RFP) or Request for Qualifications (RFQ). The RFP/RFQ shall include:

1.3.1.2

~~1.2.4.1.1~~ 1.3.1.2.1 Pass/fail criteria to be used as an initial screening of responses. Such criteria shall include, but not be limited to, insurance requirements, licensing, and any other consideration which would make the proposer ineligible to perform the work.

~~1.2.4.1.2~~ 1.3.1.2.2 All evaluation factors and their relative importance.

~~1.2.4.1.3~~ 1.3.1.2.3 The standard contract language that the successful proposer will be required to comply with, including applicable federal clauses and certifications.

~~1.2.4.2~~ 1.3.1.3 Notice of the ~~professional~~ services required shall be published at least once in a newspaper of general circulation and at least one minority publication in San Diego County, on SANDAG's ~~website and~~ electronic vendor portal and in such publications as appropriate in San Diego County, at least three weeks before the proposal due date. The notice shall state at a minimum, that SANDAG is interested in receiving responses from qualified firms, ~~and~~ indicate how additional information can be obtained, and the time and place for receiving responses.

~~1.2.4.3~~ 1.3.1.4 Notice shall also be sent to firms or individuals previously known to be interested in providing the required services, including small and emerging businesses on SANDAG various interested party lists, and to appropriate Disadvantaged Business Enterprises (DBE) firms or individuals listed in the SANDAG vendor database and the California Unified Certification Program (CUCP) Database.

~~1.2.4.4~~ 1.3.1.5 Responses to an RFP/RFQ shall list all proposed sub~~consultant~~ contractors and subcontractors, ~~their area of~~ the work they will perform, and identify which of them, if any, are certified DBEs.

~~1.2.4.5~~ 1.3.1.6 Responses to an RFP/RFQ shall include a detailed cost estimate.



~~1.2.4.6~~ 1.3.1.7 For procurement that are all or predominantly Mini Brooks Act ~~Section 4525~~

Services, separately bound or sealed cost proposals shall be submitted as part of the process and shall not be opened until after the evaluation committee has ranked the proposers. Cost proposals shall be excluded as an evaluation factor for Mini Brooks Act Services ~~and will only be used by the Chief Executive Officer, when negotiating within the prescribed budget, except as provided in 3.1.5.2 below.~~ Sections 1.3.2 and 1.6 of this policy concern Mini Brooks Act Services procedures.

~~1.2.4.7~~ 1.3.1.8 For all other services, the cost proposal shall be submitted along with the technical proposal and will be used as an evaluation factor by the evaluation committee.

~~1.2.4.8~~ 1.3.1.9 The responses shall be evaluated by an evaluation committee. The evaluation committee should consist of SANDAG staff who are not all in the same chain of command. For procurements in excess of \$5 million, at least one person on the evaluation committee should be from outside the agency ~~and, unless waived at the discretion of the procuring department's by a Director on the basis that it is not in the best interest of the agency, at least one person from outside the agency.~~

1.3.1.10 The top-ranked firm(s) should ~~shall~~ then be interviewed. If only one firm is in the competitive range, an interview may be, if deemed unnecessary. The final list of qualified firms shall be based on the response to the RFP/RFQ, references, the interview, and other relevant factors.

1.3.2 A "two-step" procurement process may be used for procurements of any service but are most often used for Mini Brooks Act Services. The RFQ process is as follows:

1.3.2.1 Letters of Interest/Statements of Qualifications (LOIs/SOQs) are solicited from the firms registered in the electronic vendor portal for the particular services specialty.

1.3.2.2 Notice of the professional services required shall be on SANDAG's electronic vendor portal and in any such other publications as appropriate in San Diego County, at least three weeks before the proposal due date. The notice shall state that SANDAG is interested in receiving Letters of Interest or Statements of Qualifications (LOIs/SOQs) from qualified firms, and indicate how additional information can be obtained, and the time and place for receiving responses.

1.3.2.3 Requests for LOIs/SOQs will be sent to firms or individuals registered on the SANDAG vendor portal.

1.3.2.4 "Pass/fail" criteria will be established by staff and clearly stated in the LOI/SOQ to be used as a screening of responses. Such criteria shall include but not be limited to: adherence to project budget, insurance requirements, and if required, DBE participation.

1.3.2.5 An evaluation committee will be formed. The evaluation committee should consist of SANDAG staff who are not all in the same chain of command. For procurements in excess of \$5 million, at least one person on the evaluation committee should be from outside the agency, unless waived at the discretion of the procuring department's Director.

1.3.2.6 The evaluation committee will evaluate the SOQs and a memo will be prepared for the CEO summarizing the evaluation committee's findings and recommending one or more qualified firms to be invited to receive an RFP. Following approval by the CEO, staff shall then issue an RFP to the qualified firm(s). The RFP shall include all evaluation factors and their relative importance, and the contract that the successful proposer will be expected to execute (including all applicable federal clauses and certifications).

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

1.3.1.4 Selection Process for Services Other Than Mini Brooks Act Services. When the services to be procured are not Mini Brooks Act Services, selection may be based on a best value determination. "Best value" means a value determined by objective criteria and may include, but is not limited to, price, features, functions, life-cycle costs, and other criteria deemed appropriate by SANDAG. If there are some Mini Brooks Act Services mixed in with a procurement that is predominantly for services that do not qualify as Mini Brooks Act Services, then the best value selection process is to be used rather than qualifications only. A summary of the findings of the evaluation committee will be included in a recommendation memo to the CEO~~Chief Executive Officer~~. The memo shall include the evaluation committee's recommendation for negotiations with one or more firms in the competitive range and the best value evaluation factors.

~~1.3.1~~ — The CEO~~Chief Executive Officer~~ 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, meeting insurance requirements, and DBE participation for federally funded projects. ~~The Chief Executive Officer may also interview one or more of the firms prior to making a selection.~~

1.4.1

~~1.3.2.1.4.2~~ Approval by the CEO~~Chief Executive Officer~~ of the recommendation shall be deemed approval to enter into negotiations with one or more firms in the competitive range.

~~1.3.3~~ — ~~For contracts for Section 4525 Services, the separately submitted cost proposal shall be used as a basis for negotiation. Negotiations will be conducted by the Chief Executive Officer, and can include factors other than cost, such as staffing levels, project schedule, etc. Should negotiations fail, the Chief Executive Officer, 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 Chief Executive Officer. Only the cost proposal of the firm in negotiations shall be opened.~~

~~1.3.4.1.4.3~~ For all other service contracts, t~~I~~he cost proposals from the firm(s) in the competitive range shall be used as a basis for negotiation. Negotiations will be conducted by the CEO~~Chief Executive Officer~~, and can include factors other than cost, such as staffing levels, project schedule, etc. If negotiations

are only conducted with one firm and those negotiations fail, staff will enter into negotiations with the next ranked firm. If negotiations are conducted with more than one firm in the competitive range, then staff may attempt to obtain the most favorable terms by negotiating with all of the firms. Once negotiations are complete, a contract incorporating the negotiated terms and conditions will be prepared for the approval of the CEO~~Chief Executive Officer~~.

1.4.1.5 Services with Highly Specific Scope. For those services that are able to be defined with a very explicit scope of work containing detailed, straight-forward specifications that will allow consistent responses, proposers will be considered qualified or not qualified based on predetermined criteria. Cost proposals will then be opened for those proposers considered qualified and the consultant~~contractor~~ with the lowest bid will be awarded the contract. The CEO~~department directors~~ will determine whether the nature of any of the services are appropriate for within their purview~~lend themselves to~~ using this low bid procedure.

1.5—Services that Are Predominantly ~~If desired, a “two-step” selection process may be followed, as follows:~~

1.5.1—~~Letters of Interest/Statements of Qualifications (LOIs/SOQs) shall be solicited from the current SANDAG consultant list for the particular services specialty.~~

1.5.2—~~Notice of the professional services required shall be on SANDAG’s website and electronic vendor portal and in such other publications as appropriate in San Diego County, at least three weeks before the proposal due date. The notice shall state that SANDAG is interested in receiving LOIs/SOQs from qualified firms, and indicate how additional information can be obtained, and the time and place for receiving responses.~~

1.5.3—~~Requests for LOIs/SOQs may be sent to firms or individuals previously known to be interested in or capable of providing the required services. Reasonable effort shall be made to send requests to minority firms known to be capable of providing the required services.~~

~~“Pass/fail” criteria will be established by staff and clearly stated in the LOI/SOQ to be used as a screening of responses. Such criteria shall include, but not be limited to: adherence to project budget, insurance requirements, and DBE participation.~~

1.5.4—~~An evaluation committee will be formed, which should consist of SANDAG staff and at least one person from outside the agency.~~

1.5.5—~~The evaluation committee will evaluate the SOQs and a memo will prepared for the Chief Executive Officer summarizing the evaluation committee’s findings and recommending one or more qualified firms to be invited to receive an RFP. Following approval by the Chief Executive Officer, staff shall then issue an RFP to the qualified firm(s). The RFP shall include all evaluation factors and their relative importance and the contract that the successful proposer will be expected to execute (including all applicable federal clauses and certifications).~~

~~1.5.6 From this point, the steps above for a one-step procurement should be followed.~~

~~1.6 Mini Brooks Act For contracts for Section 4525 Services. When the work will predominantly be Mini Brooks Act Services, scoring and selection will be qualifications-based. Only the most qualified firm(s) shall have its cost proposal reviewed. The separately submitted cost proposal shall be used as a basis for negotiation. Negotiations will be conducted by the Chief Executive Officer, and can include factors other than cost, such as staffing levels, project schedule, etc. Should negotiations fail, the Chief Executive Officer, may authorize 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 Chief Executive Officer. Only the cost proposal of the firm in negotiations shall be opened.~~

1.6

1.7 Compliance with Brooks Act Provisions for Federally Funded Contracts. If federal funds are used and the services in the contract are of the types included in the Mini-Brooks Act, SANDAG shall comply with the provisions of the Brooks Act even if the amount awarded will be less than the Small Purchase Amount threshold.

Multiple Award On-Call Contracts. All on-call contracts will be awarded in accordance with the SANDAG Procurement Manual and applicable procedures.

1.8 When SANDAG has a need to procure services within a particular genre, such as planning, environmental, or legal services, but the specific project assistance that will be needed is not known in a sufficient amount of detail, a two-phase process will be used.

1.8.1 First, an RFP or RFQ two-step competitive proposal process will be used to select one vendor or a short-list of vendors to be placed under an on-call contracting arrangement for a specific period of time. All on-call contracts will be awarded in accordance with the SANDAG procurement manual and policies.

1.8.2 Second, if only one vendor was awarded an on-call contract, each time services are needed, the vendor will be sent a scope of work prepared by SANDAG. The on-call vendor will then send a proposal to SANDAG and staff will evaluate the proposal and negotiate terms and conditions of the task order with the vendor. If multiple vendors are awarded an on-call contract, a secondary task order solicitation will be sent to all vendors within the relevant genre(s) of the on-call to allow for full and open competition. Selection will be based on the evaluation factors in the RFP or RFQ issued in the first phase.

1.8.3 Task orders for services other than Mini Brooks Act Services shall be awarded on a best value basis. Award of Mini Brooks Act Services shall be qualifications based.

1.8.4 Noncompetitive task order procurements shall only be permitted under the conditions set forth in Section 4 of this policy.

1.8.5 Task orders that include phased project work must include a description of the plan for future deliverable(s) or service(s) within the solicitation document and

resulting task order to establish clearly that such future deliverable(s) and/or service(s) are conditioned upon applicable matters within SANDAG's discretion such as availability of funds, budget, contractor performance, and SANDAG's best interest. The solicitation for phased work task orders must contain a sufficient description of the scope of work to avoid later work from being categorized as noncompetitively procured.

~~1.6.1 —~~

~~1.7 — 4.1 If the on-call solicitation identifies that task orders will be issued based on an additional competitive solicitation issued to all on-call vendors who provide the same service, the secondary task order solicitation will be sent to all vendors within the relevant category of the on-call to allow for full and open competition.~~

~~1.8 — 4.1.1 Noncompetitive and limited competition task order procurements shall only be permitted under the conditions set forth in Section 6 of this policy.~~

~~— 4.2 Task orders that include phased project work must include a description of the plan for future deliverable(s) or service(s) within the solicitation document and resulting task order to establish clearly that such future deliverable(s) and/or service(s) are conditioned upon applicable matters within SANDAG's discretion such as availability of funds, budget, contractor performance, and SANDAG's best interest.~~

## **2. Compliance with Brooks Act Provisions for Federally Funded Contracts.** If federal funds are used and the services are A&E in nature, SANDAG shall comply with the provisions of the Brooks Act. **Rules for Procurement of Equipment, Supplies, and Materials**

2.1 When a purchase is predominantly equipment, supplies, and materials (goods), SANDAG staff are required to use a competitive procurement process, unless a justification in Section 4 of this policy applies. Pursuant to PUC section 132352.4(b)(4), SANDAG is required to use the lowest bidder selection process.

2.2 Micro Purchases. For purchases below the micro purchase amount, a micro purchase procurement method may be used. A micro purchase is a noncompetitive purchase technique; however, the price of the item must still be fair and reasonable. There should be equitable distribution among qualified suppliers in the local area and no splitting of procurements to avoid competition. A bid is only required from the vendor of choice and no contract is required.

2.3 Small Purchases. For purchases in excess of the Micro Purchase Amount and less than the formal procurement threshold, a simplified competitive procurement method may be used:

2.3.1 Staff shall obtain written bids or document oral bids from at least three suppliers in a manner that permits prices and other terms to be compared.

2.3.2 Staff shall recommend the supplier that will provide the best value to SANDAG, taking into account the possible range of competing products and materials

available, fitness of purpose, manufacturer's warranty, and other similar factors in addition to price.

2.3.3 Staff shall obtain approval as required in the administrative delegation of authority policy and the small procurement procedures for use of the recommended supplier.

2.4 Formal Procurements. For purchases in excess of the stated threshold, an invitation for bids (IFB) shall be issued and the award will be made to lowest responsible bidder submitting a responsive bid:

2.4.1 The IFB will be posted on the SANDAG electronic vendor portal with a link from the SANDAG Web site.

2.4.2 Notice of the IFB will be published in at least one newspaper of general circulation and at least one minority publication in San Diego County and in such other publications as appropriate at least two weeks before the bid opening date. The notice shall state that SANDAG is interested in receiving bids from qualified firms, and indicate how additional information can be obtained, the date, location and time for receiving and opening the sealed bids.

2.5 For purchases that are better suited for a Request for Proposals (RFP) (negotiated purchase) or purchase on the open market, instead of an IFB (low bidder), approval may be sought from the Director of Contracts and Procurement Services to utilize a different procurement process in accordance with PUC section 132352.4(b)(7). An alternate procurement process to the IFB may be in the best interest of SANDAG in the following example situations:

2.5.1 Contract negotiations with the offerors will be needed.

2.5.2 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.

2.5.3 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.

### **3. Rules for Procurement of Public Works Construction**

3.1 PUC section 132352.4(b)(3) mandates that SANDAG establish rules for competitive procurement for construction of public works projects. SANDAG must solicit bids in writing and award the work to the lowest responsive and responsible bidder or reject all bids. Additionally, Government Code section 14085 et seq. requires that whenever any public entity is to receive state or federal funds for the purposes of project planning, design, rights-of-way, construction, acquisition, or improvement of exclusive public mass transit guideways it shall prepare various policies, procedures, and

performance standards, which are subject to review and approval by the State of California prior to the implementation of the project or the project phases affected. This documentation must include the overall project financing plan and the overall project development schedule, as well as other items such as policies and procedures for contract provisions, bidding and awards, change orders, payments and audits, and contractor claims. This policy, the Procurement Manual, the Construction Manual, and applicable procedures are meant to address these requirements.

3.2 Micro Purchases. For construction contracts estimated to cost an amount equal to or less than the Micro Purchase Amount, the work may be awarded without competition so long as the price is determined to be fair and reasonable. Otherwise, staff shall seek a minimum of three bids which may be either written or oral to permit prices and other terms to be compared.

3.3 Small Purchases. For construction contracts estimated to cost in excess of the Micro Purchase Amount, but not more than the \$50,000 limit in PUC Code section 132352.4(b)(3), the following procedures shall be followed:

3.3.1 An Invitation for Bids (IFBs) with the same scope of work and specifications will be sent to a minimum of three qualified bidders. The bid period will be a minimum of three calendar days. When possible, IFBs should be sent to at least two certified DBE firms. The IFB will contain the time and location for receiving and opening bids.

3.3.2 The contract will be awarded to the lowest responsive and responsible bidder after a Notice of Intent to Award has been issued to all bidders and the protest period has expired.

3.3.3 Bid bonds will only be required on bids that are under \$50,000 when requested by the applicable Director or his or her designee.

3.4 Formal Procurements. For public works construction procurements estimated to cost more than \$50,000, a formal procurement process will be used to award the work to the lowest bidder.

3.4.1 Public notice shall be given by publication once a week for at least two consecutive weeks, with the first publication occurring at least three weeks before the day set for receiving bids, as follows:

3.4.1.1 In a newspaper of general circulation, published in San Diego County;

3.4.1.2 In a trade paper of general circulation published in Southern California devoted primarily to the dissemination of contract and building news among contractors and building materials supply firms; and

3.4.1.3 In at least one minority or community newspapers as appropriate to best meet SANDAG's DBE goals.

3.4.1.4 Advertisements may also be placed in other minority and community newspapers, as appropriate. Appropriate DBEs listed in the current SANDAG vendor database will be notified of any work advertised under this policy.

3.4.1.5 The notice shall state the time and location for receiving and announcing sealed bid amounts and shall describe the work to be done.



3.5 Contractor Prequalifications. SANDAG may, for prospective contractors whose bid could exceed \$500,000, adopt and apply a uniform prequalification system for rating bidders; on the basis of a standard experience questionnaire and financial statement verified under oath in respect to the contracts upon which each bidder is qualified to bid. A contractor may request to be prequalified for a predetermined contract amount prior to bidding.

3.5.1 In no event shall any bidder be awarded a contract if such contract award would result in the bidder having under contract(s), work cumulatively in excess of that authorized by its qualification rating.

3.6 Form of Bids. SANDAG shall furnish each bidder with a standard bid form, to be filled out, executed, and submitted as its bid.

3.6.1 All bids shall be submitted as a sealed bid in a form directed by SANDAG, which shall mean either submission in a sealed envelope or electronically through the use of SANDAG's web-based solicitation system.

3.6.2 Any bid may be withdrawn any time prior to the time fixed in the notice for bid opening only by written request to the SANDAG CEO. The request shall be executed by the bidder or its designated representative. Bids shall not be withdrawn after the time fixed for public opening.

3.6.3 On the day specified in the notice, staff shall immediately post the preliminary bid results on the SANDAG electronic vendor portal.

3.7 Review of Bids. After the bids are opened, the staff shall review all bids in order to determine which bidder is the lowest responsive and responsible bidder. The term "lowest responsive and responsible bidder" shall mean the lowest monetary bidder (excluding taxes) whose bid is responsive and who is responsible to perform the work required by the solicitation and contract documents.

3.7.1 SANDAG may investigate the responsibility and qualifications of all bidders to whom the award is contemplated for a period not to exceed 90 days after the bid opening. The 90-day review period may be extended upon the written request by staff and written approval by the affected bidders.

3.7.2 The lowest monetary bidder's bid will be evaluated to determine whether or not that bid is responsive. The term "responsive" generally means that the bid has been prepared and submitted in accordance with the requirements of the solicitation and bid documents. These requirements shall generally include, but will not be limited to, the following:

3.7.2.1 Bid Booklet - with all bid amounts filled in

3.7.2.2 Designation of Suppliers and Subcontractors - including dollar amounts

3.7.2.3 Acknowledgment of Addenda

3.7.2.4 Contractor's License Requirements

3.7.2.5 Ability to Meet Minimum Insurance Requirements

3.7.2.6 Public Contract Code 10162 Questionnaire

3.7.2.7 Bidder's Bond



3.7.2.8 Noncollusion Affidavit

3.7.2.9 Certification of Restrictions on Lobbying

3.7.2.10 Disclosure of Lobbying Activities

3.7.2.11 Certification Regarding Debarment

3.7.3 If the lowest monetary bidder's bid is responsive, then the bidder's qualifications will be evaluated to determine whether or not the bidder is responsible to perform the work required by the contract documents. The term "responsible" generally means that the bidder is able to demonstrate that it possesses: (1) the capacity to perform the work required by the contract documents with respect to financial strength, resources available, and experience; and (2) the integrity and trustworthiness to complete performance of the work in accordance with the contract documents.

3.8 Award or Rejection of Bids. If staff finds that the lowest monetary bidder submitted a responsive bid and that the bidder is responsible, then that bidder shall be deemed the apparent lowest responsive and responsible bidder, and the findings shall be reported as a recommendation to the CEO.

3.8.1 If staff finds the lowest monetary bidder's bid is not responsive or the lowest monetary bidder is not responsible, then the responsiveness and responsibility of the next low monetary bidder may be reviewed. If staff finds the next low monetary bidder is responsive and responsible, then that next low bidder shall be deemed the apparent lowest responsive and responsible bidder, and the findings will be reported as recommendations to the CEO. Staff may continue to review the responsiveness and responsibility of the next lowest monetary bidder until he/she finds the lowest monetary bidder that is also responsive and responsible, and deemed lowest responsive and responsible bidder. In the event one or more low monetary bidders are found to be nonresponsive, those bidders will be given notice and a reasonable opportunity to present additional evidence to SANDAG within five working days after the bidder receives the notice.

3.8.2 The CEO may authorize a Limited Notice to Proceed (LNTF) to the apparent lowest responsive and responsible bidder for an amount not to exceed \$250,000 prior to the award of the construction contract if the CEO determines that the award of an LNTF is justified.

3.8.3 If in the best interest of SANDAG, the CEO may, on refusal or failure of the successful bidder to execute the contract, award it to the second-lowest responsive and responsible bidder. If the second-lowest responsive and responsible bidder fails to execute the contract, the CEO may likewise award it to the third-lowest responsive bidder. On the failure or refusal of any bidder to execute the contract, its bidder's security shall be forfeited to SANDAG.

3.8.4 For all contract awards in excess of \$25,000, the successful bidder must furnish a performance bond equal to at least one-half of the contract price and a payment bond equal to one hundred percent of the contract price. Federally funded contract awards shall require a performance bond equal to one hundred percent of the contract price. Notwithstanding the foregoing, depending upon authorization from the funding source(s), the performance and payment bond

requirements may be modified within the Invitation for Bids with prior approval of the CEO.

3.8.5 All bids shall be accompanied by one of the following forms of bidder's security: cash, a cashier's check, certified check, or a bidder's bond executed by an admitted surety insurer and made payable to SANDAG. A bid shall not be considered unless accompanied by one of the forms of bidder's security, which may be in either hard copy or electronic format. Bidder's security shall be at least 10 percent of the amount bid. Bidder's bonds must be issued by bonding companies registered in the State of California.

3.8.6 Failure to furnish the required bonds shall constitute failure to execute the contract.

3.9 Return of Bidder's Security. SANDAG may withhold the bidder's security of the second- and third-lowest responsive and responsible bidders until the contract has been finally executed. SANDAG shall, upon request, return cash, cashier's checks, and certified checks submitted by all other unsuccessful bidders within 30 days after the bid opening, and the bidder's bonds shall be of no further effect.

3.10 Procedure for Subcontractor Substitution. Subcontractor substitutions shall be made only pursuant to the provisions of the Subletting and Subcontracting Fair Practices Act, Public Contract Code section 4100 et seq., as it may be amended from time to time. Notwithstanding the foregoing, nothing in this policy is intended to require SANDAG to strictly comply with the Subcontracting Fair Practices Act. The CEO is hereby designated to carry out all functions of the awarding authority under Section 4100 et seq.

3.11 Relief from Maintenance and Responsibility. SANDAG will, upon written application by the contractor, consider granting relief from maintenance and responsibility on major elements of each major construction project as permitted in the contract specifications. The CEO is hereby delegated authority to grant said relief in writing to the contractor and shall report actions on contracts over \$25,000 to the Board.

—Acceptance of Work.

3.12 SANDAG will, upon written application by the contractor, accept the entire work on major construction contracts, provided that the work has been completed, in all respects, in accordance with the contract plans and specifications. The CEO is hereby delegated the authority to accept such work on behalf of the Board and shall report to the Board all acceptances over \$25,000.

3.12.1 In determining whether to accept the entire work on major construction projects, these procedures should be followed:

3.12.1.1 The contractor shall request acceptance in writing.

3.12.1.2 Concurrence with the request by the SANDAG Resident Engineer shall be in writing to the CEO and include these findings: (1) that the contract has been completed in accordance with the plans and specifications, (2) a statement as to the financial condition of the contract, and (3) a statement as to whether the contract was completed on time or with an apparent overrun.

3.13 Job Order Contracting. A Job Order Contract (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 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 is issued, the scope of work will identify the quantity and specific location of the work to be performed. JOC procurements are authorized pursuant to PUC section 132352.4(b)(7).

3.13.1 JOC General Requirements. JOCs shall be awarded under written agreement subject to the following limitations:

3.13.1.1 The specifications were advertised in accordance with this policy based on the maximum potential value of the JOC.

3.13.1.2 The specifications provided for competitive bidding on unit-cost terms for all labor, material, and equipment necessary to perform all work contemplated for individual Job Orders.

3.13.1.3 The JOC does not exceed a term of three years in duration.

3.13.1.4 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.

3.13.1.5 The JOC may not contain any provision which would guarantee the contractor cumulative Job Orders in excess of \$50,000.

3.13.2 Issuance of Job Orders. Following award of a JOC, job orders may be issued by the CEO in accordance with this policy, administrative policies, and procedural manuals upon certification by that individual that it is not in conflict with other Board policies and it is the best interest of SANDAG to use the JOC procurement process because one or more of the following criteria have been met:

3.13.2.1 Use of the JOC process will result in a cost savings through economies of scale or expedite the delivery of work; or

3.13.2.2 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

3.13.2.3 The entity or entities providing funds for the project have authorized use of the JOC process.

3.13.3 An individual Job Order may not exceed the sum of \$2,000,000, except in the case of an emergency as defined in this policy, or as specifically authorized by the CEO, whose authorization shall not be delegated.

3.13.4 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 job orders for purposes of avoiding this limitation.

3.13.5 Non-prepriced items of work may be included in Job Orders provided that the non-prepriced items are within the scope and intent of the JOC, do not make up

more than 25% of the bid amount, and are priced reasonably and in conformity with all applicable laws, regulations and policies.

3.13.6 Job Order Contract Intergovernmental Agreements. The SANDAG CEO may permit, subject to requirements of this section and subject to such terms and conditions that the CEO may prescribe, any public entity, including the California Department of Transportation, or any municipal corporation, school or other special district within San Diego County, to participate via the Service Bureau in JOCs entered into by SANDAG, and may enter into any agreements necessary to do so.

3.14 Design-Build Contracting. Design-build contracting is a project delivery method in which both the design and construction of a project are procured from a single entity. Notwithstanding other provisions of this policy, SANDAG is permitted to use the design-build contracting method when allowed by law and in accordance with such law.

3.15 Construction Manager/General Contractor Contracting. Construction Manager/General Contractor (CM/GC) contracting is a project delivery method using a best value selection process in which a construction manager is procured to provide pre-construction services during the design phase of the project and construction services during the construction phase of the project. Notwithstanding other provisions of this policy, SANDAG is permitted to use the CM/GC contracting method on regional projects in accordance with Public Contracts Code sections 6950-6958; in accordance with the Otay Mesa East Toll Facility Act, Section 31460 et seq. of the Streets and Highways Code; or as otherwise permitted by law. A competitive negotiation process, similar to the process described in this policy for the procurement of services, will be used to procure CM/GC services. Selection criteria for CM/GC procurements shall be subject to Board approval.

3.16 Design Sequencing Contracting. Design sequencing contracting is a method of project delivery that enables the sequencing of design activities to permit each construction phase to commence when the design for that phase is complete, instead of requiring design for the entire project to be completed before commencing construction. This is a variation of the design-bid-build project delivery method. SANDAG is permitted to use the design sequencing contracting method on transit projects in accordance with Public Contracts Code sections 6950-6958.

3.17 Community Benefits Agreement. The SANDAG Community Benefits Agreement shall apply to all construction projects awarded on or after May 19th, 2011, with a prime contract awarded by SANDAG with a SANDAG estimated construction contract award value of \$5,000,000 or greater. It shall apply to all Job Order Contracts with an individual job order valued at \$250,000 or greater and issued under a master Job Order Contract with an award value of \$5,000,000 or greater.

#### **4. Other Than Full and Open Competition**

4.1 SANDAG will utilize a full and open competition when soliciting bids or proposals for procurements in excess of the Small Purchase Amount unless use of another method is fully justified.

4.2 Limited Competition. Under certain circumstances, a procurement may be justified that does not utilize full and open competition. These procurements are known as limited competition procurements. Staff may limit the number of sources and use small purchase procedures when the agency's need for the supplies or services is of such an unusual and compelling urgency that SANDAG would be seriously injured, financially or otherwise, unless the agency is permitted to limit the number of sources from which it solicits bids or proposals and use a simplified acquisition procedure.

4.2.1 Contract awards using this authority shall be supported by written justifications and approvals and require that offers be requested from as many potential sources as is practicable under the circumstances.

4.2.2 The total period of performance of a contract awarded using this authority shall not exceed the time necessary to meet the unusual and compelling requirements of the work to be performed under the contract and/or for the agency to enter into another contract for the required goods and services through the use of full and open competitive procedures.

4.2.3 Such contracts shall not exceed one year, including all options, unless the CEO determines that exceptional circumstances apply and the determination is documented in the contract file and reported to the Board.

4.3 Noncompetitive procurement also is known as sole source procurement. Sole source procurements are not favored and only may be used when adequate justification exists and approval has been obtained from the CEO. Noncompetitive and limited competition procurements shall only be permitted when the conditions in this Section 4 are met.

4.4 When the project will be paid for in whole or in part by federal funds, one of the conditions allowing a limited competition or sole source procurement set forth in the latest version of Federal Transit Administration Circular 4220.1G, or the equivalent from other federal funding agencies, must be met. For projects funded in whole or in part by Caltrans or Federal Highway Administration funds, the applicable provisions in the Caltrans Local Assistance Procedures Manual must be met.

4.5 When there are no federal funds involved, one of the following additional factors may be utilized to justify a limited competition or sole source procurement:

4.5.1 There is only one contractor capable of providing the services because the services are unique or highly specialized.

4.5.2 The services should be purchased from a particular contractor in the interest of economy or efficiency as a logical follow-on to services already in progress under a competitively awarded contract based on a documented cost benefit analysis.

4.5.3 The cost to prepare for a competitive procurement exceeds the cost of the services.

4.5.4 The services are essential to maintain research or operational continuity.

4.5.5 The good or service provided is utilized by SANDAG staff members with specialized training and/or expertise in using the good or services and retraining would incur substantial cost in time and/or money.

—The Director of Contracts and Procurement Services will report noncompetitive contract awards to the Board of Directors on a semi-annual basis.

1.94.6

## **5 General Rules**

5.1 Bid splitting, the intentional dividing of procurements into smaller quantities in order to avoid the statutory threshold for advertised competition, is strictly prohibited.

5.2 SANDAG reserves the right to reject any or all bids or proposals and to waive any immaterial irregularity. No bid or proposal shall be binding upon SANDAG until after the contract is signed by both the contractor and SANDAG.

5.3 Late bids or proposals shall not be accepted after the time and date designated in the applicable solicitation.

4.1—The Board's Equal Employment Opportunity Program and adequate audit provisions to allow the SANDAG independent performance auditor access to the contracted entity's records needed to verify compliance with the terms specified in the contract will be incorporated by reference in all SANDAG contract templates.Other Than Full and Open Competition

5.4

4.2—The CEO is not required to make a contract award if he/she determines the proposals received or contract terms negotiated by SANDAG staff are not in the best interests of SANDAG. Normally, SANDAG will utilize a full and open competition when soliciting bids or proposals for procurements in excess of the threshold set by the Public Utilities Code, as amended by AB 1833 \$100,000. Under certain circumstances, however, a procurement may be justified that does not utilize full and open competition. These procurements are known as limited competition procurements. When less than full and open competition is used, SANDAG shall solicit offers from as many potential sources as is practicable under the circumstances. Noncompetitive procurement is known as sole source procurement. Noncompetitive and limited competition procurements shall only be permitted when the conditions below are met.

4.3—When the project will be paid for in whole or in part by federal funds, one of the conditions allowing a limited competition or sole source procurement set forth in the latest version of Federal Transit Administration Circular 4220.1, or the equivalent from other federal funding agencies, must be met. For projects funded in whole or in part by Caltrans or Federal Highway Administration funds, the applicable provisions in the Caltrans Local Assistance Procedures Manual must be met.

4.4—When there are no federal funds involved one of the following additional factors may be utilized to justify a limited competition or sole source procurement:

~~4.5—There is only one consultant capable of providing the services because the services are unique or highly specialized.~~

~~4.6—The services should be purchased from a particular consultant in the interest of economy or efficiency as a logical follow-on to services already in progress under a competitively awarded contract.~~

~~4.7—The cost to prepare for a competitive procurement exceeds the cost of the services.~~

~~4.8—The services are essential to maintain research or operational continuity.~~

~~4.9—The service is one with which staff members who will use the deliverables have specialized training and/or expertise and retraining would incur substantial cost in time and/or money.~~

~~4.10—~~

~~4.11—General Conditions~~

## 5.5

~~——Bid splitting, the intentional dividing of orders for services into smaller quantities in order to avoid the statutory threshold for advertised competition, is strictly prohibited.~~

~~4.12—In the event that circumstances dictate other than the processes indicated above for procurements that will exceed \$300,000, prior Board 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.~~

~~4.13—Where proposals received are deemed inadequate by the Chief Executive Officer, the Board may authorize a negotiated contract with a recommended firm based on a newly approved scope of services, performance schedule, and/or instructions and conditions.~~

~~The Chief Executive Officer is not required to make a contract award if he/she determines that the proposals received or contract terms negotiated by SANDAG staff are not in the best interests of SANDAG.~~

~~4.14—The final award of professional services contracts in excess of \$ 5 million shall be brought before the Board for decision.~~

~~4.15—The Chief Executive Officer may approve contract amendments that exceed the project budget, approved annually by the Board, totaling up to \$300,000 that are necessary to complete services originally contemplated subject to the limitations set forth in Section 132.2 of this policy. The Board will be notified of all such amendments. Contract amendments that will cause the project budget to be exceeded by more than \$300,000 or those contemplating a significant change in the original scope of services must be processed in accordance with the SANDAG procurement manual and policies.~~

~~4.16—For purchases in excess of the Mmicro Purchase Amount involving federal funds, all applicable federal requirements and certifications must be attached to the purchase order or contract. For purchases that exceed \$50,000, a standard~~

~~agreement should~~~~contract may~~ be used instead of a purchase order in order to ensure provisions are included to protect the interests of SANDAG.

#### 5.6

5.7 The Board's Disadvantaged Business Enterprise (DBE) Program shall be incorporated by reference in all services contracts that are federally funded. DBEs shall have every possible opportunity to participate in the procurement of services as set forth in the Board's DBE program.

~~4.17 The Board's Equal Employment Opportunity Program and adequate audit provisions to allow the SANDAG independent performance auditor access to the contracted entity's records needed to verify compliance with the terms specified in the contract will be incorporated by reference in all SANDAG service contract templates. The Board's Disadvantaged Business Enterprise (DBE) Program shall be incorporated by reference in all services contracts that are federally funded. DBEs shall have every possible opportunity to participate in the procurement of services as set forth in the Board's DBE program.~~

5.8 In limited instances, a retroactive effective date can be applied to a contract document in accordance with the SANDAG procurement manual and with consideration of appropriate funding sources. A retroactive effective date should only be applied in emergency situations or when business continuity could be jeopardized. Responsibility Requirements. For all contracts in excess of \$1 million, the following uniform system of determining whether or not a bidder or proposer is "responsible" shall be applied. Multi-million-dollar contract awards must include sufficient pre-award analysis to demonstrate the bidder or proposer has been formally evaluated against SANDAG's project requirements. The CEO will consider the following non-exclusive list of factors in relation to the work to be performed for the project:

#### 5.8.1 Financial Requirements:

5.8.1.1 The following guidelines may be used by staff to evaluate this factor:

5.8.1.1.1 Evidence of availability of sufficient working capital in the form of liquid assets, lines of credit, or similar sources to cover time periods during which the bidder or proposer will be required to provide goods or services without yet being eligible for payment from SANDAG;

5.8.1.1.2 The bidder or proposer should have completed contract(s) with a contract duration similar to the potential contract award and whose cumulative value meets or exceeds their bid or proposal amount. In the case of an on-call, as-needed, or phased contract, the maximum estimated contract amount shall be used in place of a bid or proposal amount;

5.8.1.1.3 The bidder or proposer should have successfully completed contracts during the previous five years that together exceed five times the annual value of the SANDAG contract.

#### 5.8.2 Experience Requirements:



5.8.2.1 The following guidelines will be used by staff to evaluate this factor:

- 5.8.2.1.1 The bidder or proposer must demonstrate their firm's experience on work similar to the SANDAG 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 that the bidder or proposer provides to be considered in determining its requisite experience. The list shall contain a name, title, email address, and phone number for staff to contact to verify the contract details;
- 5.8.2.1.2 The bidder or proposer shall demonstrate individual experience by submitting a list of all key personnel, including project managers, who will be involved in the SANDAG contract. These key personnel shall have at least three years of experience on contracts where the work is similar to the SANDAG contract. 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 SANDAG contract. For each individual listed, the bidder or proposer shall include the name, title, address, and phone number of an individual or organization who can verify the individual's experience;
- 5.8.2.1.3 The bidder or proposer 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 proposer or bidder or proposer against owner, and the final status of each claim);
- 5.8.2.1.4 The bidder or proposer shall state whether or not it has defaulted on a contract within the last two years;
- 5.8.2.1.5 The bidder or proposer shall list any violation of the Apprenticeship Requirements under the State Business and Professions Code or Labor Code found by an appropriate authority within the last two years;
- 5.8.2.1.6 The bidder or proposer shall state whether it has been found guilty of failure to pay required prevailing wages on a public contract within the last two years;
- 5.8.2.1.7 The bidder or proposer shall state whether it has been formally found to be a nonresponsible bidder or proposer, for reason other than being nonresponsive, by a public agency within the last two years;
- 5.8.2.1.8 The bidder or proposer shall list how many construction projects it will be working on concurrently with the SANDAG project;
- 5.8.2.1.9 The bidder or proposer shall state whether it has ever been terminated by an owner or client, or rejected from bidding in a public works project in the last five years;
- 5.8.2.1.10 The bidder or proposer shall state whether a surety ever completed any portion of the work of its projects within the last five years;
- 5.8.2.1.11 The bidder or proposer shall state whether it, any of its officers, or any of its employees who has a proprietary interest in it, 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

5.8.2.2 For all items identified under subsections 5.8.2.1.3 – 5.8.2.1.11, the bidder or proposer shall provide the name of owner, title of project, contract amount, location of project, date of contract, and name of the bonding company.

5.8.3 Reporting Forms: In order to demonstrate that financial and experience requirements are met, the bidder or proposer shall submit, when requested by SANDAG, a Statement of Experience and Financial Condition Questionnaire verified under oath that shall meet the requirements in this section of the policy.

5.8.3.1 Failure to provide accurate information relative to its financial status or experience may result in the debarment of the bidder or proposer from future SANDAG work.

5.8.3.2 The Statement of Experience and Financial Condition Questionnaire shall not be considered public records nor open for public inspection to the extent they are exempt under the California Public Records Act.

5.8.4 SANDAG will make its determination of responsibility based upon information submitted by bidder or proposers, and, if necessary, interviews with previous owners, clients, design professionals, or subcontractors with whom the bidder or proposer has worked, including SANDAG. If a bidder or proposer is determined to be nonresponsible, it shall be afforded an administrative hearing upon the submission of a timely protest of such issue. Any additional evidence submitted in the course of the protest procedure shall be considered in making the recommendation to the CEO regarding determination of the lowest responsive and responsible bidder or proposer and award of the contract.

5.9 In the event that circumstances dictate other than the processes indicated in this policy for procurements that will exceed \$1 million, prior Board 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.

5.10 Board consent shall be obtained for the following solicitations and awards:

5.10.1 All services and job order contracting solicitations valued at \$5 million or more;

5.10.2 All final awards of services and job order contracts that are the result of a solicitation valued at \$5 million or more;

5.10.3 All final awards of construction solicitations valued at \$5 million or more;

5.10.4 All awards that were originally solicited for less than \$5 million, but for which an amendment is sought that will cause it to exceed the \$5 million threshold that would have required approval;

5.10.5 Procurements that exceed \$300,000 where circumstances dictate other than the procurement processes required or authorized by this policy.

5.11 In limited instances, a retroactive effective date can be applied to a contract document in accordance with the SANDAG Procurement Manual and with

consideration of appropriate funding sources. A retroactive effective date should only be applied in exigent or emergency situations as described in this policy. Failure to plan as defined in this policy is not a permissible reason for use of a retroactive effective date in a contract.

5.12 When SANDAG procures goods or services to respond to public exigency or emergency, it will limit its contract only to the quantities or period of performance necessary to see it through the emergency or exigent situation.

## **56 Conflicts of Interest**

5.16.1 A ~~consultant~~contractor is eligible for award of ~~aservice~~ contracts by SANDAG so long as the contract in question does not create an actual, potential, or apparent conflict of interest. A prohibited conflict of interest exists when, because of other activities, relationships, or contracts, a firm or its staff is or may be unable to render impartial, objective assistance or advice to SANDAG; or a firm's objectivity in performing the contract work is or might be otherwise impaired; or where a firm would receive an unfair competitive advantage. Prohibited conflicts of interest include, but are not limited to, the following situations unless otherwise authorized by applicable federal or state law:

~~5.1.16.1.1~~ Except in cases of design-build, CM/GC, or other approved alternative delivery method, any firm that provides design services to SANDAG will be ineligible for award of a construction contract to construct the improvements, which are the subject of the design services.

~~5.1.26.1.2~~ Any firm that provides design services to SANDAG will be ineligible for award of any contract to provide construction management services resulting from the specific project for which design services were provided.

~~5.1.36.1.3~~ Any firm that provides construction management services to SANDAG will be ineligible for award of a construction contract for which construction management services were or will be provided.

~~5.1.46.1.4~~ Any firm that assists SANDAG or any of its member or affiliated agencies in the preparation of a solicitation~~construction RFP or RFQ~~ document will not be allowed to participate as a bidder or proposer~~offeror~~ or join a team submitting a proposal in response to the ~~that solicitation RFP or RFQ~~. SANDAG may in its sole discretion, however, determine there is not an organizational conflict of interest for a prospective firm where:

~~5.1.4.16.1.4.1~~ The role of the firm was limited to provision of preliminary design, reports, or similar "low-level" documents that will be incorporated into the solicitation~~construction RFP or RFQ~~, and did not include assistance in development of instructions to offerors or evaluation criteria; or

~~5.1.4.26.1.4.2~~ Where all relevant documents and reports delivered to the agency by the firm are made available to all offerors; or

~~5.1.4.36.1.4.3~~ The role of the firm was limited to preparation of a California Environmental Quality Act (CEQA) or National Environmental Policy Act (NEPA) document related to the project where the CEQA and NEPA processes have been completed prior to issuance of the solicitation~~RFP and RFQ~~.

~~5.1.56.1.5~~ SANDAG shall not contract with, and will reject any bid or proposal submitted by, the following persons or entities, unless the CEO~~Chief Executive Officer~~ finds that special circumstances exist ~~that~~which justify the approval of such contract:

~~5.1.5.16.1.5.1~~ Persons employed by SANDAG;

~~5.1.5.26.1.5.2~~ Profit-making firms or businesses in which SANDAG employees serve as officers, principals, partners or major shareholders;

~~5.1.5.36.1.5.3~~ Persons who, within the immediately preceding twelve (12) months, were employed by SANDAG and (1) were employed in positions of substantial responsibility in the area of service to be performed by the contract, or (2) participated in any way in developing the contract or its service specifications; or

~~5.1.5.46.1.5.4~~ Profit-making firms or businesses in which the former employees described in subsection ~~687~~.1.5.3 serve as officers, principals, partners or major shareholders.

~~5.26.2~~ General ~~consultantcontractor~~s or sub~~consultantcontractor~~ firms may provide services on other SANDAG projects. A ~~consultantcontractor or subcontractor~~ shall not, however, participate in the review and analysis of, or render opinions regarding, its work performed on other SANDAG projects or as limited in this section. Unless otherwise defined by the ~~CEO~~~~Chief Executive Officer~~, a general ~~consultantcontractor~~ is a ~~consultantcontractor~~ whose procurement is typically for a two-year period with an option for one or more one-year option extensions to provide services as needed for various assigned projects from time to time on a work order or task order basis, rather than for one specific predefined project. General ~~consultantcontractors~~ support SANDAG staff in managing other SANDAG ~~consultantcontractors~~. ~~General consultants are prime consultants to SANDAG.~~ Sub~~consultantcontractor~~s to general ~~consultantcontractors~~ are not classified as general ~~consultantcontractor~~s. General ~~consultantcontractor~~ procurements ~~will be~~ identified as such during the ~~solicitationRFP~~ process.

~~5.36.3~~ A Notice of Potential for Conflict of Interest shall be included within any ~~applicable solicitationRFP for services~~ issued by SANDAG. The ~~n~~Notice shall be the policy of the Board as listed ~~in this policyherein~~. Any ~~solicitationmajor service agreement~~ issued in accordance with this policy shall include or make reference to ~~th~~~~Section 6 of this~~ policy ~~listed herein~~.

~~5.4~~ For purposes of this Section 6, A “firm” shall be 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, construction management company, and the construction company. A “firm” also shall include any partnership, corporation, association, or other legal entity or any member of a joint venture that meets the above-stated definition.

~~5.56.4~~ “Ineligible” firms shall include the prime ~~consultantcontractor~~ for the services, sub~~consultantcontractor~~s 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.

~~5.66.5~~ 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, OGC~~ will, upon written request, provide a written ~~determination on behalf of SANDAGruling~~. This procedure is encouraged prior to submittal of proposals or bids. In the event a conflict of interest is determined to exist, a written appeal may be made by the affected firm to the ~~CEO~~~~Chief Executive Officer~~ within five calendar days of notice from SANDAG ~~regarding the OGC's determinationconflict~~. The ~~CEO~~~~Chief Executive Officer~~ shall determine the adequacy of the appeal and make a subsequent final decision. No further appeal shall be considered.

~~5.7~~ The Executive Committee shall review and, if appropriate, waive any actual or apparent conflict of interest that may exist or arise as a result of concurrent legal representation of SANDAG and parties whose interests may conflict.

~~5.86.6~~ SANDAG staff and third parties with whom SANDAG does business shall comply with SANDAG administrative policies concerning Standard of Conduct and all relevant Board ~~P~~Policies ~~and administrative policies and procedures~~.

## **67 Protests to Solicitation, Bid, or Award**

~~6.17.1~~ SANDAG shall include in all ~~solicitations~~~~procurements~~ a procedure to be followed by interested parties who wish to protest a specification or procedure related to a procurement. Interested parties are defined as firms that submitted a bid or proposal in response to the solicitation. The procedure shall include the following:

~~6.17.1.1~~ A requirement that protest submittals shall be in writing, be specific to the specification being protested, state the grounds for protest, and include all documentation needed to enable SANDAG to reach a decision.

~~6.17.1.2~~ A statement that the protest shall be submitted within clearly defined time limits prior to receiving proposals or opening bids or prior to award of contracts. In no event shall the time limit for a solicitation exceeding the Micro Purchase Amount be less than three business days or the Small Purchase Amount be less than five business days.

~~6.17.1.3~~ A statement specifying the review and determination process by SANDAG, including time limits for response.

~~6.17.1.4~~ Requirements for submittal of protest reconsideration.

~~7.1.5~~ A statement regarding review of the initial protest by a protest review committee and review of protest reconsiderations by the ~~Chief Executive Officer~~EO, as appropriate.

~~6.17.1.6~~ A statement that protests will be rejected if they are not complete.

## **7—Procedure for ~~Consultant~~**Contractors** with Claims Against SANDAG ~~on Service Contracts~~**

### **8**

~~8.1~~ On all SANDAG ~~services~~ contracts not involving construction, using a SANDAG contract document with an award estimated ~~to cost of~~ more than \$100,000, a section shall be included in the contract provisions that specifies how a ~~consultant~~contractor should file a notice of potential claim for additional funds and the procedures for review and disposition thereof.

~~7.18.2~~ On all SANDAG construction contracts estimated to cost more than \$25,000, a section shall be included in the contract provisions that specifies how a contractor should file a "Notice of Potential Claim" and the procedures for review and disposition thereof.

~~7.28.3~~ Written notice of the potential claim must be given to ~~SANDAG the project manager~~ prior to the time the ~~consultant~~contractor shall have performed the work giving rise to the potential claim, if based upon an act or failure to act of ~~SANDAG the project manager~~; or in all other cases, within 15 calendar days of the happening of the event, thing or occurrence giving rise to the potential claim.

~~7.38.4~~ It is the intention of the ~~ese claim~~is requirements that differences between the parties arising under and by virtue of the contract be brought to the attention of

~~SANDAG the project manager~~ at the earliest possible time in order that such matters may be settled, if possible, or other appropriate action promptly taken. The ~~consultantcontractor~~ shall agree to have no right to additional compensation for any claim that may be based on any such act, failure to act, event, thing or occurrence for which no written notice of potential claim as herein required was filed. A claim must be presented and acted upon as a prerequisite to suit thereon.

~~7.4.8.5~~ If a ~~consultantcontractor~~ files an appropriate notice of potential claim," the administrative procedure shall be as follows:

~~7.4.18.5.1~~ SANDAG staff shall respond in writing within 25 calendar days with an appropriate decision. It is expected that SANDAG staff shall investigate the area of claim thoroughly and shall issue a decision that is fair to all parties. It is further expected that every effort will be made to resolve the claim at the job level.

~~7.4.28.5.2~~ If it appears to staff that the claim cannot be settled, the project manager and contracts staff shall, as soon as practicable, forward the details of the claim to the ~~CEOChief Executive Officer~~ and shall so notify the ~~consultantcontractor~~ of the action.

~~7.4.38.5.3~~ The ~~CEOChief Executive Officer~~ shall direct the appropriate department director to obtain all pertinent information, including any oral or written presentation, concerning the claim the ~~consultantcontractor~~ might wish to present. The department director shall provide all information to the ~~CEOChief Executive Officer~~, including any recommendations.

~~7.4.48.5.4~~ The ~~CEOChief Executive Officer~~ shall report a final decision in writing to the ~~consultantcontractor~~. The written decision shall notify the ~~consultantcontractor~~ that this action completes the ~~consultantcontractor~~'s administrative remedies and any further dispute would have to be resolved by either a nonbinding Dispute Resolution Board or ~~binding~~ arbitration if provided for in the provisions of the contract and agreed to by both parties, or litigation.

~~7.4.58.5.5~~ ~~Any~~The final recommendation of ~~at~~the Dispute Resolution Board or arbitration shall be presented to the ~~CEOChief Executive Officer~~ for approval before going to the Board for action.

~~7.58.6~~ Any claim disputes not resolved by the ~~CEOChief Executive Officer~~ shall be reported to the Board at one of the Board's regular meetings.

~~7.68.7~~ If a contract amendment proposed for the settlement of a claim causes a budget impact over \$300,000, the amendment must be sent to the Board for approval.

~~7.78.8~~ Federal Transit Administration review and concurrence may be required for claim settlements that exceed \$100,000 if federal funds are involved.

~~7.88.9~~ A list of all outstanding claims exceeding \$100,000 which involve the use of federal funds shall be included in the federal grants quarterly report.

## **89 Debarment Procedures ~~for Service Contracts~~**



~~8.19.1~~ In addition to all other remedies permitted by law, SANDAG may, upon advice of the ~~CEO and OGC~~~~Chief Executive Officer and Office of General Counsel~~, by issuance of a resolution by the Board of Directors, declare a ~~proposer or consultant~~contractor ineligible to bid on SANDAG contracts for a period not to exceed three years for any of the following grounds:

~~8.19.1.1~~ Unjustified failure or refusal to timely provide or properly execute contract documents;

~~8.19.1.2~~ Unsatisfactory performance of contract;

~~8.19.1.3~~ Excessive and/or unreasonable claims while performing work for SANDAG;

~~8.19.1.4~~ Two or more occasions within a two-year period of failure to submit bond or insurance documents acceptable to SANDAG in the time periods required;

~~8.19.1.5~~ Unjustified refusal to properly perform or complete contract work or warranty performance;

~~8.19.1.6~~ Unjustified failure to honor or observe contractual obligations or legal requirements pertaining to the contract;

~~8.19.1.7~~ Conviction under a state or federal statute or municipal ordinance for fraud, bribery, theft, falsification or destruction of records, receiving stolen property or of any other similar crime;

~~8.19.1.8~~ Any offense or action which indicates a lack of business integrity and which could directly affect the reliability and credibility of performance of the ~~consultant~~contractor on future contracts with SANDAG;

~~8.19.1.9~~ Any debarment of the ~~consultant~~contractor by another governmental agency; and

~~9.1.10~~ Two or more claims of computational, clerical, or other error in cost proposal submission within a two-year period;

~~9.1.11~~ False statements or certifications in documents submitted as part of a bid or any supplementary documentation thereto; or

~~8.19.1.12~~ Unjustified failure or refusal to timely provide or properly execute contract documents.

~~8.29.2~~ SANDAG may permanently debar a firm for a conviction under federal or state antitrust statutes involving public contracts or the submission of bid proposals, for any corrupt practices involving the administration or award of a contract with SANDAG, or permanent debarment of the ~~bidder~~bidder or proposer or ~~consultant~~contractor by another governmental agency, as permitted by law.

~~8.39.3~~ The ~~proposer or consultant~~firm shall be provided notice and an opportunity to present evidence and show cause before the Board why such ineligibility should not be declared after the ~~CEO~~~~Chief Executive Officer~~ has established a factual basis for debarment.



~~8.4~~9.4 A ~~consultant firm's~~ debarment shall be effective amongst SANDAG and any of its subsidiary entities. Debarment prohibits SANDAG and subsidiary entities from executing contracts with the debarred ~~consultant firm~~.

~~8.5~~9.5 Debarment constitutes debarment of all divisions or other organizational elements of the ~~consultant firm~~, unless the ~~development~~ decision is limited by its terms to specific divisions, organizational elements, or commodities. The debarment decision may be extended to include any affiliate of the ~~consultant firm~~ if the affiliate is (1) specifically named, and (2) given written notice of the proposed debarment and an opportunity to respond.

~~8.6~~9.6 Notwithstanding the debarment of the ~~consultant firm~~, the Board may continue contracts in existence at the time the ~~consultant firm~~ is debarred, unless the Board directs otherwise, after receiving advice from the ~~CEO and OGC Chief Executive Officer~~ as to the effects of termination of an existing agreement.

## **~~9.10~~ Contract Administration and ~~Consultant Contractor~~ Assurances**

~~9.1~~10.1 SANDAG ~~consultant contractor~~s must ~~assure that they~~ meet all applicable laws concerning labor law, labor rates, EEO, and licenses.

~~9.2~~10.2 SANDAG ~~contractors shall assure~~~~shall ensure that~~ all services requiring a licensed ~~consultant contractor or subcontractor~~ shall be performed by licensed ~~consultant contractors~~.

~~9.3~~10.3 ~~Consultant Contractor~~s will be responsible for complying with the provisions of the ~~federal~~ Fair Labor Standards Act of 1938 as amended.

~~10~~ ~~Consultant Contractor~~s must provide the minimum scope of insurance as stipulated in the contract.

~~11.10.4~~ ConsultantContractors shall be required to provide Workers' Compensation Insurance to their employees in accordance with the provisions of Section 3700 of the Labor Code. Prior to commencement of work, the ~~consultantcontractor~~ shall be required to provide a certificate of compliance and proof of any required insurance to SANDAG.

~~11.210.5~~ Contractors must agree to meet labor compliance requirements on SANDAG contracts, which shall be consistent with the California Labor Code.

~~11.310.6~~ ConsultantContractors shall comply with the EEO requirements set forth by Title VI of the 1964 Civil Rights Act on any project where federal funds are included; and any other requirements established by an applicable federal funding agency~~the Federal Transit Administration.~~

10.7 ConsultantContractors shall comply with Section 1735 of the Labor Code and all other California laws prohibiting discrimination based on protected class status.:

10.8 Contractor shall be required to pay workers no less than the stipulated prevailing wage rates paid for such work or craft in the San Diego area by the contractor or any of its subcontractors, unless it is otherwise authorized by law.

10.9 Contracts including construction services in excess of \$1 million shall include a provision requiring the entity contracting with SANDAG to commit that the entity and its subcontractors at every tier will use a skilled and trained workforce to perform all construction work on the project consistent with PUC section 132354.7 unless one of the exceptions in Section 132354.7(a) are met.

~~11.410.10~~ All contractors shall assure compliance with the Board's Equal Employment Opportunity Program and agree to audit provisions to allow the SANDAG independent performance auditor access to the contracted entity's records needed to verify compliance with the terms specified in the contract.

## **1211 Amendments and Change Orders to Service Contracts**

~~11.1~~ All contracts may be amended ~~by a suitable amendment processed~~ in accordance with the SANDAG Procurements Manual and related procedures/policies. Unplanned amendments are not favored and should only be needed when events that could not have reasonably been anticipated with sufficient planning occur. Staff shall provide detailed reasons and justifications for amendment requests.

11.2 Contracts staff shall review all amendments and the contract procurement history to ensure bid splitting and avoidance of competition is not occurring. Contracts staff shall ensure justifications for amendments are allowable and in the event it is unclear if the justification is adequate, consult with the OGC.

11.3 Any amendment to a contract document that constitutes a cardinal change requires a sole source justification in accordance with Section 4 of this policy.

11.4 Pursuant to Board Policy No. 017, the CEO has authority to enter into agreements not currently incorporated in the budget and make other modifications to the budget in an

amount up to \$300,000 per project per fiscal year, subject to the limitations in this policy. The Board will be notified of all such amendments.

11.4.1 The Executive Committee or Transportation Committee or, if not practical, the Board Chair, First Vice Chair, or Second Vice Chair are hereby authorized to approve such amendments that will cause the project budget to be changed in an amount exceeding \$300,000 when waiting for Board approval could potentially delay a project or increase the cost of the change. Approval of such items by the Board Chair, First Vice Chair, or Second Vice Chair is not the preferred practice and should only be used if a regular or special meeting of an authorized legislative body is infeasible or impractical. In such an instance, the Chief Executive Officer shall notify the Board of the action at the next regular Board meeting.

~~12.11.5~~ Notwithstanding any need for a budget approval from the Board of Directors or others permitted to authorize such an amendment under the previous subsection, all amendments in excess of \$500,000, shall be reported to the Board of Directors on a monthly basis, with a brief explanation of the need for the amendment. The \$500,000 amount shall be cumulative of all amendments to the original dollar amount in the solicitation or contract, whichever amount is higher.;

~~12.2~~ All amendments that impact or potentially impact Board-adopted policies shall be brought before the Board for decision.

11.6 All amendments, including change orders, which utilize ing federal funds shall conform to the Code of Federal Regulations, Volume 2, Part 200 and the most recent version of Federal Transit Administration Circular 4220.1G or the equivalent from other applicable federal funding agencies.

11.7 Construction Contract Change Orders. Change orders are a type of amendment made to public works construction contracts.

11.7.1 All construction contracts may be amended by a suitable change order. Change orders shall be processed in accordance with the SANDAG Procurement and Construction Manual(s), this policy, and applicable procedures. Such procedures shall be consistent with the Board of Directors intent to be apprised of contract amendments.

11.7.2 All change orders shall be approved by the CEO, except the following, which shall be brought before the Board for decision:

11.7.2.1 Change orders that would require review as an amendment pursuant to this Section 11; and

—On contracts where the price of the original contract or solicitation value exceeds \$5 million, change orders where the value of such change order exceeds 25 percent of the price of the original contract or otherwise qualifies as a cardinal change.

11.7.2.2

~~12.2.1~~—

## **12 Contract Administration**

- 12.1 During the life of the contract, the staff member(s) authorized to administer the contract shall track the performance of contractors and subcontractors, use of Disadvantaged Business Enterprises (DBEs), the milestone dates for contractor performance and deliverables, and the rate at which funding for the contract is being used and report any concerns to their manager.
- 12.2 A Notice to Cure shall be sent to a contractor when its performance falls behind deliverable dates or milestones by more than 60 days. Such correspondence shall be reviewed by the OGC prior to being sent and submitted to Contracts Department staff for recordkeeping. Failure of the contractor to resolve the matter(s) in the notice within 30 days shall result in the matter(s) being reported to the Board of Directors as set forth in Section 12.4 of this policy.
- 12.3 When a contract exceeds \$100,000 in aggregate value, final contractor performance shall be evaluated upon completion or termination of the contract. This requirement also shall apply to task orders in excess of \$100,000.
- 12.4 To ensure timely communication of critical contract concerns related to contractor performance or claims, the Director of Contracts & Procurement Services will track the following criteria to include in a monthly report to the Board of Directors when a contract value will exceed \$1 million in aggregate:
- 12.4.1 Contracts for which a Stop Work Notice is issued for a vendor performance concern.
- 12.4.2 Contracts for which a Notice to Cure is issued and not resolved within the timeline required by this policy.
- 12.4.3 Contracts with at least two instances of documented non-excusable delays. A non-excusable delay is defined as a delay of more than five working days when that delay was solely within control of the contractor.
- 12.4.4 Contracts for which the contractor is responsible for compensable delays, based on liquidated damages or otherwise, in excess of \$50,000. A compensable delay occurs when there is going to be some compensation to SANDAG for the delay because the contractor is liable for an extension of time or cost compensation or both.
- 12.4.5 Contracts with "critical path" delays. A critical path delay is defined as a significant contractor delay in reaching a milestone or maintaining a project schedule that results in a determination that the contractor will not be able to reasonably accomplish the work by the contracted deadline.
- 12.4.6 When there is notice of a potential claim by the contractor related to the contract.
- 12.4.7 When there is notice of an actual claim by the contractor related to the contract.
- 12.4.8 In other situations when the OGC or Director of Contracts & Procurement Services determines the Board of Directors should be placed on notice of significant contractual issues related to priority projects.
- 12.5 Employees assigned as project managers over projects with a budget in excess of \$1,000,000 shall meet specific job qualifications and have Project Management Professional certification prior to being assigned such responsibilities.

- 12.6 Persons administering SANDAG contracts and overseeing the work of a contractor, including but not limited to, contract analysts, project managers, and contract managers, shall, at minimum, receive formal training at least once per year. Training shall be provided by procurement and contracting subject matter experts and/or management. Training shall at minimum, include the following subjects:
- 12.6.1 Assigned roles, responsibilities, and procedures of persons in the procurement and contracting process;
- 12.6.2 What is required from contractors for invoices based on SANDAG contract language. Elements of invoice review shall include:
- 12.6.2.1 Ensuring fee schedules align with the applicable contract rates.
- 12.6.2.2 Tracking of invoices and invoice approval processes.
- 12.6.2.3 The amount of detail and itemization required in invoices and progress reports prior to payment to the contractor being authorized. How to cross-check against the contract document to verify invoiced work reflects work performed consistent with the contract. The requirement that staff must validate the work has been performed and meets contractual requirements before invoices are authorized for payment using information such as detailed timesheets or task specific assignment sheets that support labor or work product results, subcontractor invoices, and goods and/or receiving receipts from third parties.
- 12.6.3 Procurement planning and oversight functions such as tracking of contracts, phased procurements, monitoring of expiration dates, procurement timelines for any changes to projects or potential amendments or change order needs, steps and timelines needed to prepare for various sized and timed procurements, and avoidance of requests for a contract with a retroactive effective date.
- 12.6.4 The requirement that competition must be open and full unless a permitted justification in this policy applies, and the frequency that competition must occur as required by applicable laws, rules and regulations. Information provided shall include:
- 12.6.4.1 How to ensure sole sources are limited and are thoroughly being reviewed and analyzed to ensure potential risks are mitigated.
- 12.6.4.2 Instruction explaining failure to plan is not an adequate justification.
- 12.6.4.2.1 Circumstances that constitute failure to plan include, but are not limited to, staff not adequately tracking contract expiration dates, not allowing enough time to conduct a new solicitation prior to contract expiration, issues with a non-performing consultant that have not been addressed through a formal Notice to Cure, and failure to timely replace a project manager who is absent from work, has left the agency, or has changed roles.
- 12.6.5 Reporting requirements to the Board of Directors for procurement and contract actions as described in this policy.
- 12.6.6 The requirement that performance evaluations of contractors be submitted upon completion or termination of a contract document.

- 12.6.7 Explanation of justifications allowed for amendments with examples of both allowable and non-allowable justifications. This shall include training for contract analysts to ensure they are reviewing and analyzing whether justifications are allowable by among other things, reviewing amendment requests and procurement history, identifying excessive amendments, identifying potential bid splitting or avoidance of competition, ensuring amendments are not being issued to non-performing consultants, and making enquiries to confirm there are no conflicts of interest.
- 12.6.8 The Procurement Manual, Construction Manual, and any relevant Standard Operating Procedures.
- 12.6.9 Information that must be included in the record of negotiation for contracts not procured using the low bid process to ensure an adequate record exists of the steps taken to negotiate the contract.
- 12.6.10 Contract negotiation training to include reasons and intent of negotiations to provide the best contract terms and conditions for SANDAG, best practices, and the risks of not negotiating and/or not following best practices.
- 12.6.11 Proper use of the on-call contract process, competition required to award task orders or job orders, and methods that must be used to ensure fairness and equity in the award of task orders. The requirement that on-call procurements are appropriately advertised to reach sufficient, qualified and a variety of contractors and subcontractors, including outreach efforts using public platforms and attendance of outreach events to attract new and disadvantaged contractors and subcontractors.
- 12.6.12 Internal control requirements in Board Policy No. 041, including those applicable to limitation of sole source procurements.
- 12.6.13 The types of contract documents requiring review and approval by the OGC pursuant to Board policies and applicable procedures.
- 12.6.14 Conflicts of interest that can arise based on personal relationships of staff. This training shall include information on how to eliminate improper influence by any person on evaluation committees for selection of contractors.
- 12.6.15 Instruction that staff should not dictate the selection of particular subcontractors and should be sensitive to the fact that suggestions to contractors to hire particular subcontractors may be perceived as unduly coercive or create an appearance of favoritism or a lack of competitive contracting.
- ~~12.3~~12.7 Following completion of all projects with contracts exceeding \$5 million in aggregate, analyses shall be conducted, with lessons learned documented and corrective action plans for future projects prepared and presented to the CEO. The analyses will be shared with relevant internal stakeholders and presented to the CEO within 60 days of completion of the project. The documentation will be saved in the project files for future reference. Any lessons learned will be noted and incorporated into standard operating procedures and future procurements of a similar nature.

Amended December 2006

Amended December 2007

Amended December 2008

Amended January 2010

Amended November 2010

Amended March 2014

Amended November 2014

Amended December 2015

Amended January 2017

Amended February 2018

Amended February 2021

Amended June 2021

Amended March— 2025 (with consolidation of Board Policy Nos. 023 and 024).

DRAFT



## BOARD POLICY NO. 023

### **RESERVED PROCUREMENT AND CONTRACTING—EQUIPMENT & SUPPLIES**

#### **Purpose**

To establish procedures for acquiring supplies, equipment, and materials.

#### **Background**

When purchasing equipment, supplies, and materials, SANDAG staff is required to use a competitive procurement process, unless a justification in Section 3 of this policy applies. Pursuant to Public Utilities Code section 132352.4(5), SANDAG is required to select the lowest responsible bidder meeting specifications for awards of \$50,000 or more, not including sales tax. This section also states two exceptions to this requirement. First, if an article of a specified brand or trade name is the only article that will properly meet the needs of SANDAG, competitive procurement is not required. Second, the Board may approve a purchase of equipment, supplies, or materials that exceeds \$50,000 without utilizing competitive procurement methods if it is in the best interest of SANDAG to do so. The Board hereby finds that it is in the best interest of the agency to authorize simplified procurement procedures for contract awards covered by this policy that will not exceed \$100,000. All references to the Executive Director in this policy also apply to the Executive Director's designee.

#### **Policy**

- 1.—Supplies, equipment, and materials not otherwise provided for in a contract for construction or services, and estimated to cost more than \$100,000, shall be listed separately in the budget or otherwise provided for by Board action or Executive Director approval before suppliers are asked to submit any binding proposals or bids.
- 2.—For purposes of this policy, the term “micro-purchase amount” shall mean an amount that will not exceed the ceiling amount for micro-purchases set by the applicable funding agency(ies) for the procurement.
- 3.—For purchases in excess of the micro-purchase amount involving federal funds, all applicable federal requirements and certifications must be attached to the purchase order or contract. For purchases that exceed \$50,000, a purchase order or a contract must be used in order to ensure provisions are included to protect the interests of SANDAG.
- 4.—Normally, SANDAG will utilize a full and open competition when soliciting bids or proposals for procurements in excess of \$50,000. Under certain circumstances, however, a procurement may be justified that does not utilize full and open competition. These procurements are known as limited competition procurements. When less than full and open competition is used, SANDAG shall solicit offers from as many potential sources as is practicable under the circumstances. Noncompetitive procurement is known as sole source procurement. Noncompetitive and limited competition procurements shall only be permitted when the conditions below are met:



- 4.1 When there are no federal funds involved the following additional factors may make limited competition or sole source procurement within the best interest of SANDAG. Therefore, a limited competition or sole source for these types of procurements may be permitted when one of the conditions in this section (3.1) is met:
- 4.1.1 — There is only one vendor capable of providing the item because the item is unique or highly specialized.
  - 4.1.2 — The item should be purchased from a particular vendor in the interest of economy or efficiency as a logical follow-on to an order already issued under a competitively awarded contract.
  - 4.1.3 — The cost to prepare for a competitive procurement exceeds the cost of the item.
  - 4.1.4 — The item is an integral repair part or accessory compatible with existing equipment.
  - 4.1.5 — The item is essential in maintaining research or operational continuity.
  - 4.1.6 — The item is one with which staff members who will use the item have specialized training and/or expertise and retraining would incur substantial cost in time and/or money.
  - 4.1.7 — The procurement is of the type that may be made as a sole source procurement pursuant to the Public Contracts Code.
- 4.2 — When the project will be paid for in whole or in part by federal funds one of the conditions allowing a limited competition or sole source procurement set forth in the latest version of FTA Circular 4220.1, or the equivalent from other federal funding agencies, must be met. For projects funded in whole or in part by Caltrans or Federal Highway Administration funds, the applicable provisions in the Caltrans Local Assistance Procedures Manual must be met.
5. — For purchases below the micro purchase amount, a micro purchase procurement method may be used. A micro purchase is a noncompetitive purchase technique; however, the price of the item must still be fair and reasonable. There should be equitable distribution among qualified suppliers in the local area and no splitting of procurements to avoid competition. A bid is only required from the vendor of choice and no contract is required.
6. — For purchases in excess of the micro purchase amount and \$50,000, a simplified competitive procurement method may be used:
- 6.1. — Staff shall obtain written bids or document oral bids from at least three suppliers in a manner that permits prices and other terms to be compared.
  - 6.2. — Staff shall recommend the supplier that will provide the best value to SANDAG, 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.
  - 6.3. — Staff shall obtain approval as required in the administrative delegation of authority policy and the small procurement procedures for use of the recommended supplier.

- 7.—For purchases in excess of \$50,000, an invitation for bids (IFB) shall be issued and the award will be made to lowest responsible bidder submitting a responsive bid:
- 7.1.—The IFB will be posted on the SANDAG Web site. In addition, notice of the IFB will be sent to suppliers previously known to be interested in providing the needed article(s).
- 7.2.—Notice of the IFB will be published on SANDAG's website and electronic vendor portal, in at least one newspaper of general circulation and at least one minority publication in San Diego County and in such other publications as appropriate at least two weeks before the bid opening date. The notice shall state that SANDAG is interested in receiving bids from qualified firms, and indicate how additional information can be obtained, the date, location and time for receiving and opening the sealed bids. For federally funded projects, the IFB must also be published in one or more Disadvantaged Business Enterprise-certified publications.
- 8.—For purchases that are better suited for a Request for Proposals (RFP) (negotiated purchase) or purchase on the open market, instead of an IFB (low bidder), approval may be sought from the Contracts Manager to utilize a different procurement process. An alternate procurement process to the IFB may be in the best interest of SANDAG in the following example situations:
- 8.1.—The purchase may be made at a lower price on the open market.
- 8.2.—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.
- 8.3.—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.
- 9.—If staff seeks authorization to utilize an alternate procurement process under section 7, 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 shall be submitted in the requisition packet.
- 10.—The Board's Equal Employment Opportunity Program and adequate audit provisions to allow the SANDAG independent performance auditor access to the contracted entity's records needed to verify compliance with the terms specified in the contract will be incorporated by reference in all SANDAG equipment and supplies contract templates.
- 11.—Conflicts of Interest
- 11.1.—SANDAG shall not contract with, and will reject any bid or proposal submitted by, the following persons or entities, unless the Executive Director finds that special circumstances exist which justify the approval of such contract:
- 11.1.1.—Persons employed by SANDAG;
- 11.1.2.—Profit-making firms or businesses in which SANDAG employees serve as officers, principals, partners or major shareholders;

~~11.1.3—Persons who, within the immediately preceding twelve (12) months, were employed by SANDAG and (1) were employed in positions of substantial responsibility in the area of service to be performed by the contract, or (2) participated in any way in developing the contract or its service specifications; or~~

~~11.1.4—Profit-making firms or businesses in which the former employees described in subsection 10.1.3 serve as officers, principals, partners or major shareholders.~~

~~11.2—SANDAG staff and third parties with whom SANDAG does business shall comply with SANDAG administrative policies concerning Standard of Conduct and all relevant Board Policies.~~

~~11.3—A Notice of Potential for Conflict of Interest shall be included when relevant in any procurement issued by SANDAG. The Notice shall include the policy of the Board as listed herein. Any agreement issued in accordance with this policy shall include or make reference to the policy listed herein.~~

~~11.4—A “firm” shall be 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, construction management company, and the construction company.~~

~~11.5—“Ineligible” firms shall include the prime consultant 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.~~

~~11.6—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. This procedure is encouraged prior to submittal of proposals or bids. 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 SANDAG the conflict. The Executive Director shall determine the adequacy of the appeal and make a subsequent final decision. No further appeal shall be considered.~~

~~Adopted November 2003  
Amended December 2006  
Amended December 2007  
Amended December 2008  
Amended November 2014  
Amended February 2018  
Amended June 2021~~



## BOARD POLICY NO. 024

### **RESERVED PROCUREMENT AND CONTRACTING—CONSTRUCTION**

#### **Purpose**

To establish a method for administering SANDAG construction contracts.

#### **Background**

Public Utilities Code section 132352.4 states that if the estimated total cost of any construction project or public works project will exceed fifty thousand dollars (\$50,000), SANDAG must solicit bids in writing and award the work to the lowest responsible bidder or reject all bids. Section 132352.4 further mandates that SANDAG establish rules for procurement of construction of public works projects. Additionally, Government Code section 14085 *et seq.* requires that any public entity receiving state funds for a guideway project adopt policies and procedures for contract administration. Code of Federal Regulations, Volume 2, Part 200, Federal Transit Administration Circular 4220.1F, and the Caltrans Local Assistance Procedures Manual also establish procedures that SANDAG must follow when administering contracts using federal funds. All references to the Executive Director in this policy also apply to the Executive Director's designees.

#### **Policy**

##### **1.—Bidding Process**

A competitive bidding process shall be utilized to the greatest extent possible for all construction contracts:

##### **1.1.—Bid Procedure for Small Contracts**

1.1.1.—For purposes of this policy, the term “micro purchase amount” shall mean an amount that will not exceed the ceiling amount for micro purchases set by the applicable funding agency(ies) for the procurement. For construction contracts estimated to cost an amount equal to or less than the micro purchase amount, the work may be awarded without competition so long as the price is determined to be fair and reasonable. Otherwise, staff shall seek a minimum of three bids which may be either written or oral to permit prices and other terms to be compared.

1.1.2.—For construction contracts estimated to cost in excess of the micro purchase amount, but not more than \$50,000, the following procedures shall be followed:

1.1.2.1.—An Invitation for Bids (IFBs) will be sent to a minimum of three qualified bidders by mail or email on the same date. The bid period will be a minimum of three calendar days. When possible, IFBs should be sent to at least two certified Disadvantaged Business Enterprise (DBE) firms. The IFB will contain the time and location for receiving and opening bids.

- 1.1.2.2—The contract will be awarded to the lowest responsive and responsible bidder after a Notice of Intent to Award has been issued to all bidders and a protest period of five working days has expired.
      - 1.1.2.3—Bid bonds will only be required on bids that are \$50,000 or less when requested by the applicable Director or his or her designee.
- 1.2.—~~Bid Procedure for Contracts in Excess of \$50,000~~
  - 1.2.1—Public notice of a construction contract estimated to cost more than \$50,000 shall be given by publication once a week for at least two consecutive weeks, with the first publication occurring at least three weeks before the day set for receiving bids, as follows:
    - 1.2.1.1—In a newspaper of general circulation, published in San Diego County;
    - 1.2.1.2—In a trade paper of general circulation published in Southern California devoted primarily to the dissemination of contract and building news among contractors and building materials supply firms (optional for projects estimated to cost less than \$100,000); and
    - 1.2.1.3—In at least one minority or community newspapers as appropriate to best meet SANDAG's DBE goals.
  - 1.2.2—Advertisements may also be placed in other minority and community newspapers, as appropriate. Appropriate DBEs listed in the current SANDAG vendor database will be notified of any work advertised under this policy.
  - 1.2.3—The notice shall state the time and place for receiving and opening sealed bids and shall describe, in general terms, the work to be done.
- 1.3.—~~Contractor's Prequalification~~
  - 1.3.1—SANDAG may, for prospective contractors whose bid could exceed \$500,000, adopt and apply a uniform prequalification system for rating bidders, on the basis of a standard experience questionnaire and financial statement verified under oath in respect to the contracts upon which each bidder is qualified to bid. A contractor may request to be prequalified for a predetermined contract amount prior to bidding.
  - 1.3.2—In no event shall any bidder be awarded a contract if such contract award would result in the bidder having under contract(s), work cumulatively in excess of that authorized by its qualification rating.
- 1.4.—~~Form of Bids~~
  - 1.4.1—SANDAG shall furnish each bidder with a standard proposal form, to be filled out, executed, and submitted as its bid.
  - 1.4.2—All bids shall be submitted as a sealed bid, which shall mean either submission in a sealed envelope or electronically through the use of SANDAG's web-based solicitation system. All bids shall be accompanied by one of the following forms of bidder's security: cash, a cashier's check, certified check, or a bidder's bond executed by an admitted surety insurer and made payable to SANDAG. A bid shall not be considered unless accompanied by one of the forms of bidder's security, which may be in either hard copy or electronic format. Bidder's security shall be at least 10 percent of the amount bid. Bidder's bonds must be issued by bonding companies registered in the State of California.
  - 1.4.3—Late bids shall not be accepted after the time and date designated in the notice.

~~1.4.4—Any bid may be withdrawn any time prior to the time fixed in the notice for bid opening only by written request to the SANDAG Executive Director. The request shall be executed by the bidder or its designated representative. Bids shall not be withdrawn after the time fixed for public opening.~~

~~1.4.5—On the day specified in the notice, staff shall immediately post the bid results on the SANDAG electronic vendor portal.~~

~~1.5.—Review of Bids~~

~~1.5.1—After the bids are opened, the applicable Director or designee (hereinafter "Director"), shall review all bids in order to determine which bidder is the lowest responsive and responsible bidder. The term "lowest responsive and responsible bidder" shall mean the lowest monetary bidder (excluding taxes) whose bid is responsive and who is responsible to perform the work required by the solicitation and contract documents.~~

~~1.5.2—SANDAG may investigate the responsibility and qualifications of all bidders to whom the award is contemplated for a period not to exceed 90 days after the bid opening. The 90-day review period may be extended upon the written request by the Director and written approval by the affected bidders.~~

~~1.5.3—SANDAG reserves the right to reject any or all bids and to waive any immaterial irregularity. No bid shall be binding upon SANDAG until after the contract is signed by both the contractor and SANDAG.~~

~~1.5.4—The lowest monetary bidder's bid will be evaluated by the Director in order to determine whether or not that bid is responsive. The term "responsive" generally means that the bid has been prepared and submitted in accordance with the requirements of the solicitation and bid documents. These requirements shall generally include, but will not be limited to, the following:~~

~~1.5.4.1—Bid Booklet—with all bid amounts filled in~~

~~1.5.4.2—Designation of Suppliers and Subcontractors—including dollar amounts~~

~~1.5.4.3—Acknowledgment of Addenda~~

~~1.5.4.4—Contractor's License Requirements~~

~~1.5.4.5—Ability to Meet Minimum Insurance Requirements~~

~~1.5.4.6—Public Contract Code 10162 Questionnaire~~

~~1.5.4.7—Bidder's Bond~~

~~1.5.4.8—Noncollusion Affidavit~~

~~1.5.4.9—Certification of Restrictions on Lobbying~~

~~1.5.4.10—Disclosure of Lobbying Activities~~

~~1.5.4.11—Certification Regarding Debarment~~

~~1.5.5—If the lowest monetary bidder's bid is responsive, then the bidder's qualifications will be evaluated by the Director to determine whether or not the bidder is responsible to perform the work required by the contract documents. The term "responsible" generally means that the bidder is able to demonstrate that it possesses: (1) the capacity to perform the work required by the contract documents with respect to financial strength, resources available, and experience; and (2) the integrity and trustworthiness to complete performance of the work in accordance with the contract documents. The Director shall review "responsibility" of bidders based upon factors set forth below.~~

~~1.5.6—For all contracts in excess of \$500,000, the following uniform system of determining whether or not a bidder is "responsible" shall be applied. The Director will consider the following non-exclusive list of factors in relation to the work to be performed for the project:~~

~~1.5.6.1—Financial Requirements:~~

~~1.5.6.1.1—Bidders shall have evidence of the availability of sufficient working capital;~~

~~1.5.6.1.2—For design-bid-build projects, the largest value of all work any bidding contractor has had under contract over a previous similar time frame as the subject contract shall meet or exceed the total amount of the bid; or in the case of a Job Order Contract, the value of the maximum amount of the Job Order Contract; and~~

~~1.5.6.1.3—For design-bid-build projects, 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 SANDAG contract, or in the case of a Job Order Contract, at least 50 percent of the maximum amount of the Job Order Contract; and~~

~~1.5.6.1.4—For design-bid-build projects, the bidder shall have successfully completed contracts during the previous five years that together exceed five times the annual value of the SANDAG contract.~~

~~1.5.6.2—Experience Requirements:~~

~~1.5.6.2.1—The bidder must demonstrate organization experience on work similar to the SANDAG 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 that the bidder provides to be considered in determining its requisite experience. The list shall contain a name, title, email address, and phone number for staff to contact to verify the contract details;~~

~~1.5.6.2.2—The bidder shall demonstrate individual experience by submitting a list of all key personnel, including project managers, who will be involved in the SANDAG contract. These key personnel shall have at least three years of experience on contracts where the work is similar to the SANDAG contract. 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 SANDAG contract. For each individual listed, the bidder shall include the name, title, address, and phone number of an individual or organization who can verify the individual's experience;~~

~~1.5.6.2.3—The bidder 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);
- ~~1.5.6.2.4 — The bidder shall state whether or not it has defaulted on a construction project within the last two years;~~
- ~~1.5.6.2.5 — The bidder shall list any violation of the Apprenticeship Requirements under the State Business and Professions Code or Labor Code found by an appropriate authority within the last two years;~~
- ~~1.5.6.2.6 — The bidder shall state whether it has been found guilty of failure to pay required prevailing wages on a public contract within the last two years;~~
- ~~1.5.6.2.7 — The bidder shall state whether it has been formally found to be a nonresponsible bidder, for reason other than being nonresponsive, by a public agency within the last two years;~~
- ~~1.5.6.2.8 — The bidder shall list how many construction projects it will be working on concurrently with the SANDAG project;~~
- ~~1.5.6.2.9 — The bidder shall state whether it has ever been terminated by an owner or client, or rejected from bidding in a public works project in the last five years;~~
- ~~1.5.6.2.10 — The bidder shall state whether a surety ever completed any portion of the work of its projects within the last five years;~~
- ~~1.5.6.2.11 — The bidder shall state whether it, any of its officers, or any of its employees who has a proprietary interest in it, 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~~
- ~~1.5.6.2.12 — For all items identified under 1.5.6.2.1 through 1.5.6.2.11 above, the bidder shall provide name of owner, title of project, contract amount, location of project, date of contract, and name of the bonding company.~~
- ~~1.5.6.3 — Reporting Forms: In order to demonstrate that the SANDAG financial and experience requirements are met, the bidder shall submit, when requested by SANDAG, a standard experience questionnaire and financial statement verified under oath that shall meet the requirements adopted herein.~~
- ~~1.5.6.4 — Failure to provide accurate information relative to its financial status or experience may result in the debarment of the bidder from future SANDAG work.~~
- ~~1.5.6.5 — Questionnaires and financial statements shall not be considered public records nor open for public inspection.~~



1.5.7—SANDAG will make its determination of responsibility based upon information submitted by bidders, and, if necessary, interviews with previous owners, clients, design professionals, or subcontractors with whom the bidder has worked. If a bidder is determined to be nonresponsive, it shall be afforded an administrative hearing upon the submission of a timely protest of such issue. Any additional evidence submitted in the course of the protest procedure shall be considered in making the recommendation to the Executive Director regarding determination of the lowest responsive and responsible bidder and award of the contract.

1.6.—Award or Rejection of Bids

1.6.1—If the Director finds that the lowest monetary bidder submitted a responsive bid and that the bidder is responsible, then that bidder shall be deemed the apparent lowest responsive and responsible bidder, and the Director shall report the findings as recommendation to the Executive Director.

1.6.2—If the Director finds that the lowest monetary bidder's bid is not responsive or that the lowest monetary bidder is not responsible, then the Director may review the responsiveness and responsibility of the next low monetary bidder. If the Director finds that the next low monetary bidder is responsive and responsible, then that next low bidder shall be deemed the apparent lowest responsive and responsible bidder, and the Director shall report the findings as recommendations to the Executive Director. The Director may continue to review the responsiveness and responsibility of the next low monetary bidders until he/she finds the lowest monetary bidder that is also responsive and responsible, and deemed lowest responsive and responsible bidder. In the event that one or more low monetary bidders are found by the Director to be nonresponsive or nonresponsible, those bidders will be given notice and a reasonable opportunity to present additional evidence to the Director within five working days after the bidder receives the notice.

1.6.3—The Executive Director may authorize a Limited Notice to Proceed (LNTP) to the apparent lowest responsive and responsible bidder for an amount not to exceed \$250,000 prior to the award of the construction contract if the Executive Director determines that the award of an LNTP is justified.

1.6.4—If it is for the best interest of SANDAG, the Executive Director may, on refusal or failure of the successful bidder to execute the contract, award it to the second lowest responsive and responsible bidder.

1.6.5—If the second lowest responsive and responsible bidder fails to execute the contract, the Executive Director may likewise award it to the third lowest responsible bidder.

1.6.6—On the failure or refusal of any bidder to execute the contract, its bidder's security shall be forfeited to SANDAG.

1.6.7—For all contract awards in excess of \$25,000, the successful bidder must furnish a performance bond equal to at least one-half of the contract price and a payment bond equal to one hundred percent of the contract price. Federally funded contract awards shall require a performance bond equal to one hundred percent of the contract price. Notwithstanding the foregoing, depending upon authorization from the funding source(s), the performance and payment bond requirements may be modified within the Invitation for Bids with prior approval of the Director.

- ~~1.6.8—Failure to furnish the required bonds shall constitute failure to execute the contract.~~
- ~~1.7.—Return of Bidder's Security~~
  - ~~1.7.1—SANDAG may withhold the bidder's security of the second and third lowest responsive and responsible bidders until the contract has been finally executed. SANDAG shall, upon request, return cash, cashier's checks, and certified checks submitted by all other unsuccessful bidders within 30 days after the bid opening, and the bidder's bonds shall be of no further effect.~~
- ~~1.8.—Protests to Solicitation, Responsibility, Bid, or Award~~
  - ~~1.8.1—SANDAG shall include in all procurements a procedure to be followed by interested parties who wish to protest a specification, procedure, or finding of nonresponsibility. The procedure shall include the following:~~
    - ~~1.8.1.1—A requirement 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 SANDAG to reach a decision.~~
    - ~~1.8.1.2—A statement that the protest shall be submitted within clearly defined time limits prior to receiving proposals or opening bids or prior to award of contracts.~~
    - ~~1.8.1.3—A statement specifying the review and determination process by SANDAG, including time limits for response.~~
    - ~~1.8.1.4—Requirements for submittal of a protest reconsideration.~~
    - ~~1.8.1.5—A statement regarding review of the initial protest by a protest review committee, or in the case of a protest regarding a finding of nonresponsibility by an administrative hearing officer or panel, and review of protest reconsiderations by the Executive Director, as appropriate.~~
    - ~~1.8.1.6—A statement that protests will be rejected if they are not complete.~~
- ~~1.9.—Procedure for Subcontractor Substitution Protest~~
  - ~~1.9.1—Subcontractor substitutions shall be made only pursuant to the provisions of the Subletting and Subcontracting Fair Practices Act, Public Contract Code section 4100 et seq., as it may be amended from time to time. Notwithstanding the foregoing, nothing in this policy is intended to require SANDAG to strictly comply with the Subcontracting Fair Practices Act. The Executive Director is hereby designated to carry out all functions of the awarding authority under Section 4100 et seq.~~
- ~~1.10.—Procedure for Contractors with Claims Against SANDAG on Construction Contracts~~
  - ~~1.10.1—On all SANDAG construction contracts estimated to cost more than \$25,000, a section shall be included in the contract provisions that specifies how a contractor should file a "Notice of Potential Claim" and the procedures for review and disposition thereof.~~
  - ~~1.10.2—Federal Transit Administration review and concurrence is required for claim settlements that exceed \$1 million if FTA funds are involved.~~
  - ~~1.10.3—A list of all outstanding claims exceeding \$100,000 which involve the use of federal funds shall be included in the federal grants quarterly report.~~
- ~~1.11.—Debarment Procedures for Procurement and Construction Contracts~~
  - ~~1.11.1—In addition to all other remedies permitted by law, SANDAG may, upon advice of the Executive Director and Office of General Counsel, by resolution declare a bidder or contractor ineligible to bid on SANDAG procurement and~~

~~construction contracts for a period not to exceed three years for any of the following grounds:~~

- ~~1.11.1.1—two or more claims of computational, clerical, or other error in bid submission within a two-year period;~~
- ~~1.11.1.2—unjustified failure or refusal to timely provide or properly execute contract documents;~~
- ~~1.11.1.3—unsatisfactory performance of contract;~~
- ~~1.11.1.4—false, excessive and/or unreasonable claims while performing work for SANDAG;~~
- ~~1.11.1.5—two or more occasions within a two-year period of failure to submit bond or insurance documents acceptable to SANDAG in the time periods required;~~
- ~~1.11.1.6—unjustified refusal to properly perform or complete contract work or warranty performance;~~
- ~~1.11.1.7—unjustified failure to honor or observe contractual obligations or legal requirements pertaining to the contract;~~
- ~~1.11.1.8—conviction under a state or federal statute or municipal ordinance for fraud, bribery, theft, falsification or destruction of records, receiving stolen property or of any other similar crime;~~
- ~~1.11.1.9—any offense or action which indicates a lack of business integrity and which could directly affect the reliability and credibility of performance of the contractor on future contracts with SANDAG;~~
- ~~1.11.1.10—any debarment of the contractor by another governmental agency; and~~
- ~~1.11.1.11—false statements or certifications in documents submitted as part of a bid or any supplementary documentation thereto.~~
- ~~1.11.2—SANDAG may permanently debar such bidder or contractor for a conviction under federal or state antitrust statutes involving public contracts or the submission of bid proposals, for any corrupt practices involving the administration or award of a contract with SANDAG, or permanent debarment of the bidder or contractor by another governmental agency.~~
- ~~1.11.3—The bidder or contractor shall be provided notice and an opportunity to present evidence and show cause before the Board why such ineligibility shall not be declared after the Executive Director has established a factual basis for debarment.~~
- ~~1.11.4—A contractor's debarment shall be effective amongst SANDAG and any subsidiary entity. Debarment prohibits SANDAG and any subsidiary entity from executing contracts with the debarred contractor.~~
- ~~1.11.5—Debarment constitutes debarment of all divisions or other organizational elements of the contractor, unless the debarment decision is limited by its terms to specific divisions, organizational elements, or commodities. The debarment decision may be extended to include any affiliate of the contractor if the affiliate is (1) specifically named, and (2) given written notice of the proposed debarment and an opportunity to respond.~~
- ~~1.11.6—Notwithstanding the debarment of the contractor, the Board may continue contracts in existence at the time the contractor is debarred, unless the Board directs otherwise, after receiving advice from the Executive Director as to the effects of termination of an existing agreement.~~

## **2.—Contract Administration and Contractor Assurances**

- 2.1—SANDAG contractors must meet all applicable laws concerning labor law, labor rates, EEO and licenses. SANDAG shall ensure that the following requirements are carried out:
  - 2.1.1—All bidders and contractors shall be licensed in accordance with the laws of California. Additionally, contractor requirements shall be guided by the provisions of Chapter 9 of Division 3 of the Business and Professions Code concerning the licensing of contractors.
  - 2.1.2—The contractor may not, in any case, pay workers less than the stipulated prevailing rates paid for such work or craft in the San Diego area by the contractor or any of its subcontractors, unless it is otherwise authorized by law.
  - 2.1.3—The contractor will be responsible for complying with the provisions of the Fair Labor Standards Act of 1938 as amended.
  - 2.1.4—SANDAG contractors shall be required to provide Workers' Compensation Insurance to their employees in accordance with the provisions of Section 3700 of the Labor Code. Prior to commencement of work, the contractor shall sign and file with SANDAG a certification of compliance.
  - 2.1.5—Labor compliance requirements on SANDAG contracts shall be consistent with the California Labor Code.
  - 2.1.6—Contracts including construction services in excess of \$1 million shall include a provision requiring the entity contracting with SANDAG to commit that the entity and its subcontractors at every tier will use a skilled and trained workforce to perform all construction work on the project consistent with Public Utilities Code Section 132354.7 unless one of the exceptions in Section 132354.7(a) are met.
  - 2.1.7—The contractor shall comply with the EEO requirements set forth by Title VI of the 1964 Civil Rights Act on any project where Federal funds are included.
  - 2.1.8—The contractor shall also comply with Section 1735 of the Labor Code and all other California laws prohibiting discrimination based on protected class status.
  - 2.1.9—The Board's Equal Employment Opportunity Program and adequate audit provisions to allow the SANDAG independent performance auditor access to the contracted entity's records needed to verify compliance with the terms specified in the contract will be incorporated by reference in all SANDAG construction contract templates.

## **3.—Construction Contract Change Orders**

- 3.1—All construction and procurement contracts may be amended by a suitable change order. The contract change orders shall be processed in accordance with SANDAG procurement and construction manual(s).
- 3.2—Construction contract change orders shall be approved by the Executive Director in accordance with SANDAG Board policies, administrative policies, and procedural manuals.
- 3.3—Except in an emergency, or in the case of a justifiable sole source procurement, a change order shall not be awarded without competitive bidding where the amount of such change order exceeds 25 percent of the price of the original or altered contract, or the change order is out of the original contract scope.
  - 3.3.1.—For purposes of this section, an emergency is defined as a sudden or unforeseen situation in which, in the Executive Director's opinion, injury to

persons, or significant injury to property or interruption of a public service will occur if immediate action is not taken.

3.4—All change orders that conflict or potentially conflict with Board-adopted policies shall be brought before the Board for decision.

3.5—All change orders which utilize federal funds shall conform to the Code of Federal Regulations, Volume 2, Part 200 and Federal Transit Administration Circular 4220.1F and any successors thereof, that are applicable by law.

#### **4.—Other Than Full and Open Competition**

Normally, SANDAG will utilize a full and open competition when soliciting bids or proposals for procurements in excess of \$50,000. Under certain circumstances, however, a procurement may be justified that does not utilize full and open competition. These procurements are known as limited competition procurements. When less than full and open competition is used, SANDAG shall solicit offers from as many potential sources as is practicable under the circumstances. Noncompetitive procurement is known as sole source procurement. Noncompetitive and limited competition procurements shall only be permitted when the conditions below are met.

4.1—When the project will be paid for in whole or in part by federal funds one of the conditions allowing a limited competition or sole source procurement set forth in the latest version of FTA Circular 4220.1, or the equivalent from other federal funding agencies, must be met.

4.2—When there are no federal funds involved, additional factors may be used to justify a limited competition or sole source procurement as being within the best interest of SANDAG. For these types of procurements one of the conditions in this section (4.2) or section 4.1 must be met:

4.2.1.—There is only one contractor capable of providing the work because the work is unique or highly specialized.

4.2.2.—The work should be carried out by a particular contractor in the interest of economy or efficiency as a logical follow-on to work already in progress under a competitively awarded contract.

4.2.3.—The cost to prepare for a competitive procurement exceeds the cost of the work.

#### **5.—Relief from Maintenance and Responsibility and Acceptance of Work**

5.1—SANDAG will, upon written application by the contractor, consider granting relief from maintenance and responsibility on major elements of each major construction project as permitted in the contract specifications. The Executive Director is hereby delegated authority to grant said relief in writing to the contractor and shall report actions on contracts over \$25,000 to the Board.

5.2—SANDAG will, upon written application by the contractor, accept the entire work on major construction contracts, provided that the work has been completed, in all respects, in accordance with the contract plans and specifications. The Executive Director is hereby delegated the authority to accept such work on behalf of the Board and shall report to the Board all acceptances over \$25,000.

~~5.2.1—In determining whether to accept the entire work on major construction projects, these procedures should be followed:~~

~~5.2.1.1—The contractor shall request acceptance in writing.~~

~~5.2.1.2—Concurrence with the request by the SANDAG Resident Engineer shall be in writing to the Executive Director and include these findings: (1) that the contract has been completed in accordance with the plans and specifications, (2) a statement as to the financial condition of the contract, and (3) a statement as to whether the contract was completed on time or with an apparent overrun.~~

~~5.2.1.3—The Executive Director shall accept the action and report the findings to the Board.~~

## **~~6.—Conflict of Interest~~**

~~6.1—A contractor is eligible for award of service contracts by SANDAG so long as the contract in question does not create an actual, potential, or apparent conflict of interest. A prohibited conflict of interest exists when, because of other activities, relationships, or contracts, a firm is or may be unable to render impartial, objective assistance or advice to SANDAG; or a firm's objectivity in performing the contract work is or might be otherwise impaired; or where a firm would receive an unfair competitive advantage. Prohibited conflicts of interest include, but are not limited to, the following situations unless otherwise authorized by applicable federal or state law:~~

~~6.1.1—Except in the case of design-build or other authorized alternative delivery method contracting, any firm that provides design services or project management services to SANDAG will be ineligible for award of a construction contract to construct the improvements, which are the subject of the design services.~~

~~6.1.2—Any firm that provides design services to SANDAG will be ineligible for award of any contract to provide construction management services resulting from the specific project for which design services were provided.~~

~~6.1.3—Any firm that provides construction management services to SANDAG will be ineligible for award of a construction contract for which construction management services were or will be provided.~~

~~6.1.4—Any firm that assists SANDAG or any of its member or affiliated agencies in the preparation of a construction procurement document will not be allowed to participate as a bidder/offeror or join a team submitting a bid/offer in response to that procurement document except under the provisions in Section 7.1.4 of Board Policy No. 016.~~

~~6.2—SANDAG shall not contract with, and will reject any bid or proposal submitted by, the following persons or entities, unless the Executive Director finds that special circumstances exist which justify the approval of such contract:~~

~~6.2.1—Persons employed by SANDAG;~~

~~6.2.2—Profit-making firms or businesses in which SANDAG employees serve as officers, principals, partners, or major shareholders; Persons who, within the~~

~~immediately preceding twelve (12) months, were employed by SANDAG and (1) were employed in positions of substantial responsibility in the area of service to be performed by the contract, or (2) participated in any way in developing the contract or its service specifications; or~~

~~6.2.3—Profit-making firms or businesses in which the former employees described in subsection 6.2.2 serve as officers, principals, partners or major shareholders.~~

~~6.3—SANDAG staff and third parties with whom SANDAG does business shall comply with SANDAG administrative policies concerning Standard of Conduct and all relevant Board Policies.~~

~~6.4—A Notice of Potential for Conflict of Interest shall be included when relevant in any procurement issued by SANDAG. The Notice shall be the policy of the Board as listed herein. Any agreement issued in accordance with this policy shall include or make reference to the policy listed herein.~~

~~6.5—A “firm” shall be 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, construction management company, and the construction company.~~

~~6.6—“Ineligible” firms shall include the prime consultant 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.~~

~~6.7—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. This procedure is encouraged prior to submittal of proposals or bids. 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 SANDAG the conflict. The Executive Director shall determine the adequacy of the appeal and make a subsequent final decision. No further appeal shall be considered.~~

## **~~7.—Job Order Contracting~~**

~~A Job Order Contract (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 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 is issued, the scope of work will identify the quantity and specific 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.~~

### **~~7.1—General Requirements~~**

~~7.1.1—JOCs shall be awarded under written agreement subject to the following limitations:~~

- 7.1.1.1—The specifications were advertised in accordance with Board Policy No. 024, Section 1, “Bidding Process” based on the maximum potential value of the JOC;
        - 7.1.1.2—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 Job Orders;
        - 7.1.1.3—The JOC does not exceed a term of three years in duration;
        - 7.1.1.4—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;
      - 7.1.2—JOC may not contain any provision which would guarantee the contractor cumulative Job Orders in excess of \$50,000.
- 7.2—Issuance of Job Orders
  - 7.2.1—Following award of a JOC, Job Orders may be issued by the Executive Director in accordance with SANDAG Board Policies, administrative policies, and procedural manuals upon certification by that individual that it is not in conflict with other Board Policies and it is the best interest of SANDAG to use the JOC procurement process because one or more of the following criteria have been met:
    - 7.2.1.1.—Use of the JOC process will result in a cost savings through economies of scale or expedite the delivery of work; or
    - 7.2.1.2.—Compliance with the traditional competitive bidding requirements will not produce an advantage to SANDAG; or
    - 7.2.1.3.—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
    - 7.2.1.4.—The entity or entities providing funds for the project have authorized use of the JOC process;
  - 7.2.2—An individual Job Order may not exceed the sum of \$2,000,000, except in the case of an emergency as defined in Section 3.3.1 of this Policy, or as specifically authorized by the Executive Director, whose authorization shall not be delegated;
  - 7.2.3—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 Job Orders for purposes of avoiding this limitation;
  - 7.2.4—Non-prepriced items of work may be included in Job Orders provided that the non-prepriced items are within the scope and intent of the JOC and are priced reasonably and in conformity all applicable laws, regulations and policies;
- 7.3—Job Order Contract Intergovernmental Agreements
  - 7.3.1—The SANDAG 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 San Diego County, to participate via the Service Bureau in JOCs entered into by SANDAG, and may enter into any agreements necessary to do so;

## **8.—Design-Build Contracting**



~~"Design-build" contracting is a project delivery method in which both the design and construction of a project are procured from a single entity. Notwithstanding Section 7 of this Policy, SANDAG is permitted to use the design-build contracting method on transit projects in accordance with Public Contracts Code section 22160 et seq. A competitive negotiation process similar to the process described in Board Policy No. 016 for the procurement of services will be used to procure design-build services. Selection criteria for design-build procurements shall be subject to Board approval.~~

#### **9.—Construction Manager/General Contractor Contracting**

~~Construction Manager/General Contractor (CM/GC) contracting is a project delivery method using a best value procurement process in which a construction manager is procured to provide pre-construction services during the design phase of the project and construction services during the construction phase of the project. Notwithstanding Section 7 of this Policy, SANDAG is permitted to use the CM/GC contracting method on transit projects in accordance with Public Contracts Code §§6950-6958. Additionally, Chapter 7 (commencing with ) of Division 17 provides for SANDAG to construct the Olay Mesa East Port of Entry Project using CM/GC. A competitive negotiation process similar to the process described in Board Policy No. 016 for the procurement of services will be used to procure CM/GC services. Selection criteria for CM/GC procurements shall be subject to Board approval.~~

#### **10.—Design Sequencing Contracting**

~~"Design sequencing" contracting is a method of project delivery that enables the sequencing of design activities to permit each construction phase to commence when the design for that phase is complete, instead of requiring design for the entire project to be completed before commencing construction. This is a variation of the design-bid-build project delivery method. SANDAG is permitted to use the design sequencing contracting method on transit projects in accordance with Public Contracts Code §§6950-6958.~~

~~Adopted November 2003  
Amended December 2006  
Amended December 2007  
Amended December 2008  
Amended January 2010  
Amended November 2010  
Amended February 2012  
Amended November 2012  
Amended October 2013  
Amended November 2014  
Amended January 2017  
Amended February 2018  
Amended January 2019  
Amended June 2021~~



## BOARD POLICY NO. 017

### DELEGATION OF AUTHORITY

The purpose of this policy is to establish the authority granted by the Board of Directors to the Chief Executive Officer (CEO). It also provides the CEO with the authority to delegate functions he or she has been delegated by the Board to SANDAG staff.

#### Definitions

The following words shall have the meanings indicated when used in this policy:

“Agreement” shall be interpreted to include contracts, memorandums of understanding, agreement amendments, purchase orders, invoices, money transfers, or any other document that could be enforced against SANDAG in a court of law.

“Budget” shall be interpreted to include SANDAG’s annual budget, revisions and amendments thereto, and the Overall Work Program.

“Emergency or Urgent Need” for purposes of this policy shall mean a situation in which, in the CEO’s or his/her designee’s opinion, injury to persons, or significant injury to property, covered species, habitats, linkages, and/or corridors identified in the San Diego County Natural Communities Conservation Planning program, or interruption of a public service will occur if immediate action is not taken.

#### Procedures

1. Adoption of a budget by the Board shall automatically authorize the CEO to enter into any agreements or take any other actions necessary to implement the budget items or other actions approved by the Board.
2. Any authority delegated to the CEO shall automatically vest with ~~a Chief Deputy Executive Director~~ the Chief Financial Officer (CFO) when business must be conducted in the absence of the CEO. In the event the CEO position is vacant, the Chair or their designee shall serve as the supervisor to the CFO. Chief Deputy Executive Director and shall have the authority to authorize salary adjustments, consistent with agency pay practices as set forth in the SANDAG Employee Handbook.
3. In the event of emergency or an urgent need, the CEO is authorized to take all necessary actions to prevent significant unnecessary loss to SANDAG, a shut-down of public services, or to address a situation threatening the health or safety of persons or property, including, but not limited to, authorization to contract with a contractor or consultant on a sole source basis, consistent with applicable state or federal law without prior approval from the Board. In the event such an emergency or urgent need occurs, the CEO will consult with the Chair of the Board, promptly communicate all actions taken to the Board members, and submit a report to the Board at its next regular meeting in order to obtain ratification for those actions.

4. The CEO is hereby authorized to carry out the actions set forth below. In the event any of the authorities in this paragraph are exercised, the CEO will report actions taken to the Board in summary written form on a monthly basis.
  - 4.1 Enter into agreements not currently incorporated in the budget and make other modifications to the budget in an amount up to \$300,000 per project per fiscal year so long as the overall annual budget remains in balance. This authority shall refresh in the event the Board of Directors or Policy Advisory Committee authorizes further modifications to a capital project budget within the same fiscal year or a new annual budget has been approved by the Board.
  - 4.2 Approve all design plans, specifications and estimates for capital improvement projects.
  - 4.3 Execute all real property transfer documents, including but not limited to, rights of entry, licenses, leases, deeds, easements, escrow instructions, and certificates of acceptance.
  - 4.4 Approve the establishment of an offer of just compensation based on a qualified appraisal and within approved project budget for property sought to be acquired, and direct payment to persons for such property so long as the payment amount does not exceed 110 percent of the appraised value, or \$100,000 above the appraised value, whichever is greater, or the full satisfaction of court judgments regarding property valuation.
  - 4.5 Reject all bids and/or suspend the competitive procurement process.
  - 4.6 Provide the final determination to persons or firms filing a protest regarding SANDAG's procurement or contracting process or procedures.
  - 4.7 File administrative claims and to initiate and maintain lawsuits on behalf of the Board to recover for damage to or destruction of SANDAG property, or interruption of a public service.
  - 4.8 Settle all lawsuits initiated under paragraph 4.7.
  - 4.9 Settle all lawsuits that SANDAG must defend when the settlement amount does not exceed \$100,000.
  - 4.10 Accept reimbursement from member agencies for use of SANDAG on-call contracts.
  - 4.11 Execute tolling agreements to extend the statute of limitations for litigation involving SANDAG as a potential plaintiff or defendant when deemed in the best interest of SANDAG by the CEO and Office of General Counsel.
  - 4.12 Authorize transfers of funds in the SANDAG budget for capital improvement projects following approval of such a transfer by the affected transit operator's board of directors or designated governing body.
  - 4.13 Authorize the expenditure of Emergency Land Management Funds designated in the most recent Board-adopted Environmental Mitigation Program Funding Strategy based upon support from a cross-section of technical experts not affiliated with the request.

- 4.14 Modify the Board of Directors meeting agenda regarding issues that arise after the most recent Executive Committee meeting with the concurrence of Chair of the Board.
  - 4.15 Execute Right-of-Way Certifications for submittal to the California Department of Transportation, and take all other actions necessary to facilitate the timely filing of such certifications, for SANDAG projects that are either on the State Highway System or for those off-system projects with federal funding.
  - 4.16 Authorize writing off or compromising uncollectable debt in an amount not exceeding \$5,000 per account when, in the judgment of the Director of Finance, after using all appropriate collection tools, it is likely that the full debt is uncollectible and that it would not be cost efficient to pursue collection of the entire debt.
  - 4.17 Approve exemptions and addendums to a previously-approved Environmental Impact Report or Negative Declaration consistent with CEQA Section 15164 where only minor technical changes or additions are necessary.
  - 4.18 Approve administrative modifications to the Regional Transportation Improvement Program (RTIP) which have been prepared consistent with Federal Transportation Improvement Program Amendment and Modification Procedures agreed to between Caltrans and the Federal Highway Administration and Federal Transit Administration.
5. With the exception of any position identified by the Board of Directors in a Board policy, the CEO~~The Executive Director~~ shall act as the appointing authority for SANDAG with the authority to appoint, promote, transfer, discipline, and terminate all employees of SANDAG consistent with the provisions of SANDAG's Employee Handbook, which shall be provided to the Board on an annual basis. The CEO shall have the authority to offer severance to an employee in accordance with the employee's contract and/or at the discretion of the CEO. In the event this discretion is exercised, the CEO shall obtain written concurrence from the Office of General Counsel and shall report any action taken in summary form at the next regular meeting of the Board.
  6. The CEO shall prepare for the Board's consideration, and shall update on a regular basis, an administrative policy that includes a process to conduct staff performance evaluations on a regular basis to determine if the knowledge, skills, and abilities of staff members are sufficient to perform their respective functions in order to allow the Board monitor the staff evaluation process on a regular basis.
  7. Pursuant to Article V, Section 4, paragraph c of the Bylaws, the CEO shall develop and maintain an administrative policy governing the procedures for delegating his/her authority to other SANDAG staff.
  8. In addition to other responsibilities as directed by the Board of Directors, the CEO shall have the following responsibilities:
    - 8.1 Ensure that executive staff take an active role in overseeing the implementation of all accepted audit recommendations and hold staff accountable to timely address all related corrective actions.
    - 8.2 Require that staff managing projects with budgets in excess of \$100,000 have the requisite project management skills, training, and certifications to effectively conduct the analyses of internal resources

- and contractor capacity needed to successfully complete the project, including technical expertise, documented risk assessments, and demonstrated alignment with the agency's budget and goals.
- 8.3 Establish and maintain clearly defined senior management roles, responsibilities, and expectations, and when an individual is given a special project assignment, such as management oversight for a system implementation, the role for the assignment also must have clearly defined responsibilities and expectations. The CEO shall hold staff accountable to their roles, responsibilities, and expectations in their performance evaluations.
- 8.4 Direct staff to have all contract transactions identified in Board Policy No. 008 reviewed by the Office of General Counsel prior to those contracts' final approval by SANDAG.
- 8.5 Ensure proper controls are in place to prevent staff from splitting procurements, awarding sole source contracts, or issuing contracts with a retroactive effect in a manner that is meant to circumvent requirements applicable to such transactions per Board Policy No. 016.
- 6.1

Adopted October 2003  
Amended November 2004  
Amended December 2006  
Amended December 2008  
Amended February 2012  
Amended November 2012  
Amended October 2013  
Amended November 2014  
Amended January 2019  
Amended June 2021  
Amended March 2025

March 14, 2025

## **Proposed Amendments to Board Policy No. 008 and General Counsel Hiring Options**

### **Overview**

Historically, the agency's General Counsel has been appointed and evaluated by the Chief Executive Officer (CEO). Per direction from the Board of Directors, in the future it will assume the role of appointing a general counsel. Amendments are proposed to Board Policy No. 008 (Attachment 1) to clarify the Board's authority to do so and to make an additional change to address recommendations from the Independent Performance Auditor and San Diego County Grand Jury.

Staff have researched two alternative structures for hiring a general counsel based on common practice at other agencies with one or more similarities to SANDAG for the Board to evaluate: 1) Board appoints a general counsel as an employee via recruitment, or 2) Board hires a general counsel as an independent contractor via a competitive procurement process.

### **Key Considerations**

#### ***Applicable Law***

An important piece of information to note at the outset is the law governing attorneys when they serve as legal counsel for a government agency. The rules of ethics for attorneys admitted to the California Bar Association are in the California Rules of Professional Responsibility. Rule 1.13 states in relevant part, "A lawyer employed or retained by an organization shall conform his or her representation to the concept that the client is the organization itself, acting through its duly authorized directors." Thus, no matter what hiring mechanism the Board selects, the agency as a whole is the client of the general counsel, and the Board is and shall remain the highest authority that speaks on behalf of that client. California law is clear that if an attorney with an organization as a client believes that if there is a split of opinion between an individual member of management or board member and the rest of the board, the attorney must align with the majority of the members of the governing body.<sup>1</sup>

Despite the law being clear, splits of opinion between the CEO and the SANDAG Board are a challenge to navigate for a general counsel. Particularly when the CEO has the authority to decide on the general counsel's compensation, any applicable discipline, and whether employment should continue. It places the attorney in the position of losing his or her livelihood and reputation in a situation where the split of opinion may not have obvious demarcations. This friction will be mitigated by having the client- the SANDAG Board- serve as the appointing authority for the general counsel.

### **Action: Discussion/Possible Action**

The Executive Committee is asked to consider the information in the report and if it is prepared to do so recommend that the Board:

1. Approve the changes to Board Policy No. 008; and
2. Direct staff to prepare a recruitment and/or Request for Proposals for the General Counsel role.

### **Fiscal Impact:**

Estimated \$0-\$250,000 annually above amount currently budgeted for General Counsel

### **Schedule/Scope Impact:**

None.

<sup>1</sup> La Jolla Cove Motel & Hotel Apartments, Inc. v. Sup.Ct. (2004) 121 CA4th 773, 785.

## **Amendments to Board Policy No. 008**

Outside counsel has determined that the Board has authority to retract its delegation to the CEO to appoint a general counsel for the agency. This can be accomplished with changes to Board policy. Board Policy No. 008, Legal Matters, can be amended to accomplish this purpose. Section 3 has been added to the draft policy amendments to identify the Board as the appointing authority. Language also is proposed to explain how the general counsel is to proceed in the event of a future conflict. Further clarifying changes can be made to [Board Policy No. 017](#), Delegation of Authority, and SANDAG's governing statutes at a future date.

For efficiency, another amendment is proposed for Board Policy No. 008 that has been pending implementation. New verbiage is proposed in Section 6.2 of the policy to effectuate a recommendation from the Office of the Independent Performance Auditor in the Contracts and Procurement Operational and System Control Audit Report (Part II) that the Office of General Counsel be involved in reviewing a wider range of contracts to reduce risk and increase internal controls.

## **Research of Comparison Agencies**

Representatives from eight agencies were surveyed or interviewed. The results are in Attachment 2. In addition, a report published by the League of California Cities in 2022 and entitled *Counsel and Council: A Guide to Building a Productive City Attorney-City Council Relationship*<sup>2</sup>, was used as a resource. That report notes that city councils directly appoint the city attorney in 469 of California's 482 incorporated cities, with the bulk of those being hired as employees except in the case of small cities with limited need for legal counsel.

Like Sacramento Regional Transit District and San Diego Metropolitan Transportation System, SANDAG has had its general counsels as in-house employees appointed by the chief executive. During interviews, there was agreement that this model works effectively when the members of the governing body and the chief executive are aligned on their policy and risk tolerance perspectives. When this is not the case, however, the general counsel's duty of loyalty to his/her client (the governing body) is at odds with the general counsel's desire to please the person with control over their livelihood. The easiest way to ensure the general counsel's duty of loyalty is not challenged is to have the governing body take control of the terms and conditions under which the general counsel works.

Three of the eight agencies have independent contractors as their general counsel, however, in each case, there are circumstances that distinguish the agency from SANDAG that the Board should consider. The first is the Orange County Transportation Authority (OCTA). OCTA has a 15-year contract plus a 15-year option with a full-service law firm that provides for virtually all of the agency's legal services. SANDAG's current contracting policies and mix of funding would not allow for a contract this extensive.

The second agency is the Southern California Association of Governments (SCAG). SCAG is the only agency known to have a hybrid scenario, with one attorney for staff hired as an employee by its CEO and a second attorney hired by its governing body as an independent contractor. This arrangement has proven valuable to SCAG because the governing body's counsel handles questions from the 86-member Regional Council regarding parliamentary procedures and the Brown Act, which frees up the staff general counsel to focus on all of the day-to-day substantive issues and agency risks. Under this model, the governing body's attorney does not interact with the members unless she/he receives direction to do so; it is not proactive in nature because the outside counsel is not aware of the day-to-day issues of the agency. All day-to-day matters are handled by the staff counsel and then it is up to the staff counsel's discretion to brief the outside general counsel. This type of arrangement may not meet the SANDAG Board's desire to ensure its members stay informed of all relevant matters.

The last of the agencies using outside counsel for the general counsel role is the Sacramento Council of Governments (SACOG). SACOG has determined it does not need full-time legal counsel because of its relatively small annual budget of \$50 million, staff of 60, a narrow scope of planning responsibilities, and

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<sup>2</sup> [CC-Counsel-Council-2022-ver4.pdf](#)

an average of three public meetings per month. For SACOG it is more cost effective to use legal counsel on a part-time, independent contractor basis. SACOG's risk profile and needs for legal counsel are much lower than SANDAG's. SANDAG requires multiple full-time attorneys to carry out its current functions.

### ***Employee Versus Independent Contractor Model***

The League of California Cities report discusses some of the benefits of in-house legal counsel. The benefits include having the general counsel serve as a member of the executive team where they can provide advice from both a legal and policy perspective based on their institutional knowledge. Attorneys serving as agency employees also can serve as project managers, problem solvers, policy advisors, and strategists for the agency. Furthermore, an in-house general counsel is in the best position to gain advance notice that a legal question may be developing, even if all factors giving rise to the question are not fully known. This promotes the process of giving and receiving timely, high-quality legal advice to the Board and staff and cannot be achieved when outside counsel is used due to the impromptu manner in which discussions can raise legal flags.

On the other hand, a benefit of using outside counsel is that the Request for Proposals (RFP) can call for the law firm that is selected to have multiple attorneys in various fields of law available on an on-call basis for use by SANDAG. This would provide SANDAG with a "bench" of attorneys that could cover for each other on an as-needed basis and perhaps provide additional depth to the knowledge base of SANDAG legal counsel. There would be tradeoffs for this approach, including potential loss of institutional knowledge and additional costs. These and other pros and cons will be discussed further during the staff presentation.

If the SANDAG Board chooses to hire an employee as the general counsel, then the general counsel would continue to oversee the hiring and evaluations for the rest of the attorneys in the Office of General Counsel (OGC) for SANDAG as is the current practice. In the past, attorneys in the OGC have been selected by a panel headed by the General Counsel. If the General Counsel is an independent contractor working for a private sector firm, then she or he will not be supervising the other attorneys in the OGC because they will not have enough contact with the attorneys or review their daily work so would not be in a position to give assignments or evaluate their efforts as employees. Other agencies who use an independent contractor model have the CEO or delegates thereof hire any other attorneys who are agency employees.

### **Next Steps**

Pending a recommendation from the Executive Committee to proceed with approving the proposed changes to Board Policy No. 008, there are two tracks the Board could follow for hiring a general counsel. First, the Board could direct staff to issue recruitment to hire a new general counsel as an employee to be appointed by the Board. Alternatively, the Board could direct staff to prepare an RFP to hire a specific attorney or law firm to serve as general counsel via a competitively awarded contract. With either option, the Board Chair may want to appoint a small subcommittee to work with staff on defining the general counsel's job description or scope of work.

An additional distinction to consider between the recruitment and RFP hiring process is the ability for the entire Board to be involved in the interview stage to evaluate the final candidate(s). If the recruitment process is used, the Brown Act will permit the Board to meet in closed session to evaluate the candidate(s) after they have been narrowed down by the subcommittee by whatever means are selected by the subcommittee. If, however, the RFP process is used, a closed session will not be permitted because the candidates will be independent contractors versus employees.

### ***Julie Wiley, Senior Counsel***

Attachments:   1. Draft Amended Board Policy No. 008  
                      2. General Counsel Survey and Interview Results





## BOARD POLICY NO. 008

### LEGAL MATTERS

#### Purpose and Applicability

This policy provides direction from the Board of Directors regarding the authority and responsibilities of the agency's General Counsel and the Office of General Counsel. In addition, this policy establishes procedures for the filing of claims and institution of claims and lawsuits, for obtaining the review and concurrence or comment from the Office of General Counsel on all requests to the Board for authority to file lawsuits in court, and for handling process servers or individuals serving other legal documents.

Under Public Utilities Code section 132354(a), SANDAG can sue or be sued. All claims for money or damages against SANDAG are governed by Part 3 (commencing with section 900) and Part 4 (commencing with section 940) of the Government Code (the Tort Claims Act). Government Code section 935 authorizes SANDAG to adopt local claims procedures for claims that are not governed by any other statutes or regulations. From time to time it may be necessary for SANDAG to initiate litigation in order to resolve issues of significant concern to SANDAG. The Board desires to have the concurrence or written review from the Office of General Counsel relative to the merits of such lawsuits prior to their consideration by the Board. For these reasons, it is necessary to establish these procedures.

#### Procedures

##### 1. Claims and Actions Against SANDAG

Any and all claims for money or damages against SANDAG must be presented to, and acted upon, in accordance with the following procedures. Compliance with these procedures is a prerequisite to any court action, unless the claim is governed by statutes or regulations which expressly free the claimant from the obligation to comply with this policy and the claims procedures set forth in Government Code 900 et seq.

###### 1.1 Form of Claims

All claims must be presented to SANDAG using the form entitled "Claim Against SANDAG" available on the SANDAG Web site as an attachment to this Policy or upon request to the SANDAG Office of General Counsel.

###### 1.2 Time Limitations

1.2.1 Claims for money or damages relating to a cause of action for death, injury to person or personal property, or growing crops, shall be presented to SANDAG not later than six (6) months after the accrual of the cause of action (Government Codes 905 and 911.2).

1.2.2 Claims for money or damages as authorized in Government Code 905 that are not included in Paragraph 1 above shall be filed not later than one year from the date the cause of action accrues (Government Codes 905 and 911.2).

- 1.2.3 Claims for money or damages specifically excepted from Government Code 905 shall be filed not later than six (6) months after the accrual of the cause of action (Government Codes 905, 911.2, and 935).

### 1.3 Late Claims

- 1.3.1 Claims under "Time Limitations" Paragraphs 1.2.1 and 1.2.3 above, which are filed outside the specified time limitations, must be accompanied by an application to file a late claim. Such claim and application to file a late claim must be filed not later than one year after the accrual of the cause of action. If a claim is filed later than the specified time limitation and is not accompanied by an application to file a late claim, the Board or Chief Executive Director (CEO) may, within forty-five (45) days, give written notice that the claim was not filed timely and that it is being returned without further action.
- 1.3.2 The application shall state the reason for the delay in presenting the claim. The Board or CEO shall grant or deny the application within forty-five (45) days after it is presented. By mutual agreement of the claimant and the Board or CEO, such forty-five (45) day period may be extended by written agreement made before the expiration of such period. If no action is taken on the application within forty-five (45) days, it shall be deemed to have been denied on the forty-fifth (45th) day unless such time period has been extended, in which case it shall be deemed to have been denied on the last day of the period specified in the extension agreement.
- 1.3.3 If the application to present a late claim is denied, the claimant shall be given notice as required by Government Code section 911.8 (Government Codes 911.3, 911.4, 911.6, 911.8, 912.2, and 935).

### 1.4 Delivery and Form of Claim

- 1.4.1 A claim, any amendment thereto, or an application for leave to present a late claim shall be deemed presented when delivered to the office of the CEO or deposited in a post office, sub-post office, substation, or mail chute or other like facility maintained by the U.S. Government in a sealed envelope properly addressed to SANDAG's offices with postage paid (Government Codes 911.4, 915, and 915.2).
- 1.4.2 Claims must contain the information set forth in Section 910 and 910.2 of the Government Code (Government Codes 910, 910.2, and 910.4).

### 1.5 Notice of Claim Insufficiency

The CEO shall cause all claims to be reviewed for sufficiency of information. The CEO or designee may, within twenty (20) days of receipt of claim, either personally deliver or mail to claimant a notice stating deficiencies in the claim presented. If such notice is delivered or sent to claimant, the Board shall not act upon the claim until at least fifteen (15) days after such notice is sent (Government Codes 910.8, and 915.4).

## 1.6 Amendments to Claim

Claims may be amended within the above time limits or prior to final action, whichever is later, if the claim, as amended, relates to the same transaction or occurrence which gave rise to the original claim.

## 1.7 Action on Claim

- 1.7.1 Upon rejection of the claim, the claimant has only six (6) months from such rejection to institute a lawsuit. If no action is taken, the claim is deemed rejected after forty-five (45) days from SANDAG's receipt of the claim, but the claimant has two (2) years to institute a suit against SANDAG. The notice of rejection must comply with requirements of Government Code 913 unless the claim has no address on it.
- 1.7.2 If the claim is filed late and not accompanied by an application for leave to present a late claim, then SANDAG must notify the claimant that no action was taken due to the claim being filed late.
- 1.7.3 Within forty-five (45) days after the presentation or amendment of a claim, or upon such further time as may be allowed pursuant to Government Code 915.2, SANDAG shall take action on the claim. This time limit may be extended by written agreement before the expiration of the forty-five (45) day period or before legal action is commenced or barred by legal limitations. The CEO or designee shall transmit to the claimant a notice of action taken. If no action is taken, the claim shall be deemed to have been rejected (Government Code 945.6).
- 1.7.4 The Board delegates to the CEO the authority to take action on claims including accepting or rejecting claims, allowing or disallowing late claims, agreeing to extend the claim response deadline, and settling claims when the amount of the claim does not exceed fifty thousand dollars (\$50,000) (Government Code 935.4).

## 2. Claims & Actions Initiated by SANDAG

It is the policy of the Board that except as may be otherwise determined by the Board, prior to Board authorization and direction to the Office of General Counsel to file a lawsuit in court, the Office of General Counsel shall be consulted as to the merits of such a lawsuit. Any request or recommendation for authorization and direction from the Board to the Office of General Counsel to file a lawsuit in court shall be accompanied by written views of the Office of General Counsel with regard to the merits of the case, provided however, that the Office of General Counsel may, in lieu of such written concurrence or written views, request that the matter be discussed with the Board in Closed Session. As part of this attorney-client review, all requests or recommendations on potential lawsuits will be reviewed for comment by the CEO prior to being submitted to the Office of General Counsel.

### **3. General Counsel Role**

#### **3.1 Appointing Authority**

The General Counsel shall be appointed by the Board and serve at the pleasure of the Board. Any final decision regarding compensation, evaluations, discipline, or termination of employment or contract for the General Counsel shall be made by the Board.

#### **3.2 Responsibilities**

Consistent with California State Bar Rules of Professional Conduct, Rule 1.13, the General Counsel's client is SANDAG acting through its governing body, the Board of Directors. For purposes of giving advice, receiving direction, and providing representation, the General Counsel shall take direction from the Chair or Vice Chairs. In addition, the Board requires that the General Counsel support and assist with the endeavors of executive staff in carrying out the day-to-day activities of the agency as further described in the General Counsel's statement of duties. In the event of contrary direction from any individual Board member(s) or member(s) of the Board and executive staff, the Rules of Professional Conduct require that the General Counsel take direction from the majority of its constituent Board members<sup>1</sup>. In the event of a conflict between members of the Board, the General Counsel shall take special care to provide the same, balanced legal advice to all sides.

### **3.4. Legal Counsel for ARJIS**

SANDAG shall provide legal counsel to the Automated Regional Justice Information System Joint Powers Agency (ARJIS) to the extent time allows, and as long as no potential conflict of interest exists. In general, SANDAG's Office of General Counsel should ensure consistent legal treatment of all matters. In areas involving a need for special expertise, substantial time commitments, or separate counsel, SANDAG, on behalf of ARJIS, may contract with an outside firm and ARJIS will pay for those services out of its own funds. Such contracts shall be reported to the SANDAG Board.

### **4.5. Acceptance of Garnishments, Wage Attachments, Summons & Complaints**

~~4.15.1~~ The SANDAG Office of General Counsel will accept service of a summons and complaint upon SANDAG and/or any Board members being sued in his or her official capacity as a member of SANDAG's Board of Directors.

~~4.25.2~~ In compliance with California Civil Code of Procedure 415.20, SANDAG will also accept service of a summons and complaint upon one of its employees at its offices under the substituted services of process method provided for in that statute.

~~4.35.3~~ Whenever SANDAG, as employer, is served with a garnishment and wage attachment, the server should be instructed to present such document to SANDAG's Office of General Counsel.

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<sup>1</sup> Should a vote of the Board be required to determine the majority opinion, the vote will be made by tally vote, with each member agency being treated as a constituent acting on behalf of SANDAG.

## **5.6. Execution of ~~Litigation or Alternative Dispute Resolution~~ Documents**

~~6.1~~ All pleadings, discovery, and other documents that are filed with a court, arbitrator, or other alternative dispute resolution authority on behalf of SANDAG shall be signed by the Office of General Counsel and/or the CEO or his/her designee.

~~5.16.2~~ All contract documents except those calling only for a no cost time extension of 30 days or less shall be reviewed and executed by an attorney in the Office of General Counsel. For purposes of this policy, a contract document is any written document, whether or not it contains a dollar amount, that states that SANDAG or its employees agree to carry out or refrain from one or more actions. Contract documents include, but are not limited to, Memoranda of Understanding, agreements for services, settlements, employment agreements, purchase orders, task orders, amendments, nondisclosure agreements, letters of intent regarding future transactions, and real property purchase agreements.

## **~~6.7.~~ Appearances on Behalf of SANDAG**

~~6.17.1~~ The CEO or his/her designee, in consultation with the Office of General Counsel, are authorized to appear on behalf of SANDAG in Small Claims Court.

~~6.27.2~~ The Office of General Counsel or outside counsel hired by the Office of General Counsel is authorized to appear or file documents on behalf of SANDAG in court proceedings when insufficient time is available to inform the Board in closed session of the matter. The Office of General Counsel shall report to the CEO regarding the need for and outcome of such appearances or filings and report on the results on a monthly basis as either a delegated action or in a closed session item.

Adopted June 2003

Amended November 2004

Amended December 2006

Amended December 2008

Amended January 2010

Amended November 2014

Amended January 2017

Amended June 2021

Amended May 2024

Amended March 2025

OFFICIAL USE ONLY (Date/Time Stamp)	 <b>CLAIM FOR DAMAGES</b>	OFFICIAL USE ONLY Claim Number:
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Claims for death or injury to persons or personal property must be filed not later than six months after the occurrence. (Government Code §911.2)  
 Claims for any other cause of action (ex: contracts and real property) must be filed not later than one year after the occurrence. (Government Code §911.2)  
 Attach separate sheets, if necessary, to give full details and **sign each accompanying sheet.**

**Claim must be mailed or delivered to (Gov. Code §915a):**

San Diego Association of Governments  
 401 B Street, 8<sup>th</sup> Floor  
 San Diego, CA 92101  
 Attn: Clerk of the Board

\*Required fields per Government Code §910.

Other fields are optional, but will assist SANDAG in determining whether the claim has merit.

*Name of Claimant(s)				
*Home Address	*City	*State	*Zip	Home or Cell Phone No.
*Provide address to which Claimant desires notices to be sent. If same as above, leave blank.				
1. *How did the indebtedness, obligation, injury, damage or loss occur? Provide all details.				
2. Provide date, time and location of incident/occurrence.				
*Date:	Time:	*Location:		
3. *What particular act or omission by SANDAG or its employees do you claim caused the indebtedness, obligation, injury, damage or loss? Provide names of SANDAG employee(s), if known.				
4. *What indebtedness, obligation, injury, damage or loss do you claim resulted? (If your Claim involves property damage to a vehicle, include license, year, make and model of vehicle.)				

5. For personal injury claims, if eligible for Medicare, the following information is required pursuant to Section 111 of the Medicare, Medicaid and SHIP Extension (MMSEA) Act of 2007:		
Date of Birth:	Social Security Number:	Medicare Beneficiary Number (if applicable):

6. *What is the total amount of money you are seeking to recover? (Check one of the boxes below.)	
<input type="checkbox"/>	The total amount claimed is less than or equal to \$10,000.
<input type="checkbox"/>	The total amount claimed is more than \$10,000, but not over \$25,000; jurisdiction rests in Superior Court (Limited Civil).
<input type="checkbox"/>	The total amount claimed is more than \$25,000; jurisdiction rests in Superior Court (Unlimited Civil).

7. \*If the claim is less than or equal to \$10,000, give the PRESENT AMOUNT you claim for each item of indebtedness, obligation, injury, damage or loss and basis of the computation (ex: bills, receipts, invoices, etc.). Please attach documents.


8. \*Give the ESTIMATED AMOUNT you claim for each item of prospective (future) indebtedness, obligation, injury, damage or loss as far as you know. Give basis of the computation.


9. Provide name of insurance company and contact information for insurance agent. Provide amounts of insurance payments you have received, if any.


10. Provide name and address of witnesses, doctors and hospitals, if applicable.

Name	Address	Phone Number

**WARNING: IT IS A CRIMINAL OFFENSE TO FILE A FALSE CLAIM  
(Penal Code § 72; Insurance Code § 556.1)**

I have read the matters and statements made in the above claim and I know the same to be true of my own knowledge, except as to those matters stated upon information or belief and as to such matters, I believe the same to be true. I certify under penalty of perjury that the foregoing is TRUE and CORRECT.

Name of Agent (if on behalf of Claimant)			
Address of Agent		City	State    Zip
Office Phone Number	Fax Number	Cellular Phone Number	
*Signature of Claimant (or Agent)			Date

**NOTE: Is this Claim being submitted on behalf of a Class (i.e., more than one person)?  
If so, pursuant to Government Code §910, please attach to this claim, on a separate  
sheet, the applicable information for each Claimant.**

Agency Name	No. of Employees	Annual Budget	Primary Responsibilities	Employee or Contractor	Appointing Authority
Sacramento Regional Transit District	1300	\$2.17B	Builds and operates transit infrastructure	Employee	Chief Executive
San Diego Metropolitan Transit System	1800	\$692M	Builds and operates transit infrastructure, regulate taxi services	Employee	Chief Executive
San Diego North County Transit District	250	\$188M	Builds and operates transit infrastructure	Employee	Governing Body
Orange County Transportation Authority	1500	\$1.76B	Sales tax authority, toll operator, transit operator, builds public infrastructure	Independent Contractor <sup>1</sup>	Governing Body
San Diego Unified Port District	550	\$315M	Oversees park space and concessions along coast, manages two cargo facilities and one cruise facility	Employee	Governing Body
Southern California Association of Governments	200 (86 governing board members)	\$427M	MPO	Employee for staff	Chief Executive
				Independent Contractor for Board	Governing Body
Sacramento Council of Governments	60	\$50M	MPO	Independent Contractor	Governing Body
Metropolitan Transportation Commission / Assoc. of Bay Area Governments	400	\$1.5B	MPO, COG, freeway and bridge toll operator, housing and infrastructure financing, some capital projects, JPA that purchases natural gas	Employee	Governing Body

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<sup>1</sup> Contract is with a law firm versus an attorney. Term is for 15 years with a 15-year option.



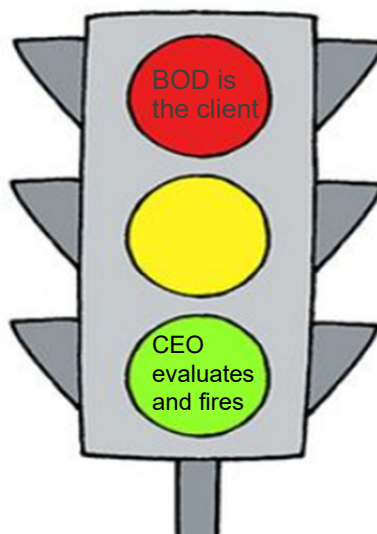


## Proposed Amendments to Board Policy No. 008 and General Counsel Hiring Options

Executive Committee | Item Number 6B  
Julie Wiley, Senior Counsel  
Friday, March 14, 2025

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### Mixed Signals on Duty of Loyalty



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## Proposed Amendments to Board Policy No. 008

- Clarifies that the Board will be the appointing authority whether using an employee or independent contractor model
- Addresses duty of loyalty and client conflicts based on California Professional Rules of Conduct
- Adds language in response to OIPA recommendation regarding Office of General Counsel reviewing more contracts to reduce agency risk

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## Research Sources

- Surveys and Interviews:
  - Sacramento Regional Transit District
  - San Diego Metropolitan Transit System
  - San Diego North County Transit District
  - Orange County Transportation Authority
  - San Diego Unified Port District
  - Southern California Association of Governments
  - Sacramento Council of Governments
  - Metropolitan Transportation Commission/Assoc. of Bay Area Governments
- League of California Cities 2022 Publication:
  - Counsel and Council: A Guide to Building a Productive City Attorney-City Council Relationship

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## Considerations for Independent Contractor Model

- Need to rely on in-house attorneys to brief General Counsel and vice versa
- Initiative and planning required to ensure General Counsel is present for project meetings
- Staff coaching crucial to avoid stigma of bringing an “outsider” in and incurring more fees on a project
- Extra care needed to define role of General Counsel versus chief in-house legal counsel:
  - During public meetings
  - With the public
  - When there is litigation

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## Employee or Independent Contractor?

### Employee

- Opportunistic Advisor
- Open door availability
- Advance knowledge
- Multi-purpose employee
- No other clients
- 4-6 month hiring timeline
- Cost already built into budget
- Interviews can be done by subcommittee or by full Board in closed session

### Independent Contractor

- Easier to terminate
- Deeper bench of knowledge possible
- Method needed to ensure transfer of institutional knowledge
- 6-8 month hiring timeline
- \$192-250K per year minimum additional cost
- Interviews must be done by subcommittee

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## Stay connected with SANDAG

- Explore our website  
[SANDAG.org](https://SANDAG.org)
- 🔍 Follow us on social media:  
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- ✉ Email: [Julie.Wiley@sandag.org](mailto:Julie.Wiley@sandag.org)

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