

LNRA BOARD POLICY
304 – PROCUREMENT

304.10 PURPOSE

The purpose of this policy is to provide guidance to the LNRA Board of Directors and employees regarding the procurement of equipment, goods, or services and entering into contracts on behalf of LNRA.

304.20 POLICY

304.201 SCOPE

This policy does not apply to the procurement of real property, water, or water rights.

304.202 CONFLICTS OF INTEREST

LNRA shall not procure any equipment, goods, or services in violation with the LNRA Board Policy 301 – Ethics and Conflict of Interest.

304.203 RIGHT TO WORK

While procuring goods or services, awarding a contract, or overseeing procurement or construction for a public work or public improvement, the LNRA:

- May not consider whether a vendor is a member of or has another relationship with any organization; and
- Shall ensure that its bid specifications and any subsequent contract or other agreement do not deny or diminish the right of a person to work because of the person's membership or other relationship status with respect to any organization.

304.30 PROCUREMENT OF EQUIPMENT, GOODS, SERVICES AND CONSTRUCTION CONTRACTS

304.301 SCOPE

Sections 304.301 – 304.310 of this policy does not apply to:

- Equipment, materials, or machinery purchased by the LNRA at an auction that is open to the public;
- Contracts for consultant or professional services or for a utility service operator;
- Purchase of equipment, goods, services or property for which there is only one

source or for which it is otherwise impracticable to obtain competition;

- Contracts for the purchase of electricity for use by LNRA;
- Purchase of materials, supplies, services or equipment pursuant to Local Government Code 271.101 - 271.102, Cooperative Purchasing Program; or
- Contracts for services related to compliance with a state or federal construction storm water requirement, including acquisition of permits, construction, repair, and removal of temporary erosion devices, cleaning of silt and debris from streets and storm sewers, monitoring of construction sites, and preparation and filing of all required reports.

304.302 CONTRACT PLANS AND SPECIFICATIONS

Contract documents shall be prepared in general conformance with those adopted and recommended by the Texas Section of the American Society of Civil Engineers (latest revision). At a minimum, the following requirements shall apply:

- The contract documents must be prepared in such a manner as to promote competitive bidding and to ensure that all bids are prepared on a common basis.
- The contract must include a section that contains instructions to bidders and that gives special attention to the following:
 - (1) The basis of the award shall be clearly defined. If alternate proposals are to be considered, the instructions to bidders shall clearly state in which order the alternates will be considered in determining the most advantageous bid. If two or more contracts are to be awarded, the instructions to bidders shall clearly indicate if combined bids, or tied bids, will be allowed, or if each contract will be awarded separately.
 - (2) The contract should clearly provide that alternate bids will not be considered, unless specifically allowed by instructions to bidders and requested in the proposal form.
 - (3) Specific notice shall be given that qualifying statements or accompanying qualifying letters will be cause of rejection of the bid.
 - (4) Provision shall be made for prospective bidders to request additional information, explanations, or interpretations regarding contract documents prior to the bid opening. All requests and answers to all such requests shall be given in writing. Answers will be in addendum form to all prospective bidders.

Contracts for construction work must contain, incorporate by reference, or have attached to them the specifications, plans, and details for work included in the contracts. All construction contract

work shall be performed in accordance with these plans and specifications or with authorized change orders under the supervision of the Board of Directors or the General Manager.

Upon written request, LNRA shall furnish a copy of the engineer's report or contract plans and specifications to any person desiring to bid on a construction contract. LNRA may charge a reasonable fee to cover the cost of making the copy.

Contracts for construction work may include economic incentives for early completion of the work or economic disincentives for late completion of the work.

304.303 QUALIFICATION OF BIDDERS

The LNRA may adopt minimum criteria for the qualifications of bidders on its construction contracts.

The LNRA may require a bidder to submit a statement of qualifications. The statement shall include such data as the LNRA may reasonably require to determine whether the contractor is responsible and capable of completing the proposed project.

The LNRA may require attendance by a principal of each prospective bidder at mandatory pre-bid conferences and may make any reasonable additional requirements it deems appropriate to obtain competitive bids from responsible contractors and to minimize contract disputes.

304.304 TWO PERCENT DEPOSIT REQUIRED ON BIDS FOR CONTRACTS OVER \$50,000

For contracts over \$50,000 a bidder must submit a certified or cashier's check on a responsible bank in the state equal to at least two percent of the total amount of the bid or a bid bond of at least two percent of the total amount of the bid issued by a surety legally authorized to do business in the state. If cashier's checks are required, the checks for all bidders except the three most qualified bidders shall be returned within three days of the bid opening. For a contract for more than \$250,000, LNRA must accept a bid bond as a bid deposit if it meets the requirements of this Policy. If the successful bidder fails or refuses to enter into a proper contract with the LNRA or if it fails or refuses to furnish the payment and performance bonds that are required by law, it forfeits its deposit.

304.305 ADVERTISING AND BIDDING REQUIREMENTS

A contract may cover all the work to be provided for the LNRA, or the various elements of the work may be segregated for the purpose of receiving bids. A contract may also provide that the work will be completed in stages over a period of years. The LNRA may not, however, subdivide work to avoid advertising and bidding requirements.

For equipment, goods, services and contracts for \$150,000 or more, the LNRA shall advertise the letting of the contract, including the general conditions, time, and place of opening of sealed bids. The notice shall be published in any newspaper with general circulation in Jackson County. The notice must be published once a week for two consecutive weeks before the date that the bids are opened, and the first publication must be not later than the fourteenth day before the date of the opening of the sealed bids. The bidding documents, plans, specifications, and other data needed to bid on the project must be available at the time of the first advertisement, and the advertisement shall state the location at which these documents may be reviewed.

For equipment, goods, services and contracts for \$25,000 or more but less than \$150,000, the LNRA shall solicit written competitive bids on uniform written specifications from at least three bidders.

For equipment, goods, services and contracts of more than \$500 but less than \$25,000, LNRA will seek phone bids.

The LNRA may not accept bids that include substituted items unless the substituted items were included in the original bid proposal and all bidders had the opportunity to bid on the substituted items or unless notice is given to all bidders at a mandatory pre-bid conference.

The LNRA is not required to advertise or seek competitive bids for the repair of its facilities if the scope or extent of the repair work cannot be readily ascertained or if the nature of the repair work does not readily lend itself to competitive bidding.

LNRA is not required to advertise or seek competitive bids for security or surveillance systems or components of or additions to LNRA facilities relating to security or surveillance, including systems used for the prevention of terrorist or criminal acts and incidents or acts of war, if the Board finds that doing so would compromise the safety and security of LNRA facilities or residents.

LNRA may use the reverse auction procedure, as defined by section 2155.062(d), Government Code, for purchasing.

304.306 PREFERENCE GIVEN TO USE OF RECYCLED MATERIALS

In compliance with current law, LNRA will give preference to products manufactured or produced containing recycled materials when procuring consumable office products and cleaning supplies and/or building materials. Cost, quality, reliability, and overall value should be considered when evaluating the use or incorporation of recycled products.

304.307 PREFERENCE GIVEN TO LOCAL SUPPLIERS

LNRA will give preference to suppliers in Jackson County when evaluating competitive bids.

304.308 PAYMENT AND PERFORMANCE BONDS

Those to whom construction contracts are awarded must give good and sufficient performance and payment bonds.

The LNRA may adopt minimum criteria for the qualifications of sureties issuing payment and performance bonds. It may not, however, require that a contractor obtain a surety bond from any specific insurance or surety company, agent, or broker. The criteria may include:

- Authorization to do business in Texas; and
- Authorization to issue payment and performance bonds in the amount required for the contract and:
 - (1) a rating of at least A from Best’s Key Rating Guide; or
 - (2) if the surety company does not have any such rating due to the length of time it has been a surety company, it must demonstrate eligibility to participate in the surety bond guarantee program of the Small Business Administration and must be an approved surety company listed in the current United States Department of Treasury Circular 570. Such performance and payment bonds shall meet the criteria contained in the rules and regulations promulgated by the United States Department of Treasury with respect to performance and payment bonds for federal jobs, including specifically the rules related to the underwriting limitation. The LNRA shall satisfy itself that such surety company and bonds meet such criteria.

The LNRA shall satisfy itself that all persons executing the bonds are duly authorized by the laws of the State of Texas and the surety company to do so.

- A “performance bond” is:
 - (1) solely for the protection of the LNRA;
 - (2) in the amount of the contract; and
 - (3) conditioned on the faithful performance of the work in accordance with the plans, specifications, and contract documents.
- A “payment bond” is
 - (1) solely for the protection and use of the payment bond beneficiaries who have a direct contractual relationship with the prime contractor or a subcontractor to supply public work, labor or material; and
 - (2) in the amount of the contract.

For contracts in excess of \$100,000, the LNRA shall require the contractor, before beginning work, to execute to the LNRA a performance bond.

For contracts in excess of \$25,000, the LNRA shall require the contractor, before beginning work, to execute to the LNRA a payment bond.

The LNRA shall require that bidders submit, along with the bid, the name of the person, firm, or corporation that will execute payment and performance bonds.

304.309 CHANGE ORDERS

If changes in plans or specifications are necessary after the performance of the contract is begun, or if it is necessary to decrease or increase the quantity of the work to be performed or of the materials, equipment, or supplies to be furnished, the Board of Directors or the General Manager may approve change orders making the changes. The Board grants authority to the General Manager to approve a change order that involves an increase or decrease of \$150,000 or less. The aggregate of the change orders may not increase the original contract price by more than 25 percent.

A vendor or subcontractor may elect not to proceed with additional work directed by the LNRA or property owner if they have not received a written fully executed change order and the value of the work exceeds 10% of the original contract amount. The contractor or subcontractor is not responsible for any damages associated with the election not to proceed.

The Board of Directors shall approve all change orders that increase the overall project cost.

Change orders may be issued (i) as a result of unanticipated conditions encountered during construction, repair, or renovation; (ii) as a result of changes in regulatory criteria; or (iii) to facilitate project coordination with other political entities.

304.310 PAYMENTS FOR CONSTRUCTION WORK

The LNRA shall make progress payments under construction contracts monthly as the work proceeds or at more frequent intervals as determined by the contract specifications. Payments will be made based on pay requests submitted by the contractor and approved by the General Manager.

If requested by the LNRA, the contractor shall furnish a breakdown of the total contract price showing the amount included for each principal category of the work, in such detail as requested, to provide a basis for determining progress payments.

304.311 RETAINAGE AND INTEREST ON RETAINAGE

Except as set forth below, contract retainage may not be less than five percent of the estimate of the contract price at the time of execution.

In making progress payments, ten percent of the estimated amount shall be retained by the LNRA until final completion and acceptance of the contract work. However, if the General Manager, at any time after fifty percent of the work has been completed, finds that satisfactory progress is being made, may authorize any of the remaining progress payments to be made in full. Also, if the work is substantially complete, the General Manager, if it finds the amount retained to be in excess of the amount adequate for the protection of the LNRA, may release to the contractor all or a portion of the excess amount. The LNRA is not obligated to pay interest on amounts retained except as provided herein. The LNRA is not obligated to pay interest on the

ten percent retainage held on the first fifty percent of work completed. If the LNRA holds any retainage on the remaining fifty percent of the work completed, it shall pay interest on such retainage from the date the retainage is withheld to the date of payment to the contractor. The interest rate to be paid on such retainage shall be the rate of interest paid by the LNRA's depository bank on interest bearing accounts of similar amounts during the period of time interest accrues as provided herein. On completion and acceptance of each separate project, public work, or other division of the contract, on which the price is stated separately in the contract, payment may be made without retention of a percentage.

304.312 HIGH TECHNOLOGY PROCUREMENTS

A high technology procurement requiring an expenditure of more than \$50,000 must use the reverse auction procedures as defined by Section 2155.062(d), Government Code, for purchase, or comply with Alternative Procurement methods in section 304.40 of this policy.

304.313 PROCEDURES TO RECEIVE BIDS THROUGH ELECTRONIC TRANSMISSION

In accordance with section 49.2731 of the Water Code, LNRA may receive bids electronically. LNRA will ensure the identification, security, and confidentiality of electronic bids and that the electronic bids remain effectively sealed and unopened until the proper time.

Identification. Invitation to Bids and Requests for Proposals will be advertised as provided under Policy 304. A notification will be added to bid terms and conditions stating vendors may submit responses electronically through LNRA's service provider at the appropriate electronic address identified. An automatic "e-mail response notification" will be sent to the submitting vendor upon electronic receipt of the vendor's bid or proposal.

Security. All bids or proposals received electronically before the time set for bid opening will be kept secure in restricted-access electronic bid folder. Access to the electronically transmitted proposal will be password restricted. At specified bid closing time, a member of the Authority's Administrative Team with an authorized user account and password, will open, download, and print all bids. The printing operation will occur in the controlled environment of the Administrative Supply Room. A bid submitted non-electronically within the bidding period will be considered as per the bid and proposal document terms and conditions.

Confidentiality. The downloaded bid will be secured and kept confidential until bid opening. The purchasing staff person will then read aloud all bid responses received by closing time and date to any interested parties present at the bid opening. After tabulation of bids or proposal, staff will prepare bid tabulation with a qualifying statement: "The tabulation listing of a bid should not be construed as a comment on its responsiveness or an indication that LNRA accepts such bid as responsive." After evaluating bids or proposals, LNRA will provide tabulation and staff award recommendation of the contract to LNRA Board of Directors for action. The tabulation and staff recommendation will be provided upon request.

304.40 ALTERNATIVE PROCUREMENT METHODS OF CONTRACTS FOR THE

**CONSTRUCTION, REHABILITATION, ALTERATION, OR REPAIR SERVICES OF A
“PUBLIC WORKS” AND FOR CERTAIN HIGH TECHNOLOGY
PROCUREMENTS 304.401 SCOPE**

The provisions of 304.401, by virtue of the Board’s adoption thereof, signifies that the Board has elected that these methods for construction contracting shall control over and supersede any otherwise applicable regulation that conflicts with 304.401 and that requires the use of competitive bidding, competitive sealed proposals, or certain procurement methods described under Section 304.40 through 304.50 of this policy.

304.401 applies to a public work contract made by LNRA.

301.401 applies to a high technology procurement requiring an expenditure of more than \$50,000.

A “facility” means an improvement to real property.

A “public work contract” means a contract for constructing, altering, or repairing a public building or carrying out or completing any public work.

304.402 ALTERNATE METHODS OF PROCUREMENT OF CONSTRUCTION SERVICES

The LNRA may use any of the following methods, as more fully set below that provides it with the best value when contracting for the construction, rehabilitation, alteration, or repair of a facility:

- Competitive bidding;
- Competitive sealed proposals for construction services;
- A design-build contract;

The LNRA may also use methods set out and using the steps prescribed in Government Code Chapter 2267, including:

- Construction Manager-Agent method
- Construction Manager-At-Risk method
- Job Order Contracts method

Except as otherwise provided herein, the LNRA, in connection with the award of a contract, may consider:

- The purchase price;
- The reputation and experience of the offeror and of the vendor’s goods or services;

- The quality of the offeror's goods or services;
- The offeror's proposed personnel;
- The offeror's safety record;
- The impact of the ability of the LNRA to comply with rules relating to historically underutilized businesses;
- Whether the offeror's financial capability is appropriate to the size and scope of the project; and
- Any other relevant factor specifically listed in the request for bids, qualifications, or proposals.

In determining the award of a contract under this chapter, the governmental entity shall:

- (1) consider and apply any existing laws, including any criteria, related to historically underutilized businesses; and
- (2) consider and apply any existing laws, rules, or applicable municipal charters, including laws applicable to local governments, related to the use of women, minority, small, or disadvantaged businesses.

304.403 PROCUREMENT METHODS *OTHER THAN* COMPETITIVE BIDDING

If the LNRA is considering a construction method other than competitive bidding, it must, before advertising, determine which method provides the best value.

LNRA shall base its selection among offerors on applicable criteria listed for the particular method used. LNRA shall publish in the request for proposals or qualifications the criteria that will be used to evaluate the offerors, and the applicable weighted value for each criterion. LNRA shall document the basis of its selection and shall make the evaluations public not later than the seventh day after the date the contract is awarded.

304.404 AWARD OF CONTRACT

LNRA shall base its selection among offerors on applicable criteria listed for the particular method used. The LNRA shall publish in its request for bids, proposals, or qualifications all the criteria that will be used to evaluate the offerors and the relative weights given to the criteria. The LNRA shall document the basis of its selection and shall make the evaluations public not later than the seventh day after the date the contract is awarded.

304.405 ADVERTISING REQUIREMENTS

Appropriate public notice must be given, regardless of the procurement method utilized. The LNRA shall publish notice of the time and place the bids or proposals, or the responses to a request for qualifications, will be received and opened. The notice must be published in a newspaper of general circulation in Jackson County once each week for at least two weeks before the deadline for receiving bids, proposals, or responses. In a two-step procurement process, the time and place that the second step bids, proposals, or responses will be received are not required to be published separately.

304.4051 USE OF OTHER PROFESSIONAL SERVICES

The LNRA shall provide or contract for, independently of the contractor, construction manager-at-risk, or design build firm, the inspection services, the testing of construction materials engineering, and the verification testing services necessary for acceptance of the facility. To the extent the LNRA must contract for these services, it shall do so in compliance with the *Professional Services Procurement Act*, Texas Government Code, Section 2254.04.

304.406 COMPETITIVE BIDDING METHOD

LNRA entity shall select or designate an architect or engineer in accordance with Chapter 1051 or 1001, Occupations Code, as applicable, to prepare the construction documents required for a project to be awarded by competitive bidding.

LNRA shall prepare a request for competitive bids that includes construction documents, estimated budget, project scope, estimated project completion date, and other information that a contractor may be required to submit a bid.

Competitive bids may be opened only by the Board of Directors at a public meeting or by an officer or employee of the LNRA at or in an office of the LNRA. LNRA shall receive publicly open, and read aloud, the name of the offerors and their bids. A bid that has been opened may not be changed for the purpose of correcting an error in the bid price. A bidder may, however, withdraw a bid resulting from a material mistake in the bid.

The LNRA is entitled to reject any and all bids.

The LNRA shall award a competitively bid contract for construction, alteration, rehabilitation, or repair of a facility by awarding the contract to the lowest responsible bidder according to the selection criteria that were established by the LNRA.

In determining who is a responsible bidder, the LNRA shall consider the criteria listed in section 304.402 of this provision. Among the criteria, may take into account the safety record of the bidder; of the firm, corporation, partnership, or institution represented by the bidder; or of anyone acting for such a firm, corporation, partnership, or institution if:

- The LNRA has adopted a written definition and criteria for accurately determining the safety record of a bidder;
- The Board of Directors has given notice to prospective bidders in the bid specifications that the safety record of a bidder may be considered in determining the responsibility of the bidder; and

The determinations are not arbitrary and capricious.

Not later than the seventh day after the date the contract is awarded, LNRA shall document the basis of its selection and shall make public the evaluations.

304.407 COMPETITIVE SEALED PROPOSALS METHOD

The LNRA shall select an engineer or architect to prepare the construction documents for the project. If the engineer or architect is not a full-time employee of the LNRA, he must be selected in accordance with the provisions of chapter 2254, subchapter A of the *Texas Government Code*, *i.e.*, the *Professional Services Procurement Act*. To the extent the LNRA must contract with an engineer or architect, it must do so through requests for proposals. The LNRA must first select the most highly qualified engineer or architect on the basis of demonstrated competence and qualifications and then attempt to negotiate with him a contract at a fair and reasonable price. If a satisfactory contract cannot be negotiated with the most highly qualified engineer or architect, the LNRA shall formally end negotiations with that provider, select the next most highly qualified engineer or architect, and attempt to negotiate a contract with that provider at a fair and reasonable price. The LNRA shall continue this process until a contract is made.

The LNRA shall prepare a request for competitive sealed proposals that includes construction documents, selection criteria, estimated budget, project scope, schedule including estimated project completion date, and other information that contractors may require to respond to the request. The LNRA shall state in the request for proposals the selection criteria and the weighted value for each criterion that will be used in selecting the successful offeror.

The LNRA shall receive, publicly open, and read aloud the names of the offerors and any monetary proposals in each proposal. Not later than the forty-fifth day after the date of opening the proposals, the LNRA shall evaluate and rank each proposal submitted in relation to the published selection criteria.

The LNRA shall select the offeror that offers the best value for the LNRA based on the published selection criteria and the weighted value for those criteria and on its ranking evaluation. In determining what constitutes the “best value,” the LNRA is not limited to considering price alone; it may also consider any other factor stated in its selection criteria. The LNRA shall first attempt to negotiate a contract with the selected offeror. The LNRA and its engineer or architect may discuss with the selected offeror options for a scope or time modification and any price change associated with the modification. If the LNRA is unable to negotiate a contract with the selected offeror, it shall, formally and in writing, end negotiations with that offeror and proceed to the next offeror in the order of the selection ranking until a contract is reached or all proposals are rejected.

304.408 DESIGN-BUILD CONTRACTS METHOD

The design build method applies only to a facility that is a building or an associated structure, including an electric utility structure. The design build method does not apply to:

- (1) a highway, road, street, bridge, underground utility, water supply project, water plant, wastewater plant, water and wastewater distribution or conveyance facility, wharf, dock, airport runway or taxiway, drainage project, or related type of project associated with civil engineering construction; or
- (2) a building or structure that is incidental to a project that is primarily a civil engineering construction project.

LNRA may use the design build method for the construction, rehabilitation, alternation, or repair of a building or associated structure only as provided by this policy. In using that method, LNRA shall enter into a single contract with a design build firm for the design and construction of the building or associated structure. A design build firm must be a sole proprietorship, partnership, corporation, or other legal entity or team that includes an architect or engineer and a construction contractor.

The LNRA shall select an engineer or architect independent of the design-build firm to act as its representative for the duration of the work on the facility. If the engineer or architect is not a full-time employee of the LNRA, he must be selected through requests for proposals. The LNRA must first select the most highly qualified engineer or architect on the basis of demonstrated competence and qualifications and then attempt to negotiate with him a contract at a fair and reasonable price. If a satisfactory contract cannot be negotiated with the most highly qualified engineer or architect, the LNRA shall formally end negotiations with that provider, select the next most highly qualified engineer or architect, and attempt to negotiate a contract with that provider at a fair and reasonable price. The LNRA shall continue this process until a contract is made.

The LNRA shall prepare a request for qualifications that includes general information on the project site, project scope, budget, special systems, selection criteria and the weighted value of each criterion, and other information that may assist potential design-build firms in submitting proposals for the project. The LNRA shall also prepare a design criteria package that includes more detailed information on the project. If the preparation of the design criteria package requires engineering or architectural services that constitutes the practice of engineering, those services shall be provided in accordance with applicable law.

The design criteria package must include a set of documents that provides sufficient information, including criteria for selection, to permit a design build firm to prepare a response to LNRA's request for qualifications and to provide any additional information requested. The design criteria package must specify criteria LNRA considers necessary to describe the project and may include, as appropriate, the legal description of the site, survey information concerning the site, interior space requirements, special material requirements, material quality standards, conceptual criteria for the project, special equipment requirements, cost or budget estimates, time schedules, quality assurance and quality control requirements, site development requirements, applicable codes and ordinances, provisions for utilities, parking requirements, and any other requirement. LNRA entity may not require offerors to submit architectural or engineering designs as part of a

proposal or a response to a request for qualifications.

The LNRA shall evaluate statements of qualifications and select a design-build firm in two phases.

In the first phase, for each design build firm that responded to the request for qualifications, LNRA shall evaluate each offeror's experience, technical competence, and capability to perform, the past performance of the offeror's team and members of the team, and other appropriate factors submitted by the team or firm in response to the request for qualifications, except that cost-related or price-related evaluation factors are not permitted. Each offeror must certify to the LNRA that each engineer or architect that is a member of its team was selected based on demonstrated competence and qualifications in the manner provided by § 2254.004 of the *Professional Services Procurement Act*. The LNRA shall qualify a maximum of five offerors to submit additional information and, if the LNRA chooses, to interview for final selection.

In the second phase, the LNRA shall evaluate the information submitted by the offerors on the basis of the selection criteria stated in the request for qualifications and the results of an interview. The LNRA may request additional information regarding demonstrated competence and qualifications, considerations of the safety and long-term durability of the project as proposed, the ability of the offeror to meet schedules, or costing methodology. "Costing methodology" means an offeror's policies on subcontracting markup, definition of general conditions, range of cost for general conditions, policies on retainage, policies on contingencies, discount for prompt payment, and expected staffing for administrative duties. The term does not include a guaranteed minimum price or bid for overall design or construction. The LNRA may not require offerors to submit detailed engineering or architectural designs as part of the proposal. The LNRA shall rank each proposal submitted on the basis of the criteria set forth in the request for qualifications. The LNRA shall select the design-build firm that submits the proposal offering the best value for the LNRA on the basis of the published selection criteria and on its ranking evaluations. The LNRA shall first attempt to negotiate a contract with the selected offeror. If the LNRA is unable to negotiate a satisfactory contract with the selected offeror, it shall, formally and in writing, end negotiations with that offeror and proceed to negotiate with the next offeror in the order of the selection ranking until a contract is reached or negotiations with all ranked offerors end. Not later than the seventh day after the date the contract is awarded, LNRA shall make the rankings public.

Following the selection of a design-build firm, that firm's engineers or architects shall complete the design, submitting all design elements for review and determination of scope compliance to the LNRA or the LNRA's engineer or architect before or concurrently with construction.

An engineer shall have responsibility for compliance with the engineering design requirements and all other applicable requirements of Chapter 1001, Occupations Code. An architect shall have responsibility for compliance with the requirements of Chapter 1051, Occupations Code.

The LNRA shall provide or contract for, independently of the design-build firm, the inspection services, the testing of construction materials engineering, and the verification testing services necessary for acceptance of the facility. To the extent it must contract for these services, the LNRA must do so in compliance with § 2254.004 of the *Professional Services Procurement Act*.

The design-build firm shall supply a signed and sealed set of construction documents for the project to the LNRA at the conclusion of construction.

A payment or performance bond is not required for, and may not provide coverage for, the portion of a design-build contract under this policy that includes design services only. If a fixed contract amount or guaranteed maximum price has not been determined at the time a design-build contract is awarded, the penal sums of the performance and payment bonds delivered to the LNRA must each be in an amount equal to the project budget, as specified in the design criteria package. The design-build firm shall deliver the bonds not later than the tenth day after the date the design-build firm executes the contract unless the design-build firm furnishes a bid bond or other financial security acceptable to the LNRA to ensure that the design-build firm will furnish the required performance and payment bonds when a guaranteed maximum price is established.

304.409 CONSTRUCTION MANAGEMENT-AGENT; CONSTRUCTION MANAGER-AT-RISK; AND, JOB ORDER CONTRACTS

In addition to competitive bidding, competitive sealed proposals and design build, LNRA may use the construction services methods specified under Chapter 2267 of the Government Code including construction manager-agent, construction manager-at-risk, and job order contracts. When LNRA considers a construction contract using a method authorized by Chapter 2267 of the Government Code other than competitive bidding, it must, before advertising, determine which method provides the best value for LNRA. LNRA shall base its selection among offerors on applicable criteria listed for the particular method used. LNRA shall publish in the request for proposals or qualifications the criteria that will be used to evaluate the offerors, and the applicable weighted value for each criterion. LNRA shall document the basis of its selection and shall make the evaluations public not later than the seventh day after the date the contract is awarded.

304.410 EFFECT OF VIOLATION OF POLICY

A contract entered into in violation of this policy is against public policy and is void.

304.50 DELEGATION TO GENERAL MANAGER AND RESPONSIBILITY TO PROCURE EQUIPMENT, GOODS, AND SERVICES

304.501 SCOPE

The General Manager shall have the authority and responsibility to procure equipment, goods, or services including construction services and enter into contracts on behalf of the LNRA subject only to the LNRA enabling act, LNRA Bylaws, board policies and resolutions, and other applicable law. The General Manager is designated as the LNRA representative regarding an action authorized or required by this policy and shall exercise such authority and responsibility subject to the above-mentioned limitations and conditions. The delegation described herein shall constitute notice of delegation required under section 2267.053 of the Texas Government Code.

Effective: July 23, 2003, Amended April 21, 2004, Amended October 17, 2007, Amended September 19, 2012, Amended September 18, 2013, July 15, 2020, September 20, 2023.