


LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY

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DATE: AUGUST 9, 2016 
FROM: KATHLEEN ROLLINGS-McDONALD, Executive Officer
SAMUEL MARTINEZ, Assistant Executive Officer
TO: LOCAL AGENCY FORMATION COMMISSION

SUBJECT: Agenda Item #9: Review and Consideration of Policy Updates
Related to Approval of SB 239 – Contracts for the Provisions of Fire
Protection

RECOMMENDATION:

Staff recommends that the Commission:

1. Approve the proposed policies and procedures for fire protection contracts pursuant to Government Code Section 56134 as included in Attachment #2;
2. Approve the new Application for Fire Protection Service by Contract form to be used for fire protection contracts pursuant to Government Code Section 56134 as included in Attachment #3; and,
3. Adopt LAFCO Resolution No. 3233 reflecting the changes to the Policy and Procedure Manual and direct the Executive Officer to distribute to affected and interested parties and to update the Commission Website.

BACKGROUND:

Senate Bill (SB) 239 (copy included as Attachment #1), authored by Senator Robert Hertzberg, added Section 56134 to the LAFCO statutes addressing fire protection contracts, specifically addressing contracts between two or more public agencies—both local and state agencies—for the delivery of fire protection and emergency medical response. Prior to this bill being enacted, such a contract between two (or more) public agencies would have been processed as an exemption from LAFCO review pursuant to Government Code Section 56133(e)(1).

The new law became effective January 1, 2016, adding new procedures for processing fire protection contracts when either of the following conditions are met:

1. The agreement/contract transfers service responsibility of more than 25 percent of an affected public agency's service area; or
2. The agreement/contract affects more than 25 percent of the employees of an affected public agency.

If one (or both) of these thresholds are met, the Commission is now required to review the agreement/contract at a noticed public hearing, and take action to approve, approve with conditions, or deny the request for approval of the fire protection contract.

DISCUSSION:

In order to implement SB 239, the bill's author encouraged each LAFCO to create local policies to best implement the law based on local conditions and/or other local policies. Therefore, staff is recommending that the Commission adopt policies and procedures implementing Section 56134 as a new chapter of the Application Processing section in its Policy and Procedure Manual (Section IV).

As suggested by the bill's author, staff consulted with the stakeholders who may be impacted by this new law. Following the continuation of this item in April 2016, LAFCO staff had initially reached out to the San Bernardino County Fire Protection District (County Fire) and then to all the other fire service providers in San Bernardino County (including CALFIRE) with a letter that was sent through the San Bernardino County Fire Chiefs' Association. A copy of the letter is included (without the attachments) as Attachment #4 to this report. Staff was also invited to make a presentation to the County Fire Chiefs' Association meeting that was held in Redlands on July 28, 2016.

CALFIRE Comments:

On August 4, 2016, LAFCO received a comment letter from CALFIRE on the proposed policies and procedures, which is included as Attachment #5 to this report. The following is staff's responses to their comments:

- CALFIRE has expressed the desire to have a single set of parameters throughout the State to address the consideration of an application under Government Code Section 56134. Staff's response is that a single set of policies to apply Statewide would be quite impossible to achieve since each LAFCO is unique and all have individual policies and procedures to implement the laws that govern it. In the staff's view this is the beauty of LAFCO law to address local circumstance and is a direct reflection of State's statutory direction as outlined in Government Code Section 56301. This is the reason why the bill's author encouraged the individual LAFCOs to create local policies to best implement SB 239 to reflect their local circumstance and condition.

- With regard to the definition of “Affected Public Agency”, LAFCO staff has clarified the policy to identify that the affected agency(ies) can mean the agency(ies) providing or receiving the new or extended fire protection service(s).
- The 25 percent service area and employee thresholds apply to any of the affected public agencies, whether it is the agency providing the service or the agency receiving the service.
- The policy requiring a letter of approval from the Director of Finance is the Commission’s proof that the fire protection contract application request, either by a state agency or a local agency currently under contract with a state agency, is approved by the Director of Finance.
- The meeting with the applicant, various County departments and other affected/interested public agencies is not a public hearing. This refers to an informal meeting that happens for all types of proposals submitted to this LAFCO. This meeting with LAFCO staff (not the Commission) is to discuss any technical issues related to the application, identify any missing documentation/materials, review comments provided from the different agencies, etc., before the item is placed on the Commission’s agenda. The hearing described in SB 239 and Section 56134 is the actual public hearing before the Commission, which has the 21-day noticing requirements and is subject to the Brown Act.
- The local policies are not intended to restate what the law already says. In the case of fire protection contracts, this is already defined in Section 56134(a)(1). Therefore, the additional text describing fire protection contracts will not be added to the local policies. However, staff agrees to add the text “changes the employment status of” to the background statement.

The changes identified above as accepted by staff have been included in the policies and procedures presented for Commission consideration. The following narrative discusses each of the sections to be added to Manual individually.

BACKGROUND:

Like most chapters in the Policy and Procedure Manual, staff is recommending a background section or preamble be added that encapsulates the purpose of the set of policies and procedures related to fire protection contracts which is proposed as follows:

BACKGROUND:

“Beginning January 1, 2016, a Local Agency Formation Commission has been charged with the responsibility for reviewing and taking action on fire protection contracts that either: transfers more than 25 percent of the service area of an affected public agency or changes the employment status of more than 25 percent of the employees of an affected public agency pursuant to Government

Code Section 56134. These are unique actions not directly related to the processing of other types of proposals and the following policies and procedures will provide guidance on their processing.”

POLICY DEFINITIONS:

There are certain terms within Section 56134 that are not defined by statute, which can lead to ambiguity or a difference in interpretation. Such terms need to be clearly defined as policies related to this section.

1. Public Agency is a term that is statutorily defined in Section 56070. However, in the context of fire protection contracts—which is not considered a change of organization/ reorganization—the term “*affected public agency*” needs to be defined as those agencies that are affected by the fire protection contract. This is necessary since other references related to “affected” such as affected city (Section 56011), affected district (Section 56013), or affected local agency (Section 56014), only refer to those agencies for which a change of organization or reorganization is proposed. Therefore, for the purpose of defining “*affected public agency*” pursuant to Section 56134, LAFCO staff is recommending that the Commission adopt the following definition as a policy:

““Affected Public Agency(ies)” for the purpose of fire protection contracts, shall be defined as the public agency(ies), as described pursuant to Government Code Section 56070, that is(are) affected by the fire protection contract, either as the agency providing or receiving the new or extended fire protection service(s).”

2. “*Changes the employment status...*” as reflected in Section 56134(a)(1)(B) can be interpreted in many ways including a change in employment status due to a transfer, a salary adjustment, modification of benefits, change of workhours, workload, etc. However, for the purpose of this section, an employment status change will be limited to the following: 1) employee transfer from one agency to another (inter-agency); 2) employee transfer from within an agency (intra-agency); and 3) an employee that is terminated as part of the agreement. Therefore, for the purpose of the term “*changes the employment status...*” pursuant to Section 56134, LAFCO staff is recommending that the Commission adopt the following definition as a policy:

““Employment Status” for the purpose of fire protection contracts, shall be defined as either inter-agency or intra-agency transfer of employee(s), and/or employee(s) whose employment is/are terminated as a result of the contract.”

3. The term “jurisdictional boundaries” is currently defined in Section 56134(a)(3) to include the territory protected by a fire protection contract entered prior to January 1, 2016. However, jurisdictional boundaries have usually been understood to mean the actual boundaries of an agency. Therefore, in order to clarify this interpretation, LAFCO staff is recommending that the Commission adopt the following definition as a policy:

“Jurisdictional boundary(ies)” for the purpose of fire protection contracts, shall be as defined pursuant to Government Code Section 56134(a)(3). Any other instance, jurisdictional boundary(ies) shall mean the actual boundaries of a public agency such as the corporate boundaries of a city or the boundary of a special district.”

IMPLEMENTATION POLICIES:

In order to determine the 25 percent threshold pursuant to Section 56134(a)(1)(A) and (B), LAFCO staff is recommending that the Commission adopt a policy that requires an applicant to provide documentation as to the threshold reached to require the Commission to review and take action on a fire protection contract:

“Documentation Required - The applicant must provide the Commission with documentation on whether the fire protection contract meets either threshold outlined in Government Code Section 56134(a)(1)(A) and (B):

- *Transfers service responsibility of more than 25 percent of an affected public agency’s service area; or,*
- *Changes the employment status of more than 25 percent of the employees of an affected public agency.*

If the area to be served by the fire protection contract is not the entire jurisdictional boundaries of an affected agency, a map of the contract area must be provided. If the fire protection contract affects more than 25 percent of the employees of an affected agency, a document with a listing of all employees for the affected agency that clearly identifies all the employees affected by the fire protection contract must be provided.”

Section 56134(c) requires that a public agency requesting approval of a fire protection contract must adopt a resolution of application. For a city or district, its legislative body must adopt a resolution of application. However, for a state agency, the director of the state agency is required to initiate the application and it is to be approved by the Director of Finance. Also, when the local agency currently contracts with a state agency, the application request must be initiated by resolution of application adopted by the local agency’s legislative body and it is also to be approved by the Director of Finance. Therefore, LAFCO staff is recommending that the Commission adopt a policy that specifies what is to be provided by a state agency and/or the Department of Finance.

“For a fire protection contract application request made by a state agency, the director of the state agency must provide a letter, addressed to the Commission, outlining the agency’s intent to provide service(s) outside its jurisdictional boundaries as defined by Government Code Section 56134. The letter must include, as an attachment, all supporting documents that are required to be

submitted for a fire protection contract. In the case where the Director of Finance must provide approval of the fire protection contract, the Director must provide a letter, addressed to the Commission, outlining its support for the fire protection contract application request.”

As outlined in Section 56134(d), a public agency shall not submit the resolution of application unless both of the following occur: 1) either the applicant obtains and submits written agreements from each affected public agency and each affected employee organization (i.e. professional firefighter’s organization) consenting to the fire protection contract, or at least 30 days prior to the hearing on the resolution of application, each affected agency and each recognized employee organization is provided written notice of the hearing and that the public hearing on the resolution of application is held; and 2) the applicant conducts an open public hearing on the resolution of application. Therefore, LAFCO staff is recommending that the Commission adopt a policy that specifies what is to be provided in order to verify compliance with this provision.

“The required written agreement from an affected public agency shall be in the form of a resolution adopted by its legislative body. The written agreement from the employee organization shall be in a form of a letter signed by the President of the employee organization. In the case of providing written notice, proof that the notice was provided or delivered to each affected agency and employee organization shall be in the form of a signed affidavit or any similar type of proof that the written notices were provided. Such proof must be included as part of the application submission. In addition, all documents related to the public hearing on the resolution of application including, but not limited to, a copy of the agenda, staff report, and meeting minutes must also be included as part of the application submission.”

The resolution of application must be submitted with a Plan for Service pursuant to Section 56134(e) as well as the required independent Fiscal Impact Analysis pursuant to Section 56134(f). LAFCO staff is recommending that the Commission adopt a policy that specifies what is to be included as part of the Plan for Service and independent Fiscal Impact Analysis.

“The Plan for Service must include, but is not limited to, all the required information as outlined in Government Code Section 56134(e). In addition, the required independent Fiscal Impact Analysis must include, at a minimum, the following:

- a five year projection of revenues and expenditures;*
- a discussion of the sufficiency of general existing revenues to provide the new or extended fire protection service; and,*
- a comprehensive review of all retirement plans impacting the affected agency/agencies and employees including any unfunded retirement*

obligations and the identification of retirement debt, if any, and the responsible agency or agencies to assume such debt.”

Extending the term of an existing contract does not appear to be subject to SB 239 unless it triggers any of the threshold conditions that have been identified above. In addition, SB 239 does not appear to apply to mutual or automatic aid agreements. Therefore, LAFCO staff is recommending the Commission adopt a policy that addresses existing contracts:

“Existing fire protection contracts, and their renewal, will not be subject to the requirements of Government Code Section 56134 unless a subsequent change to an existing fire protection contract either transfers more than 25 percent of the service area of an affected public agency or affects more than 25 percent of the employees of an affected public agency. In addition, mutual or automatic aid agreements are not subject to Government Code Section 56134.”

PROCEDURES:

In order to implement these unique requirements and procedures related to fire protection contracts, LAFCO staff is proposing “application procedures” and “review procedures” specific to the implementation of Section 56134, which are shown below:

“APPLICATION PROCEDURES FOR AN OUT OF AGENCY FIRE PROTECTION CONTRACT

Government Code Section 56134 charges LAFCO with the responsibility to review and approve, approve with conditions, or deny requests for approval of a fire protection contract that provide new or extended fire protection services outside an agency’s jurisdictional boundaries provided such contracts meet one of the following thresholds: (1) transfers service responsibility of more than 25 percent of an affected public agency’s service area; or (2) affects more than 25 percent of the employees of an affected public agency. Requests under this provision are subject to Commission review.

1. Application for Review:

The filing requirements for review of a fire protection contract shall include:

A. Official Request from Applicant. The request must be made by adoption of a Resolution of Application pursuant to Government Code Section 53134(c).

- The resolution of application shall not be submitted to LAFCO unless the provisions outlined in Government Code Section 56134(d) have been met: 1) Submission of written agreement from each affected public agency and each affected employee organization consenting to the proposed fire protection contract, or proof that written notices were*

provided to each affected agency and employee organization at least 30 days prior to the public hearing on the resolution of application is held; and 2) the applicant conducts an open public hearing on the resolution of application. The resolution of application must also include a provision acknowledging the Commission's requirement for indemnification pursuant to Commission policy (see Policy and Procedure Manual, Chapter 2 - Accounting and Financial Section, Policy #3)

In addition, all documents related to the applicant's hearing on the resolution of application such as agenda, staff report, minutes, etc. shall also be submitted.

- *The resolution of application must be submitted with a Plan for Service that includes, but is not limited to, all the required information as outlined in Government Code Section 56134(e).*
 - *The resolution of application must be submitted with an independent Fiscal Impact Analysis pursuant to Government Code Section 56134(f) that includes, at a minimum, the following: a) a five year projection of revenues and expenditures, b) a discussion of the sufficiency of general existing revenues to provide the new or extended fire protection service, and c) a comprehensive review of all retirement plans impacting the affected agencies and employees including any unfunded retirement obligations and the identification of retirement debt, if any, and the responsible agency or agencies to assume such debt.*
- B. Documentation Required to Establish Thresholds Related to Service Area and Employment Status:*
- *Service Area: The applicant must submit a map of the fire protection contract area if the fire protection contract area is not the entirety of the affected public agency. If the applicant already serves the affected public agency (agency receiving service) by contract to a portion of its current jurisdictional boundaries, the map must clearly identify the area it currently serves by contract and the new area it is proposing to serve by contract.*
 - *Employment Status: The applicant must submit a document with a listing of all employee classifications/titles of an affected public agency that clearly identify the employee classifications/titles that are affected by the fire protection contract.*
- C. Payment of Appropriate Filing Fees. The applicant must submit, as part of the application, the appropriate filing fee as outlined in the LAFCO*

Schedule of Fees, Deposits, and Charges in effect at the time of submission. In addition, a review of a fire protection contract is also subject to the following deposits: legal counsel, environmental review, and individual notice. Applicants will be required to reimburse the Commission for all charges and costs in excess of the deposits outlined above. If charges billed are less than the amount of deposits, the balance will be refunded at the close of the application.

Should a fire protection contract require the extension of an existing per parcel special fee or charge, the applicant will be required to submit an additional deposit for the direct costs associated with mailing individual notices to each billed landowner within the fire protection contract area.

- D. A completed Application Form for Fire Protection Contracts including the submission of a copy of the fire protection contract that has been signed by the affected public agencies. Submission of additional map(s) showing the jurisdictional boundaries of the affected public agencies may also be required.*
- E. Any other information deemed appropriate by the Executive Officer in order to review the fire protection contract based upon its special circumstances.*

2. Environmental Review Requirements:

The review of a fire protection contract is subject to environmental review procedures as outlined in Section V of this Manual.

REVIEW PROCEDURES FOR AN OUT OF AGENCY FIRE PROTECTION CONTRACT:

A fire protection contract will require the following review:

- 1. The applicant must submit to LAFCO a completed Application Form for Fire Protection Contracts, with all its component parts as previously defined, for review and consideration. Within 30 days, the LAFCO Executive Officer will notify the applicant and any other affected public agency whether or not the application filing is complete. If incomplete, the applicant and any other affected public agency will be notified of the specific insufficiencies.*
- 2. The LAFCO staff shall forward a copy of the application to various County departments, all local fire authorities and other affected/interested agencies for their review and comment.*
- 3. Completion of the CEQA review process will be required prior to placement on the Commission's agenda.*

4. *A meeting with the applicant and any other affected public agency, and/or the various County departments and other affected/interested agencies will be held to discuss the circumstances and/or issues related to the fire protection contract.*
5. *Once these required elements have been completed and the application deemed complete, the item will be placed on the next agenda for which notice can be provided but no more than 90 days from the date the application is deemed complete. At least 21 days prior to the date of the hearing, notice of the hearing will be mailed to each affected local agency or affected county, and to any interested party who has filed a written request for notice. In addition, at least 21 days prior to the hearing, notice of hearing will be published in a newspaper of general circulation and posted on the Commission's website.*

At least 21 days prior to the date of the hearing, individual notice will be mailed to each billed landowner within the fire protection contract area if the fire protection contract will require the extension of an existing per parcel special fee or charge.

6. *At a noticed public hearing, the Commission will consider the staff's presentation and presentations, if any, by interested and affected parties, and make a determination.*
7. *The Commission has the authority to approve, approve with conditions, or deny a fire protection contract. The Commission's determination regarding 56134(h)(2)(i) and (j) and any required findings will be set out in a resolution which specifies the area to be served, the services to be provided, and the authority of the agency to provide its services outside its boundaries.*
8. *Reconsideration: Following an action by the Commission on the contract request, reconsideration by the Commission may be requested pursuant to existing Commission policies."*

The new application procedures (shown starting on page 6 of the staff report) provides an affected public agency with the guidance needed to submit a fire protection contract application to LAFCO pursuant to the provision of Government Code Section 56134. It also provides LAFCO staff with the necessary tools to evaluate such contracts. The new review procedures (shown starting on page 8 of the staff report) provide a process through which these fire protection contracts can be evaluated by the Commission and its staff. Attachment #3 to this report is the new application form that will be used by the affected public agency when submitting an out-of-agency fire protection contract application.

CONCLUSION:

With this new legislative process in place, the Commission, the staff, and the affected fire providers within our County will be apprised of the policies and procedures required to comply with the directives of Government Code Section 56134. Staff believes that this procedures will allow for the full vetting of any such contract for service within the confines of San Bernardino County and thereby will allow for discussion and resolution according to the unique local circumstance of our communities. At this time, staff is requesting that the Commission provide it with any additional changes, corrections or amendments to the proposed policies and procedures for fire protection contracts pursuant to Government Code Section 56134. Finally, staff recommends that the Commission approve the new policies and procedures for fire protection contracts as a new chapter of the Application Processing section of its Policy and Procedure Manual as well as approve the new Application Form for Fire Protection Contract.

KRM/sm

Attachments:

1. [SB 239 \(Hertzberg\) Local Services: Contracts: Fire Protection Services](#)
2. [Policies and Procedures Related to Fire Protection Contracts \(Chapter 5: Out of Agency Fire Protection Contract\)](#)
3. [Application Form for Fire Protection Contract](#)
4. [Copy of Letter to the San Bernardino County Fire Chiefs Dated July 14, 2016](#)
5. [Copy of Letter from CALFIRE Dated August 4, 2016](#)
6. [Draft Resolution No. 3233](#)