



Board Policy No. 465 Procurement Policy

ADOPTED: 4/92

RECENT AMENDMENT:

~~6/10/2011/13/24~~

SEE ALSO: 460, 466, 468

SUBJECT CATEGORY: SECTION 400, OPERATIONS

SUBSECTION: PROCUREMENT AND MATERIALS

CONTROL DEPARTMENT: FINANCE

I. PURPOSE

The purpose of this policy is to ensure that the District's procurement activities are conducted in accordance with the applicable sections of the California Public Contract Code and Federal Transit Administration (FTA) Circular(s). Should the District's policy conflict with ~~FTA compliance state~~ or federal law, ~~FTA compliance and/such state~~ or federal law ~~shall take precedence will supersede this policy~~. The General Manager shall establish administrative procedures to ensure proper review and budgetary monitoring for all procurement activities.

II. PERSONS AFFECTED

All employees, Board members, Board Officers, and independent contractors.

III. DEFINITIONS

"Best Value" means the overall combination of quality, price, and other elements of a proposal that, when considered together, in response to the requirements described in the solicitation documents, provides the greatest overall benefit to the District. In a qualitative evaluation, a best value evaluation may necessitate award to other than the firm who receives the most points. For example, a best value award may be based on determining the firm with the lowest cost per qualitative point. If a best value approach is utilized, that approach shall be specifically stated in the solicitation.

~~**"Cardinal Change"** means a major deviation from the original purpose of the work or the intended method of achievement, or a revision of contract work so extensive, significant, or cumulative that, in effect, the contractor is required to perform very different work from that described in the original contract. (FTA Circular 4220.1F, Ch.1.5.c.)~~

~~**"Debar or Debarment"** means an action taken by the District to exclude a contractor, service provider or provider of goods or rolling stock, from any of the following: bidding or proposing on a District contract; being awarded a District contract; or performing work on a District contract for a defined period of time. A contractor or Subcontractor so excluded is "debarred".~~

~~**"Fair and Reasonable"** means a price that does not exceed that which would be incurred by a prudent person in the conduct of business and need not be the lowest available, but is the one that offers the best value to the District.~~

“Formal Solicitation” means a solicitation for goods or services that must be publicly advertised (via newspaper and/or online). A formal solicitation may be an RFP, IFB, or a Request for Qualifications.

“Goods” means the purchase of materials, supplies, and equipment, including ~~rolling stock~~ Rolling Stock.

“Independent Cost Estimate (ICE)” means the cost or price analysis performed by the requesting department in ~~connection with~~ advance of every procurement action, including contract modifications. ~~Ideally,~~ The ICE is used to determine that the District is receiving a Fair and Reasonable price for the Goods and services.

~~the ICE should be prepared prior to issuance of solicitation(s). At the very latest, it needs to be prepared and in possession of the Purchasing staff prior to receipt of financial bids or proposals.~~

~~“Invitation For Bid (IFB)” means a procurement done by sealed bid. At a designated time and location, all bids will be opened in a public forum and the apparent low bidder, pending thorough staff review disclosed. This is applicable when: (1) precise specifications are available; (2) adequate sources are available; (3) fixed price contract; (4) evaluation is price determinative; (5) negotiations are prohibited using this approach, although clarifications are acceptable based solely on information already submitted. (FTA Circular 4220.1F, Ch. VI.3c.1)~~

~~“Informal Solicitation” means a procurement for Goods or services that does not need to be publicly advertised (via newspaper and/or online).~~

~~“Invitation For Bid (IFB)” means a procurement done by sealed bid.~~

~~“Joint Procurement” is a method of contracting in which two or more purchasers agree from the outset to use a single source solicitation and enter into a single source contract with a vendor.~~

~~“Micro-Purchase” means purchases of \$10,000 or less.~~

~~“Maintenance Services” include routine, recurring and usual work for the preservation, protection, and keeping of any publicly owned or publicly operated facility for its intended purposes in a safe and continually usable condition for which it has been designed, improved, constructed, altered or repaired. Maintenance services may also include carpentry, electrical, plumbing, glazing, touchup painting, and other craft work designed to preserve the publicly owned or publicly operated facility in a safe, efficient and continuously usable condition for which it was intended. Maintenance services may also include repairs to, cleaning of, and other operations on machinery and other equipment permanently attached to the building or realty as fixtures. The definition is not exhaustive or necessarily intuitive. For example, janitorial or custodial services are not maintenance services, but landscape maintenance is included in the definition of maintenance.~~

~~“Micro-Purchase” refers to the acquisition of Goods with a total value of \$2,500 or less. For Public Works and services, the micro-purchase threshold is \$10,000 or less. Competitive procurement processes are not required for Micro-Purchases within these value limits.~~

~~“Piggybacking” is the post award use of a contractual document/process that allows someone who an entity that was not contemplated in the original procurement to purchase the same supply/equipment through that original document process. The recipient may assign those contract rights to others if the original contract contains an assignability provision. procurement.~~

~~“Public Works” includes construction, alteration, improvement, demolition, installation, maintenance, and/or repair work performed under contract and paid for in whole or in part out of public funds. Notably, different federal and state statues use slightly different definitions of “public~~

works."(See Public Contract Code § 1101 and Labor Code § 1720.)

"Request For Proposals (RFP)" means a formal competitive procurement method that is ~~appropriate when: (1) performance or functional specifications are utilized; (2) there are uncertain number of sources; (3) price alone is not determinative, or deemed used to be communicate the District's unique requirements to prospective contractors and to solicit proposals from them, often leading to negotiations between the parties to form a secondary factor in consideration of award; and (4) discussions with potential vendors is expected.~~ (FTA Circular 4220.1F, Ch. VI. 3.d.1.)contract.

"Request For Qualifications" ~~(a.k.a. Brooks Act Procurement, 40 U.S.C. §§ 1101-1104)~~ means a formal qualifications-based procurement method ~~for procurements of \$2,000 or more, which are limited to is generally used for~~ professional architectural ~~and~~ engineering (A/~~&~~E) services, ~~and are also for program.~~ Examples of A&E services include project management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, and mapping related services. The nature of the work to be performed and its relationship to construction, not the nature of the prospective contractor, determine whether qualifications-based procurement procedures may be used as described above. (FTA Circular 4220.1F, Ch. VI.3.f.)

"Rolling Stock" means transit vehicles, such as buses, vans, cars, railcars, locomotives, trolley cars and buses, and ferry boats, as well as vehicles used for support services. ~~(49 CFR 661.3).~~

"Single Source" means a procurement method where, although multiple suppliers exist, the District elects to procure from one source due to specific reasons (see Section IV.C.5.a.). Single Source procurements require justification and documentation to verify that selecting a particular vendor is in the best interest of the District.

"Small Purchase" means purchases over ~~\$10,000 the Micro-Purchase threshold~~ but not more than \$100,000 for Goods and \$250,000 per 2CFR, Part 200 for Services. Informal solicitations may be used for Small Purchases of Goods and services.

"Sole Source" means that there is only one known person or entity that can provide the ~~contractual~~ Goods or services required. A sole source procurement requires justification and approval. (See Section IV.C.5.a.)

"Vendor Performance Management" ~~(VPM) means the responsiveness and responsibility for monitoring and analyzing the reliability, quality and performance of the District's vendors. It allows the~~

~~District to help ensure contract compliance and in severe cases to debar a vendor from doing further work with the District.~~

“Unsolicited Proposals” are proposals that present an innovative and unique process or approach, are independently originated and developed by the offeror, and prepared without District supervision, endorsement, direction, or direct District involvement. The District may contract with offerors when permitted under State and Federal law.

IV. POLICY

A. Policy Goals

1. American Made

~~1. Buy American Goods: Applicable to all non-FTA funded procurements. Resolution 09-051, adopted by the Board of Directors on October 14, 2009, requires that “the District will employ its best efforts to procure goods manufactured in America”, and when possible, give first priority to the purchase of goods manufactured in California within the existing State and Federal procurement regulations.”~~ The District’s Buy American Goods requirement is implemented under this Policy in a manner intended to mirror the federal Buy America rule (49 CFR 661) and is applicable to the following types of procurements:

- a. ~~Negotiated procurements of goods over \$100,000 under California Public Contract Code sections 20216 and 20217 and to procurements of goods over \$100,000 where a Best Value procurement process is utilized; when American rule. When possible, the documentation of “Best Efforts” by the bidder to offer goods manufactured in America will be included as an evaluation criterion.~~
- b. Buy America: All applicable FTA-funded procurements shall contain Buy America provisions referenced in 49 CFR 661 including any future updates. Buy America shall specifically apply to the procurement of steel, iron, manufactured goods (including construction) and rolling stock. The Procurement Department will engage in outreach efforts to the maximum extent practical/practicable, to ensure that vendors of U.S. made goods are informed of bidding opportunities and encouraged to participate in District procurements. Either the Buy America or the Buy American procedures are required for all procurements of goods over \$100,000.
- c. ~~The Buy American Goods requirement shall not apply to the following procurements:~~
 - ~~Procurements that are federally funded, as they are governed by FTA’s Buy America requirements; purchases from the State of California Multiple Award Schedule (CMAS); purchases from the Strategic Source Initiative; intergovernmental contracts; and other procurements where the District is not the lead agency and cannot exercise control over the content of the solicitation.~~

Questions concerning interpretation of this Policy are to be referred to the Legal Department.

~~2. Disadvantaged Business Enterprise Participation: The District shall administer its Disadvantaged Business Enterprise (DBE) Program in accordance with the Department of Transportation's (DOT) Federal Transit Administration (FTA) regulations found at 49 CFR Part 26 and as authorized by Board Policy 460, Disadvantaged Business Enterprise Policy. Formal advertisements shall explicitly state the District's commitment to using DBE's; DBE outreach may be carried out in each federally funded procurement and whenever practicable, procurement strategies shall be implemented, pursuant to applicable laws and regulations, that provide maximum opportunities for DBEs to participate in the District's DOT-assisted procurements.~~

2. Locally Made: To the extent possible, and consistent with state and federal law, the District will endeavor to solicit Goods and services from businesses in Alameda and Contra Costa Counties.
3. Disadvantaged Business Enterprise Participation: Reference Board Policy 460 "Disadvantaged Business Enterprise (DBE) Policy" for guidance.
- ~~3. Small and Small Local Business Enterprise Participation: The DOT's FTA Small Business Enterprise (SBE) regulations and provisions will apply to all DOT-assisted procurements. A list of qualified Small Businesses, if available from the California Unified Certification Program (CUCP), the District's vendor data base, and/or other public agency Small, Local and Emerging Business Program data base shall be prepared and such firms notified via email upon the release of a formal solicitation.~~
4. The use of small business enterprise goals, set-asides, or in the case of non-federally-funded procurements, bid preferences shall be applied on a case-by-case basis and supported by an availability analysis or other reasonable means for warranting such actions. (Reference Board Policy 466 "Small and Small Local Business Enterprise Policy" for additional guidance.)
5. Transparency and Fairness: District procurements shall be conducted in a manner that is open, transparent, fair, and equitable to all parties.
- ~~5-6.~~ Efficient and Cost Effective: District procurements shall be conducted in an efficient and cost-effective manner.
7. Sustainability: The District will endeavor to conduct its procurements in a manner that prioritizes sustainable practices.
8. Claims and Disputes: The District's procurement practices will provide guidance for remedy and resolution of contract claims or disputes.

B. Conflicts of Interest

The District's procurement practices will adhere to proper standards of conduct by District Board members, officers, and employees. A conflict of interest occurs when an employee, officer, or agent of the District, or anyone closely related to them (such as immediate family members), has a financial or personal interest in a firm or entity being considered for a contract. A conflict of interest may also arise from receiving gifts, gratuities, or any special favors from vendors or suppliers. Procurement staff must maintain records documenting that all procurement decisions were made in compliance with the conflict of interest policy, including any instances where employees were recused from the procurement due to conflicts of interest.

Please refer to Board Policy 702 "Conflicts of Interest and Standards for Ethical Conduct."

Questions concerning interpretation of this Policy are to be referred to the Legal Department.

B.C. Procurement Standards

Procurement Standards have been developed to ensure that all ~~federally and non-federally funded~~ procurements meet the minimum basic requirements ~~outlined in Exhibit A~~ of this policy for the following types of procurements:

- ~~• Materials, Supplies and Equipment~~

~~Professional~~

1. Goods:

- a. Formal Solicitation: Formal competitive bidding must be used when procuring Goods valued over the Small Purchase threshold (\$100,000), but a Best Value approach may be used in circumstances where it is determined to be in the best interest of the District. Any notice inviting bids must be published at least once in newspaper of general circulation and on the District's procurement website at least 10 days before bids are received. The District may purchase goods on the open market if, after rejecting all bids, the Board determines by a four-fifths vote that the goods may be purchased at a lower price on the open market.
- b. Informal Solicitation: An Informal Solicitation may be used when procuring Goods valued between the Micro-Purchase threshold (\$2,500) and the Small Purchase threshold (\$100,000). To the extent practicable, such a method will involve obtaining a minimum of three quotations, either written or oral, that permit the District to compare prices and other terms. When appropriate to ensure satisfaction of the Policy Goals set forth in Section IV.A of this Policy, the District will advertise such solicitations. Informal Solicitations will use a lowest responsible bidder standard on which to base the award, unless it is determined in writing that it is in the District's best interest to apply a Best Value approach.
- c. Micro-Purchase: Whenever the District procures Goods valued at less than the Micro-Purchase threshold (\$2,500), the purchase may be made without obtaining competitive quotes, if the price to be paid is Fair and Reasonable.

- ~~• 2. Services:~~

- ~~• Construction Services (including repairs or remodeling of District facilities)~~
- ~~• Architectural and Engineering Services~~

~~1. Negotiated Procurement of Rolling Stock and Other Technology~~

- ~~a. Notwithstanding the Procurement Standards outlined in Exhibit A of this Policy, the procurement of computers, data processing equipment, telecommunications equipment, fare collection equipment, radio and microwave equipment, and other related electronic equipment and apparatus used in transit operations and specialized transit equipment including buses may be made using competitive negotiations in accordance with California Public Contract Code Sections 20216 and 20217. As applicable and allowable, at least one of the qualified sources should be a DBE or SLBE.~~
- ~~b. As an FTA grant recipient, the District will require and include 49 CFR Part 26~~

Questions concerning interpretation of this Policy are to be referred to the Legal Department.

~~procedures in all federally funded contract actions.~~

- ~~e. The Board of Directors may direct the purchase by competitive negotiation upon a finding by two thirds vote of all members of the Board that the purchase of the above described items by competitive sealed bid does not constitute a method of procurement adequate for the District's needs.~~
- ~~d. Procurement under this section will be by formal advertisement requesting proposals and shall strictly adhere to any established DBE, SBE and/or SLBE participation goals.~~
- ~~e. Joint procurements or piggybacking may be used in accordance with FTA regulations.~~
- ~~f. In accordance with the District Board Policy 340, Audit contracts shall be competitively bid at least every five (5) years, or sooner as desired by the Board. Staff will present the process and the results of its screening and selection process of the external auditor to the Board Finance and Audit Committee any actions relating to the annual renewal of audit contracts requiring Board approval.~~
- ~~g. Should the then independent audit firm of Certified Public Accountants for the District, wish to bid on the subsequent five (5) year audit contract, it will be necessary for them to specifically identify how they will address the requirements under State of California Government Code Section 12410.6.(b) for change out of the lead partner and or coordinating/review partner in the timeframe allowed, in their RFP response to the District.~~
- a. Procurement by Formal Solicitation: Formal competitive solicitations must be used when procuring services valued at \$250,000 or more. Specialized state and federal laws will apply to the procurement of architectural and engineering services, as defined by applicable laws and regulations, regardless of the estimated expenditure. A Request for Qualifications must be used when procuring architectural and engineering services, as defined by California Government Code Section 4526 et seq. and, if federally-funded, by 40 USC 1101 et seq. Any notice requesting proposals must be published on the District's procurement website at least 10 days before proposals are received.
- b. Informal Solicitation: An Informal Solicitation may be used when procuring services valued between the Micro-Purchase threshold (\$210,500) and \$250,000. To the extent practicable, such a method will involve obtaining a minimum of three quotations, either written or oral, that permit the District to compare prices and other terms. When appropriate to ensure satisfaction of the Policy Goals set forth in Section IV.A of this Policy, the District will advertise such solicitations. Informal Solicitations will use a lowest responsible bidder standard on which to base the award, unless it is determined in writing that it is in the District's best interest to apply a Best Value approach.
- c. Micro-Purchase: Whenever the District procures services valued at less than Micro-Purchase threshold (\$10,000), the purchase may be made without obtaining

competitive quotes, if the price to be paid is Fair and Reasonable. Micro-Purchase procedures may not be used for architectural and engineering services.

- d. Maintenance Services: The District may utilize the procedures in this Section (IV.C.2) for Maintenance Services. Maintenance Services may require the inclusion of numerous legal requirements, including the payment of prevailing wages. Consult Legal Counsel if there are questions as to whether particular work falls within the definition of Maintenance Services.
- e. Audit Services: In addition to the requirements of this Section, the requirements of Board Policy 340 "Accounting Policy" and Government Code Section 12410.6 apply to the procurement of auditing services.
- f. Revenue Generating Contracts/Concessions: To the extent they are not otherwise governed by District policies, concession agreements are contracts where the District grants permission to use District facilities or property to vendors to sell products or services, for which the District receives a percentage of the proceeds and/or a flat rate of compensation. Generally, these arrangements are at no direct cost to the District.

Where it is determined that a number of potential vendors are available to provide similar products or services, a competitive negotiations procedure should be followed, and award made to the highest ranked proposer, taking into consideration the economic return to the District, quality of the product, and service and experience of the vendor.

3. Public Works:
 - a. Formal Solicitation: Formal competitive bidding will be used for all Public Works projects valued at over \$10,000. Any notice inviting bids must be published at least once in newspaper of general circulation and on the District's procurement website at least 10 days before bids are received.
 - b. Micro-Purchase: The District may procure Public Works projects valued at less than \$10,000 if the price to be paid is Fair and Reasonable.
4. Cooperative, Pre-qualified List or Piggyback Purchasing Agreements: To foster greater economy and efficiency, the District may avail itself of federal, state, and local intergovernmental agreements for the procurement of Goods or services. Joint procurements, cooperative purchasing programs, piggybacking or lists of bidders/proposers that have been pre-qualified by another public agency, may be used when consistent with applicable state and federal statutory or grant requirements.
5. Non-Competitive Proposals (Procurements:
 - 2-a. Sole or Single Source} Procurements: A Sole Source procurement is a procurement action utilized when the Goods or services are available from only one source. If more than one source is available for a product, the product is not exempt from competitive bidding as a Sole Source, but may be exempt from competitive bidding as a Single Source with appropriate justification. A Sole Source decision is

not permitted merely upon the grounds that the source demonstrates technical or administrative superiority, is the most convenient, or shows superior performance potential at lower costs.

Justifications for a Single Source procurement include, but are not limited to, the following:

- ~~a. Sole Source procurement is a procurement action utilized when the goods or services are available from only one source for a required proprietary need of the District, or for compatibility purposes, or for reasons of continuity with previously delivered services or products. A Sole Source procurement is accomplished through solicitation or acceptance of a proposal from a single source. A contract amendment or change order that is not within the scope of the original contract is considered a Sole Source procurement.~~
- ~~b. Notwithstanding Public Contract Code Section 20213, the intent to award a Sole Source contract shall be published on the District's website for at least five (5) business days; providing an opportunity for review by SBEs, SLBE's and DBE's. In the event an expression of interest is received from firms with the requisite capabilities, the sole source status must be re-assessed and consideration given to compete the project.~~
- ~~c. Sole Source procurement is a limited exception to the procurement process and may be used only where the award of a contract is infeasible or impracticable under~~

~~competitive procedures and at least one of the following circumstances applies, supported by written justification and documentation:~~

- ~~i. the item is available only from a single source, and there is no comparable or “as equal” available;~~
 - ~~ii. there exists a public exigency or emergency as defined by Public Contracts Code Section 20213 (not including delays in planning or in initiating the procurement) which will not permit the delay accompanying competitive solicitation; or~~
 - ~~iii. the procurement is FTA funded, and Sole Source procurement is authorized under FTA Third Party Contracting Guidelines (FTA C. 4220 1F), and/or the use of a specific firm is contained within a grant.~~
- ~~d. In the appropriate case, where supported by case law or statutory authority, the Procurement and Materials Director may recommend to the General Manager the authorization of exception to the competitive bidding requirements provided for in this Policy.~~
- ~~e. When evaluating vendors for a formal competitive process, the District shall use “Best Efforts” to include an outside evaluation member to assist with scoring solicitations.~~
- ~~• patents or restricted data rights~~
 - ~~• substantial duplication costs~~
 - ~~• unacceptable delay~~
 - ~~• unusual and compelling urgency~~
 - ~~• statutory authorization~~
 - ~~• national emergency~~
 - ~~• public interest~~
 - ~~• grant requirements~~

~~In all cases, staff must verify that the particular procurement meets the definition of a Single or Sole Source and a cost or price analysis must be performed to determine that the price is Fair and Reasonable. A written determination of the findings will be included in the contract file and presented to the Board, if applicable.~~

- ~~b. Discretion to Waive the Competitive Process: The Board of Directors, or the General Manager in the case of procurements within the General Manager's procurement authority, may waive the requirements for formal competitive bidding or other procedures set forth in this policy when: (1) permissible under applicable law; (2) a determination is made that the best interests of the District are served thereby, and provided there is adequate documentation of the need for such goods or services, or public works; and (3) a determination is made that following competitive procedures would be unavailing and not in furtherance of the purposes of the competitive bidding statutes and this policy.~~
- ~~c. Authorized maintenance or upgrade agreements of proprietary software previously implemented at the District for “critical infrastructure” do not require~~

competitive bidding. The list of this software is posted on our website as required by Senate Bill 272 (Gov. Code §§ 7922.700-7922.725).

V. AUTHORITY

A. Board Authority

~~1. Pre-solicitation Approval/Award of Contracts~~

- ~~a. For solicitations greater than \$500,000, the Program Manager within the department shall initiate a Staff Report and submit to the Board for approval. The Procurement Department is required to approve the staff report.~~
- ~~b. The solicitation is for the following professional services regardless of cost or inclusion in the approved District Annual Operating or Capital Budget:
 - ~~• audit services~~
 - ~~• legal services related to Board Officers~~~~
- ~~c. Solicitations for the items exempted in section 2 below are exempt from Board approval.~~
- ~~d. Staff reports seeking Board approval of solicitations shall include the following:
 - ~~• An explanation of what the District's needs are in relation to the item being solicited as well as what the District intends to do with the item;~~~~

~~2. Notice of Intent to Award~~

~~The District recognizes the need for vendors and suppliers to have reasonable notice of an Intent to Award. The Notice of Intent to Award starts when the staff recommendation is made public (i.e., posted). The Contract Award is made final upon Board approval. If, following notice of an Intent to Award, staff has reason to believe that a vendor or supplier has additional concerns about the Contract Award, staff shall delay presenting the Contract Award to the Board for approval for at least one additional Board meeting in order to allow additional time to resolve concerns prior to the Contract Award becoming final.~~

~~Invitation for Bid: The Notice of Intent to Award period is established when the buyer or contract specialist determines the preferred bidder is responsive and responsible. The Notice should be sent out electronically and promptly, or as soon as the determination is reasonably made.~~

~~Request for Proposal: The Notice of Intent to Award should be sent to the apparent best proposer and to all other unsuccessful proposers once the RFP evaluation process has been completed.~~

~~Request for Qualifications: The Notice of Intent to Award shall be sent to the apparent contract awardee and to all proposers once the two-step process of determining the most technically qualified and optimal cost is determined.~~

~~3. Award of Contracts~~

~~Except as indicated below, the Board of Directors shall reserves to itself the authority to approve the award of any contract where the cost is \$250,000 or more per contract year for goods, equipment, materials, architect and engineering (A&E), revenue and professional services. The Board of Directors shall approve the award of any construction contract where the cost is \$100,000 or more per contract year Goods and services, or over \$250,000 for Public Works.~~ At the time of approval, Board members who have had any ex parte communication with a bidder, or representative of a bidder, during the procurement process shall report all such communication. In the case of any such written communication, copies of said ~~communication~~communications shall be given to the District Secretary and made part of the permanent record of the meeting.

The following items are ~~exempted~~exempt from Board approval:

- ~~• fuel and/or parts for revenue vehicles exceeding \$100,000~~• fuel and/or parts for revenue vehicles exceeding \$250,000 either in aggregate or individually that impact, if the procurement impacts the delivery of service
- ~~• emergency procurements to avoid impacts to the health, welfare, or safety of an employee or the public;*~~• emergency procurements to avoid impacts to the health, welfare, or safety of an employee or the public;* or
- ~~• any procurement action taken to prevent a violation of law or a fine by another political jurisdiction.*. Such procurement actions will come to the Board for ratification.~~• any procurement action taken to prevent a violation of law or a fine by another political jurisdiction.*. Such procurement actions will come to the Board for ratification.

~~{* Any procurement of this nature will come to the Board for ratification at the earliest possible date.}~~

4. ~~Vendor Performance and Debarment~~

~~The District Project Manager, or individual assigned as the point of contact for the Contract, shall communicate with the vendor to discuss and agree on specific vendor performance criteria upon which to be rated. Procurement staff will then incorporate the following information into the contract:~~

- ~~a. Documented assessment criteria matching the scope of services, tasks, key performance indicators or other contractual deliverables; such information may be in the form of narrative, quantitative or qualitative information.~~
- ~~b. Corrective action(s) will be documented and followed up on, as a result of the vendor performance communications and/or meeting(s). Failure of a vendor to adequately respond to corrective action(s) may result in any of the following actions:

 - ~~i. Anticipatory breach of contract notice~~
 - ~~ii. Termination of the contract or purchase order~~~~
- ~~c. Vendors may be debarred from doing business at any time, and at the District's sole discretion, when a vendor is found to be in debarment through the Federal Procurement System, SAMS (System for Award Management).~~
- ~~d. Vendors may be debarred from doing business at any time, and at the District's sole discretion, when a vendor is found to be out of compliance through registration with the Department of Industrial Relations (DIR) and/or found to be out of compliance under the California State Licensing Board.~~

~~5.1. Contract Amendments: The Board of Directors shall reserves to itself the authority to approve all amendments to Board-approved contracts in when the cumulative value of amendments exceedsss of fifteen percent (15%) of the original contract value, or any Cardinal Change in the terms and conditions and time-only extensions that exceed 50% of the original base contract term where the original award included a specific term.~~

~~6.2. Contract Assignments: The Board of Directors shall reserves to itself the authority to approve the assignment of any contract that was originally approved by the Board.~~

~~3. Contract Extensions: The Board of Directors shall does not need to approve fixed-priced contract extensions that are options tied to options in Board-approved contracts that have been previously addressed as long as the fixed-priced options were included in the original solicitation, regardless of cost or inclusion in and award of the contract. Except as described above, the Board reserves to itself the authority to approve extensions to any contract that was originally approved by the Board.~~

~~4. Leases: The Board of Directors reserves to itself the authority to approve leases, including~~

revenue leases, of District property provided the annual amount of the lease is \$100250,000 or more and/or the term of the lease exceeds five (5) years.

7.5. The Board of Directors shall review, on a fiscal year annual basis, the status of all -contracts over \$250,000 awarded by the District-Operating or Capital Budget. The report shall identify the purpose of the contract.

B. General Manager's Authority

1. Solicitations and: The General Manager has the- authority -to -approve -all -solicitations.

1.2. Award of Contracts:

With the exception of the items identified in Section V.A. of this policy (Board of Directors Approval), the General-The General Manager has the authority to approve all formal solicitationscontracts for Goods and

- a. ~~the award of any contract services where the services, materials, or supplies are specifically demarcated in the approved annual District Operating or Capital Budget. The General Manager's authority shall not exceed cost is less than \$250,000 per contract year for non construction contract awards; and \$100250,000 per year for construction contract awards. The General Manager has the authority to approve all competitive, formal solicitations less than Public Works contracts.~~
~~\$500,000 without going to the Board.~~
- 2.b. ~~_____~~ The General Manager may, at his or her discretion, ~~may~~ forward any contract within his or her authority outlined above that he or she deems to be of significant importance to the Board of Directors for action.
3. ~~Amendments, Assignments, and Extensions: Except as reserved to the Board in Section V.A, the General Manager is authorized to approval all contract amendments, change orders, assignments, and extensions.~~
3. ~~Leases: The General Manager has the authority to execute contract extensions that are tied to options that have been previously addressed in the solicitation, provided that such extension(s) is/are within the General Manager's authority and subject is authorized to all of the following conditions:~~
- a. ~~there is a continued need for the services performed under the contract;~~
 - b. ~~sufficient funds are available;~~
 - c. ~~the contractor's performance has been satisfactory; and~~
 - d. ~~the General Manager, Director of Procurement, Chief Financial Officer and the respective Executive Staff member agree that the contract extension or the exercise of an option to extend the contract is in the best operational and financial interest of the District.~~
4. ~~The General Manager has the authority to enter into agreements including, but not limited to, agreements for professional, technical, architectural, engineering, construction, and construction management services; agreements for repair or remodeling of District facilities; and lease or license agreements for District use of real property, facilities, equipment and software, provided that the General Manager or his or her designee first determines that the work or subject matter of the agreement cannot satisfactorily be performed by District officers or personnel. The General Manager also has the authority to enter into approve leases, including revenue leases, to third parties of District property provided the annual amount of the lease does not exceed \$250100,000 and the term of the lease not exceed five (5) years. Any leases entered into by the General Manager that exceed his/her authority shall be included in the General Manager's "GM Report to the Board".~~
5. ~~The Board of Directors shall review on a quarterly basis the status of all contracts over \$250,000 awarded by the District. The report shall identify the purpose of the contract.~~

5. Emergencies: For Contracts requiring Board approval, in case of any sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services, the Board hereby designates the General Manager to take all necessary and proper measures in emergency conditions to maintain the District's systems in operation. The Board also grants the General Manager the authority to determine that there is insufficient time for competitive bidding and that public interest and necessity demand the immediate expenditure of public money to safeguard life, health, or property. If the General Manager makes such a determination, the General Manager may expend or enter into a contract involving the expenditure of any sum needed in such emergency without observance of the provisions requiring contracts, bids, or notice. The General Manager will promptly report on the reasons and necessity for proceeding without a competitive solicitation for Public Works valued at \$250,000, and for Goods and services which exceed \$250,000, to the Board within seven (7) days of the action or at the next available meeting, provided that the General Manager reports to the Board no later than 14 days after taking such emergency action. Upon hearing the General Manager's report, the Board will determine, by a four-fifths vote, whether or not there is a need to continue the emergency action. The Board will continue to evaluate the emergency action, determining whether or not the emergency procurement is still required, at every regularly scheduled meeting thereafter until the action is terminated. See Public Contract Code Sections 20213 and 22050.
6. Execution of Contracts: The General Manager is authorized to execute all contracts on behalf of the District. It is the District's standard practice to include the signature of the Chief Legal Officer/General Counsel on all formal agreements to approve the form and content of the agreement.
7. Sub-Delegation: The General Manager may sub-delegate any Board-granted authority to one or more designees. Such delegation must be in writing, including monetary limits, and must be consistent with this policy.

C.VI. Miscellaneous

1. Facsimile Electronic Signatures: The use of facsimile electronic signatures on purchase orders faxed/mailed or emailed directly from the District's automated purchasing system to vendors is authorized if the purchase order is within the delegated signature authority of the buyer.

2. Services Contract Term: Generally, the District will adhere to a maximum five-year term for all services contracts. A base term plus optional years is preferred to allow for management of contractor performance.
 3. Implementation: This Policy sets forth the standards and methods to be followed by the District in obtaining public works, goods, and services. The General Manager is authorized to maintain and update as necessary the Procurement Manual to give effect to this Policy and may make subsequent revisions if necessary to implement changes in applicable laws and regulations and best procurement practices, such as FTA Best Practices Procurement Manual, Caltrans Local Assistance Procedures Manual, American Public Transit Association guidelines and standards, or other well accepted external references. Changes that represent a deviation from this Policy must be approved by the Board of Directors. All District staff with responsibility for procurement activities shall be trained in, and must adhere to, this Policy and the Procurement Manual.
- 2.4. Periodic Review: This policy shall be reviewed and amended as necessary every two years pursuant to Board Policy 302 unless earlier review becomes necessary.

~~VI.~~VII. ATTACHMENTS

Appendix A

APPENDIX A TO BOARD POLICY 465

Solicitation Requirements

<u>Type of Procurement</u>	<u>Informal, no quotes required, price must be fair and reasonable</u>	<u>Informal, obtain a minimum of 3 quotes (oral or written), price comparison</u>	<u>Formal competitive process (IFB/RFP/RFQual), DBE/SLBE utilization</u>
<u>Goods</u>	<u>Micro-Purchase (≤ \$2,500)</u>	<u>Small Purchase (\$2,500 - \$100,000)</u>	<u>Formal Solicitation (≥ \$100,001)</u>
<u>Public Works Construction</u>	<u>Micro-Purchase (≤ \$10,000)</u>		<u>Formal Solicitation (≥ \$10,001)</u>
<u>Services</u>	<u>Micro-Purchase (≤ \$10,000)</u>	<u>Small Purchase (\$10,000 - \$250,000)</u>	<u>Formal Solicitation (≥ \$250,001)</u>

Board Authority for Approval of Contract Awards

<u>Type of Procurement</u>	<u>Board Approval</u>
<u>Goods, Services + A&E</u>	<u>Board must approve award of contracts >\$250,000 per contract year</u>
<u>Audit and Legal Services</u>	<u>Board approval is required for the award, regardless of cost</u>
<u>Public Works</u>	<u>Board must approve award of contracts >\$250,000</u>