



Board Policy No. 465

Procurement Policy

ADOPTED: 4/92

RECENT AMENDMENT: 11/13/24

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 state or federal law, such state or federal law 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.

"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.

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

"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 solicitation.

“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 an entity that was not contemplated in the original procurement to purchase the same supply/equipment through that original 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 statutes 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 used to 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 contract.

“Request For Qualifications” means a qualifications-based procurement method, which is generally used for professional architectural and engineering (A&E) services. Examples of A&E services include project management, construction management, feasibility studies, preliminary engineering, design, surveying, and mapping related services.

“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 the Micro-Purchase threshold but not more than \$100,000 for Goods and \$250,000 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 Goods or services required. A sole source procurement requires justification and approval. (See Section IV.C.5.a.)

“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
 - a. Buy American: 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 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 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.
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.
4. Small and Small Local Business Enterprise Participation: Reference Board Policy 466 "Small and Small Local Business Enterprise Policy" for guidance.
5. Transparency and Fairness: District procurements shall be conducted in a manner that is open, transparent, fair, and equitable to all parties.
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."

C. Procurement Standards

Procurement Standards have been developed to ensure that all procurements meet the minimum basic requirements of this policy for the following types of procurements:

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:

- a. 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 (\$10,000) 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 Procurements:
 - 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:

- i. patents or restricted data rights

- ii. substantial duplication costs
- iii. unacceptable delay
- iv. unusual and compelling urgency
- v. statutory authorization
- vi. national emergency
- vii. public interest
- viii. 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. Award of Contracts: Except as indicated below, the Board of Directors 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 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 communications shall be given to the District Secretary and made part of the permanent record of the meeting.

The following items are exempt from Board approval:

- a. fuel and/or parts for revenue vehicles exceeding \$250,000 either in aggregate or individually, if the procurement impacts the delivery of service; or

- b. 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.
2. Contract Amendments: The Board of Directors reserves to itself the authority to approve all amendments to Board-approved contracts when the cumulative value of amendments exceeds fifteen percent (15%) of the original contract value and time-only extensions that exceed 50% of the original base contract term where the original award included a specific term.
3. Contract Assignments: The Board of Directors reserves to itself the authority to approve the assignment of any contract that was originally approved by the Board.
4. Contract Extensions: The Board of Directors does not need to approve priced options tied to Board-approved contracts as long as the priced options were included in the original solicitation 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.
5. 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 \$250,000 or more and/or the term of the lease exceeds five (5) years.
6. The Board of Directors shall review, on a fiscal year annual basis, the status of all contracts over \$250,000 awarded by the District. The report shall identify the purpose of the contract.

B. General Manager's Authority

1. Solicitations: The General Manager has the authority to approve all solicitations.
2. Award of Contracts:
 - a. The General Manager has the authority to approve contracts for Goods and services where the cost is less than \$250,000 per contract year and \$250,000 for Public Works contracts.
 - b. The General Manager may, at his or her discretion, 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.

4. Leases: The General Manager is authorized to approve leases, including revenue leases, of District property provided the annual amount of the lease does not exceed \$250,000 and the term of the lease not exceed five (5) years.
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.

VI. MISCELLANEOUS

1. Electronic Signatures: The use of electronic signatures on purchase orders 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.
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.
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.

VII. ATTACHMENTS

Appendix A

APPENDIX A TO BOARD POLICY 465

Solicitation Requirements

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

Board Authority for Approval of Contract Awards

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