



## **Board Policy No. 465**

### **Procurement Policy**

**ADOPTED:** 4/92

**RECENT AMENDMENT:** 10/23/19

**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 or federal law, FTA compliance and/or federal law shall take precedence. 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.I.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".

**"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 connection with every procurement action, including contract modifications. Ideally, 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)

**“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.

**“Piggybacking”** is the post award use of a contractual document/process that allows someone who 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.

**“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 to be a secondary factor in consideration of award; and (4) discussions with potential vendors is expected. (FTA Circular 4220.1F, Ch. VI. 3.d.1.)

**“Request For Qualifications”** (a.k.a. Brooks Act Procurement, 40 U.S.C. §§ 1101- 1104) means a formal procurement method for procurements of \$2,000 or more which are limited to professional architectural/engineering (A/E) services, and are also for program 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)

**“Small Purchase”** means purchases over \$10,000 but not more than \$250,000 per 2CFR, Part 200.

**“Sole Source”** means that there is only one known person or entity that can provide the contractual services required.

**“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.

#### IV. POLICY

##### A. Policy Goals

1. Buy American Goods: Resolution 09-051 adopted by the Board of Directors on October 14, 2009, requires that “the District employ its best efforts to procure goods manufactured in America”. 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 possible, the documentation of “Best Efforts” by the bidder to offer goods manufactured in America will be included as an evaluation criterion.
  - b. The Procurement Department will engage in outreach efforts to the maximum extent practical, to ensure that vendors of U.S. made goods are informed of bidding opportunities and encouraged to participate in District procurements.
  - 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.
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.

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.

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.)

4. Transparency and Fairness: District procurements shall be conducted in a manner that is open, transparent fair and equitable to all parties.
5. Efficient and Cost Effective: District procurements shall be conducted in an efficient and cost-effective manner.

## **B. 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 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 procedures in all federally funded contract actions.

- c. 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.

## 2. Procurement by Non-Competitive Proposals (Sole Source)

- 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 reassessed 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.

## **V. AUTHORITY**

### **A. Board Authority**

#### **1. Pre-solicitation Approval 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 approve the award of any contract where the cost is \$250,000 or more per contract year for goods, equipment, materials, construction, architect and engineering (A&E), revenue, lease property 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. 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 shall be given to the District Secretary and made part of the permanent record of the meeting.

The following items are exempted from Board approval:

- fuel and/or parts for revenue vehicles exceeding \$100,000 either in aggregate or individually that impact delivery of service
- 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.\*

[\* 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. Contract Amendments: The Board of Directors shall approve all amendments to Board-approved contracts in excess of fifteen percent (15%) of the original contract amount value per contract year, or any Cardinal Change in the terms and conditions of the original contract as defined by this policy. For construction related procurements, the District shall comply with changes per Public Contract Code 20142.
- In the case of capital improvement or construction contracts, the Board of Directors shall approve all amendments to Board approved contracts whose cumulative total exceeds fifteen percent (15%) of the original contract amount value.
6. Contract Assignments: The Board of Directors shall approve the assignment of any contract that was originally approved by the Board.



7. Contract Extensions: The Board of Directors shall approve contract extensions that are tied to options in Board approved contracts that have been previously addressed in the solicitation, regardless of cost or inclusion in the annual District Operating or Capital Budget

## B. General Manager's Authority

### 1. ~~1.~~ Solicitations and Award of Contracts

With the exception of the items identified in Section V.A. of this policy (Board of Directors Approval), the General Manager has the authority to approve all formal solicitations and the award of any contract where the services, materials, or supplies are specifically demarcated in the approved annual District Operating or Capital Budget. ~~For unbudgeted amounts, t~~The General Manager's authority shall not exceed \$250,000 ~~per contract year~~ for non-construction ~~RFPs and IFBs~~ contract awards; and \$100,000 per year for construction contract awards. ~~;\$100,000 construction, including Requests For Qualifications. The General Manager has the authority to approve~~ For all competitive, formal ~~pre-solicitations~~ less than \$500,000, ~~the General Manager has the authority to approve~~ all pre-solicitations without going to the Board.

2. The General Manager, 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. 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 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 leases, including revenue leases, to third parties of District property provided the annual amount of

the lease not exceed \$100,000 and the term of the lease not exceed five (5) years. Any leases entered into by the General Manager that exceeds 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.

#### **C. Miscellaneous**

1. Facsimile Signatures: The use of facsimile signatures on purchase orders faxed 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. 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. ATTACHMENTS**

Appendix A