



Midpeninsula Regional
Open Space District

R-18-11
Meeting 18-03
January 24, 2018

AGENDA ITEM 6

AGENDA ITEM

Addition of Design-Build Provisions to Board Policy 3.03 - *Public Contract Bidding, Vendor and Professional Consultant Selection, and Purchasing*, and Addition of a *Design-Build Conflicts of Interest Policy* as Board Policy 6.09

ACTING GENERAL MANAGER'S RECOMMENDATIONS

1. Approve the proposed changes to Board Policy 3.03 - *Public Contract Bidding, Vendor and Professional Consultant Selection, and Purchasing* to incorporate the Board's ability to award Design-Build contracts pursuant to Senate Bill 793
2. Approve the addition of a *Design-Build Contracts - Conflicts of Interest* policy as Board Policy 6.09

SUMMARY

The Midpeninsula Regional Open Space District's (District) enabling legislation has always prescribed a conventional Design-Bid-Build ("low bid") project delivery method for construction projects. However, Senate Bill (SB) 793, passed in late 2017, amends the District's enabling legislation to empower the Board of Directors (Board) to award Design-Build contracts.

To implement this project delivery method, the Acting General Manager proposes revisions to Board Policy 3.03 - *Public Contract Bidding, Vendor and Professional Consultant Selection, and Purchasing* (see Attachment 2). As required by the state Design-Build law, the Board is also required to adopt a *Design-Build Contracts - Conflicts of Interest Policy* (Attachment 3). Adopting these revisions to the Board policies provides the District with greater flexibility in selecting a contract mechanism for constructing capital projects.

BACKGROUND

The District's enabling legislation has always allowed the Board to award construction contracts to the lowest bidder after public advertisement (Cal. Pub Res Code § 5549). This is commonly referred to as the "design-bid-build" contracting process. Generally, the District first hires a design consultant, such as an architect or engineer, to provide complete drawings and specifications for a construction project. Once the design is complete, the District then advertises for construction bids through a public competitive bidding process, and ultimately awards a contract to the lowest responsible bidder, who constructs the project. The conventional design-bid-build process is expected to remain the District's primary method of contracting for most construction projects.

Like the District, most public agencies have traditionally used the design-bid-build approach for construction projects. However, beginning in 2001 with the passage of AB 598, the option of design-build became available to some agencies. Using the design-build process incorporates design and construction services into a single contract. Based on information from both the private and public sector, the advantages in using the design-build process include:

- A single point of accountability as the same firm is responsible for both the design and construction of a facility
- Fewer change orders and claims
- Reduced delivery time when design and construction overlap
- Greater cost certainty
- Lower overall project cost

In 2015, the enactment of SB 785 overhauled the California design-build law, codified in Public Contract Code sections 22160-22169. It enables certain local public agencies (including cities, counties, special districts for wastewater and water recycling, and transit districts) to use design-build contracts subject to the following:

- Only certain types of projects and facilities are eligible;
- Only projects exceeding \$1,000,000 may be procured using design-build;
- Eligible agencies must follow certain specific steps during procurement as prescribed in the design-build law;
- Eligible agencies must adopt a Conflict of Interest Policy (“Policy”) for proposers on design-build solicitations; and
- The design-build law is only in effect through January 1, 2025, unless extended by the legislature.

Under the current law, design-build procurement is a four-stage process:

1. A design professional creates the design and scoping criteria ("bridging documents") in consultation with the local agency.
2. The agency advertises a Request for Qualifications (“RFQ”) to qualify design-build entities.
3. The agency advertises a concurrent or subsequent Request for Proposals (“RFP”) that sets forth specific requirements and scoring criteria for the selection of a design-build entity.
4. The agency negotiates the terms of the design-build contract and awards the contract to the selected entity.

This procedure can be more time-intensive than the conventional design-bid-build public bidding process, partly because it requires four sets of customized documents (the bridging documents, RFQ, RFP, and final contract), and also because negotiating the final contract terms with the selected design-build entity can be time-consuming, and even contentious. By contrast, in conventional design-bid-build, a single set of bidding and contract documents is issued for lump sum bids, with no negotiation.

Depending on the complexity of the project, the transactional costs for initiating a design-build project can often be higher due to the intensive process of developing up-front criteria for the project and describing them adequately in the bridging or project scoping documents. Design-build projects also relinquish detailed design decision-making to the contractor. In theory, this

promotes value engineering by allowing the contractor to make design decisions on behalf of the agency based on performance criteria (versus personal aesthetic or design preferences), allowing the contractor to make design, product or material selections that meet the criteria at the lowest cost possible. While the ideal project can ultimately result in cost savings, the process may limit the District's ability to control design decisions made during the course of implementing the project.

DISCUSSION

Last year, the Governor signed SB 793 into law, adding the authority to award design-build contracts into the District's enabling legislation as Public Resources Code section 5580 (Attachment 1). Effective January 1, 2018, the statute provides that upon approval by the Board of Directors, the design-build process may be used to assign contracts for the construction of facilities or other buildings in the district. The minimum project limitation of one million dollars for design build projects set forth in the Public Contract Code for other local agencies does not apply to the District. Section 5580 is in effect only until January 1, 2023, unless an extension is granted in the future by the legislature.

Beginning in 2018, the District has the ability to design and implement a broader range of projects using a design-build process as an alternative to the more traditional design-bid-build model for public contracts. However, all of the other generally applicable statutory requirements for design-build projects (codified in the California Public Contract Code) are also applicable to District projects, including the prescribed procurement procedures, which are more complex than standard public bidding procedures.

Design-build is intended to allow the District to combine design and construction services early in the design process to factor in construction constraints, cost-effective material options, and value engineering strategies to reduce project delays and contain costs. In addition, design-build allows agencies to base the selection of firms not only on cost, but also on qualifications and experience. This is particularly important for the District to ensure high quality and care during project construction given that most projects are located in remote areas with difficult access and minimal utilities, and in highly sensitive and rare habitats where special-status species must be protected.

Proposed Revisions to Board Purchasing Policy

Existing Board Policy 3.03 only recognizes the District's use of the traditional design-bid-build project delivery method for construction projects. The proposed revisions would permit the use of the design-build process (see Attachment 2). Adopting the proposed revisions to Board Policy 3.03 does not obligate the District to use the design-build method. The General Manager would recommend the use of design-build for projects where it appears that utilizing this process would be beneficial, including, but not limited to, reduced costs or a shortened construction period.

Design-Build Conflict of Interest Policy

As mentioned above, California Public Contract Code section 22162 requires the District to implement a Conflict of Interest Policy specific to consultants and contractors who propose to participate in a District design-build project. The *Design Build Contracts - Conflicts of Interest* Policy seeks to prevent the involvement of a proposer on a design-build project who is unable or potentially unable to render impartial assistance to the District on a project; whose objectivity in

performing the contract work is or might be otherwise impaired; or who has an unfair competitive advantage (see Attachment 3).

BOARD COMMITTEE REVIEW

No Committee reviewed this proposed changes.

FISCAL IMPACT

There is no fiscal impact associated with this action. The policy changes discussed in this report would align the Board's contracting authority with that of its revised enabling legislation, which became effective January 1, 2018. This alignment along with the proposed update to the purchasing policy would result in improved operational efficiencies.

PUBLIC NOTICE

Notice was provided pursuant to the Brown Act. No additional notice is necessary.

CEQA COMPLIANCE

No compliance is required as this action is not a project under CEQA.

NEXT STEPS

Following Board approval, the revised policies will take effect immediately. The Acting General Manager will make any necessary revisions to the Administrative Procedures that direct the implementation of the revised Board policies.

Attachment:

1. SB 793 - Amendment to Section 5580 of the Public Resources Code, relating to open space districts.
2. Proposed Revisions to Board Policy 3.03 - *Public Contract Bidding, Vendor and Professional Consultant Selection, and Purchasing*
3. Draft Board Policy 6.09, *Design Build Contracts - Conflicts of Interest*

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State of California

PUBLIC RESOURCES CODE

Section 5580

5580. (a) Notwithstanding Section 5594 or any other law, upon approval by the board of directors of the Midpeninsula Regional Open Space District, the design-build process described in Chapter 4 (commencing with Section 22160) of Part 3 of Division 2 of the Public Contract Code may be used to assign contracts for the construction of facilities or other buildings in that district.

(b) The minimum project limitation of one million dollars (\$1,000,000), as described in subdivision (a) of Section 22162 of the Public Contract Code, shall not apply to the Midpeninsula Regional Open Space District.

(c) For purposes of this section, all references in Chapter 4 (commencing with Section 22160) of Part 3 of Division 2 of the Public Contract Code to “local agency” shall mean the Midpeninsula Regional Open Space District and its board of directors.

(d) This section shall remain in effect only until January 1, 2023, and as of that date is repealed.

(Added by Stats. 2017, Ch. 627, Sec. 4. (SB 793) Effective January 1, 2018. Repealed as of January 1, 2023, by its own provisions.)

Midpeninsula Regional Open Space District

Board Policy Manual

Public Contract Bidding, Vendor and Professional Consultant Selection, and Purchasing Policy	Policy 3.03 Chapter 3 – Fiscal Management
Effective Date: 7/24/02	Revised Date: 12/16/15
Prior Versions: 12/16/09, 1/27/10, 9/23/15	

Purpose

The purpose of this policy is to ensure that the District obtains quality services, supplies, material and labor at the lowest possible cost, and to provide a uniform method for procurement of services and supplies. In addition, through proper documentation, conformance to this Policy will enable the District's constituents to know that their public funds are being spent responsibly, and potential vendors and contractors to know that they are being treated equitably.

Policy

I. PURCHASING AUTHORITY

There are three levels of authority for purchases: Board Approval, General Manager Approval and General Manager Delegated Approval. The maximum purchasing authority amounts refer to the total price of an order, including tax and/or shipping, which may include more than one item and also includes change orders and contract amendments. As used in this Policy, the term “purchasing” refers collectively to contracting or procurement of services, supplies, material or labor, including Capital Improvements.

A. Board Approval for Purchases In Excess of \$50,000

If the cost for furnishing services, supplies, materials, labor, or other valuable consideration to the District will exceed Fifty Thousand Dollars (\$50,000), approval from the Board of Directors is required prior to entering into the contract.

The Board may reject all bids and re-advertise, or by a five-sevenths vote may elect to purchase the materials or supplies in the open market, or to construct a building, structure, or improvement using District personnel.

1. Signature

Contracts which have been approved by the Board shall be signed by the General Manager or designee, unless the Board has directed that the President sign on behalf of the District. The District Clerk shall sign all such contracts and affix the seal of the District.

B. General Manager Approval for Purchases Not Exceeding \$50,000

Pursuant to Public Resources Code 5549, the General Manager may obtain bids without advertisement or published notice inviting bids and may authorize and execute contracts for payment for services, supplies, material, labor, or other valuable consideration for any purpose, including the new construction of any building, structure, or improvement, in an amount not exceeding \$50,000. Such expenditures shall be reported to the Board of Directors at its next regular meeting, and may be reported on the Board's Claims List.

1. Administrative Purchasing Policy/Procedure

The General Manager shall issue an Administrative Purchasing Policy/Procedure, which provides appropriate guidance to staff to ensure that all District purchases are made in accordance with this Policy and required documentation procedures are followed.

The General Manager shall issue written delegation of purchasing authority to those job classifications whose duties include making purchases within his or her area of responsibility. Purchasing authority limits shall be consistent with this Policy. Such written delegation of purchasing authority shall include the authority to execute contracts, purchase orders, and other documents necessary to approve a purchase within the employee's purchasing authority.

C. Contract Change Orders

Staff may issue change orders to a contract, provided that the aggregate of all change orders to that contract does not exceed fifteen percent (15%) of the original contract price. A larger contingency may be authorized, based on unusual circumstances. Change orders shall not exceed the total contract amount approved by the Board, General Manager or other District employee as authorized by this Policy, including any contingency amount. Any expenditure beyond the originally approved contract and contingency amount shall be approved by the party authorized at that expenditure level under this Policy.

II. SOLICITATION OF BIDS

A. Solicitation of Formal Advertised Bids for Expenditures Exceeding \$50,000

When any expenditure for projects, excluding Professional services, is expected to exceed \$50,000, the District shall conduct a formal bidding process pursuant to Public Resources Code section 5594.

This type of formal bidding process typically includes the issuance of written plans or specifications describing the goods or services to be provided and the receipt of written bids from the bidders involved. Staff shall attempt to solicit formal bids from a minimum of three bidders. Following Board approval, the contract shall then be executed by the General Manager or designee, unless the Board President's signature is required. The Contract shall be awarded to the lowest responsible, responsive bidder, except as otherwise provided in this Policy.

B. Solicitation of Three Written Bids for Expenditures Exceeding \$25,000 but Not Exceeding \$50,000

When any expenditure is expected to exceed \$25,000, but not exceed \$50,000, the District shall solicit written proposals from a minimum of three (3) bidders. The General Manager's or designee's approval of the contract or purchase order is required as applicable under this Policy.

C. Solicitation of Three Quotes or Proposals for Expenditures Exceeding \$5,000 but Not Exceeding \$25,000

When any expenditure is expected to exceed \$5,000, but not exceed \$25,000, the staff member responsible for the purchase is to solicit a minimum of three (3) quotes or proposals to provide the goods or services. Such quotes shall be documented in writing pursuant to the Administrative Purchasing Policy/Procedure.

D. Expenditures Not Exceeding \$5,000

Staff members shall obtain competitive cost information, whenever feasible, for any District purchase even though formal cost quotations are not required for goods or services costing \$5,000 or less.

III. Professional Services

Professional consultant services are of a technical and professional nature, and, due to the nature of the services to be provided, do not readily fall within the "low bid" competitive bidding process. In addition, State law requires that selection of professional consultants in the categories of architects, landscape architects, engineers, surveyors, construction managers, and environmental consulting be made on the basis of demonstrated competence and the professional qualifications necessary for the satisfactory performance of the required services. Professional consultants should be individually selected for a specific project or problem with the objective of selecting the most qualified consultant at a price that is fair and reasonable. Professional services agreements shall include the full scope of anticipated services for the project, program or annual service agreements and shall not be split into smaller units for the purpose of circumvention of this Policy and the required purchasing procedures.

A. Selection Procedures for Professional Services in Excess of \$50,000

When the cost for professional services is expected to be in excess of \$50,000, the District shall prepare a Request for Qualifications (RFQ) outlining the professional's qualifications, relevant experience, staffing and support and hourly rates. This information becomes the basis for negotiating a contract or a Request for Proposal (RFP) outlining the terms, conditions and specifications of the services required by the District. The District may also prepare, as an alternative, a Request for Qualifications and Proposal, combining the required elements of the RFQ and the RFP described above. A minimum of three (3) qualified firms or individuals shall be invited to submit qualifications and/or proposals.

District staff will review the proposals received, will select the most qualified firms for interviews, and will rank the consultants based upon criteria including but not limited to the following:

- i. Ability of the consultants to perform the specific tasks outlined in the RFP/RFQ.
- ii. Qualifications of the specific individuals who will work on the project.
- iii. Amount and quality of time key personnel will be involved in their respective portions of the project.
- iv. Reasonableness of the fee requested to do the work; comparability of fee to similar services offered by other qualified consultants.
- v. Demonstrated record of success by the consultant on work previously performed for the District or for other public agencies or enterprises.
- vi. The specific method and techniques to be employed by the consultant on the project or problem.
- vii. Ability of the consultant to provide appropriate insurance in adequate amounts, including errors and omissions if applicable.

For the categories of architects, landscape architects, engineers, surveyors, construction managers, and environmental consultants, initial selection of the most qualified and competent consultants shall not include the cost criteria listed in Section III.A. of this Policy. After staff has determined the most qualified and competent consultants, this cost criteria shall be considered in negotiating a professional services agreement with the selected consultant.

B. Selection Procedures for Professional Services in Excess of \$10,000 but Not Exceeding \$50,000

District staff shall solicit written proposals from a minimum of three (3) qualified consultants. A formal RFP/ RFQ is not required. The selection shall be based upon the criteria noted in Section III.A.. The General Manager or designee may approve the selection and execute the agreement.

C. Selection Procedures for Professional Services in Not Exceeding \$10,000

District staff shall maintain current files on qualified consultants in appropriate categories. The department shall, by telephone, email, or letter, contact at least three (3) qualified consultants and request them to submit a proposal either orally or in writing. Oral proposals shall be memorialized in writing, pursuant to the Administrative Purchasing Policy/Procedure. The selection shall be based upon the criteria noted in Section III.A. and per the Administrative Purchasing Procedure. The authorized Department Manager or other authorized District employee may approve the selection and execute the agreement.

D. Renewal of Contracts with Professional Consultants

The District may, at its sole discretion, and after following required consultant selection procedures, enter into consultant agreements which contain provisions authorizing their extension or renewal. However, recommendations to extend or renew an existing contract with

a professional consultant should include an annual written evaluation of the work performed by the consultant as well as a determination that the fees being charged are comparable to similar services offered by other consultants at the time of renewal or extension. If the total amount of the original and renewed contract in any one fiscal year does not exceed \$50,000, the General Manager or designee may execute the agreement. If the total amount exceeds \$50,000, the request must be approved by the Board.

E. Conflict of Law

These procedures are not applicable where superseded by local, state or federal law, where the terms of grant funding provide for the use of other consultant selection procedures, or where the District is obligated to select consultants through the use of different procedures, such as due to the requirements of an insurance or self-insurance program.

F. Special Circumstances

These procedures are not applicable when three (3) bids or proposals are unavailable, or if it is appropriate and in the best interest of the District under the specific circumstances, to limit the number of bids or proposals solicited. The basis for such action shall be documented in writing and approved by the General Manager or designee in his/her absence. When Board approval is required, the documented basis for such action shall be included in the report to the Board.

G. Prequalified Consultant File

When, after District staff has undertaken the selection procedures as set out in this Policy and determined that a consultant is qualified and competent in the performance of the professional services in the consultant's category, District staff may maintain a current file of such consultants in their appropriate categories. For a period of four (4) years from determination of the qualification of such consultant, District staff may select such a prequalified consultant from the current file of prequalified consultants for the performance of professional services.

IV. EXCEPTIONS TO STANDARD PURCHASING PROCEDURES

A. Emergency Conditions

An emergency is defined as a breakdown in machinery or equipment or a natural disaster resulting in the inability of the District to provide services, or a threat to public health, safety, or welfare, including, but not limited to, threatened damage to natural resources. In the case of an emergency determined by the District, or federal, state, or other local jurisdictions requiring an immediate purchase, the General Manager or designee may authorize District staff to secure in the open market, at the lowest obtainable price, any services, supplies, material or labor required to respond to the emergency, regardless of the amount of the expenditure. The General Manager shall, as soon as possible, provide a full written explanation of the circumstances to the Board.

In the case of a disaster or for civil defense, nothing contained in this Policy shall limit the authority of the General Manager to make purchases and take such other emergency steps as are, or may be, authorized by the Board.

B. Limited Availability/Sole Source

Occasionally, necessary supplies, materials, equipment, or services are of a unique type, are of a proprietary nature, or are otherwise of such a required and specific design or construction, or are for purposes of maintaining consistency and operational efficiency, so as to be available from only one source. After reasonable efforts to find alternative suppliers, the District may dispense with the requirement of competitive bids and recommend negotiating and making the purchase from the sole source. The basis for the sole source recommendation shall be documented in writing and approved, in advance, by the Board for purchases exceeding \$50,000, and the General Manager or other authorized District employee, for purchases not exceeding \$50,000.

C. Cooperative Purchasing

The District shall have the authority to join in cooperative purchasing agreements with other public agencies, (e.g., the State of California, counties, cities, schools, or other special districts), to purchase goods or services at a price established by that agency through a competitive bidding process. The General Manager or designee may authorize and execute such cooperative purchasing agreements.

1. Purchases Exceeding \$50,000

The formal competitive bidding procedures of Section II.A. for purchases exceeding \$50,000 are not required when the other public agency has secured a price through a formal, advertised competitive bidding process. Board approval is required prior to purchase.

2. Purchases Not Exceeding \$50,000

The bidding procedures of Section II. B. for purchases not exceeding \$50,000 are not required when the other public agency has secured a price through a competitive bidding process. Approval from the General Manager or designee is required prior to purchase.

H. Open Purchase Orders for Routine and Repetitive Supplies and Services

Open purchase orders may be entered into with vendors who are expected to supply routine services, supplies, materials or labor to the District on a regular basis throughout the fiscal year (such as gasoline, discing, road maintenance, vehicle maintenance, printing, office supplies and field hardware). Open purchase orders shall be closed at the conclusion of each fiscal year. Vendors of repetitive supplies and services shall be selected through the competitive bidding procedures set out in Section II, based upon the anticipated or budgeted cumulative cost of the supply or service. Where competitive bidding procedures cannot feasibly be used, a comparison of vendors' prices will be made and staff will provide written documentation of the price

quotations used to select the vendor with the lowest cost, pursuant to the Administrative Purchasing Policy/Procedure. Multi-year contracts can be entered into only when appropriate and necessary to secure the best pricing or assure continuity of service. An annual review of the services and prices provided shall be documented by District staff to assure that the vendor is meeting the District's needs and expectations and remains at a competitive price. Whenever feasible, multi-year contracts for service or supplies shall provide that the option to renew or extend the contract is at the District's sole discretion.

I. Design Build Contracts

Pursuant to Public Resources Code section 5580, upon approval by the Board, the design-build process (Public Contract Code sections 22160-22169) may be used to assign contracts for the construction of facilities or other buildings in the district. The minimum project limitation of one million dollars for design build projects set forth in the Public Contract Code does not apply to District design-build projects.

A Conflict of Interest Policy for design-build contracts required by Public Contract Code section 22162 is included in the ~~Board Design-Build Contracts - Conflicts of Interest Code~~ (Board Policy 6.029).

V. GENERAL PROVISIONS

A. Conflict of Interest

No District employee or official shall be financially interested, directly or indirectly, in any purchase, contract, sale, or transaction to which the District is a party and which comes before said official or employee for recommendation or action. Any purchase, contract, sale, or transaction in which any employee or official is or becomes financially interested shall become void at the election of the District. No employee or official shall realize any personal gain from any purchase, contract, sale, or transaction involving the District. More information can be found in Board Policy 6.02 – Conflict of Interest Code.

B. Credit Cards

The General Manager may approve the use of District credit cards for District purchases by authorized employees. Employees utilizing a credit card shall not exceed his/her purchasing authority, as authorized in this Policy and as delegated by the General Manager, unless prior approval is given by a supervisor with the appropriate purchasing authority. All card holders must follow the credit card procedures outlined in the Administrative Purchasing Policy/Procedure. District credit cards shall not be issued to individual members of the District Board of Directors.

C. Purchase of Recycled Products

District staff shall purchase recycled products whenever such products are available at equal cost to non-recycled products and when fitness and quality are equal.

D. Violations of This Policy

Employees are subject to disciplinary action up to and including termination for violation of this Policy.

Midpeninsula Regional Open Space District

Board Policy Manual

Design-Build Contracts – Conflicts of Interest	Policy 6.09 Chapter 6 – General
Effective Date: 01/24/18	Revised Date: N/A
Prior Versions: N/A	

Purpose

The purpose of this policy is to establish guidelines, as required under California Public Contract Code section 22162 for a standard organizational conflict-of-interest policy, regarding the ability of a consultant (person or entity) to submit a proposal as a design-build entity or to join a design-build team (“Proposer”) for a design-build project procured pursuant to California Public Contract Code section 22160 et seq.

Policy

A consultant will not be allowed to participate as a Proposer or to join a design-build team in response to a design-build Request for Proposals (RFP) if any of the following circumstances are applicable:

- a. The consultant is the District’s general engineering, architectural or design consultant (hereinafter collectively referred to as “general design consultant”) to the subject design-build project.
- b. The consultant has assisted or is assisting the District in the management or procurement of the subject design-build project, including in the drafting or preparation of the Request for Qualifications (RFQ) or RFP language or evaluation criteria.
- c. The consultant has conducted preliminary design services for the subject design-build project such as engineering analysis, environmental analysis, feasibility studies, preliminary designs, conceptual layouts, or preparation of bridging documents.
- d. The consultant performed design work related to the subject design-build project.
- e. The consultant has performed work on a previous contract that specifically excludes them from participating as a Proposer or joining a design-build team for the subject design-build project.
- f. The consultant is under contract with any other entity to perform oversight on the subject design-build project after it has been awarded.
- g. Any circumstances that would violate California Government Code section 1090, et seq.