



Midpeninsula Regional
Open Space District

R-24-96
Meeting 24-20
July 24, 2024

AGENDA ITEM 4

AGENDA ITEM

Revisions to Board Policy 3.03 - *Public Contract Bidding, Vendor and Professional Consultant Selection, and Purchasing*

GENERAL MANAGER'S RECOMMENDATION

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Review and approve the proposed changes to Board Policy 3.03 - *Public Contract Bidding, Vendor and Professional Consultant Selection, and Purchasing* to increase the General Manager's expenditure authority by 2% pursuant to California Public Resources Code section 5549(b)(2).

SUMMARY

The District's enabling legislation establishes the General Manager's authority to enter into contracts up to a certain threshold without Board of Directors (Board) approval. That threshold was \$50,000 until 2018 when legislation empowered the Board to increase the General Manager's expenditure authority by 2% per fiscal year. The Board approved the first 2% increase during Fiscal Year 2023-24 (FY24). The General Manager recommends that the Board adopt another 2% increase for Fiscal Year 2024-25, and adopt corresponding revisions to Board Policy 3.03 – *Public Contract Bidding, Vendor and Professional Consultant Selection, and Purchasing*.

DISCUSSION

Since 2015, Section 5549 of the California Public Resources Code has provided that the General Manager may enter into contracts not exceeding \$50,000, without advertising, for the payment for supplies, materials, labor, or other valuable consideration for any purpose, including new construction of a building, structure, or improvement. In 2018, the legislature sought to handle ongoing cost increases due to inflation by enacting further legislation, allowing the Board to increase the General Manager's authority amount by 2% per fiscal year. In February 2024, the Board increased the General Manager's Authority to \$51,000. This is the second time the District is pursuing a 2% increase, which would bring the General Manager's signature authority to \$52,000. The increase is reflected in the redline version of the proposed policy amendment (Attachment 1). The Board may subsequently enact an increase, in an amount equal to 2%, for each fiscal year following the operative date of the last adjustment.

Note that the only proposed change to the Board Policy that is related to and granted under Public Resources Code section 5549(b)(2) is the proposed 2% increase to the General Manager's purchasing authority.

FISCAL IMPACT

None

PRIOR BOARD COMMITTEE REVIEW

None – though the full Board has expressed support for action items, including increases in the General Manager's purchasing authority, that facilitate project delivery. This constitutes a minor yet helpful operational improvement toward this end.

PUBLIC NOTICE

Public notice was also provided pursuant to the Brown Act.

CEQA COMPLIANCE

This item is not a project subject to the California Environmental Quality Act.

NEXT STEPS

Following Board approval, the revised policy will be implemented. The General Manager expects to return to the Board to implement increases of up to 2% for each fiscal year following the operative date of this adjustment.

Attachment:

1. Proposed Revisions to Board Policy 3.03 - Public Contract Bidding, Vendor and Professional Consultant Selection, and Purchasing

Responsible Department Head:

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Prepared by:

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Midpeninsula Regional Open Space District

Board Policy Manual

<p>Public Contract Bidding, Vendor and Professional Consultant Selection, and Purchasing Policy</p>	<p>Policy 3.03 Chapter 3 – Fiscal Management</p>
<p>Effective Date: 7/24/02</p>	<p>Revised Date: 07/24/2024</p>
<p>Prior Versions: 12/16/09, 1/27/10, 9/23/15, 1/24/18, 06/10/2020, 01/12/2024</p>	

Purpose

The purpose of this policy is to formalize the process by which the Midpeninsula Regional Open Space District (District): (1) obtains quality services, supplies, material and labor at the lowest possible monetary and environmental cost to ensure the responsible stewardship of public tax dollars; and (2) provides a uniform method for procurement of services and supplies to ensure consistent and equitable contracting with vendors, suppliers, consultants, and contractors.

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 \$52,000

If the cost for furnishing services, supplies, materials, labor, or other valuable consideration to the District will exceed **Fifty-two Thousand Dollars (\$52,000)**, 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 \$52,000

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 amounts not exceeding \$52,000. See Section II of this policy for competitive bidding requirements. Expenditures under the General Manager's purchasing authority shall be reported to the Board of Directors at its next regular meeting. Reporting expenditures on the Board-agendized Claims List fulfills this reporting obligation.

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 and Contingencies

Staff may issue change orders to a contract, provided that the aggregate of all change orders to that contract does not exceed the total contract amount with contingency as approved by the Board for amounts over \$52,000. Contingencies generally shall range between 5% and no more than 15% of the original contract price and be dependent on the level of uncertainty regarding potential additional issues that may emerge and generate unexpected costs in order to complete the intended base contract work. A contingency greater than 15% may be authorized by the Board when accompanied by a finding that circumstances warrant a larger contingency.

II. SOLICITATION OF BIDS

A. Solicitation of Formal Advertised Bids for Expenditures Exceeding \$52,000

When any Contract, excluding Professional services, is expected to exceed \$52,000, 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. A Contract shall be awarded to the lowest responsible, responsive bidder, except as otherwise provided in this Policy (see Sections III, IV and Section V).

B. Solicitation of Three Written Bids for Expenditures Exceeding \$25,000 but Not Exceeding \$52,000

When any expenditure is expected to exceed \$25,000, but not exceed \$52,000, 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. The results of the solicitation, including any 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 \$52,000

When the cost for professional services is expected to be in excess of \$52,000, 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.
- viii. The firm's location, if it is situated within District boundaries, and/or its business practices (such as sales, marketing, manufacturing, servicing, provision of services, procurement of local materials and/or labor, or research and development) that enable the firm to complete the contracted work consistent with District objectives (see Section V.D.).

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 \$52,000

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 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. The results of the solicitation, including any oral quotes, 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 prepared by the District for 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 **\$52,000**, the General Manager or designee may execute the agreement. If the total amount exceeds **\$52,000**, 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 who can provide the services for a fair and reasonable price.

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 **\$52,000**, and the General Manager or other authorized District employee, for purchases not exceeding **\$52,000**.

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 \$52,000

The formal competitive bidding procedures of Section II.A. for purchases exceeding \$52,000 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 \$52,000

The bidding procedures of Section II. B. for purchases not exceeding and up to \$52,000 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 Design-Build Contracts - Conflicts of Interest (Board Policy 6.09).

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. Environmentally Preferable Purchasing

In keeping with the District’s mission to “protect and restore the natural environment,” the District shall seek to minimize, to the extent practicable, environmental impacts arising out of its purchases of services, supplies, and materials. The District shall select environmentally preferable services, supplies, and materials when suitability, quality, sustainability, and cost, taken together, provide the best outcome for the environment and best value for the public.

The District shall consider environmental factors, including but not limited to:

- Postconsumer recycled content
- Energy efficiency
- Durability
- Low/zero air emissions
- Low/zero hazardous substances
- Water efficiency
- Product maintenance impacts (e.g., release of chemicals/waste generation)
- End-of-life management that keeps materials out of landfills (e.g., reuse, recycling, return to manufacturers)
- Low life-cycle cost/Longer life cycle
- Responsible manufacturing
- Packaging and distribution efficiency

This provision may be waived if performance objectives cannot be met, and/or the product or service is cost-prohibitive or unavailable within a reasonable period of time or if restricted by grant funders for grant-funded projects. Environmentally preferable products and services may be identified by an eco-label such as those recognized by the United States Environmental Protection Agency, or may be deemed by staff to be preferable based on objective metrics (e.g., vehicle miles traveled and/or type of fuel used to provide a service, or the material and/or end-of-life disposal options for a product). The District shall give a preference to environmentally

preferable goods and services equal to five percent (5%) of the total contract amount. The General Manager is authorized to apply a preference greater than 5% for procurements not exceeding \$10,000 where circumstances warrant a larger preference to serve the purposes of this policy. Application of the environmentally preferable purchasing provision shall be documented in writing.

D. Local Preference for Professional Services, Supplies, and Materials

This section is limited to the District's procurement of professional services and the purchase of supplies and/or materials (this section does not apply to public works/construction contracts). The District shall give a preference to local businesses (as defined below) by giving a preference equal to five percent (5%) of the contract amount. This preference will be given whenever practical and feasible in the selection process for professional services if qualifications are equal and/or for procurement of equally acceptable supplies and materials. The General Manager is authorized to apply a preference greater than 5% for procurements not exceeding \$10,000 where circumstances warrant a larger preference to serve the purposes of this policy. The selection and evaluation process shall be based upon the criteria set forth in Sections II and III above.

A local business is defined as one with a valid physical address located within Santa Clara County, San Mateo County, or Santa Cruz County. The business will be required to provide evidence that it operates or performs its business within these counties on a day-to-day-basis and holds a valid business license, if required, to operate at its local address.

Local preference shall not apply under the following conditions:

- Where the District determines that such a preference is precluded by local, state, or federal law or regulation or pertinent grant funding requirements.
- When participating in a cooperative purchasing agreement
- Emergency purchases
- Sole Source purchases

Application of the Local Preference provision shall be documented in writing by the District.

E. Violations of This Policy

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