



Midpeninsula Regional
Open Space District

R-15-24
Meeting 15-04
February 12, 2015

AGENDA ITEM 7

AGENDA ITEM

General Manager's Purchasing Authority in Public Resources Code Section 5549.

GENERAL MANAGER'S RECOMMENDATION

Approve the concept of increasing the General Manager's purchasing authority in Public Resources Code Section 5549 from \$25,000 to \$100,000 in order to achieve administrative efficiencies while maintaining competitive public contracting procedures, and direct the General Manager to work with the District's state legislators to introduce legislation to make this change.

SUMMARY

Public Resources Code Section 5549 currently limits the General Manager's purchasing authority to \$25,000. Board of Directors' approval is required to authorize contracts and other purchases above this threshold. This threshold has remained unchanged in statute since 2002 when it was increased from \$10,000 to \$25,000 for the District, East Bay Regional Park District, and Sonoma County Agricultural Preservation and Open Space District. As part of the District's Financial and Operational Sustainability Model Study, Management Partners identified early in the study that increasing this threshold could create process and administrative efficiencies. By District policy, informal and formal public bidding procedures would continue to apply based on the new threshold. Staff estimates that up to 600 hours of staff time per year in the preparation of Board reports could be saved. Therefore, the General Manager recommends direction from the Board to work with the District's state legislators to introduce legislation to increase this threshold in PRC Section 5549.

DISCUSSION

Typically, General/City/County Manager spending authority is delineated through a combination of enabling legislation (State law or Charter law) that sets the maximum threshold and the agency's contracting policy, by which the legislative body grants authority to the General/City/County Manager up to, but not exceeding the maximum authority. In the District's case, the \$25,000 limit is set in Public Resource Code 5500 (Section 5549(b)), and the Board grants this authority to the General Manager in Board Policy 3.03 "Public Contract Bidding, Vendor and Professional Consultant Selection, and Purchasing Policy." PRC Section 5549(b) is provided below and Policy 3.03 is provided as Attachment 1.

(b) With the approval of the board, the general manager may bind the district, in accordance with board policy, and without advertising, for the payment for supplies, materials, labor, or other valuable consideration for any purpose, other

than new construction of a building, structure, or improvement, in amounts not exceeding twenty-five thousand dollars (\$25,000), and for the payment for supplies, materials, labor, or other valuable consideration for new construction of a building, structure, or improvement, in amounts not exceeding twenty-five thousand dollars (\$25,000). All expenditures shall be reported to the board of directors at its next regular meeting.

Through the research completed by Management Partners as part of the Financial and Operational Sustainability Model Study, a number of areas were identified as opportunities for improvement. One area was the purchasing authority of the General Manager should be increased to reduce the amount of staff time required to prepare final contract authorization board reports and to save staff time associated with the difference between formal and informal public bidding procedures per District policy. A brief staff analysis estimates that a final contract award report to the board for authorization requires an estimated 8-16 hours of staff time to prepare and present. Based on the number of contracts between \$25,000 and \$100,000 in recent years, and projecting a two- to three-fold increase in future years related to the District's anticipated growth and Measure AA implementation, increasing the General Manager's purchasing authorization amount to a \$100,000 threshold could save up to 720 hours of staff time, or, in other words, up to 90 days of work. This calculation does not include the more significant time savings that might be realized for implementing an informal bid process compared to a formal bid process at an increased threshold as prescribed by District policy and in compliance with contracts law.

Historically, smaller PRC 5500 parks and open space agencies other than the District, East Bay Parks, and Sonoma County Agricultural Preservation and Open Space District had a purchase authorization threshold of \$10,000. In 2013-14, Assembly Bill 745 (Levine) raised the threshold for all of these 5500 agencies to \$25,000. However, the size of East Bay Park's and the District's budgets and number of projects continues to be significantly larger than most of the other 5500 agencies, suggesting an increased threshold may once again be warranted. It is also worth noting that the purchasing authority granted in neighboring cities, as well as County-dependent parks agencies, is much higher than \$25,000. Research performed by the City of Mountain View in 2010 showed that the average contracting authority threshold for public works projects in the 14 cities in Santa Clara County was \$86,500, with eight of the 14 at \$100,000 or higher. Based on this research, Mountain View raised their threshold from approximately \$40,000 to \$100,000 at that time.

Section II of the attached Board policy discusses Solicitation of Bids. The proposed legislation is not intended to change these processes. The District would still be required by Board policy to utilize competitive bidding processes. If state legislation was successful at raising the threshold, the General Manager would anticipate returning to the Board at a future date to revise the District's bidding policy to incorporate the new threshold. At the time of this review, the Board could evaluate whether to utilize different thresholds for different types of contracts, such as services and supplies, construction, or professional service contracts.

East Bay Regional Park District has also expressed interest in increasing the PRC Section 5549 purchasing authority threshold.

FISCAL IMPACT

There is no fiscal impact associated with the General Manager's recommendation. If state legislation is successfully introduced and passed raising the PRC Section 5549 purchasing threshold, and the District policy subsequently revised to reflect the new threshold, there would be a positive fiscal impact to the District through increased staff time efficiency.

PUBLIC NOTICE

Notice was provided pursuant to the Brown Act.

CEQA COMPLIANCE

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

NEXT STEPS

If the Board approves the General Manager's recommendation, staff will work with the District's state legislators to introduce legislation. If state legislation was successfully passed raising the PRC Section 5549 purchasing threshold, the General Manager would return to the Board at a future time to revise District Policy to implement the new authority threshold.

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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: 11/13/13</p>
<p>Prior Versions: 12/16/09, 1/27/10</p>	

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.

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 \$25,000

If the cost for furnishing services, supplies, materials, labor, or other valuable consideration to the District will exceed Twenty-Five Thousand Dollars (\$25,000), 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 in the General Manager’s absence, the Acting General Manager, 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 \$25,000

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 \$25,000. 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.

C. General Manager Delegated Approval for Purchases Not Exceeding \$15,000

1. The Assistant General Manager may be authorized, in writing, by the General Manager to approve purchases not to exceed \$15,000. When acting as the General Manager, in his/her absence, the Assistant General Manager and Department Managers may be delegated the General Manager's authority of \$25,000.
2. The Department Managers may be authorized, in writing, by the General Manager, to approve purchases relating to his/her area of responsibility not to exceed \$10,000.
3. The General Counsel, Assistant General Counsel, and Area Superintendents may be authorized, in writing, by the General Manager to approve purchases not to exceed \$5,000.

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.

D. Construction Change Orders

Staff may issue change orders to a construction contract, provided that the aggregate of all change orders to that contract does not exceed fifteen percent (15%) of the original contract price, and does 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 \$25,000

When any expenditure is expected to exceed \$25,000, the District shall publish a notice inviting bids a minimum of one week prior to the time of receiving bids, in a general circulation newspaper published in the District. 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 vendors involved. Solicitation of formal bids from a minimum of three vendors is required. Following Board approval, the contract shall then be executed by the General Manager (or the Acting General Manager in his/her absence,), 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 \$10,000 but Not Exceeding \$25,000

When any expenditure is expected to exceed \$10,000, but not exceed \$25,000, the District shall solicit written proposals from a minimum of three (3) vendors. The General Manager, Assistant General Manager, or Acting General Manager's approval of the contract or purchase order is required as applicable under this Policy.

C. Solicitation of Three Verbal Quotes for Expenditures Exceeding \$5,000 but Not Exceeding \$10,000

When any expenditure is expected to exceed \$5,000, but not exceed \$10,000, the staff member responsible for the purchase is to solicit a minimum of three (3) verbal quotes to provide the goods or services. Such quotes shall be documented in writing pursuant to the Administrative Purchasing Policy/Procedure.

D. Solicitation of Two Verbal Quotes for Expenditures Exceeding \$3,000, but Not Exceeding \$5,000

When any expenditure is expected to exceed \$3,000, but not exceed \$5,000, the staff member responsible for the purchase is to solicit a minimum of two (2) verbal quotes to provide the goods or services. Such quotes shall be documented in writing pursuant to the Administrative Purchasing Policy/Procedure.

E. Expenditures Not Exceeding \$3,000

Staff members shall obtain competitive cost information, whenever reasonably feasible, for any District purchase even though formal cost quotations are not required for goods or services costing \$3,000 or less.

III. EXCEPTIONS TO STANDARD PURCHASING PROCEDURES

A. Emergency Conditions

An emergency is defined as a breakdown in machinery or equipment 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 requiring an immediate purchase, the General Manager may authorize the Assistant General Manager or Department Manager or his/her designee 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, material, 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 specifically necessary for purposes of maintaining cost effective system consistency, 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 \$25,000, and the General Manager or another authorized District employee, as designated in this Policy, for purchases not exceeding \$25,000.

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, Santa Clara County or San Mateo County), to purchase goods or services at a price established by that agency through a competitive bidding process. The General Manager, or Assistant General Manager in his/her absence, may authorize and execute such cooperative purchasing agreements.

1. Purchases Exceeding \$25,000

The formal competitive bidding procedures of Section II.A. for purchases exceeding \$25,000 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 \$25,000

The bidding procedures of Section II. B. for purchases not exceeding \$25,000 are not required when the other public agency has secured a price through a competitive bidding process. Approval from the General Manager or his/her authorized designee is required prior to purchase.

D. 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 not be split into smaller units, nor shall contract amendments be used, for the purpose of circumvention of this Policy.

As used in this Policy, “professional service agreement” shall mean and include all professional service agreements, which are part of or related to the same project or program for which the consultant is being retained, and annual service agreements to provide services on an ongoing basis in any fiscal year. This policy shall include, but not be limited to, services in the following fields:

- Engineering (for example, civil, acoustical, mechanical, electrical, structural, and traffic)
- Architecture
- Landscape Architecture
- Construction Management
- City and Regional Planning
- Economic Analysis
- Property Appraisals/Analysis
- Property Acquisition
- Financial Services
- Data Processing Services
- Project Management
- Environmental Planning and Analysis
- Land Surveying
- Legal Services
- Personnel Consultants/Facilitators/Coaches
- Recruitment Services
- Safety Services
- Trainers

1. Selection Procedures for Professional Services in Excess of \$25,000

When the cost for professional services is expected to be in excess of \$25,000, the District shall prepare a Request for Qualifications (RFQ) outlining the professional's qualifications, relevant experience, staffing and support and hourly rates as a basis for negotiating a contract or a Request for Proposal (RFP) outlining the terms, conditions and specifications of the services required by the District. A minimum of three (3) qualified firms or individuals shall be invited to submit proposals.

District staff will review the proposals received, will select the most qualified firms for interviews, and will rank the consultants based upon the following criteria:

- 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. D.1. iv 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 and final selection of the consultant.

2. Selection Procedures for Professional Services in Excess of \$10,000 but Not Exceeding \$25,000

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. D.1. The General Manager or his/her authorized designee may approve the selection and execute the agreement.

3. Selection Procedures for Professional Services in Excess of \$3,000 but Not Exceeding \$10,000

District staff shall maintain current files on qualified consultants in appropriate categories. The department shall, by telephone 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. D.1. The authorized Department Manager or other authorized District employee may approve the selection and execute the agreement.

4. 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 \$25,000, the General Manager or his/her authorized designee may execute the agreement. If the total amount exceeds \$25,000, the request must be approved by the Board.

5. 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.

6. Special Circumstances

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

7. 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 two (2) 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.

E. 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 done, a comparison of vendors' prices on representative sample items 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 let 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.

IV 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.

B. Credit Cards

The General Manager may approve the use of District credit cards for District purchases by authorized employees. The employee utilizing a credit card cannot exceed his/her purchasing authority, as authorized in this Policy and as delegated by the General Manager, and 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. When recycled products are used, the supplier shall label the products to indicate that they contain recycled materials, and specify the minimum percentage of recycled material in the products.

D. Violations of This Policy

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