



Midpeninsula Regional  
Open Space District

R-22-68  
Meeting No. 22-16  
June 22, 2022

## AGENDA ITEM 7

### AGENDA ITEM

Proposed Update to Board Policy 3.03 to include Environmentally Preferable and Local Preference Purchasing for Services, Supplies, and Materials

### GENERAL MANAGER'S RECOMMENDATION

Review and approve proposed updates to Board Policy 3.03 - *Public Contract Bidding, Vendor and Professional Consultant Selection, and Purchasing Policy* - to include new sections for Environmentally Preferable and Local Preference Purchasing for Services, Supplies, and Materials.

### SUMMARY

In April 2022, the Legislative, Funding, and Public Affairs Committee (LFPAC) reviewed proposed updates to Board Policy 3.03 - *Public Contract Bidding, Vendor and Professional Consultant Selection, and Purchasing Policy* (Purchasing Policy) - to conform to State law and internal practices and include new sections regarding Environmentally Preferable and Local Preference Purchasing for Services, Supplies, and Materials. The proposed revisions would provide for up to a 5% cost differential in favor of environmentally preferred purchasing and local vendor selection. LFPAC recommended forwarding the proposed revisions to the full Board of Directors (Board) for their consideration.

### DISCUSSION

In response to Board interest for locally sourced services, materials, and supplies to reduce third-party generation of greenhouse gas emissions and consistent with ongoing efforts to reduce operational emissions under the Board-approved Climate Action Plan, the Midpeninsula Regional Open Space District (District) has reevaluated its purchasing policy. Based on recent research of best practices and policy considerations of other public agencies, District staff have assembled proposed policy revisions for Board review that align with the District's climate sustainability goals and support ongoing operational needs. These proposed revisions focus on local and environmentally conscious purchasing as allowed under existing law (refer to Attachment 1 for the proposed Board Policy 3.03 redline edits).

#### Environmentally Preferable Purchasing

The Board has previously expressed an interest in environmentally preferable purchasing of products and services from manufacturers and suppliers that demonstrate a high level of environmental responsibility. The District diligently strives to continuously implement environmentally preferable processes in alignment with and to supplement actions specified

under the District's Climate Act Plan. For example, in 2019, the District implemented a carpool/transit commute incentive and an improved waste system at District offices. In 2020, the District enhanced its policy to specify the Purchase of Recycled Products.

Incorporating environmental considerations into the purchasing policy would assist the District in promoting regional environmental sustainability by maximizing the use of renewable products and recycled content, reducing greenhouse gas emissions and total carbon footprint, conserving energy and the use of raw materials, and reducing the use of non-environmentally friendly substances as part of its ongoing operations. The General Manager recommends updates to the Policy to facilitate environmentally preferred purchasing as follows: A preference equal to five percent (5%) of the total contract amount where the basis of award is price, or equal to five percent of the total points where the basis of award is qualifications, would be given to vendors offering environmentally preferable goods and services. The General Manager would be 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 preference would be applied in determining the lowest qualified quote or proposal in the solicitation.

Numerous public sector entities have environmentally preferable purchasing programs, and the table below lists the jurisdictions and the preference information.

Agency	Agency Managing Environmentally Preferable Policy	Comment
Alameda County	Alameda County	General guidelines, no % price preference identified
East Bay Regional Park District	East Bay Regional Park District	General guidelines, no % price preference identified
Marin County	Marin County	General guidelines, no % price preference identified
Monterey County	Monterey County	General guidelines, no % price preference identified
Napa County Regional Park & Open Space District	Napa County	General guidelines, no % price preference identified
San Mateo County	San Mateo County	10% price preference on recycled content
Santa Clara County	Santa Clara County	General guidelines, no % price preference identified
Santa Cruz County	Santa Cruz County	Santa Cruz County Purchasing Procedures 2.37.105, 10% of the lowest bid or price
Santa Cruz City School District	City of Santa Cruz School Dis	5% cost differential on recycled-content paper products
Sonoma Open Space	Sonoma County	5% price preference on environmentally preferable products or products with recycled or recyclable content

### Local Preference Purchasing

Various Board members have also expressed interest in local preference purchasing as a means to invest back into the local economy, encourage local vendor participation, and reduce total worker commute miles and the associated greenhouse gas emissions. A Local Business in the proposed policy is defined as one with a valid physical address located within Santa Clara County, San Mateo County, or Santa Cruz County. However, it is important to note that a local preference may not have the full desired effect since local consultants and vendors with business

addresses within this Local Business zone do not necessarily limit themselves to using a local workforce (i.e., workers living within the same zone).

The District understands that incorporation of a local preference policy would equalize the competitive disadvantage facing local businesses in our high-price area that experience higher overhead costs as compared to other regions of the state or country. Considering state law limitations and the usefulness of local preference purchasing, the General Manager recommends providing a preference to local businesses by awarding a preference equal to five percent (5%) of the total contract amount where the basis of award is price determinative, or equal to five percent (5%) of the total points where the basis of award is qualifications. The General Manager would be 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 5% differential is consistent with what other local agencies have adopted and comports with applicable state law (including Public Resources Code section 5594 and Public Contract Code section 2002).

The District maintains a strong record of hiring consultants, contractors, and vendors whose offices are located within District boundaries. In fact, LFPAC Committee members noted that doing business within our local community is an important way for the District to be engaged within the communities it serves. In Fiscal Year 2021-22 (FY22), a total of \$21.3M was expensed on purchase orders of which over 40% or \$8.8M of these expenses were for services, supplies, and/or materials supplied by local businesses within Santa Clara and San Mateo counties. By incorporating specific language to this effect into District policy, staff will have written instructions that reflect the importance of considering local businesses when making purchases for services, supplies, and materials.

A number of public sector entities have local business preference programs, and the table below lists the jurisdictions and the preference information.

Agency	Agency Managing Local Preference Policy	Comment
Alameda County	Alameda County	5% preference given to local vendor
City of Novato	City of Novato	5% preference given to local vendor
East Bay Regional Park District	East Bay Regional Park District	No local preference policy
Marin County	Marin County	5% preference given to local vendors
Monterey County	Monterey County	5% preference given to local vendor
Napa County Regional Park & Open Space District	Napa County	5% preference given to local vendors
San Mateo County	San Mateo County	% not identified for local preference
Santa Clara County	Santa Clara County	5% preference given to local vendor
Santa Clara Valley Open Space Authority	Santa Clara Valley Open Space Authority	No local preference policy
Santa Cruz County	Santa Cruz County	5% preference given to local vendors
Sonoma Open Space	Sonoma County	5% preference given to local vendors

*Exclusion to the Local Preference Purchasing Policy*

State law, including the District's enabling legislation, does not permit the District to apply a local preference to public works construction projects. Rather, these projects are required to be awarded to the lowest responsible, responsive bidder as defined under state law.

There may also be restrictions or limitations within grant requirements and agreements whereby the proposed environmentally preferable and/or local preference purchasing policy objectives are not in alignment with the funder's priorities or criteria.

**FISCAL IMPACT**

There is no fiscal impact associated with updating Board Policy 3.03. Approval of the Local Preference and Environmentally Preferable Purchasing Policy update may potentially result in the District paying up to five percent (5%) more for services, supplies, and materials. However, certain environmentally preferable products, such as LED lighting, can save money because they use less energy and/or offer a longer lifespan. In addition, these policies would support greater investments in the local economy, which supports economic growth for the region that can translate into improved future District revenues. Furthermore, environmentally sustainable purchasing often results in lower life cycle costs and cost avoidance/reduced costs throughout the life of the product that may result in lower long-term expenditures for the District.

**PRIOR BOARD OR COMMITTEE REVIEW**

The LFPAC Committee reviewed the proposed policy changes on April 12, 2022 ([R-22-46](#), draft minutes attached as Attachment 2) and recommended moving the item forward to the full Board with the addition of authorizing the General Manager to allow a preference greater than 5% for low dollar amount purchases less than \$10,000. Additionally, the Committee requested examples of how the policy changes would be applied in the oral presentation. Lastly, the Committee discussed their disappointment that construction projects cannot be included per state law.

**PUBLIC NOTICE**

Public notice was provided as required by the Brown Act.

**CEQA COMPLIANCE**

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

**NEXT STEPS**

If approved by the Board, the General Manager will direct implementation and training of staff on the new Local Preference and Environmentally Preferable Purchasing Policy for Services, Supplies, and Materials Policy

**ATTACHMENTS**

1. Draft Public Contract Bidding, Vendor and Professional Consultant Selection, and Purchasing Policy (Board Policy 3.03)
2. April 12, 2022 Draft LFPAC Committee Meeting Minutes

Responsible Department Head / Prepared by:  
Stefan Jaskulak, CFO and Director of Administrative Services

# Midpeninsula Regional Open Space District

## Board Policy Manual

<b>Public Contract Bidding, Vendor and Professional Consultant Selection, and Purchasing Policy</b>	<b>Policy 3.03 Chapter 3 – Fiscal Management</b>
Effective Date: 7/24/02	Revised Date: <del>0X/XX</del> 06/22/2022
Prior Versions: 12/16/09, 1/27/10, 9/23/15, 1/24/18, 06/10/2020	

### Purpose

The purpose of this policy is to ~~ensure that~~ formalize the process by which the Midpeninsula Regional Open Space District (District): (1) obtains quality services, supplies, material and labor at the lowest possible cost, monetary and to provide environmental cost to ensure the responsible stewardship of public tax dollars; and (2) provides 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~~ ensure consistent and equitable contracting with vendors, suppliers, consultants, 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~~ amounts not exceeding \$50,000. ~~Such expenditures-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, and may be reported. Reporting expenditures on the Board's~~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 ~~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. the total contract amount with contingency as approved by the Board for amounts over \$50,000. 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 \$50,000

When any ~~expenditure for projects~~ Contract, 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~~ 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 \$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~~ 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 \$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.
- viii. The firm's location, if it is situated within the District boundaries of the District, and/or its business practices, such as (such as sales, marketing, manufacturing, servicing, provision of services, procurement of local materials and/or labor, or research and development) capability that enable the firm to complete the contracted work consistent with the District's 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 \$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 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~~ 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 ~~of~~ 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 \$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 who can provide the services for a fair and reasonable price.~~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**

~~2.~~

The bidding procedures of Section II. B. for purchases not exceeding and up to \$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**

~~I.~~

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. Purchase of Recycled Products~~

## 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 ~~staff shall purchase recycled products~~ select environmentally preferable services, supplies, and materials when ~~the cost,~~ suitability, ~~and~~ 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.



Midpeninsula Regional  
Open Space District

## MIDPENINSULA REGIONAL OPEN SPACE DISTRICT

### LEGISLATIVE, FUNDING, AND PUBLIC AFFAIRS COMMITTEE

*The Board of Directors conducted this meeting in accordance with California Government Code section 54953(e) and Midpeninsula Regional Open Space District Resolution 21-33. All Board members and staff participated via teleconference.*

**Tuesday, April 12, 2022**

### DRAFT MINUTES

#### **CALL TO ORDER**

Director Hassett called the meeting of the Legislative, Funding, and Public Affairs Committee to order at 2:00 p.m.

#### **ROLL CALL**

Members present: Larry Hassett, Karen Holman, and Pete Siemens

Members absent: None

Staff present: General Manager Ana Ruiz, General Counsel Hilary Stevenson, Assistant General Manager Brian Malone, Assistant General Manager Susanna Chan, Chief Financial Officer Stefan Jaskulak, District Clerk/Assistant to the General Manager Jennifer Woodworth

District Clerk Jennifer Woodworth announced this meeting is being held in accordance with Government Code section 54953(e) and Midpeninsula Regional Open Space District Resolution 21-33, allowing Board members to participate remotely. The District has done its best to conduct a meeting where everyone has an opportunity to listen to the meeting and to provide comment. The public has the opportunity to comment on the agenda, and the opportunity to listen to this meeting through the internet or via telephone. This information can be found on the meeting agenda, which was physically posted at the District's Administrative Office, and on the District website. Ms. Woodworth described the process and protocols for the meeting.

#### **ORAL COMMUNICATIONS**

No public comments submitted.

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April 12, 2022

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### ADOPTION OF AGENDA

**Motion:** Director Hassett moved, and Director Siemens seconded the motion to adopt the agenda.

**ROLL CALL VOTE: 3-0-0**

### COMMITTEE BUSINESS

#### **1. Select Committee Chair for Calendar Year 2022**

**Motion:** Director Siemens nominated Director Holman for the Legislative, Funding, and Public Affairs Committee Chair for Calendar Year 2022, and Director Hassett seconded the nomination.

**ROLL CALL VOTE: 3-0-0**

#### **2. Approve the January 18, 2022 Legislative, Funding, & Public Affairs Committee meeting minutes.**

**Motion:** Director Hassett moved, and Director Holman seconded the motion to approve the January 18, 2022 Legislative, Funding, and Public Affairs committee meeting minutes.

Public comment opened at 2:05 p.m.

Ms. Woodworth reported no public comments had been submitted.

Public comment closed at 2:05 p.m.

**ROLL CALL VOTE: 3-0-0**

#### **2. Proposed Update to Board Policy 3.03 to include Environmentally Preferable and Local Preference Purchasing for Services, Supplies, and Materials (R-22-46)**

Chief Financial Officer/Director of Administrative Services Stefan Jaskulak provided the staff presentation and described the proposed updates to the *Public Contract Bidding, Vendor and Professional Consultant Selection, and Purchasing* policy to reduce impacts on the environment by preferring recycled products and selecting less toxic and energy conserving products. The proposed local preference policy will help reduce commuter traffic, encourage local vendor participation, promote development of local small businesses and local employment of residents. Mr. Jaskulak described the proposed solicitation selection process and reviewed the areas where the environmentally preferable purchasing policy will not apply, including emergency purchases, use of a cooperative purchasing agreement, grant funding, etc.

Public comment opened at 2:18 p.m.

Ms. Woodworth reported no public comments had been submitted for this item.

Public comment closed at 2:18 p.m.



Director Hassett inquired regarding potential reasons local vendors do not typically compete for District contracts.

Mr. Jaskulak stated one potential reason may be due to higher local costs.

General Counsel Hilary Stevenson stated the District does not have the ability to award a bid based on local preference for construction projects. The District could look into creating additional policies, such as preference for veteran or minority-owned businesses, which can be researched and considered at a later time. Additionally, a business that is awarded a contract may be utilizing local labor for the projects even if their business address is located outside the District.

Director Hassett expressed concern regarding the selection of contractors from outside the area based on prevailing wage requirements. This requirement ignores other factors, such as carbon footprint, etc. The District may want to consider pursuing legislative changes in the future to address this aspect of how public contracts are awarded, but it may be difficult to be successful.

Director Siemens requested and received additional information regarding the state's prevailing wage requirements and process for compliance with the regulations.

Chair Holman suggested tiering the environmental price preference percentage for District purchases, such as 10% for purchases under \$10,000 and 5% for purchases over \$10,000. Chair Holman suggested adding support for the District's Good Neighbor Policy as a benefit for the local preference policy.

Chair Holman requested clarification regarding the exclusion of preferential policies related to grant agreements.

Mr. Jaskulak stated some grant requirements may prevent use of the preferential policies.

Chair Holman suggested assembling a list of independent vendors that meet the prevailing wage requirements.

Assistant General Manager Brian Malone reported the District does maintain a list of on-call qualified contractors local to the District who meet contracting requirements. Additionally, the District has previously provided on-site housing for some out-of-town contractors to reduce greenhouse gas emissions.

Director Hassett commented that for a majority of the District's contracts that the Board approves, the bidders are primarily located outside of the District.

Director Siemens requested staff provide a list of examples of where the local preference would apply (i.e., the definition of a local business) when the item is presented to the full Board.

Chair Holman requested "lifecycle" be included as a factor for environmentally preferable purchasing because "durability" can be subjective depending on the item being purchased. Also "salvaging" should be included in addition to the reuse of materials.

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Chair Holman requested additional information be included in the agenda report related to the limitations on the District due to state regulations, including information related to grant agreements, and additional information regarding where preferential purchasing is allowed.

Ms. Stevenson stated additional options are possible for preferential purchasing, such as minority owned, veteran-owned, etc. However, other agencies have been more successful in attracting vendors through their outreach efforts than these additional options.

Chair Holman inquired if there is any advantage partnering with other agencies for procurement purposes on a project.

Ms. Stevenson stated the District has partnered with larger agencies for projects within their purview and are able to utilize those agencies' project delivery processes and enabling legislation to procure goods and services. However, few agencies have pursued a local preference for purchasing and those have had limited success.

**Motion:** Director Siemens moved, and Director Hassett seconded the motion to forward a recommendation to the full Board of Directors to approve proposed updates to Board Policy 3.03 - *Public Contract Bidding, Vendor and Professional Consultant Selection, and Purchasing Policy* - to include new sections for Environmentally Preferable and Local Preference Purchasing for Services, Supplies, and Materials.

**ROLL CALL VOTE: 3-0-0**

### **ADJOURNMENT**

Chair Holman adjourned the meeting of the Legislative, Funding, and Public Affairs Committee at 3:28 p.m.

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Jennifer Woodworth, MMC  
District Clerk