



Midpeninsula Regional
Open Space District

R-15-127
Meeting 15-24
September 23, 2015

AGENDA ITEM 5

AGENDA ITEM

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

GENERAL MANAGER'S RECOMMENDATIONS

A handwritten signature in dark ink, appearing to be "G.M.", is written to the right of the "GENERAL MANAGER'S RECOMMENDATIONS" heading.

Approve an amendment to Board Policy 3.03, *Public Contract Bidding, Vendor and Professional Consultant Selection, and Purchasing Policy*, to extend the period of prequalification for professional services from 2 years to 4 years.

SUMMARY

The proposed extension of prequalification for professional services would streamline project development and delivery through savings in staff time and shortened project schedules. No additional direct costs would be incurred as a result of this change.

DISCUSSION

On average, the Request for Qualifications and Proposals/Professional Rates (RFQP/PR) process takes between 40-60 hours of staff time, depending on whether a pre-proposal field tour or presentation and interview process is required. Per current Board Policy, the Midpeninsula Regional Open Space District (District) qualifies professional consulting firms for up to two (2) years at the completion of the process.

Informal surveys of consultants indicate that the process for them to prepare a responsive proposal takes an equivalent 20-150 hours. The opportunity cost of this work (hours worked but not billed) is then recouped through or built into the contract price. Several firms have indicated that they will not propose on a project if the costs of proposing exceed 5-7% of the contract. The District's thorough RFQP/PR process places strong emphasis on the quality of the proposal and often requires interviews and/or field tours to select the best qualified consulting firm. Given the time and required attention to detail, the RFQP/PR process can have the effect of either limiting the pool for proposers or increasing costs for the District. One tool that mitigates the cost impacts of the RFQP/PR process is the provision for a Prequalified Consultant File, which is authorized as part of Board Policy 3.03, Section III.D.7. As part of the RFQP/PR process, the General Manager and District staff are allowed to place qualified firms who submitted proposals to the District into a Prequalified Consultant File for consideration on future projects, which raises the value proposition for consultants since the likelihood for future work is high, as is the ability to recoup the costs incurred for submitting their original proposal.

District staff saves time as well. Qualified firms can remain as a resource to the District for a period of two years. Moreover, by having a list of eligible, qualified consultants, the District is also able to leverage the availability of multiple qualified firms. This would ideally expand the number of firms with experience working for the District and working with the types of site constraints and environmental issues that are commonly encountered on District projects.

The General Manager recommends expanding the multiple benefits gained through the Prequalified Consultant File by extending the period of prequalification from 2 years to 4 years. Although the 2 years has proven to be beneficial, it is also too short a timeframe. With the recent ramping up of project delivery to demonstrate the District's commitments under Measure AA, the General Manager is seeking opportunities to streamline the District's existing processes to create added efficiencies. The following recommended change to the Board Policy to extend the period of prequalification is one example (deletion shown in ~~strike through~~ and addition shown in underline):

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~~ four (~~2~~) (4) years from determination of the qualification of such consultant, District staff may select such a prequalified consultant from the current file of prequalified consultants for the performance of professional services.

Consultants that are added to the Prequalified Consultant File would be eligible for future relevant work. The Prequalified Consultant File, which would categorize consultants based on expertise and experience, would be retained for four years. Consultants seeking future RFQP opportunities would be added to a notification list for future releases. Of those consultants that are added to the list, the most qualified firm for the scope of work would be selected. District staff would negotiate directly with the firm to arrive at a mutually agreeable cost given the desired scope of work for a project. If no agreement is reached, District staff would proceed to negotiate with the next eligible, qualified firm. If no agreement is reached with the list of eligible and qualified firms, or no firm on the existing Prequalified Consultant Files is able to provide the specific services, District staff would release a new RFPQ/PR to reinstate the selection process. To obtain the best value for the public and ensure that project opportunities are rotated among firms on the list of Prequalified Consultants, Administrative Policy AP-4-04 regarding *Public Contract Bidding, Vendor, Professional Consultant Selection and Purchasing*, which sets the procedures for implementing the Board policy, would be amended to describe the process for selecting and rotating consultants from the Prequalified Consultant File.

FISCAL IMPACT

The recommended action would not result in added costs and is anticipated to reduce administrative time to enter into contracts, which will lead to reduced project schedules.

PUBLIC NOTICE

Public notice was provided as required by the Brown Act

CEQA COMPLIANCE

The recommended action is not a project under the California Environmental Quality Act (CEQA) and is therefore not subject to CEQA Compliance.

BOARD COMMITTEE REVIEW

This item was reviewed by the Legislative, Funding, and Public Affairs Committee on July 1, 2015, who unanimously supported forwarding the item and recommendation to the full Board of Directors for consideration and approval.

NEXT STEPS

If approved by the Board, changes to Board Policy 3.03, Section III.D.7, and Administrative Policy AP-4-04 will be made consistent with this report. These changes would affect both the current and future lists of consultants that are added to the Prequalified Consultant File.

Moreover, related to Board Policy 3.03, staff will be drafting a separate set of proposed additional revisions that pertain to the General Manager's purchasing authority given the recent approval of AB495, which takes effect January 1, 2016. AB495 increased the allowable purchasing amount that the Board can authorize for the General Manager from \$25,000 to \$50,000. Staff will be bringing the proposed policy update reflecting this change to the Board for consideration by December of this year.

Attachment:

1. Board Policy 3.03, *Public Contract Bidding, Vendor and Professional Consultant Selection, and Purchasing Policy* – recommended edits shown on page 7.

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Prepared by:
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Midpeninsula Regional Open Space District

Board Policy Manual

Public Contract Bidding, Vendor and Professional Consultant Selection, and Purchasing Policy	Policy 3.03 Chapter 3 – Fiscal Management
Effective Date: 7/24/02	Revised Date: 11/13/13
Prior Versions: 12/16/09, 1/27/10	

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-four~~ (4) years from determination of the qualification of such consultant, District staff may select such a prequalified consultant from the current file of prequalified consultants for the performance of professional services.

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.