

ORDINANCE NO. 16-01

AN ORDINANCE OF THE MORAGA-ORINDA FIRE PROTECTION DISTRICT SETTING FORTH PURCHASING AND CONTRACTING PROCEDURES AND AUTHORITIES

The Board of Directors (the Board) of the Moraga-Orinda Fire Protection District (the “District”) ordains as follows:

WHEREAS, the District wishes to establish the following purchasing system for the purpose of setting forth efficient procedures for the purchase of supplies, equipment, public projects and services; to secure for the District those supplies, materials, equipment and services at the lowest possible cost in an efficient manner without unnecessary delays; to exercise positive financial control over purchases; to clearly define the delegated authority for the purchasing and contracting functions; in compliance with the Act, Government Code section 4526 and Public Contract Code section 20812(a) and (c); and to ensure the quality of the purchases and contracts for services accomplished by the District.

NOW THEREFORE BE IT RESOLVED, that the District establishes the following purchasing system for the purpose of setting forth efficient procedures for the purchase of supplies, materials, equipment and services; to secure for the District those supplies, materials, equipment and services at the lowest possible cost in an efficient manner without unnecessary delays; to exercise positive financial control over purchases; to clearly define the delegated authority for the purchasing and contracting functions; in compliance with the Act, Government Code section 4526 and Public Contract Code section 20812(a) and (c); and to ensure the quality of the purchases and contracts for services accomplished by the District.

1. DEFINITIONS

1.1 Purchasing and Contracting Authority

Purchasing and Contracting Authority is the representative or representatives of the District, whether members of its staff, or its Board of Directors acting together, who, depending on the size and type of transaction at issue, are authorized to approve a particular purchasing transaction or award a contract after completion of the applicable selection process.

1.2 Lowest Responsible Bidder

The Lowest Responsible Bidder is a bidder that is deemed responsible by the District and has demanded the least compensation from the District. When determining whether a bidder is responsible, the District shall consider one or more of the following factors as appropriate:

1.2.1 The ability, capacity, and skill of the bidder;

1.2.2 Whether the bidder has the facilities to perform the contract promptly, or within the time specified, without delay or interference;

1.2.3 The character, integrity, reputation, judgment, experience and efficiency of the bidder;

- 1.2.4 The bidder's record of performance of previous contracts;
- 1.2.5 Previous and existing compliance by the bidder with laws and policies relating to the contract;
- 1.2.6 The sufficiency of the financial resources and ability of the bidder to perform the contract;
- 1.2.7 The available insurance held by the bidder;
- 1.2.8 The quality and availability of the supplies, equipment, or services purchased, and the adaptability of the above to the particular use required;
- 1.2.9 The ability of the bidder to provide future maintenance and service for the supplies, equipment, or services purchased;
- 1.2.10 The number and scope of conditions attached to the bid;
- 1.2.11 Any referrals or comments regarding the bidder made by knowledgeable persons familiar with the bidder and/or the bidder's business, industry or finances.
- 1.2.12 For contracts for Professional Services, consistent with the Act, Government Code section 4526 and Public Contract Code section 20812(a) and (c), whether the business is (i) a "small business" within the definition of Government Code section 14837(d), which is "an independently owned and operated business which is not dominant in its field of operation, the principal office of which is located in California, the offices of which are domiciled in California, and which, together with affiliates, has 100 or fewer employees, and average annual gross receipts of ten million dollars (\$10,000,000) or less over the previous three years," or (ii) a manufacturer within the meaning of Government Code section 14837(c) and has 100 or fewer employees.

1.3 Open Market Purchase Procedure

The Open Market Purchase Procedure does not involve any formal or informal solicitation and evaluation of competitive bids. The Purchasing and Contracting Authority shall use his or her judgment and experience in making the decision, and shall also consider the same criteria used to determine the Lowest Responsible Bidder.

1.4 Informal Bidding Procedure

The Informal Bidding Procedure is a cost-effective competitive process for canvassing the marketplace to identify vendors most likely to provide appropriate supplies or services at a reasonable price and in an efficient manner.

The Informal Bidding Procedure requires the Purchasing and Contracting Authority to solicit written, faxed, e-mailed or verbal price quotations from a minimum of three (3) vendors. The solicitation may be either written or verbal, as dictated by the circumstances and judgment of the Purchasing and Contracting Authority. The bid shall be awarded to the Lowest Responsible Bidder as defined above.

1.5 Formal Bidding Procedure

- 1.5.1 Preparation of Plans and Specifications.** For Public Projects, the District shall prepare plans and specifications providing adequate direction to enable any competent contractor or other builder to carry them out.
- 1.5.2 Notice.** Notice requesting sealed bids shall set a date for the opening of sealed bids. The first publication or posting of the notice shall be at least 10 days before the date of opening the sealed bids. Notice shall be published at least twice, not less than five days apart, in a newspaper of general circulation in the District, or if there is none, it shall be posted in at least three public places in the District.
- 1.5.3 Posting Bonds.** The District Board may require in the public notice for bids that the bidder provide bidder's security, insurance, and/or the posting of those bonds it deems desirable as a condition to the filing of a bid or the letting of a contract. A surety bond insures the faithfulness of the bid and insures the performance of a contract. The intent is to protect the District from losses, damages, claims and liabilities in the event the vendor fails to execute a contract. For all Public Projects in excess of \$25,000, posting of a bond shall be required.
- 1.5.4 Time Stamping Bids.** Bids received shall be time-stamped by the District Clerk and deposited unopened in the bid file. Any bid received subsequent to the time of closing as stated on the request for bid shall be time-stamped and returned to the bidder.
- 1.5.5 Tendering Bids.** Bidders shall be entitled to the return of bid security, except that a successful bidder shall forfeit its bid security upon refusal or failure to execute the contract within ten (10) days after the notice of award has been mailed, or a time agreed upon in writing by both the successful bidder and the District, unless the District is responsible for the delay. The Purchasing and Contracting Authority may, on refusal or failure of the successful bidder to execute the contract, award the contract to the next Lowest Responsible Bidder. The amount of the lowest bidder's forfeited security shall be applied by the District to the difference between the low bid and the second lowest bid, and the surplus, if any, shall be returned to the lowest bidder. The successful bidder's check or bond will be held until submission of the performance bond.
- 1.5.6 Bid Opening.** In the case of construction contracts, and pursuant to the Public Contract Code, bidders shall submit sealed bids to the District and shall identify the bid as a sealed bid on the envelope. Sealed bids must be opened only at the time and place stated in the public notice. The Purchasing and Contracting Authority shall prepare a summation of all sealed bids received and shall make the summation available for public inspection during regular business hours for a period of not less than thirty (30) days after the bid opening. The District shall not accept any bid unless it is in writing.
- 1.5.7 Award of Bid.** If any bid is awarded, it shall be awarded to the Lowest Responsible Bidder using the criteria defined within this Ordinance.

1.5.8 Tie Bids. Pursuant to the Public Contract Code, if two or more bids are the same and the lowest, the Purchasing and Contracting Authority may accept the bid of any of the lowest responsible bidders.

1.5.9 Rejection of Bids. In its discretion, the District Board may reject the bids presented and readvertise.

1.6 Formal Request for Proposal Procedure

1.6.1 The Request for Proposal shall include a general description of the services to be procured, the criteria by which the District shall evaluate proposals, a proposed agreement, including insurance requirements, and the time and place for submission of proposals.

1.6.2 A notice inviting proposals shall be distributed to at least three (3) consultant or service firms at least ten (10) days prior to the deadline for submission of proposals.

1.6.3 Proposals must be signed acknowledging acceptance of the terms and conditions of the agreement and insurance requirements, and proposers shall submit sealed proposals.

1.6.4 All responsive proposals shall be reviewed and evaluated by the Purchasing and Contracting Authority to determine which proposer best meets the District's needs by demonstrating the competence and qualifications necessary for the satisfactory performance of the required services. The dollar amount of the proposal shall be considered but the award need not be made to the lowest dollar proposal.

1.7 Public Projects

Contracts for the construction or completion of any building, structure, or improvement

2 PURCHASES OF SUPPLIES AND EQUIPMENT

This section governs purchases of goods, materials, supplies, vehicles, machinery, furnishings and other tangible property.

2.1 For purchases of supplies and equipment under \$5,000, the Purchasing and Contracting Authority shall use the Open Market Purchase Procedure.

2.2 For purchases of supplies and equipment of between \$5,000 and \$100,000, the Purchasing and Contracting Authority shall use the Informal Bidding Procedure.

2.3 For purchases of supplies and equipment over \$100,000, the Purchasing and Contracting Authority shall use the Formal Bidding Procedure.

2.4 For purchases of gasoline or other automotive fuel, the Purchasing and Contracting Authority shall use the Informal Bidding Procedure. Informal bidding shall occur at least triennially.

2.5 Notwithstanding the above, purchases of any equipment for fire protection purposes shall conform to the standardization provisions of Health & Safety Code section 13025 and following (dealing with couplings and threaded fittings).

3 PUBLIC PROJECTS

Contracts for the construction or completion of any building, structure, or improvement must follow the procedures of this section.

3.1 When the expenditure required for a Public Project described above exceeds ten thousand dollars (\$10,000), the Purchasing and Contracting Authority shall follow the Formal Bidding Procedure.

In addition, the following provisions apply to contracts let for Public Projects.

3.1.1 **Cost Records.** Cost records of the public project work shall be kept in the manner provided in Chapter 1 (commencing with Section 4000) of Division 5 of Title 1 of the Government Code.

3.1.2 **Contractor Requirements.** Contracts authorized by the District shall be let only to a holder of a valid State Contractor's license unless such work is exempt from such licensing requirement by any other provision of law.

4 SERVICES

4.1 **Professional Services** includes professional services of private architectural, landscape architectural, engineering, environmental, land surveying, or construction project management firms.

4.1.1 Pursuant to Government Code section 4526, selection of providers of the above Professional Services shall be on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required. Formal competitive bidding is not required.

4.2.1 **Special and Incidental Services** includes accounting, administration, ambulance, auditing, custodial, economics, finance, insurance, labor relations, law, maintenance, mechanics, medicine, planning, science, technology, and other services which are incidental to the operation of the district.

4.2.2 When the annual aggregate cost of the special and incidental services contract is less than \$5,000, the Purchasing and Contracting Authority shall utilize the Open Market Purchase Procedures when selecting the service provider.

4.2.3 When the annual aggregate cost of the special and incidental services contract is \$5,000 or more, but not more than \$100,000, the Purchasing and Contracting Authority may hire independent contractors to perform the special and/or incidental services by using the Informal Bidding Procedures.

- 4.2.4 For the special and incidental services contracts with an annual aggregate cost of \$100,000 or more, the Purchasing and Contracting Authority shall use the Formal Request for Proposal Procedure.
- 4.2.5 If the District Board rejects all proposals received as part of the Formal Request for Proposal Procedure, it may either readvertise or adopt a resolution, by two-thirds vote, declaring that the service can be performed more economically by the District's employees or obtained at a lower price in the open market.
- 4.3 **Core Services** includes fire protection services, rescue services, emergency medical services, hazardous material emergency response services, ambulance services, and any other emergency services for the protection of lives and property.
- 4.3.1 When the district board determines that it is in the public interest, the District may contract with any other public agency for Core Services. No formal competitive process is required. The District may not contract with private entities for the Core Services.

5 EXCEPTIONS TO THE BIDDING PROCESS

Purchases of supplies, equipment or services may be, but need not be, allowed pursuant to competitive proposals in the following circumstances:

- 5.1.1 In the case of an emergency, as defined in Public Contract Code section 1102, the District Board delegates authority to the Fire Chief up to \$100,000 to repair or replace a public facility, take any directly related and immediate action required by that emergency, and procure the necessary equipment, services, and supplies for those purposes, without giving notice for bids to let contracts. If the Fire Chief orders any such action, he or she shall report to the Board, at its next meeting as required under Public Contract Code section 22050, the reasons justifying why the emergency will not permit a delay resulting from a competitive solicitation for bids and why the action is necessary to respond to the emergency. The District shall follow all other applicable procedures of Public Contract Code section 22050.
- 5.1.2 When the following types of personal property or services are being acquired, obtained, rented or leased: (i) advertising; (ii) books, recordings, films, subscriptions; (iii) election supplies; (iv) insurance; (v) public utility services; (vi) travel services; (vii) property or services provided by or through other governmental agencies; or obtainable from suppliers which have in force a current contract with another governmental agency for the same item or service; or (viii) property or services the price of which is fixed by law; or
- 5.1.3 The supplies, materials, services or equipment are produced only by one manufacturer or are available from only one source; or
- 5.1.4 When a purchase is made through a master agreement, multiple award schedule or cooperative agreement with any federal, state or local agency wherein the original agreement was properly awarded through the appropriate public bid process.

6 PURCHASING AUTHORITY LEVELS

The funding included in the annual budget approved by the Board of Directors for the purchase of supplies and equipment, services, and Public Projects shall constitute spending authority to the listed persons for such contracts up to the amounts listed below. The Board of Directors, when sitting as a convened Board, may serve as the Purchase and Contract Authority for any District purchases in any amount. All such purchases by any individual or the Board of Directors shall meet the requirements, if any, of the informal or formal bidding requirements prior to purchase and the contracting limits as specified below.

For Public Projects of \$100,000 or more, the District Board of Directors shall be the only Purchasing and Contracting Authority.

For all other types of purchases and contracts, each of the following persons shall be authorized to be a Purchasing and Contracting Authority:

Any amount less than \$100,000:	District Fire Chief
Any amount less than \$25,000:	Administrative Services Director
Any amount less than \$10,000	Battalion Chief, Fire Marshal and Emergency Preparedness Coordinator
Any amount less than \$500	Captain
Any amount less than \$100	Any District employee

7 PROHIBITED ACTS

In no event shall any Purchasing and Contracting Authority allow any unlawful activity including, but not limited to, rebates, kickbacks or other unlawful consideration in fulfilling the requirements of this Ordinance nor shall any individual participate in the selection process when he or she has a financial interest as defined in Government Code section 87100, et seq. with a person or business entity seeking a contract.

8 SUFFICIENT FUNDS REQUIRED

Nothing in this Ordinance shall be interpreted to allow any purchase or contract for which insufficient District funds have been appropriated.

9 USE OF DISTRICT FORM CONTRACTS

The District shall utilize a form contract provided by the District and approved by District Counsel ("Form Contract") to memorialize agreements for provision of any Services whenever the District is agreeing to pay \$500.00 or more. The District may utilize a Form Contract for expenditures of \$499.99 or less.

10 PROTEST PROCEDURE

After the award of any contract, any unsuccessful bidder may challenge the bid procedure by filing a written protest with the Purchasing and Contracting Authority. The protest must set forth the reasons for the challenge and must be filed within ten (10) days of the award of the contract, and must be accompanied by a bid protest deposit. The District bid protest deposit is \$1,500. The bid protester will be charged actual hourly costs of staff time and attorney fees and any remaining deposit will be returned.

The Board of Directors shall review the protest and provide a written reply in an expeditious manner. The decision of the Board of Directors with respect to the protest shall be final. Failure to file a timely protest shall be deemed a waiver of any challenge to the selection procedure or the award of a contract. Notice of this procedure shall be included in any formal or informal District solicitation for the purchase of supplies, materials, equipment or the performance of services.

11 SPLITTING ORDERS

The splitting of orders to separate purchases, orders or contracts for services into smaller quantities or amounts for the purpose of avoiding the competitive bidding provisions or the Purchasing and Contracting Authority provisions of this Ordinance will not be allowed.

12 INSPECTION AND TESTING

The Purchasing and Contracting Authority shall have the power to inspect all supplies, materials and equipment delivered pursuant to any District purchase or any service provided by District contract to determine their conformance with the specifications for the involved supplies, materials, equipment or service. The Purchasing and Contracting Authority shall also have the power to require chemical and physical tests of samples submitted with bids and samples of deliveries, as necessary to determine their quality and conformance with specifications and applicable law.

13 SEVERABILITY

If any section, subsection, subdivision, paragraph, sentence, clause, phrase or word in this Ordinance is for any reason held to be unconstitutional or otherwise invalid, such holding shall not affect the validity of the remaining provisions of this Ordinance. The Board hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, phrase or word of this Ordinance regardless of the unconstitutionality or invalidity of any other section, subsection, subdivision, paragraph, sentence, clause, phrase or word herein.

SECTION 2. Effective Date and Publication of Ordinance Summary. This Ordinance shall take effect and be in force thirty (30) days from and after the date of its passage. The Administrative Secretary of the District shall cause a summary of the Ordinance to be posted in accordance with Section 25124 of the Government Code of the State of California.

SECTION 3. This Ordinance supercedes Ordinance 15-01.

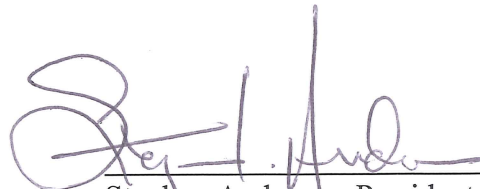
Adoption on motion by the Board of Directors of the Moraga-Orinda Fire Protection District.

AYES: Directors Barber, Evans, Famulener and Weil

NOES: None

ABSENT: President Anderson


ABSTAIN: None



Stephen Anderson, President
Board of Directors

I certify that this is a full, true and correct copy of the original document which is on file in my office that was passed and adopted by the Moraga-Orinda Fire Protection District on the date shown.

ATTEST:



Secretary, Board of Directors
Grace Santos