

RESOLUTION NO. 23-15

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE MORAGA-ORINDA FIRE PROTECTION DISTRICT ESTABLISHING CONTRACTING PROCEDURES FOR SPECIAL SERVICES CONTRACTS

WHEREAS, Public Contract Code section 20182(a) provides that the Moraga-Orinda Fire Protection District (District) may contract for special services.

WHEREAS, In securing such special services, pursuant to Public Contract Code section 20812(b), the District shall follow the contracting and purchasing procedures which apply to the County of Contra Costa.

WHEREAS, Section 4.2 of Ordinance 23-05 of the District provides that the District shall, by resolution, adopt contracting and purchasing procedures for securing special services that following the contracting and purchasing procedures which apply to the County of Contra Costa.

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the Moraga-Orinda Fire Protection District hereby adopts contracting and purchasing procedures for securing special services, which are attached hereto as "Exhibit A" and incorporated herein by reference, that follow the contracting and purchasing procedures which apply to the County of Contra Costa.

PASSED, APPROVED, and ADOPTED this 20th day of September 2023 at the regular meeting of the Moraga-Orinda Fire Protection District Board of Directors held at 22 Orinda Way, Orinda, California 94563, on a motion made by Director Hasler, and seconded by Director Danziger, and duly carried with the following vote:

AYES: DIRECTORS DANZIGER, HASLER, ROEMER, AND JEX

NOES: NONE

ABSENT: DIRECTOR JORGENS

ABSTAIN: NONE

Resolution 23-15

Dated:



John Alex, 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, and that was passed and adopted by the Moraga-Orinda Fire Protection District on the date shown.

ATTEST:



Marcia Holbrook
District Clerk

APPROVED AS TO FORM:



Jon Holtzman, District Counsel

APPROVED AS TO CONTENT:



Dave Winnacker, Fire Chief

Exhibit A

MORAGA-ORINDA

FIRE PROTECTION DISTRICT

CONTRACTING PROCEDURES

SPECIAL SERVICES CONTRACTS

The purpose of this policy is to set forth purchasing policies and requirements to achieve minimum standards for contracts for special services for the benefit of the Moraga-Orinda Fire Protection District (the "District"). More information about compliance with this policy, including process, procedures and forms can be found in the resources included in the "References" section at the conclusion of this policy.

I. DEFINITIONS

- A. **"Cooperative Purchasing Contract"** is a contract for goods or services between a vendor and another public agency, awarded following a competitive solicitation, and made available to other public agencies. Examples of agencies that administer such Cooperative Purchasing Contracts include the National Intergovernmental Purchasing Alliance (National IPA), the State of California, Department of General Services, the U.S. General Services Administration, U.S. Communities Government Purchasing Alliance sponsored by the National Association of Counties, or similar entity. The District may participate in a Cooperative Purchasing Contract by entering into a Participating Agreement with the vendor that is party to the Cooperative Purchasing Contract.
- B. **"Informal Bid"** is a written or oral quotation obtained from an approved vendor but not required to be opened publicly at a specified day, place and time.
- C. **"Invitation for Bid"** (IFB) is a solicitation method by which awards are made to the lowest bid. The winning bid must be responsive (conforms to bid requirements) and responsible (competent and qualified to perform under the contract).
- D. **"Participating Agreement"** means an agreement between the District and a vendor that incorporates by reference, with or without modifications, the terms of a Cooperative Purchasing Contract that the vendor has entered into with another public agency.
- E. **"Purchasing and Contracting Authority"** is the representative or representatives of the District, whether members or 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, and are identified as such in Ordinance Number 23-05.

- F. **“Request for Information”** (RFI) is a process to separate those vendors who intend to participate in an upcoming solicitation from those who have no interest in participating. An RFI is typically used when there is an excessively large pool of interested vendors and to identify qualified suppliers capable of providing a certain product or service. If an RFI is issued for an upcoming solicitation and a single, qualified vendor responds to the RFI, then it is not necessary to conduct any further Solicitation.
- G. **“Request for Proposal”** (RFP) is a formal competitive procurement process and is the most flexible method for obtaining contracted services and certain types of goods. Responders to an RFP submit proposals detailing their technical and business experience, capabilities, and specific approach to achieve the requirements for the services or goods requested. An RFP includes evaluation factors and criteria, and their relative importance for award selection. An RFP may establish minimum or pre-qualification requirements to be eligible for consideration.
- H. **“Request for Qualifications/Quote”** (RFQ) is a process to establish a pre-qualified list of potential vendors by allowing interested parties to demonstrate compliance with minimum qualifications or requirements to provide a material, product, or service. An RFQ may be used to initiate a formal procurement process or to establish a pool of qualified vendors and may be released for a specific amount of time or on a continuous basis to maintain a current qualified list of vendors at all times.
- I. **“Single Source”** is a procurement decision whereby purchases are directed to one vendor because of standardization, warranty, or other factors, even though other competitive sources may be available.
- J. **“Special Services,”** as defined in Public Contract Code section 20182(a), are limited to the fields of accounting, administration, ambulance, architecture, custodial, economics, engineering, finance, insurance, labor relations, law, maintenance, mechanics, medicine, planning, science, technology, and other services which are incidental to the operation of the District. The term “special services” includes, in accordance with Government Code section 4526, professional services of private architectural, landscape architectural, engineering, environmental, land surveying, and construction project management firms. For purposes of this policy, whether services contracted for are “special services” requires consideration of factors such as the nature of the services, qualifications of the person furnishing them, and their availability from public sources. For example, services may be special because of the outstanding skill or expertise of the person furnishing them.
- K. **“Sole Source”** is a procurement decision created due to the inability to obtain competition due to one vendor or supplier possessing the unique ability to meet the particular requirements of the solicitation.
- L. **“Solicitation”** is a request for offers to provide goods or services, including an Informal Bid request for price quotations, an Invitation for Bids (IFB), Request for Qualifications/Quote (RFQ), Request for Information (RFI) or a Request for Proposals (RFP).

II. PURCHASE OF SERVICES CONTRACTS

A. Applicability.

This section establishes procedures for the purchase of special services required by the District. State law provides that the Board of Directors may contract for special services under certain circumstances. The Board of Directors has established, pursuant to Ordinance Number 23-05, persons authorized to serve as a Purchasing and Contracting Authority at certain threshold amounts up to and not exceeding \$100,000. Service contracts for \$100,000 or more require approval by the Board of Directors, following review by District Counsel and the District Fire Chief.

B. Procedures for Service Contracts.

1. Mandated Findings. Before a contractor for services is engaged, all of the following findings must be made and documented by the Purchasing and Contracting Authority.
 - a. A statute authorizes the contract for the desired services. For example, Public Contract Code section 20812 authorizes the District to enter into a service contract for Special Services;
 - b. District staff is not available or qualified to perform the services; and
 - c. In the case of facilities maintenance or custodial matters, the site is remote from available District employee resources and the District's economic interests are served by contracting for such services rather than by paying additional travel and subsistence expenses to existing District employees.
2. Solicitations Required. The following solicitations are required for purchase of services in the following amounts.
 - a. Service Contracts Equal to or Below \$25,000.
 1. A Purchasing and Contracting Authority may enter into service contracts equal to or below \$25,000 without providing evidence of solicitation.
 2. Purchasing and Contracting Authorities are strongly encouraged to purchase from local businesses, small businesses, women-owned businesses, disabled- owned businesses, veteran-owned businesses, and other disadvantaged business enterprises consistent with [Contra Costa County's Outreach and SBE Program](#) so they may achieve an objective of awarding 50% of total eligible dollar base amounts to SBEs.
 - b. Service Contracts Above \$25,000 and Below \$100,000.
 1. A Purchasing and Contracting Authority may enter into a service contract above \$25,000 and equal to or below \$100,000 after securing a minimum of three (3) proposals through an Informal Bid.
 2. If three (3) proposals cannot be secured, the Purchasing and

Contracting Authority or designee, shall determine whether to proceed with the service contract taking into consideration the vendor that provides the best value to the District.

3. Purchasing and Contracting Authorities are strongly encouraged to purchase from local businesses, small businesses, women-owned businesses, disabled- owned businesses, veteran-owned businesses, and other disadvantaged business enterprises consistent with [Contra Costa County's Outreach and SBE Program](#) so they may achieve an objective of awarding 50% of total eligible dollar base amounts to SBEs.

c. Service Contracts Equal to and Above \$100,000.

1. A Purchasing and Contracting Authority may enter into a service contract equal to and above \$100,000 after providing for open and competitive solicitation.
2. The form of solicitation may be an Invitation for Bid (IFB), Request for Qualifications/Quote (RFQ) or a Request for Proposals (RFP); however, initially issuing a Request for Information (RFI) should be considered to generate a list of potential vendors to provide the services required. If the District receives a single response to the RFI from a qualified bidder, then no further solicitation is required.
3. Purchasing and Contracting Authorities are strongly encouraged to purchase from local businesses, small businesses, women-owned businesses, disabled- owned businesses, veteran-owned businesses, and other disadvantaged business enterprises consistent with [Contra Costa County's Outreach and SBE Program](#) goals so they may achieve an objective of awarding 50% of total eligible dollar base amounts to SBEs.

3. Solicitation Compliance Procedure.

- a. The Purchasing and Contracting Authority shall draft an IFB, RFQ, RFI or RFP seeking qualified vendors to provide the desired services.
- b. The Purchasing and Contracting Authority shall post the solicitation online to comply with the fair and open competition requirement of this policy for a minimum of fourteen (14) calendar days.
- c. The Purchasing and Contracting Authority shall work to secure a minimum of three (3) solicitation responses in writing before selecting a vendor.
- d. The Purchasing and Contracting Authority shall retain solicitation records for the duration of each contract term.

4. Exemption from Solicitation Requirements.

- a. Service Types. The following are service contract types that are exempt

from bid solicitation requirements:

1. utility services;
2. educational services;
3. intergovernmental agreements;
4. newspaper and publication services;
5. law firms, subject to approval by District Counsel;
6. print legal briefs or legal notices;
7. reporters services or transcripts;
8. expert witnesses, consultants, and investigators hired to assist in legal matters;
9. election supplies;
10. physician services;
11. appraiser services;
12. consultants and other experts employed directly by the Board of Directors; and
13. other services that, by law, some other officer or body is specifically charged with obtaining.
14. Any additional categories noted in Chapter 5 of Ordinance 23-05 not enumerated here.

b. Cooperative Purchasing Contracts. A Purchasing and Contracting Authority may use a Cooperative Purchasing Contract for services that the District requires and that the District may procure under a Participating Agreement.

5. Ethical Standards. It is the obligation and the responsibility of every District employee to represent the District in a professional and ethical manner. Any procurement related matter shall be handled in a professional manner with the interest of the District taking precedent, including, but not limited to:
 - a. Avoiding activities which would compromise or give the perception of compromising the best interests of the District;
 - b. Actively promoting the concept of competition through bid solicitation consistent with this policy; and
 - c. Refraining from engagement in any procurement activity in which an employee may have a personal or indirect financial interest in accordance with Government Code sections [87100](#) and [81703](#).
6. Outreach and SBE Program Compliance. Additional thresholds and goals under the Contra Costa [County Outreach and SBE \(Small Business Enterprise\) programs](#) apply to and are required for service contract solicitations. These thresholds and goals may be updated from time to time and Purchasing and Contracting Authorities must ensure compliance with the latest Outreach and SBE Program construct.
7. Contract Development and Monitoring. Purchasing and Contracting Authorities are responsible for the development and monitoring of service contracts entered into on behalf of the District, including negotiation of service plans and/or scopes of work.

- a. Performance Metrics Required. Purchasing and Contracting Authorities are responsible for negotiating service contracts that identify specific performance outputs and/or outcomes to be achieved during the contract term. These performance outputs and/or outcomes include contract deliverables (e.g., produce a final written report by a date specified) and/or service tasks (e.g., conduct three one-hour training sessions within a specified date range). Purchasing and Contracting Authorities shall review contracts at least once per year to ensure compliance with output/outcome requirements. The review should identify reason(s) for any noncompliance, including whether or not the outputs/outcomes will be achievable during the remainder of the contract term.
 - b. Payment Provisions. Vendor payment terms shall correlate with the performance outputs/outcomes negotiated as part of a service plan or scope of work for each service contract. Types of payment terms include fixed price (where deliverables are produced by the contractor and payment is due upon completion of each deliverable) and rate (where services are provided by the contractor and the contractor is reimbursed at an hourly or other periodic rate). Purchasing and Contracting Authorities shall avoid contract payment terms that are not typical of the service type being procured. For example, legal service providers may require payment of an advance, or “retainer”, upon execution of a service contract, which is typical of that industry. However, a financial consultant requesting a monthly, fixed payment as a “retainer,” whether or not the County uses the contracted services, is not a typical financial industry practice and must be avoided. Other negative payment terms, such as late payment penalties, should not be entertained as part of the negotiation of payment terms.
 - c. Vendor Noncompliance. Failure of a vendor to achieve contracted performance output and/or outcome requirements may be grounds for contract termination.
 - d. Corrective Action Plan. For contracts determined to be out of compliance with performance outputs and/or outcomes during an annual review process, and for which a Purchasing and Contracting Authority does not recommend terminating the contract, the Purchasing and Contracting Authority shall work with the vendor on a corrective action plan to ensure contracted services are delivered during the term of the contract.
 - e. Documentation. Purchasing and Contracting Authorities shall immediately notify a vendor if a determination of non-compliance is reached, including whether or not the contract will be recommended for termination. In cases where a Corrective Action Plan is entered into with the vendor, a copy of the plan shall be retained for the term of the contract.
 - f. Renewals. Purchasing and Contracting Authorities shall keep track of contract expiration dates in order to renew contracts prior to expiration, or issue solicitations for new contracts to be in place prior to expiration of the existing contract.
8. Effective Date. Service contract documents must be executed before the service contract effective date. Contract payments cannot be made until the

service contract is executed by all parties.

9. Indemnification. Any contract that requires the District to indemnify the contractor, or includes a limitation of liability, must be approved by the Board of Directors regardless of the contract amount.

C. District Counsel Review

1. A service contract that is either more than \$50,000 or not on a District standard form (i.e., on a vendor's form) must be reviewed and approved as to legal form by District Counsel before a Purchasing and Contracting Authority executes the contract. If a service contract is \$50,000 or less and is on a standard form approved by the Board of Directors and District Counsel, the Purchasing and Contracting Authority may sign the contract without District Counsel review.
2. All service contracts that are over \$50,000 must be reviewed and approved as to legal form by District Counsel.

- D. Legal Authority**. The legal authority for the purchase of certain services required by the District is set forth in the following statutes and District ordinances: Government Code section 4526, Government Code section 53060, Public Contract Code section 20812, and Ordinance Number 23-05.

III. DIGITAL SIGNATURES. All purchasing and contract related documents specified in this policy may be executed either with original signatures or electronic signatures through a digital signature platform authorized by the Fire Chief.

IV. OTHER PROCUREMENT POLICIES. The Board of Directors, in its discretion, may adopt additional policies impacting procurement of or services from time to time. This policy establishes the minimum standards for conducting procurement activities; however, compliance with additional policies adopted by the Board of Directors or those required to satisfy federal or state grant requirements may supersede this policy.

References:

- [Small Business Enterprise \(SBE\) Program Requirements](#)