



SAN MATEO COUNTY TRANSIT DISTRICT

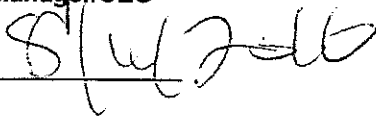
PROCUREMENT MANUAL

Approved:



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General Manager/CEO

Date:



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I. INTRODUCTION

The San Mateo County Transit District ("SamTrans" or "District") is a political subdivision of the State of California, organized pursuant to California Public Utilities Code ("Pub. Util. Code"), §103000 et seq. Policies and procedures governing District procurements of supplies, equipment, materials, services and public works projects are derived from the District's enabling legislation, the California Public Contract Code ("Pub. Cont. Code"), rules and regulations established by the District's Board of Directors, (Resolution 2003-26) and by federal law. Notably, certain standards, regulations, orders of the United States Office of Management and Budget ("OMB"), and requirements for grants-in-aid to local governments mandated by the United States Department of Transportation, Federal Transit Administration ("FTA"), the Federal Highway Administration ("FHWA") and the OMB apply to the District in connection with solicitations financed in whole or in part with federal funds.

The District provides personnel, administrative, and operational support for the Peninsula Corridor Joint Powers Board ("JPB") and the San Mateo County Transportation Authority ("SMCTA"). The JPB is a joint powers authority organized pursuant to Government Code §6500 et seq., and comprised of three Member Agencies: the City and County of San Francisco, Santa Clara Valley Transportation Authority, and San Mateo County Transit District. The JPB acquired the right-of-way, rolling stock, stations, and other property associated with the Peninsula Commuter Service ("PCS") and assumed responsibility for managing this service. The SMCTA is an independent agency formed to administer the proceeds of a countywide half-cent sales tax. The original Measure A established the agency and its funding program for transportation projects, which was approved for 20 years by voters in 1988. It was re-authorized by voters in 2004 and is now set to expire in 2033.

The District is the Managing Agency for both the JPB and the SMCTA. As such, District staff provide procurement support functions for both agencies. Pursuant to Resolution 2004-17, the JPB Board of Directors authorized the Executive Director to utilize the San Mateo County Transit District Procurement Manual for implementation of its procurement policies. The SMCTA follows its own procurement procedures for the acquisition of professional services as set forth in Resolutions 1989-6, 1996-8 and 2007-22.

The procedures contained in this manual are designed to implement the fundamental principles of procurement, as follows: (1) foster maximum open and free competition for District contracts; (2) promote the greatest economy and efficiency in District procurements; (3) ensure adherence to the highest levels of ethical conduct by District officers and employees; (4) maintain procurement policies and procedures that guarantee compliance with applicable local, state, and federal laws and regulations; (5) establish and maintain an arm's length relationship with all Contractors; (6) treat all prospective Contractors, Consultants, and vendors in an equal and equitable manner, including Disadvantaged Business Enterprises (DBE's); and (7) provide opportunities for remedy and resolution of Contract claims or disputes.

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II. DEFINITIONS

ADMINISTRATIVE CODE

A compilation of documents prescribing the powers and duties of District officers, the method of appointment of District employees, and the methods, procedures, and systems of operation and management of the District.

BEST VALUE

The overall combination of quality, price, and other elements of a proposal that, when considered together, provide the greatest overall benefit to the District in response to the requirements described in the solicitation documents.

BID

An offer submitted to the District in response to an Invitation for Bids (IFB) that is not subject to negotiation.

BOARD OF DIRECTORS

The "Board of Directors" or "Board" shall mean the governing Boards of the San Mateo County Transit District, Peninsula Corridor Joint Powers Board and the San Mateo County Transportation Authority

CONTRACT OR AGREEMENT

A binding understanding, enforceable by law, between two or more competent parties, obligating the seller to furnish the supplies or services and the buyer to pay for them ("Contract" and "Agreement" may be used interchangeably).

CONTRACT ADMINISTRATOR

An employee of the District responsible for ensuring that Contractors conform to the terms, conditions and specifications of the Contract.

CONTRACT OFFICER

An employee of the District responsible for the acquisition of all supplies, materials, equipment, and services.

CONTRACTOR OR CONSULTANT

Any individual, firm, partnership, joint venture, corporation, or combination thereof who enters into a contract or agreement with the District.

CONTRACTS AND PROCUREMENT DEPARTMENT

The department responsible for procurement activities for the District.

DAYS

Refers to calendar days unless otherwise noted.

DIRECTOR, CONTRACTS AND PROCUREMENT

The individual responsible for directing the activities of the Contracts and Procurement Department for the District ("Director of Contracts").

EQUIPMENT

All tangible, nonexpendable, personal property that has a useful life of more than one year and an acquisition cost that exceeds \$5,000 per unit. This includes rolling stock and all other such property used in the provision of public transit service.

EX-PARTE COMMUNICATIONS

Communication, either written or oral, that does not include all parties privy to the transaction. Once a solicitation has been issued, no District employee or Consultant acting on behalf of the District, shall engage in any "ex-parte" communication with a potential Contractor/Consultant or representative of that

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potential Contractor. All communication to and from potential Contractors/Consultants during the solicitation process shall be made through the Contract Officer.

EXPERTISE CODE

A commodity or service classification identification system

FAIR MARKET VALUE

The most probable price which goods and services should bring in a competitive and open market when both buyers and sellers are knowledgeable about the item, behaving in their own best interests and free of undue pressure to trade.

F.O.B. (Free On Board)

A contract provision that designates a physical location for delivery of a good or service. The location specified determines the responsibility and basis of payment for freight charges, delivery claims and, unless otherwise agreed, the point at which title for the material passes from the seller to the buyer.

FORMAL SOLICITATION

A procurement of \$100,000 or more, or in the case of public works projects, \$10,000 or more, that requires a Notice to be published in a local newspaper notifying the public of an upcoming solicitation.

GENERAL CONDITIONS

Standard clauses used by the District in various types of Contracts.

GENERAL MANAGER/CHIEF EXECUTIVE OFFICER (“General Manager/CEO”)

The General Manager and Chief Executive Officer of the San Mateo County Transit District.

INFORMAL SOLICITATION

A procurement exceeding \$2,500 but less than or equal to \$100,000, with the exception of public works projects, not requiring a Notice to be published in a local newspaper notifying the public of an upcoming solicitation. Quotations submitted by vendors may be made by informal means of mail, fax or e-mail.

INVITATION FOR BIDS (“IFB”)

A solicitation document and process used in sealed bid procurements. IFBs must describe the District’s requirements clearly, accurately, and completely. Bids submitted by vendors are in sealed envelopes and publically opened at a date and time specified in the solicitation.

MEMORANDUM OF UNDERSTANDING (“MOU”)

Memorandum of Understanding is most often used to bind an agency, person, or firm to set forth mutually beneficial arrangements but which does not lend itself to the detailed provisions of a formal contractual Agreement, and which *has not* been competitively procured. The MOU generally arises in a political context and is not subject to the requirements of this Manual, but is subject to the same District signature authority thresholds as competitively procured contracts.

OFFER

A Proposal or Bid submitted to the District in response to an RFQ, RFP, or an IFB.

OFFEROR

Any individual, firm, partnership, joint venture, corporation, or combination thereof, submitting a Quote, Bid or Proposal for the work contemplated, acting directly through a duly authorized representative.

PROCUREMENT

All stages of the process of acquiring supplies or services, beginning with solicitation and ending with Contract completion and closeout.

PROJECT MANAGER

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The District employee or Consultant responsible for technical input during the solicitation process and Contract administration, including but not limited to, resident engineers for public works projects including those for construction services and Contract management for professional services agreements with consultants.

PROPERTY

Property is limited to personal property, which is all property other than real property.

PROPOSAL

An offer submitted to the District to enter into a Contract, Contract modification, or termination settlement which allows for negotiation.

PUBLIC WORKS

Projects undertaken which work includes construction, alteration, improvement, demolition, installation, maintenance and/or repair work done under Contract and paid for in whole or part out of public funds (Pub. Cont. Code 7103.5 and Lab. Code 1720).

PURCHASE ORDER (“PO”)

The form signed by a duly authorized signatory constituting written authorization to a vendor to furnish the District with materials, equipment, supplies, or services of the kinds and in the amounts specified.

PURCHASE REQUISITION (“Requisition”)

A document that is submitted on-line to Contracts and Procurement by a District using department , to officially request and initiate a particular procurement action. The Requisition contains the authorized signature approvals and identifies the salient funding that will support the action.

REAL PROPERTY

Land, including affixed land improvements, structures and appurtenances. This does not include movable machinery and equipment.

REQUEST FOR PROPOSAL (“RFP”)

A solicitation document other than IFB’s or RFQ’s. RFPs are used in procurements to communicate unique District requirements to prospective Contractors/Consultants and to solicit Proposals from them, often leading to negotiations between the parties to form the contract.

REQUEST FOR QUOTATIONS (“RFQ”)

A solicitation document used for requesting quotations as part of an informal bid process. Quotes submitted may be used by the District to form a binding Contract.

RESPONSIVE BID OR PROPOSAL

To be considered for award, a Bid or Proposal must comply in all material respects with the solicitation. Responsiveness refers to a potential Contractor's conformance to the applicable Bid or Proposal requirements.

RESPONSIBLE BIDDER

A Bidder who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform the Contract (Pub. Cont. Code 1103).

ROLLING STOCK

Rolling stock is defined as transit vehicles such as buses, vans, cars, railcars, locomotives, trolley cars, buses, and ferry boats, as well as support vehicles (Buy America regulations: 49 CFR Part 661.3).

SOLICITATION OR SOLICITATION DOCUMENTS

A document sent to prospective Contractors by the District, requesting the submission of offers or of information. This generic term includes Invitations for Bids (IFBs), Requests for Proposals (RFPs), and Requests for Quotations (RFQs).

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SPECIAL PROVISIONS

The Special Provisions section of the Solicitation Documents modifies or augments identified sections of the General Conditions. Additionally, Special Provisions of the solicitation may identify the Solicitation timeline, procedures for Bid submittal, DBE requirements, and other terms unique to a particular procurement.

SPECIFICATION OR TECHNICAL SPECIFICATIONS

A document used in procurements to clearly and accurately describe in detail the essential requirements for items, materials, or services, including criteria for determining that the requirements have been met.

SUPPLIES

All consumable items other than equipment as defined above

TERMS AND CONDITIONS

The provisions of a Contract.

UNSOLICITED PROPOSAL

A proposal submitted by a vendor in the absence of any public notification or formal solicitation from a Contract Officer. It may be submitted in response to a perceived need but not in response to a Contract Officer's formal request. .

USING DEPARTMENT

The term used for any organizational entity within the District that initiates a request for procurement action and that will ultimately benefit from the goods or services acquired.

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III. RESPONSIBILITY AND AUTHORITY FOR IMPLEMENTATION OF MANUAL POLICIES AND PROCEDURES

A. Legislative and Regulatory Authority

The procurement policies and procedures discussed in this Manual have been developed in conformance with the standards and limitations established by State and Federal law and District rules and policies as follows:

- California Public Utilities Code (“Pub. Util. Code”)
- California Public Contract Code (“Pub. Cont. Code”)
- California Statutory and Case Law
- California Code of Regulations, Prevailing Wage
- California Labor Code (“Lab. Code”), Prevailing Wage
- Board of Directors’ Resolution 2003-26 and Board Rules
- District Policies

The applicable Federal laws, regulations, and agreements, including all updates that may follow, affecting the procurement practices of the District are as follows:

- 49 USC Transportation, Chap. 53, Mass Transportation
- Department of Transportation, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, 49 CFR Part 18.
- FTA Master Agreement
- FTA Circular 4220.1F, Third Party Contracting Guidelines
- FTA Circular 5010.1D, Grant Management Requirements
- FTA Circular 5200.1A, Full Funding Grant Agreements Guidance
- Participation by Disadvantaged Business in Department of Transportation Programs, 49 CFR Part 26

B. Signature Authority

The Director of Contracts has the authority to execute agreements and amendments for procurement or lease of equipment, supplies, materials, or services, including professional services with a value up to \$50,000 and for public works Contracts up to \$10,000.

The General Manager/CEO has the authority to execute any agreements for the procurement or lease of equipment, supplies, materials, or services, including professional services with a value up to \$100,000; for public works Contracts the General Manager/CEO has the authority to execute Contracts up to \$10,000.

All other agreements or leases exceeding these amounts shall require the approval of the Board of Directors. The General Manager/CEO, or designee, shall have the authority to approve all change orders for Contracts not exceeding \$100,000 or up to 10-percent (cumulative) of the Contract amount, whichever is greater. The Contract amount shall equal the base amount of the Contract, supplemented by (a) the amount of any exercised options; (b) the amount of any Board authorized contingency; and/or (c) the amount of any Board-approved amendments or change

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orders.

For a detailed summary of Contract signature authority thresholds and the internal delegation of authority for Work Directives and Change Orders, see Appendices A, B, and C.

C. Contracts and Procurement Department

It is the responsibility of the Contracts and Procurement Department (hereinafter referred to as "Contracts and Procurement") to coordinate, monitor, and record all phases through Contract award of District procurement of supplies, equipment, materials, services, and public works projects, as well as any Contract change orders. Contracts and Procurement is also responsible for sale or disposal of District surplus property. The Director of Contracts shall report to the District's Deputy CEO, Administration and Finance with respect to all purchasing decisions and activities.

D. Office of Civil Rights

The Office of Civil Rights has responsibility for affirmative action, Disadvantaged Business Enterprises ("DBE"), and labor compliance programs at the District.

1. Disadvantaged Business Enterprises (DBE)

In accordance with Federal regulations, the District is committed to and has adopted a Disadvantaged Business Enterprise ("DBE") Program to engage DBEs in District contracting opportunities. It is the policy of the District to ensure nondiscrimination on the basis of race, color, national origin, or sex in the award and administration of the U.S. Department of Transportation ("USDOT") assisted contracts. It is the intention of the District to remove barriers and create a level playing field on which DBEs can compete fairly for contracts and subcontracts relating to the District's construction, procurement, and professional services activities. The Manager, Employee Relations and Civil Rights, and the DBE Officer, in cooperation with the Deputy CEOs of the District, are responsible for the development, implementation, and monitoring of the DBE Program in furtherance of the District's nondiscrimination policy.

In accordance with District policy, Contracts and Procurement shall advise the DBE Officer of the initiation of the drafting of Solicitation Documents. The DBE Officer shall provide input on the solicitation documents regarding DBE matters, including the identification of subcontracting opportunities for small businesses, including DBEs, and DBE goals, if applicable. Bid results and other DBE documentation and related matters shall be referred to the DBE Officer for review and approval. To the fullest extent practicable, the Solicitation Documents shall be drafted so as to foster full and open competition, including the participation of DBE firms.

2. Labor Compliance

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The District administers a California Department of Industrial Relations (DIR) approved Labor Compliance Program (LCP) for all public works Contracts and Purchase Orders. Public works, in this case, is broadly defined to include the construction, alteration, demolition, maintenance, repair, inspection, and land surveying of District facilities, structures, utilities, roads and real property. Under the LCP, the Labor Compliance Office monitors contractors' payment of prevailing wages, hours of labor, maintenance of payroll records and utilization of apprentices. Before a public works contract is issued, the Labor Compliance Office provides Contracts and Procurement the required language for Solicitation Documents based on funding sources and contract amounts. After bids or proposals are submitted, the Labor Compliance Office provides analysis of labor cost proposals to ensure that prevailing wage work is properly identified and cost estimated. Throughout the contract term, the Labor Compliance Office acts as a resource for providing updated prevailing wage information, troubleshooting labor compliance software, processing worker complaints and providing other necessary support regarding the agency's LCP. Upon completion of all required procedures, the Labor Compliance Office will provide a recommendation on a contractor's final retention payment.

E. Attorney

Contracts and Procurement staff shall consult the Attorney for the District on any issues pertaining to the interpretation of federal or state law and may consult on District policy or procedures on procurement matters. The Attorney will provide legal review of procurements requiring formal competitive bidding, including review of the Solicitation Documents, Bids and recommendations for Contract award. The Attorney shall also review Requests for Proposals, sole source, and non-competitive procurements.

F. Use of Electronic Marketplaces

For supplies, equipment, and materials which fall below the \$100,000 formal Invitation for Bid threshold, the District may utilize electronic (on-line) marketplaces for Requests for Quotes.

Utilization of electronic marketplaces shall be aligned with Contracts and Procurement's policy objective to reduce the volume and streamline the flow of paperwork while continuing to maintain accurate documentation of transactions.

Use of an electronic marketplace shall be approved by the Director of Contracts upon the determination that use of the electronic marketplace does not restrict competition.

G. Taxation

Summary

Section 6005 of the Revenue and Taxation Code defines the San Mateo County Transit District, as well as all other government agencies, as a "person." As such, the District is subject to sales and use tax like any ordinary individual. The exception to this is Federal Excise Tax.

1. Federal Excise Tax

The District is exempt from paying Federal Excise Tax associated with fuel and

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tire procurements. The Accounts Payable Department is responsible for the annual exemption certification.

2. Out of State and Internet Vendors

If a sale of goods to the District occurs in California, the seller is responsible for remittance of sales tax to the State Board of Equalization (“BOE”) if the seller is required or authorized to collect California use tax and the District makes payment to the seller for the sales tax due.. The District should confirm with the seller whether or not they are registered with the BOE.

If the seller is out-of-state and is not registered with the BOE and/or is not required or authorized to collect California sales tax, the District is required to report and pay use tax on the purchase directly to the BOE on a quarterly basis. The use tax rate calculated on such purchases is the same as if the purchase was made from a retailer in California. All procurement requests of taxable goods and services should include the current sales tax.

H. Splitting Procurements Prohibited

The District shall not arbitrarily split purchases into smaller segments or partial orders to remain below the authorized dollar threshold level for formal Invitation for Bids in an effort to take advantage of the informal bidding procedures. This prohibition applies to both public works projects and all other procurements.

IV. STANDARDS OF CONDUCT

A. Duty to Disclose

Contracts and Procurement staff and other District employees shall not be involved in any purchasing decisions, tasks, or procedures (including participation in initiation, award, or administration of a Contract) in which they or persons related to them have a real or apparent conflict of interest, as more particularly defined in Section 4.B, below. In cases where there may be such conflict of interest, employees have the responsibility to report in writing such conflict to the Director of Contracts.

Potential Consultants may be required to disclose in their Proposals any positions they hold as directors, officers, consultants, or employees of a government agency to assist the District in determining whether a conflict of interest exists. (District Reso. 1993-33)

B. Conflict of Interest

The District Board of Directors has adopted a Conflict of Interest Code under which certain designated employees and Consultants disclose economic interests and are prohibited from participating in decisions that may have an effect on their financial interests.

It is further required that no employee, officer, or agent of the District participate in procedures, tasks, or decisions relative to initiation, evaluation, award, or administration of a Contract if a conflict of interest, real or apparent, exists. Such a conflict of interest arises when (a) the Director,

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employee, officer or agent; (b) any member of his or her immediate family; (c) his or her business associate; or (d) an organization which employs, or which is about to employ any of the above described individuals, has a financial or other interest in a firm that participates in a District solicitation process or that is selected for an award. The standards governing the determination as to whether such an interest exists are set forth in the Political Reform Act (Gov't. Code §81000, 1090, 1091 and 1091.5 et seq.)

C. Levine Act

California Government Code Section 84308, commonly referred to as the "Levine Act," prohibits any District Board Member from participating in any action related to a contract if he or she receives any political contributions totaling more than \$250 within the previous twelve months, and for three months following the date a final decision concerning the contract has been made, from the person or company awarded the contract. The Levine Act also requires a member of the District Board who has received such a contribution to disclose the contribution on the record of the proceeding.

D. Gratuities and Contingent Fees

No Director, officer, employee, or agent of the District knowingly shall solicit, accept, or agree to accept gratuities, favors, contingent fees, or anything of more than a nominal monetary value in connection with actual or potential procurement and contracting activities. A contingent fee is any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or entity has in securing a Contract. Policy regarding employee acceptance of gratuities is defined in the Personnel Policies and Procedures Manual issued by the Human Resources Department.

E. Ex-Parte Communications

Proposers and Proposers' representatives may not communicate with the District's Board members except in writing and if the communication is made public. Proposers and Proposers' representatives must communicate in the manner set forth in the solicitation. All such communication shall be directed to the named Contract Officer until after a Letter of Transmittal of the Effective Date has been issued by the District. There shall be no communication with any officer, director, employee, or agent of the District, except as may be reasonably necessary to carry out the procedures specified in the solicitation. Nothing herein prohibits Proposers and their representatives from making oral statements or presentations in public to one or more representatives of the District during a public meeting.

F. Confidential Information

No member of Contracts and Procurement staff shall use confidential information for his or her actual, anticipated, or apparent personal gain, or for the actual, anticipated, or apparent personal gain of any person related to such employee. "Related" is defined in Section 4.B, above. "Confidential Information" is defined to include any proprietary, privileged, or nonpublic information, coming to the employee's attention as a result of employment by the District, the knowledge of which makes possible

financial gain.

G. Post Employment Restrictions

No person previously in the position of Director, Officer, employee or agent of the District may act as an agent or attorney for, or otherwise represent, a Consultant or Contractor by making any formal or informal appearance, or any oral or written communication, before the District, or any officer or employee of the District, for a period of 12 months after leaving office or employment with the District if the appearance or communication is made for the purpose of influencing any action involving the issuance, amendment, award or revocation of a permit, license, grant, or Contract.

H. Discipline for Violation

The violation of any of the above Standards of Conduct will subject the violator to any disciplinary proceedings or action as required by law, including but not limited to the Political Reform Act, Government Code §81000 et seq., or as deemed appropriate by the District, up to and including dismissal.

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V. METHODS OF PROCUREMENT

A. Summary

All purchases and Contracts, whether by formal advertising or by negotiation, shall be made on a competitive basis to the greatest extent practicable. The method of procurement shall be appropriate for the type of project or procurement and shall be in the best interest of the District.

The District promotes full and open competition in its procurements and will not arbitrarily place restrictive or burdensome requirements on firms in order for them to qualify to do business with the District.

B. i. Micro-Purchases – Procurements Not to Exceed \$2,500

a. The Using Department may choose to utilize petty cash (up to \$50), or check requests for one-time purchases of supplies, materials, or services that are \$500 or less.

b. For the procurement of supplies, equipment, materials, or services that do not require an expenditure of more than \$2,500, Contracts and Procurement staff will poll possible vendors of the products or services requested. One verbal or written quote is required. When competition is not obtained, Contracts and Procurement staff must take reasonable actions to ensure an equitable distribution of purchases are made among qualified suppliers.

c. For the procurement of bus inventory parts and equipment, the Director, Bus Maintenance, or designee is authorized to procure inventoried spare and replacement parts or equipment for the purpose of vehicle maintenance and repair up to \$2,500 in accordance with this Procurement Manual.

d. One verbal or written quote is required. These micro-purchases may be made without obtaining additional quotations if the price to be paid is determined to be fair and reasonable.

ii. Public Works Contracts (Informal Solicitation) – Procurements Not to Exceed \$10,000

1. Summary

Public works Contracts whose dollar value is \$10,000 or less are to be let to the lowest, responsive, and responsible Contractor quoting on the work. The solicitation for the work shall incorporate appropriate public works requirements. A subsequent

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Agreement or Purchase Order for the work is issued to the Contractor by Contracts & Procurement and signed by the authorized designee as provided for in Exhibit A.

2. Contractor's License Classification

For public works projects, the applicable contractor's license classification shall be identified in the Solicitation Documents (Pub. Cont. Code 3300).

3. Prevailing Wages and Davis Bacon

- a. Prevailing wages apply to all public works Contracts in excess of \$1,000 (Lab. Code 1771 and 1773.2)
- b. Davis-Bacon General Decisions apply to all federally funded public works projects in excess of \$2,000. Applicable General Decisions must be included with Solicitation Documents and Contracts (40 USC §§276a–276a(7), 49 USC §5333(a), and 29 CFR Part 5).

iii. Small Purchases (Informal Solicitation) Not to Exceed \$100,000 Except For Public Works Projects

a. Overview

The District has adopted and will adhere to the provisions of State of California Assembly Bill 116 (AB116) which parts govern the purchase of supplies, equipment, or material for the District in amounts greater than \$2,500 but not more than \$100,000.

Procurements of supplies, equipment, materials, or non-professional services with an estimated cost greater than \$2,500 but not more than \$100,000, except for public works projects, shall be informally procured. These solicitations seek to receive, when practical, a minimum of three or more oral or written quotes, as practicable. In addition, written quotes may be obtained by using the electronic marketplace or by issuing a written solicitation. Written quotes may include published catalog prices, prices listed on a vendor's website, and existing valid quotes for the same product or service. The solicitation describes the desired products or services, and sets forth the terms of the procurement to those firms/suppliers. A Letter RFP would be used when services are required that would benefit from a judgment of best value. An independent cost estimate, which may consist of budgetary information and/or project manager estimates, is required for all procurements exceeding \$2,500.

For the procurement of bus inventory parts and equipment, the Director, Bus Maintenance, or designee is authorized to procure inventoried spare and replacement parts or equipment for the purpose of vehicle maintenance and repair between \$2,500 and \$10,000 in accordance with the small purchase procedures set forth in this section.

b. RFQ and Letter RFP Procedures

i. Initiation of Process

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The Using Department shall initiate an on-line requisition (“Requisition”) that will subsequently be received in Contracts and Procurement when fully approved. A detailed Scope of Work shall be provided to Contracts and Procurement on-line with the requisition specifying the items or services desired, including technical specifications, drawings, exhibits, etc. The Requisition must contain the estimated cost of the item(s), all accounting and project cost codes, and include suggested vendors or suppliers.

ii. Solicitation Preparation

Upon approval of the Requisition by Contracts and Procurement staff, a determination is made as to whether it meets the RFQ or Letter RFP criteria. A RFQ shall include the basic terms and conditions of the procurement sought, a description of the products or services required, FOB point, delivery date and address, identification of components of Bid prices and technical specifications (as required by the nature of the product or services), and the date and time by which the quotations must be submitted to the District. Other terms and conditions may also be set out in the RFQ, as appropriate. RFQ's shall be sent to firms registered on the District's Contracts and Procurement website and Procurement staff in coordination with the requestor shall poll possible vendors of the products or services requested in order to maximize the possibility of multiple Offers.

A Letter RFP will describe the Scope of Work, including technical specifications, and include the relevant terms and conditions, the due date and time for proposals, and will clearly state the evaluation criteria and process the agency will adhere to once proposals are received.

iii. Evaluation and Award

Upon receipt of quotations or proposals, Contracts and Procurement staff and possibly requesting department representatives shall conduct an evaluation on the basis of the following criteria: a) lowest monetary quote; b) responsiveness to the solicitation requirements; and c) qualifications of the firm; or d) other qualifying factors.

If necessary, interviews may be conducted. Proposers will be invited to present their proposals to an Evaluation Committee who will evaluate each firm to arrive at a determination of the highest-ranked firm.

If an award is made, the District shall make an award to the lowest responsive, responsible firm or the firm receiving the highest point ranking.

e. Issuance of Purchase Order or Contract

Upon verification and approval of the award by the Director of Contracts, a Purchase Order or Agreement shall be issued as appropriate, to the successful

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firm, by Contracts and Procurement staff and signed by the authorized designee as indicated by Appendix A.

C. Formal Competitive Procurements for Goods and Services Exceeding \$100,000 and Public Works Projects Exceeding \$10,000

1. Summary

The District is required by statute to formally advertise and publicly solicit for the submission of sealed Bids and Proposals on a competitive basis for Contracts for the purchase of supplies, equipment, materials, professional and non-professional services in excess of \$100,000, and for public works projects in excess of \$10,000.

The solicitation process may take the form of an Invitation for Bid (IFB) or a Request for Proposals (RFP) as described further in this section.

The Invitation for Bids ("IFB") procedure begins with the public advertisement of the Notice Inviting Bids, and the subsequent issuance of comprehensive Solicitation Documents, which include the Notice Inviting Bids, General Conditions and Instruction to Bidders, Special Provisions, Technical Specifications, Bid Forms, and other documents as may be required by the procurement, and as required by local, state, and federal law. The Contract is awarded to the lowest responsive and responsible Bidder, defined as the qualified Bidder submitting the Bid that conforms with all the material terms and conditions of the invitation for Bids and that is lowest in price.

2. Bid and Contract Award Procedures

a. Initiation

The Using Department shall submit a fully executed Requisition and shall submit draft documentation, including an independent cost estimate, technical specifications, and scope of work which adequately describes the products or work required, and Bid forms as applicable. The Using Department may also submit a list of potential Bidders.

If there is no funding in the current budget to cover the resulting Contract, the Using Department shall also obtain the approval of the Board for the issuance of the solicitation, and shall state in its documentation to Contracts and Procurement the number of the Board resolution authorizing the solicitation. This documentation will also include the Using Department's proposed solicitation timeline and desired Contract commencement date, and the designated Project Manager. The Project Manager and/or the Cost Center Manager of the Using Department shall ensure all documentation is approved prior to its being sent to Contracts and Procurement.

Upon receipt of the Using Department's documentation by Contracts and Procurement, the Director of Contracts or designee shall review and confirm that the procurement is appropriate for a formal competitive solicitation process. Upon such

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confirmation, Contracts and Procurement staff shall issue a solicitation number that shall be referenced in all Solicitation Documents. The Contract Officer shall also post the Notice to All Prospective Bidders on the District's website provider.

b. Advertisement for Bids

A Notice Inviting Bids shall be published once a week for at least two consecutive weeks, with at least five days between each publication, in at least one newspaper of general circulation published in San Mateo County (Gov. Code 6001, 6008, 6060, and 6066). The advertisement shall state the time and place for the receiving and opening of sealed Bids, and shall describe the work to be done in general terms. Where a particular Contract involves a trade or expertise for which there are special industry publications, the Contract Officer may advertise the notice in appropriate trade journals. The Notice shall also be posted on the District's Website.

c. Preparation of Solicitation Documents

i. Components of the Solicitation Documents

With the required documentation from the Using Department, Contracts and Procurement staff shall prepare the Solicitation Documents. Although there exists certain variations in the provisions and requirements to be included in the Solicitation Documents, as noted hereafter, each set of Solicitation Documents shall, at a minimum, contain the following items:

(a) Notice Inviting Bids

The Notice Inviting Bids ("Notice") is a publicly advertised document which notifies potential Bidders of the title and nature of the Contract, and the date, time, and place of the opening of Bids. The Notice shall also inform Bidders of the DBE and prevailing wage requirements, as applicable, and other significant requirements under federal or state laws.

If the Contract to be let is financed in whole or in part by the United States Department of Transportation, the FTA, or FHWA, the Notice shall identify the grant and shall further state that Bidders will be required to comply with all terms and conditions prescribed for third-party Contracts in the grant Contract between the District and the funding agency, if any. The Notice shall also state that all Bidders will be required to certify

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that they are not on the Comptroller General's list of debarred or suspended Contractors for projects financed with federal assistance.

If the Contract to be let is a public works Contract, in addition to the other requirements in this section, the Notice must identify the required Contractor's license classification (Pub. Cont. Code 3300), applicable wage rates or where they are on file (Lab. Code 1773.2), Davis Bacon General Decisions, and where and when the Solicitation Documents which may include final plans and specifications, will be made available (Pub. Cont. Code 6610).

If a Pre-Bid Conference is planned, the Notice shall advise of the date, time, and location for the conference (Pub. Cont. Code 6610). The Notice shall refer to and incorporate by reference all the other Solicitation Documents, (i.e., the General Conditions and Instruction to Bidders, the Special Provisions, the Technical Specification, and other certificates, forms, and documents). The Notice shall also designate the method for obtaining copies of the Solicitation Documents and shall be dated and signed by the responsible Contract Officer.

The Notice should also contain a statement that the District has a right to reject any and all Bids and waive any irregularities or informalities. Finally, the Notice should include the Bid opening date, the length of time Bids should remain firm, and the Bidder's security requirement, if any.

(b) General Conditions and Instructions to Bidders

The General Conditions and Instructions to Bidders ("General Conditions") set forth standard terms and conditions applicable to all District Contracts, and may vary depending upon the funding sources for the procurement, (i.e., whether federal assistance is involved). The General Conditions include such general provisions as definitions, compliance with law, prohibited interest, bidding procedures, taxes, delivery charges, general bonding requirements, times for performance and payments, liquidated damages, changes in the Contract, warranties and the like.

Contracts and Procurement shall prepare and maintain a standard set of General Conditions necessary for inclusion in all

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Solicitation Documents for formal competitive Bid procurements. The General Conditions shall be updated from time to time, with the assistance of Legal Counsel, as changes in Federal and other applicable law may require.

(c) Special Provisions

The Special Provisions prescribe terms and conditions specially tailored to the particular procurement sought. The Special Provisions shall include, where applicable, terms and conditions relating to delivery requirements, time for performance, place of performance, inspection, acceptance, warranty, insurance requirements, liquidated damages, qualifications of Bidders, instructions on completion of Bid form and other Proposal documents, method for evaluation of Bids, approved equals procedures, Contract bond requirements, options for Contract renewal and such clauses as may be required for federally assisted Contracts.

(i) Liquidated Damages Clause

The Contract Officer and the Project Manager shall determine whether a Liquidated Damages clause should be included. The Liquidated Damages clause establishes the amount of damage that may be due for Contractor failure to complete Contract requirements within the specified time for performance. The District may deduct any assessed liquidated damages from payment due the Contractor.

A Liquidated Damages clause should be included in Contracts when it would be difficult or impracticable to assess the actual amount of damages. The amount to be established as liquidated damages shall be reasonable in light of the estimated losses to the District caused by a delay in the Contractor's performance. The Contract Officer, with input from the Project Manager, shall evaluate these factors, and set a sum as liquidated damages providing written justification for the specified amount in the contract record. Liquidated damages shall not be assessed without cause.

(ii) Pre-Bid Conference

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If a Pre-Bid Conference is scheduled, the Special Provisions shall advise of the date, time, and location of the conference. Such conference shall be conducted in accordance with the procedures specified in Section V.F.2.d.

(iii) Qualifications of Bidders

All Contracts shall include a provision setting forth the required qualifications of Bidders. Such provision shall clearly state that the District may reject any Bid from a Bidder who does not meet the required qualifications. The provision may include requirements that Bidders demonstrate they are regularly engaged in the manufacture, construction, or provision of the work or product called for in the solicitation and that they have the necessary resources, facilities and personnel to perform the Contract. In some cases, Bidders may be required to attest that they have previously and satisfactorily performed work comparable to that specified in the Solicitation Documents and may be required to furnish adequate references.

(d) Technical Specifications

The Technical Specifications shall clearly define the nature of the work, products, or services to be procured, so that Bidders may formulate responsive Bids. Initial responsibility for drafting the Technical Specifications lies with the Using Department staff. The Contract Officer shall review the Technical Specifications for completeness. The Technical Specifications shall include detailed descriptions of the qualitative and quantitative nature of the supplies, equipment, materials, routine services, or public works project and service to be procured. They must also set forth the minimum essential characteristics and standards to which the products, services, or work must conform in order to satisfy the District's intended use. Where it would be of assistance in clarifying the specifications, inclusion of blue prints, diagrams, charts, maps, and other attachments is encouraged.

The Technical Specifications shall not be drafted to unduly restrict competition. Brand names may be used in the

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Technical Specifications only when it is impractical or uneconomical to specify clear and adequate descriptions of the technical requirements for particular product needs. In all cases where brand names are used, Bidders must be afforded the opportunity to propose to the District a substitute product of equal or better quality or value for approval.

(e) Other Solicitation Documents

(i) Bid Form

The Bidder's completion and submission of the Bid Form shall constitute its acceptance of all the terms and conditions contained in the Solicitation Documents, and shall also indicate the Bidder's quoted prices. Contract Officer shall be responsible for development of the Bid Form, with the assistance of the Project Manager. The Bid Form shall seek separate cost quotations for all relevant aspects of the procurement, including, unit price, extended price, sales or use taxes, and cost of installation and delivery, where applicable. In all cases, the Bid Form shall be structured to allow the District to make an objective comparison of all Bids. Whenever possible, this will be accomplished by structuring the Bid Form to request a Grand Total Bid Price.

(ii) Security Forms

The Solicitation Documents shall include forms for a Bidder's Bond, a sample Performance Bond, a sample Payment Bond, an Irrevocable Standby Letter of Credit, or a Maintenance and Guaranty Bond when such securities are required. The amount of these securities may vary depending upon the Contract. See Section V.C.3.c.

(iii) Other Solicitation Documents

Other documents may be included as required by federal, state, or local law, FTA guidelines, or the nature of the particular procurement sought. See Section X for information on federally funded Contracts.

(iv) Sample Agreement

A sample Agreement form showing what the successful Bidder will be required to execute with the

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District shall be included among the Solicitation Documents.

ii. Final Review of Solicitation Documents

(a) Distribution of Solicitation Documents

Upon completion of the draft Solicitation Documents, copies shall be distributed to the following for review prior to advertising:

- (1) Attorney;
- (2) Project Manager;
- (3) DBE Officer, if applicable;
- (4) Labor Compliance Officer, if applicable, and
- (5) Risk Management

(b) Date for Submission of Comments

Contracts and Procurement shall establish a review schedule, based upon the anticipated date of advertisement, which designates the date upon which all changes, comments, and required approvals shall be submitted to the Director of Contracts. Such schedule shall permit a sufficient time period for review of the Solicitation Documents by the individuals listed above.

d. Pre-Bid Conference

A Pre-Bid Conference may be held according to the schedule contained in the IFB. The Conference shall be chaired by the responsible Contract Officer, who will cover basic requirements for the IFB, including Special Provisions, Technical Specifications, critical dates, qualifications of Bidders, the time and place for submission of Bids, and other requirements. The DBE Officer shall be invited to discuss the participation requirements for DBE firms. Staff from the Using Department will also be present to discuss technical aspects of the scope of work. The Pre-Bid Conference shall offer an opportunity for interested Contractors to inquire about or become more familiar with the terms of the IFB.

e. Preparation of Addenda

Once the Solicitation Documents have been issued, all changes necessary to correct any errors or omissions, to extend deadlines for the benefit of the District or the Bidders, or to otherwise revise the Solicitation Documents, shall be accomplished through the issuance of Addenda. Addenda shall be drafted by the Contract Officer, with input from the department requiring such change, and shall be reviewed and approved by the Director of Contracts or designee. Each Addendum shall contain the solicitation number and title, the date of issuance, the Addendum

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number, specific reference to the provision of the Solicitation Documents that is being amended, and the substance of such amendment. The Addendum shall be issued to all firms or persons who have received a copy of the Solicitation Documents.

f. Bid Opening

All Bids received must remain unopened and stored in a secure location until the public opening on the date and time specified in the Notice. On the date of Bid opening, any Bids received after the time specified in the Notice shall be rejected and returned unopened.

The Contract Officer shall preside at all Bid openings. In addition, at least one other District employee shall be present for purposes of witnessing the Bid opening. The following information shall be recorded at the time of Bid opening:

- i. The names of all persons in attendance at the Bid opening;
- ii. The name of each Bidder;
- iii. The time and date each Bidder's Bid was submitted;
- iv. The time and date each Bidder's Bid was opened;
- v. The grand total Bid price of each Bid; and
- vi. The signature of the person who opens the Bid and the person who witnesses the Bid opening.

The name of each Bidder and the Grand Total Bid Price shall be read aloud by the person opening the Bids. Members of the public shall be permitted to witness the Bid opening.

After the date and time set forth for the Bid opening, no Bidder shall be permitted to change its Bid.

g. Evaluation of Bids

i. Evaluation Criteria

After the Bid opening, the Contract Officer shall deliver one copy of the Bids received to the Project Manager for their technical review. The original copy of the Bids received shall be retained by Contracts and Procurement.

The criteria used in evaluating the Bids shall be: lowest monetary Bid, responsiveness of Bid, and responsibility of Bidder. The Contract Officer shall be principally responsible for the evaluation of the Bids. In addition, the Project Manager shall review the Bids for compliance with the Technical Specifications, and provide a recommendation for award.

ii. Lowest Monetary Bid

The Contract Officer shall first examine the Bids to determine which Bid is the lowest in price. In doing so, staff shall observe the

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following rules:

- (a) Any formula for determining the basis for evaluating Bids, as described in the Solicitation Documents, shall be utilized;
- (b) All Bids showing item extensions and/or totals shall be reviewed for accuracy. The unit price shall govern whenever both unit price(s) and extended price(s) or total(s) are given. If a calculator or a computer spreadsheet program is used to verify totals, the calculator tape or spreadsheet shall be attached to the Bid documents. Any errors in Bidders' calculations shall be noted and brought to the attention of the Attorney;
- (c) Where more than one Bidder submits a Bid, the Contract Officer shall conduct a price analysis of the Bids in accordance with the procedures described in Section V.F.g.iii. In cases where only one Bid is received or it is determined that there was a lack of adequate competition for the Contract, the Contract Officer shall conduct a cost analysis, the procedures for which are described in Section V.F.g.iii, unless the reasonableness of the Bid price can be established by some other justifiable means, including but not limited to a catalog or market price for a similar commercial product sold in substantial quantities to the general public or prices set by law or regulation.

iii. Cost or Price Analysis

A price or cost analysis is required for every procurement. The applicability and extent of analysis is dictated by the circumstances of the individual procurement. The goal is for the Contracting Officer to conclude that the Contract dollar award amount, or cost components of it, is fair and reasonable.

A price analysis includes the examination and evaluation of readily available prices or rate information. The information needs to be adequate to make a determination of price reasonableness.

The Contract Officer need not obtain additional information from a Bidder or supplier for price evaluation purposes if:

- (a) adequate price competition exists, as when multiple quotes or Bids (two or more responsible, responsive offers) are received;
- (b) prices are for commercial products or services sold at catalog or market prices in substantial quantities to the general public;

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(c) prices are for commercial products or services whose prices are set by law or regulation; or

(d) a waiver is granted by the Director of Contracts and Procurement in exceptional cases.

A cost analysis is a detailed compilation, review and evaluation of the separate cost elements that comprise the proposed price and is required in cases where reasonableness of price cannot be ascertained through a price analysis as described above. A cost analysis is also required when a Bidder or Proposer is required to submit the elements of its estimated cost, such as may be the case in architectural, engineering, or other professional services Contracts.

A cost analysis involves the following steps:

(a) Verification of the accuracy of cost data;

(b) Evaluation of specific cost elements; including direct, indirect, General and Administrative, and fee or profit.

(c) Comparison of historical cost data to proposed costs.

Additionally, a determination shall be made that the Contractor's accounting structure and level of resources can support accurate cost data that is being furnished for analysis. After analysis and settlement of costs with the Contractor, the procurement record shall indicate a finding that based on the analysis, the proposed or settled price is fair and reasonable.

iv. Responsiveness

The Contract Officer, together with the Project Manager, shall determine whether the lowest monetary Bid is responsive to the contractual and technical requirements. The DBE Officer shall evaluate the submitted DBE participation requirements. The Contract Officer shall review the Bid documents to ensure that the Bidder has made no unauthorized deletions, amendments, or changes to the Solicitation Documents. The Contract Officer shall verify that required Bid Forms and certificates have been completed and signed as necessary. If, for any of these reasons, the lowest Bidder appears nonresponsive, the Contract Officer shall notify the Attorney of the deficiency. The Contract Officer, with input from the Attorney, shall make a determination as to whether the deficiency is a minor irregularity and therefore eligible for consideration of waiver by the District, or whether the deficiency is more substantive in nature.

v. Responsible Bidder

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The Contract Officer shall determine whether the lowest responsive Bidder is a responsible Bidder by evaluating whether such firm or person has sufficient experience, qualifications, trustworthiness, and financial stability to perform the Contract (Pub. Cont. Code 1103). Other criteria shall include the Bidder's past experience and history of service to the District, if any; the Bidder's references; and any other relevant information as revealed to the District from any other legal source. Any rejection of a lowest responsive Bid on the basis that the Bidder is not responsible can only be made if there are sound, documented reasons evidencing the inability of the Bidder to perform the Contract.

In making this determination, the Contract Officer shall use as the standard the minimum requirements set forth in the Special Provisions and Technical Specifications, and shall not assess the Bids as to relative superiority.

vi. Relief of Bidders

Pursuant to Public Contract Code 5101, unless by the consent of the District, a Bidder shall not be relieved of its Bid nor shall any change be made to a Bid because of a claimed mistake in the Bid. If a Bidder claims a mistake in its Bid, staff shall apply the standards set forth below when considering whether or not to grant relief to the Bidder. Relief shall only be granted when the required elements are met and such determination is in the best interest of the District.

The Bidder must establish in writing that: 1) a mistake was made; 2) the Bidder gave the District written notice within five days after the opening of the Bids of the mistake, specifying in detail in the notice how the mistake occurred; 3) the mistake made the Bid materially different than the Bidder intended it to be; and 4) the mistake was made in filling out the Bid and not due to error in judgment or to carelessness in inspecting the site of work, or in reading the Solicitation Documents.

vii. Rejection of Bids

Any determination to reject a lowest Bid on the basis that the Bidder is not responsible or that the Bid is not responsive may be recommended by the Contract Officer or Project Manager and must be approved by the Director of Contracts and the Attorney. The Contract Officer shall draft the staff recommendation to the Finance Committee and the Board, specifying the reasons for rejection of the Bid. The Bidder shall be notified of the staff recommendation and the Bidder's right to

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attend the Finance Committee and Board meetings. Action to reject by the Finance Committee and the Board is necessary prior to notification to the Bidder that its Bid is rejected.

The Board of Directors has the right to reject all Bids received on any solicitations that are advertised for competitive sealed Bids. Following the Bid evaluation, the staff may decide to recommend this course of action to the Board in cases where a) the Bids received were too high and the funds available in the budget are insufficient to cover the amount of the Contract even if it were awarded to the lowest responsible Bidder; b) none of the Bids were deemed responsive to the requirements of the Solicitation Documents; c) none of the Bidders were deemed sufficiently responsible to perform the Contract in a satisfactory manner; or d) staff determines that it would be imprudent to proceed with the Contract award based upon sound, documented business reasons; or e) it is not in the best interests of the District to award a Contract.

viii. Tied Bids

If two Bids are identical and are also the lowest responsible Bids, any one of the following methods may be used in determining the Bidder to whom the Contract shall be awarded:

- (a) In a case where cash discount terms proposed by the tied Bidders differ, the Bidder offering better cash terms may be selected.
- (b) In a case where tied Bidders propose different delivery schedules in response to the Solicitation Documents that allow for different delivery schedules, the Bidder proposing the more favorable delivery terms (i.e. shorter delivery period), may be selected.
- (c) Where there is any doubt as to the quality or equality of materials or equipment proposed by tied Bidders, the Bidder proposing the item specified in the Solicitation Documents, as opposed to a Bidder specifying an alternate brand or approved equal, may be considered the lowest responsible Bidder.
- (d) Where a tied Bidder has a history of dependable service to the District, such Bidder may be declared the lowest responsible Bidder.
- (e) If a Bidder is a registered DBE, said Bidder shall be considered over a non-DBE.

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(f) If none of the foregoing methods is appropriate to the particular procurement or results in breaking the tie, the District will determine a fair and objective way to break the tie.

ix. Recommendation for Contract Award

Upon completion of the evaluation methods described above, the Contract Officer, with the advice of the Attorney, shall make a recommendation to the Board of Directors as to which firm submitting a Bid represents the lowest responsible and responsive Bidder. Such recommendation shall be made within the time period specified in the Notice Inviting Bids for reporting the Bid results to the Board. Each recommendation on award of Contract shall be supported by the Attorney's written approval. In all cases, the recommendation shall contain information validating the recommendation and confirming that the proper evaluation method has been followed. If the Contract is awarded to a Bidder other than the apparent low monetary Bidder, the Contract Officer shall notify all other Bidders of the reasons for the determination of award.

h. Award of Contract

i. Award

For non-public works projects and service contracts less than \$50,000 and for public works projects less than \$10,000, the General Manager/CEO is authorized to award the Contract. For non-public works projects and service contracts in excess of \$50,000, and public works contracts in excess of \$10,000, the Board of Directors shall authorize the award of Contract. Contracts may be awarded to the lowest responsible Bidder in accordance with the recommendation made to the Board pursuant to Section V.F.2.g.ix, above. The Board may reject such recommendation and may waive any irregularity or informality in any Bid or in the bidding procedure, within legal guidelines, or may reject all of the Bids submitted for any reason.

ii. Notification

Upon award of the Contract, the Contract Officer shall notify the successful Bidder in writing of the award. The successful Bidder shall execute the Agreement, together with all bond forms, insurance certificates, and other documents, as required, within the time specified in the notice of award issued by the Contract Officer.

iii. Execution of Agreement

Upon receipt of the executed documents by the successful

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Bidder, the Contract Officer shall review the documents and prepare the Agreement package for signature by the General Manager/CEO with attestation by the Secretary to the Board, and approval as to form by the Attorney.

iv. Notice to Proceed

After submission of any required securities and insurance certificates and execution of the Agreement by the District and the successful Bidder, hereinafter referred to as the Contractor, the Director of Contracts or designee, with the concurrence of the Project Manager, shall issue the Notice to Proceed to the Contractor.

3. Insurance and Bonding

a. Summary

The District generally requires insurance and bonding for protection in the event of default, failures to perform, accident, injury, or other liability or loss. Insurance and bonding requirements vary according to the type and estimated cost of the Contract, the source of funding, market conditions, risk assessment, and other considerations.

b. Insurance

All Contracts for services and public works projects shall carry, at a minimum, workers' compensation, commercial general liability insurance, and automobile liability coverage. In addition, any Contracts for the procurement of supplies, equipment, or materials, where on-site installation, inspection, or delivery activities are incident to the procurement, shall also include these insurance coverages. In certain cases, professional liability, errors and omissions, criminal theft, and employment practices liability insurance may be appropriate. The specific amounts and types of coverage shall be determined by the Risk Manager, with the advice of the District's insurance broker and other relevant staff members. District approval of a Contractor's insurance policies and coverage shall be required prior to commencing work under the Agreement.

c. Bonding

In the case of default or other failure to perform, the District shall require security to protect its interests. Except as specified in Section X.H for federally funded procurements, security requirements for both IFB and RFP procurements are as follows:

i. Bidder's Security

A Bidder's security may be required for an IFB or RFP in order to protect the District's interests in the event that a Bidder fails or refuses to honor its Bid or to enter into a Contract awarded to it. In the event of such

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a failure or refusal, the security is intended to reimburse the District for any resulting or anticipated damages. In the case of procurements of goods or services that can be readily obtained on the open market at a competitive price, the District may determine to waive the Bidder's security requirement.

For Contracts where a Bidder's security is required, it shall take the form of a bond using the form included in the Solicitation Documents, letter of credit, certified check, or cashier's check. The amount of the Bidder's security may vary according to the assessed risk and will be determined by the Contract Officer. All Contracts for public works projects in an amount of \$10,000 or more shall require such Bidder's security.

ii. Performance Security

When necessary to secure fulfillment of all the Contractor's obligations under the Contract, the District will require that the Contractor furnish a performance bond using the form included in the Solicitation Documents, letter of credit, or other form of security satisfactory to the District, in an amount up to 100-percent of the Contract price. In setting the amount of the performance bond, the District will consider the following factors: (a) risk of non-performance, including the capability of such bond to cover the likely differential in price between the Contractor and the next lowest responsible Bidder or a firm that could be retained from the open market should the District have to reassign the Contract; (b) industry practices or norms; and (c) other considerations as determined by the Project Manager in concert with Contracts and Procurement. The life of the performance bond may be required to extend beyond the completion of the main work under the Contract in order to cover any warranty period. All public works projects in excess of \$10,000 shall require either a performance bond or other form of security satisfactory to the District. The amount of a performance bond, or other security, may vary according to the assessed risk, as determined by the Contract Officer. When performance bonds are required, they must be executed by an admitted surety insurer in the state of California. (Code of Civ. Pro. 995.311).

iii. Payment Bonds

In all public works contracts, a payment bond, using the form included in the Solicitation Documents, shall be required. The amount of the bond shall be, at a minimum, 100-percent of the Contract price for expenditures in excess of \$25,000. (Civ. Code 3247-3252). The payment

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bond assures the Contractor's full discharge of its obligations to subcontractors, suppliers, and other labor used on the project. At the Contract Officer's discretion, with the concurrence of the Project Manager, payment bonds may be included in other procurements which involve subcontracting.

iv. Maintenance and Guaranty Security

If required by the District at the time of the final acceptance of the deliverable(s), and prior to release of the Performance Bond by the District, the Contractor shall furnish, at its own expense, a Maintenance and Guarantee Bond satisfactory to the District. The Bond shall be equal to a percentage of the Total Bid Price and serve as a guarantee of good faith on behalf of the Contractor that the warranty and service support terms of this Contract shall be complied with in every particular. Said bond shall remain in full force and effect for five years from the date of final acceptance of the deliverable(s).

v. Bond Sureties

The District shall have the right to reject as unacceptable any surety on a bond furnished by a Bidder or a Contractor if there are reasonable grounds to question the financial security of such surety. All bonds must be executed by an admitted surety insurer in the state of California.

D. Professional Services (Request for Proposal)

1. Summary

The preferred method for procurement for professional services is the Request for Proposal ("RFP") procedure. This process is appropriate when seeking to retain specially trained persons or firms ("Consultants") to provide services in connection with financial, economic, information technology, engineering, administrative, or other matters involving specialized expertise or unique skills including the operation of transportation services under Contract.

As a matter of policy, informal or competitive bidding can be undertaken for services with standard, non-professional qualities that are easily quantifiable and which lend themselves to Bid price comparison (such as janitorial services, landscaping, and other non-professional services).

The District's RFP procedure generally includes planning, solicitation of Proposals, evaluation of Proposals, negotiation with prospective Consultants, award of Contract and Contract administration. The explicit negotiation and proposal evaluation procedures that the District and prospective Consultants undertake in the process is a salient characteristic of the RFP that differentiates itself from those of formal competitive

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bidding.

Specific and separate procurement rules apply for procurement of architectural and engineering services, design-build contracts, and purchase of rolling-stock and technological equipment through the provisions of Government Code §4525 et seq., Public Contract Code 20209.5 et seq., and 20216 et seq. The contract term, inclusive of options, for bus purchases and replacement parts shall not exceed five (5) years and shall not exceed seven (7) years for rail purchases, per the requirements of FTA C. 4220.1f

2. Procedures

a. Initiation of RFP Process

The Using Department shall submit a fully-executed Requisition with a description of the scope of services required and an independent cost estimate. Other documentation may include suggested Consultants, their history with the District, and their qualifications for and experience in providing the services required. The Using Department will also identify a Project Manager, whose duties will include performing a liaison function with Contracts and Procurement. An authorized signatory of the Using Department shall approve all documentation prior to its being sent to Contracts and Procurement.

b. Notice to Prospective Proposers/Letters of Interest

The Contract Officer shall identify and send a Notice to all prospective Proposers and list the solicitation on the District's Website. Both the Notice and the Website will identify the type of solicitation, give a brief description of the service being sought, and note the expected issue date of the RFP.

Requests for Letters of Interest (LOI) may be sent to prospective Proposers as a means of soliciting interest in a particular project. The request may be broadcast via the District's Website, or other means, and will describe the salient characteristics of the project.

c. Request for Statement of Qualifications (SOQ)

The Director of Contracts shall review the Using Department's documentation and confirm that the services desired are appropriate for the RFP procedure. Staff will prepare a list of "potentially qualified Consultants" to whom the request for SOQ will be sent, if appropriate. Such list shall include the suggested Consultants named by the Using Department, and may be augmented by the inclusion of such persons or firms that Contracts and Procurement identifies from other sources to be potentially qualified for the provision of the subject services. Alternatively, Contracts and

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Procurement, with approval of the Using Department, may solicit Proposals without the use of SOQs.

The request for SOQ, prepared by Contracts and Procurement staff, shall contain a generalized statement of the scope of work which will be required under the Contract, and shall request that the person or firm submit a SOQ or LOI, as appropriate, evidencing specific expertise in the area delineated in the scope of work. The request shall establish a date on which such SOQs shall be submitted to Contracts and Procurement.

d. Evaluation of SOQs

Contracts and Procurement staff and the Project Manager shall review and evaluate the SOQs received. Those District employees with technical expertise in the area of performance contemplated by the Contract may be consulted during such review process. A determination shall be made as to which persons or firms appear most qualified in the specific area of expertise called for under the RFP. To permit reasonable competition consistent with the nature and requirements of the procurement, two or more such qualified sources shall be selected for inclusion on the RFP distribution list. Subsequent requests by other persons or firms to compete shall be added to the RFP distribution list to the maximum extent practicable.

e. Request for Proposal (RFP)

The RFP shall set forth details such as:

- i. Statement of purpose
- ii. Statement of services
- iii. Applicable terms and conditions
- iv. Schedule of events
- v. Project duration
- vi. Evaluation criteria
- vii. Required submittals
- viii. Contract type (i.e. firm fixed price, cost reimbursement)

Evaluation criteria may include but not be limited to, key personnel qualifications and experience, past Contract performance, bondability, understanding of the scope of work, financial resources, ability to perform the work, any proposed exceptions to RFP requirements, proposed method for management, schedule for delivery of the work, and cost. RFP's should state that the District has the right to negotiate with the top ranked Proposer. In the event that the District determines to assign weighted values to the evaluation criteria, such values shall be specified in the RFP.

f. Geographical Preferences

Geographic location preferences are not permitted in any District

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procurement.

The SMCTA has adopted a professional consultant selection procedure giving local preference to architectural and engineering firms located in San Mateo County.

g. Qualification-Based Competitive Proposal for Architectural and Engineering Services

Pursuant to California Government Code §4525 et seq., the District shall use qualifications-based competitive proposal procedures for the procurement of architectural, landscape architectural, engineering, environmental, land surveying or construction project management services. Under this method, the Proposals shall not contain a cost Proposal and shall be evaluated based upon qualifications and demonstrated competence. The Director of Contracts shall open negotiations with the Proposer deemed most qualified. If the parties are unable to negotiate fair and reasonable Contract terms, including compensation, then the negotiations will be closed and the Director of Contracts will commence negotiations with the second most qualified Proposer. This process will be followed until an Agreement is reached or the determination is made to recommend rejection of all Proposals. The procedure outlined in this Section V.G regarding Request for Proposal shall otherwise be followed for these procurements except to the extent inconsistent with these statutory requirements.

h. Pre-Proposal Conference

A Pre-Proposal Conference may be held according to the schedule contained in the RFP. The Conference shall be chaired by the responsible Contract Officer, who will cover basic requirements for the RFP, including funding type, Contract type, evaluation criteria, and specific points to be addressed in the Proposals, the time and place for submission of Proposals, and the requested content and length of the Proposals. The DBE Officer shall be invited to discuss the participation requirements for DBE firms. Staff from the Using Department will also be present to discuss technical aspects of the scope of work. The Pre-Proposal Conference shall offer an opportunity for interested Consultants to inquire about or suggest changes in the terms of the RFP.

i. Review of Proposals

Timely submitted Proposals received shall be reviewed by Contract Officer, the Project Manager, and other personnel with the

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appropriate technical expertise, as well as Legal Counsel as needed. The DBE forms shall be forwarded to the DBE Officer for review.

The review process shall begin with the verification that the Proposals received conform with the RFP requirements. The review shall adhere to the evaluation criteria in the RFP.

Those firms or persons judged by the reviewers to be the most qualified to perform the work required under the Contract may be asked to participate in an oral interview. A Selection Committee shall be established for the purpose of Proposal review, interviews, discussions, scoring, and recommendation, as required, of Proposals. The Selection Committee shall be comprised of District individuals (Project Managers, Contract Administrators, etc.) familiar with the requirements of the project and may include one or more outside experts. To ensure impartiality, generally Supervisors or Managers are not to be on the same Selection Committee as their subordinates. Contracts and Procurement personnel shall not be a voting member of the Selection Committee for the purpose of scoring and/or ranking of Proposals, but shall provide guidance and oversight to the scoring and ranking procedure to ensure that equal and fair treatment of all Proposers is maintained throughout the Proposal review process. On the basis of the oral presentation and the written Proposal, the reviewers shall make a final written ranking of Proposers using Final Consensus Ranking forms. The qualifications of the Consultant to perform the necessary work are of utmost importance to the District in professional services Contracts; however, where two or more persons or firms appear equally qualified to perform the desired services, the one proposing the lowest total price shall receive the higher point value allowable for cost. For projects that indicate entire or component budget funding provided by the State of California, Department of Transportation (CalTrans), originals of Final Consensus Ranking Forms shall be retained in the file as a permanent record.

j. Price and Cost Analysis

The Contract Officer shall conduct a price or cost analysis to determine whether the compensation terms of the Proposals offered by the Consultants under consideration are fair and reasonable for the anticipated work or services. See Section V.F.2.g.iii for a complete discussion on price and cost analyses.

k. Negotiations

If negotiations are undertaken, the Contract Officer, with the

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advice of the Project Manager and those District personnel with technical expertise relating to the project (“negotiating team”), shall negotiate with the Consultant ranked highest in order to finalize the scope of work, the time and schedule for completion of the work, the cost of services, and the method and manner of payment. In the event that negotiations with the highest ranked Consultant prove unsuccessful, the negotiating team shall commence discussions with the next highest ranked Consultant. Upon the successful completion of negotiations, the Contract Officer shall prepare a memorandum to be forwarded to the Finance Committee, outlining the cost and other significant terms of the Agreement and recommending an award of Contract to a particular Consultant.

For negotiation procedures applicable to federally funded Contracts, refer to Section X.B.

I. Recommendation of Award

The conclusions of the reviewers shall be summarized in a memorandum written by the Contract Officer, in consultation with the District's Attorney if needed. The Memorandum will be distributed among the reviewers for their information. On this basis, staff may proceed with a recommendation regarding contract award. The Contract Officer shall send written notice to all Proposers found to be in the competitive range notifying them of the intent to award a Contract.

m. Rejection of All Proposals

Proposals may be rejected if they are non-responsive, outside the competitive range, or for the convenience of the District, particularly if funding is terminated or there is a substantive change in the District's requirements.

Authorization to reject Proposals shall follow the Award of Contract thresholds described in subsection n, below.

n. Award of Contract

Professional services Contracts will be executed in accordance with the signature authorization threshold set forth in Appendices A and B. Thereafter, the Contract Officer, in a form approved by the Attorney, shall prepare the Agreement to be executed by the District and the Contractor. The Contract Officer shall notify the successful Consultant in writing advising of award of Contract. This notification shall include the transmittal of an Agreement for execution and request submittal of all required Contractor documentation. The Contractor shall be given a reasonable time period, normally not to exceed two weeks, for

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submission of the required bonds, guarantees, and certification of insurance coverage.

o. Notice to Proceed

Upon receipt of the Consultant's required bonds, guarantees, evidence of insurance, and an executed Agreement, the Contract Officer will coordinate with the Project Manager as to the date that the Notice to Proceed is to be issued. Such notice shall be authorized by the Director of Contracts, or designee.

E. Cooperative Purchasing Agreements

a. Summary

To foster greater economy and efficiency, the District may avail itself of state and other intergovernmental agreements for procurement or use of common goods and services. These programs consolidate the purchasing needs of participating agencies to obtain products at prices generally available only to large volume buyers. Competitive bidding procedures and nonrestrictive specifications are used in these programs. These programs should be utilized to the extent that prices are lower than those the District could obtain through its normal purchasing procedures. The Contract Officer may obtain information on current procedures and lists of products or services from the California Department of General Services (DGS) or the Regional Transit Coordinating Council.

If a joint procurement will be funded by an FTA grant, the requirements for FTA funded projects shall apply and must be included in the specifications. See Section X for procedures.

i. State of California Cooperative Purchasing Program

Public Contract Code 10298 allows the District to participate in State procurements including agreements for goods, information technology, and services. The District may Contract with suppliers awarded these Contracts without further competitive bidding. However, not all of the State Contracts are competitively bid in accordance with the District's statutory requirements and the Contract Officer should ensure that the prices offered are the lowest available prices.

The State of California Cooperative Purchasing Program is administered by the DGS. DGS is responsible for the competitive bidding process, the pre-qualification of Bidders, the maintenance of a state Bid list, the use of non-restrictive product specifications, and the resolution of supplier protests.

Although participating in a State Contract, the Contract Officer

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will have direct contact with the supplier and initiate the purchase by issuing a District Purchase Order that follows the signature threshold limits set forth in Appendix A.

ii. California Multiple Award Schedule (CMAS)

The CMAS unit is a division of the DGS which establishes agreements with those suppliers that offer products or services that are currently on an existing multiple award schedule with the Federal General Services Administration (GSA) or other approved multiple award contracts. Not all of the CMAS Contracts are competitively bid in accordance with the District's statutory requirements and the Contract Officer should ensure that the prices offered on the CMAS are the lowest available prices. Additionally, the Contract Officer may negotiate any special features to the product or additional legal or contractual terms that may be applicable or desirable to the District.

iii. Regional Transit Coordinating Council (RTCC)

The RTCC Procurement Committee is made up of several Northern California agencies, including San Mateo County Transit District, and was formed in an effort to save transit agencies' time, effort, and money, by jointly procuring parts, materials, and supplies that are commonly purchased among such agencies.

One agency will typically act as the lead agency that gathers quantity and usage information from the other participating agencies and is responsible for all contractual provisions. The other participating agencies are allowed the benefit of the same costs and services offered by the supplier to whom the Contract is awarded.

F. Piggybacking

a. Summary

Staff may choose to procure supplies or equipment by a method known as "piggybacking". Piggybacking is the post-award use of a contractual document or process that allows an agency that was not contemplated in the original procurement to purchase the same supplies/equipment through that original document or process. The agency who originally issued the procurement must have included a piggybacking provision or assignability clause in their Solicitation Documents in order for another agency to piggyback on their procurement.

b. Procedure

If the piggyback method is chosen, the Using Department shall submit a fully executed Requisition, advise Contracts and Procurement of a known valid Contract covering the supplies or equipment they are seeking, and supply a copy

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of the issuing agency's Solicitation Documents and Contract, if available. Upon receipt by Contracts and Procurement, the Director of Contracts or designee shall review the Using Department's documentation and confirm that the procurement is appropriate for piggybacking.

i. Permissible use of Piggybacking

The use of piggybacking is only permissible when:

(1) the Solicitation Documents meet the District's own bidding requirements.

(2) the Solicitation Documents and Contract include an assignability clause that allows for assignment of all or part of the specified deliverable items as originally competed and evaluated (i.e., the quantities being procured by the piggybacking procedure were in the original Bid and were evaluated as part of the original Contract award decision).

(3) the Contract being accessed by the piggybacking procedure contains the clauses required by the funding source.

(4) the Contractor has submitted the Certifications required by the funding source with its original Bid or Proposal, if any.

(5) the procurement in other respects meets the funding source's requirements.

ii. Issuing Agency Approval

In most cases, the original procuring agency must approve all requests for piggybacking on their Contract. The Contract Officer shall contact the original procuring agency that issued the Solicitation Documents and request a letter of approval for piggybacking, if applicable.

iii. Contractor Notification

Once the approval is received from the original procuring agency, the Contract Officer shall send a letter of interest that describes the supplies or equipment, the quantity, and requests pricing verification, estimated time for delivery, and any other factors deemed necessary, and enclose a copy of the approval letter from the original procuring agency to the Contractor. The Contractor will be required to acknowledge such an interest and supply any details pertinent to the procurement.

iv. Award and Post-Award of a Contract

Award of a Contract shall be approved by the same authorization thresholds set forth in Appendices A, B, and C. See Section V.F.2.h for

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procedures.

VI. SOLE SOURCE AND NON-COMPETITIVE PROCUREMENTS

A. Summary

On occasion, the District may waive competitive bidding requirements for a procurement in which no competitive advantage can be gained through competitive bidding. Examples of a non-competitive advantage are when there is only one technically approved source of supply, there are compatibility requirements with existing products or equipment, warranty conditions may be voided, the procurement is for testing purposes only, or an emergency procurement is necessary. Such procurements often arise where the specifications and requirements for the items or services to be procured are so unusual or distinct as to dictate one source. This may be the case, for example, with replacement parts for brand name machinery, equipment, or vehicles.

B. Sole Source

A sole source procurement is one for which there is only one source of supply. The sole source must be the only known source of supply with the capability of meeting the specification requirements or satisfy one of the other verification criteria in subsection 2, below. A sole source decision is not permitted merely upon the grounds that such approach is the most convenient or that the subject product: a) demonstrates technical or administrative superiority; b) is preferred by staff; or c) shows superior performance potential at lowest cost.

1. Procedures

The Using Department desiring to procure supplies, equipment, materials, or services for which there is only one available source of supply shall initiate such procurement by submitting a fully executed Requisition to Contracts and Procurement, which shall be approved by the Project Manager and/or Cost Center Manager of the Using Department or authorized designee. The Requisition shall indicate that the procurement is a sole source purchase and shall include a justification for this determination.

2. Verification Criteria for Justification

Prior to any Contracts and Procurement action on the procurement, the Director of Contracts, or authorized designee, shall verify in writing that the procurement meets the sole source definition set forth above and meets at least one of the verification criteria below:

- a. The item is available from only one source; or
- b. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation; or
- c. After solicitation of a number of sources, competition is determined inadequate.

However, if the item or service must be procured on an emergency basis or through an open market purchase, please refer to Sections VI.C and VI.G, respectively.

In cases of Contracts in excess of \$10,000 for public works projects and \$100,000 for supplies, equipment, materials, and services where the Director of Contracts desires legal

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advice as to whether the procurement qualifies as a sole source, the District's Attorney may be consulted as to the applicability of the sole source procurement procedures. In such cases, the solicitation procedures shall not commence until the Attorney has confirmed that the procurement qualifies as a sole source.

For federally funded sole source procurements, see other criteria set forth in Section X.C.

3. Price or Cost Analysis

The Contract Officer shall obtain a price for the proposed procurement from the sole source. Unless the reasonableness of the price can be established by some verifiable means, including but not limited to a catalog or market price for a similar commercial product sold in substantial quantities to the general public, or on the basis of prices set by law or regulation, a cost analysis shall be conducted. See Section V.F.2.g.iii for a full discussion on cost and price analyses.

4. Issuance of Purchase Order or Contract

a. Procurements Under \$10,000 for Public Works But Less Than \$50,000 for Supplies, Equipment, Materials, or Services

Upon verification by Contracts and Procurement regarding the sole source status of the procurement and its reasonable cost as defined above, the Purchase Order shall be issued by Contracts and Procurement, and shall be signed by the Director of Contracts or authorized designee, in all cases.

b. Procurements Exceeding \$50,000 But Less Than \$100,000 for Supplies, Equipment, Materials, or Services

In any case where the sole source procurement exceeds \$50,000 for supplies, equipment, materials, or services but is less than \$100,000, the Director of Contracts shall submit a report and Contract for approval to the General Manager/CEO, or authorized designee.

c. Procurements Exceeding \$10,000 for Public Works and Exceeding \$100,000 for Supplies, Equipment, Materials, or Services

In any case where the sole source procurement exceeds \$10,000 for public works projects or exceeds \$100,000 for supplies, equipment, materials, or services, the Director of Contracts shall submit a report to the General Manager/CEO confirming the sole source status and reasonableness of the costs and requesting the approval of the Board of Directors. Following Board approval, the Director of Contracts shall prepare a Contract containing all applicable terms and conditions of the procurement for execution by the General Manager/CEO.

C. Unsolicited Proposals

The District, in its normal course of business, may receive unsolicited proposals from any Offeror. An unsolicited proposal is typically a proposal that presents an innovative and unique

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process or approach, is independently originated and developed by the Offeror, and prepared without District supervision, endorsement, direction, or direct District involvement. It should include sufficient detail to permit a determination that District support could be worthwhile and the proposed work could benefit the District or further other missions or goals of the District. The Project Manager must verify that the unsolicited proposal meets these requirements. A proposal for a known District requirement that can be acquired by competitive methods or for an item or service that is commonly available in the marketplace is not considered an unsolicited proposal.

If it meets the requirements and the Project Manager finds it worthy of further consideration, evaluation results and a justification including a request for funding for a contract will be submitted to Executive Management for approval to proceed with negotiations.

Upon approval, the Project Manager shall notify the Director of Contracts for a determination as to whether proposal negotiations will be conducted by Contracts and Procurement in conjunction with the Project Manager or managed by another department.

Notwithstanding the above, the District reserves the right, at its sole discretion, to return any unsolicited proposal to the Offeror without further consideration.

D. Emergency Procurements

1. Summary

The District is not required to engage in competitive bidding in an emergency. The Board of Directors may delegate to the General Manager/CEO or designee, the authority to waive any procedures in the Procurement Manual in accordance with state law when making emergency purchases of supplies, equipment, materials or services. "Emergency," as used in this Manual, means a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services. (Pub. Cont. Code 1102)

2. Procedures

a. Initiation and Authorization for the Emergency Procurement

Emergency purchases should be made by staff members who have expertise related to the emergency giving rise to the need for the procurement. The staff member may contact one or more vendors by telephone, and, as expeditiously as possible, determine the best price and quality of product or services available from the vendor(s). The staff member shall then relay the details of the emergency procurement to the department Project Manager and/or Cost Center Manager who shall relay such information to the General Manager/CEO or designee. The General Manager/CEO or designee may authorize the emergency purchase up to \$10,000 for public works projects and \$25,000 for supplies, equipment, materials, and services, including professional

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services.

For an emergency purchase exceeding \$10,000 for public works projects and \$25,000 for supplies, equipment, materials, and services, the Board may delegate authority to the General Manager/CEO to purchase goods and services on an emergency basis subject to the requirements of subsection 'c.' below.

b. Confirmation of Emergency Purchase

After the order is placed, the staff member who placed the order shall notify Contracts and Procurement: a) the nature of the emergency; b) that an emergency procurement has been effected; c) that the Project Manager and/or Cost Center Manager of the Using Department or authorized designee has approved the procurement; d) the name and location of the vendor or supplier; and e) that the General Manager/CEO or designee, has authorized the emergency purchase pursuant to the procedures outlined in paragraph a, above. Upon verification of the emergency procurement, the Director of Contracts, or designee, shall issue a Purchase Order to the vendor confirming the procurement and its terms.

c. Board Ratification of Emergency Procurements Exceeding \$10,000 for Public Works or \$25,000 for Supplies, Materials, or Services

Even if the General Manager/CEO has been given delegated authority to make emergency purchases, he must report the emergency action at the next regularly scheduled Board meeting or Special Board Meeting, provided it is no later than 14-days after the emergency action was taken.

The Board of Directors shall review the emergency action and determine by a 4/5 vote whether such emergency action is still needed.

E. Memorandum of Understanding (MOU) and Interagency Agreements

The Memorandum of Understanding (MOU's) and Interagency Agreements (IA's) are two forms of agreements which can be used to set out and describe the unique duties and obligations of the parties, and which bind the parties to those terms and conditions. MOU's and IA's are not formed as a result of a competitive procurement, and do not contain the detailed provisions normally found in formal contractual agreements. In most cases, an MOU or Interagency Agreement shall be initiated by a Division Chief and reviewed and approved by the District's legal counsel. The General Manager/CEO's or Board of Directors' approval of the MOU or Interagency Agreement may also be required in accordance with the signature authority thresholds set forth in Appendices A, B, and C.

F. Leases

1. Equipment and Supplies

It is usually less economically advantageous for the District to lease equipment than purchase it. There are exceptions to this rule. For example, short-term

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leases of equipment required for a unique task may be reasonable and economically sound. In some cases, it is easier to have equipment maintained if it is leased and not bought. However, long-term leases and leases of items that should but cannot be capitalized because of budget constraints are sometimes prudent, desirable, or necessary from an economic perspective. In view of this, a Requisition for leasing equipment shall include an analysis and recommendation addressing the economics of lease versus purchase. The extent of the analysis should be appropriate to the size and complexity of the procurement. If leasing is the chosen procurement action, a lease with an option to purchase the equipment is preferable.

A Project Manager or other staff shall initiate a lease request by completing a Lease-Buy Analysis Form, located at the District's internal website. The Contract Officer may assist with the lease-buy analysis and recommendation, which shall be presented to the Director of Contracts for approval.

G. Real Property

The Real Estate Department is responsible for the purchasing, leasing, and licensing related to all of the real property transactions necessary to support the District's requirements in accordance with all applicable state and federal guidelines.

H. Utility Contracts

Utility expenditures are approved annually by the Board as part of the operating budget. Utilities may include gas, electric, telephone systems, water service, data transmission lines and service, and computer lines. The District evaluates purchases of utility services on a case-by-case basis after surveying the market and may enter into utility contracts pursuant to a competitive process.

I. Open Market Purchases

The District may purchase items on the open market under the following conditions:

1. If the District rejects all Bids received in connection with a procurement of materials, supplies and equipment requiring formal competitive bidding, and
2. If the Board of Directors determines and declares by a two-thirds vote of all its members that in its opinion the supplies, equipment and materials may be purchased at a lower price in the open market; or
3. If the Board of Directors, or the General Manager/CEO, within his procurement authority, has exercised discretion to waive the competitive process when permissible under applicable law and in accordance with the fundamental principles of procurement set forth in the Procurement Policy, Appendix C.

J. Discretion to Waive Competitive Process

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The Board of Directors or the General Manager/CEO for procurements within his procurement authority may waive the requirements for formal competitive bidding or other procedures set forth in the Procurement Policy, Appendix C, when permissible under applicable law, when a determination is made that the best interests of the District are served thereby, and provided there is adequate documentation of the need for the procurement. These circumstances shall be evaluated on a case-by-case basis, keeping in mind the fundamental principles of procurement set forth in the Policy. The findings justifying the waiver must be documented in the record.

VII. TYPES OF CONTRACTS

A. Summary

There are two basic categories of Contract types used by the District: Fixed-Priced and Cost Reimbursable. Cost risk is the main determining factor when choosing between the two categories of Contract types. In compliance with Federal regulations (10 USC 2306(a) and 41 USC 254(b)), the District does not permit the use of cost-plus-a-percentage-of-cost type contracts. In some cases, the District may also enter into a revenue generating Contract related to one of its assets, or a design-build Contract for a large project.

1. Fixed-Price Contracts

A fixed-price Contract is one in which the total Contract price or all of the unit prices comprising the total Contract work are fixed. Typically, this type of pricing is used in sealed Bid procurements. Either the fixed-price or the cost reimbursable type of Contract can be used in a negotiated procurement.

Fixed-price contracts shift the cost risk of performing the work under the Contract to the Contractor. If there is an unanticipated cost overrun, with no change in scope, the Contractor, and not the District, must pay for it.

2. Cost-Reimbursable Contracts

A cost-reimbursable Contract is one where most of the cost risk is assumed by the District which must not only pay the Contractor any guaranteed fee, but must also pay allowable and allocable costs regardless if they exceed or fall short of original cost estimates. The Contractor must get the District's approval to incur costs beyond the initially agreed upon target cost. In no case, however, will the District pay more than any not-to-exceed ceiling specified in the Contract.

3. Revenue-Generating Contracts

Revenue-generating contracts are those with the primary purpose of generating revenues. Examples of these contracts are advertising, concession (food and newsstands), use of right-of-ways, licenses (e.g. filming a movie), and land leasing. For revenue-generating contracts not associated with FTA-funded assets, the District shall follow the procurement methods detailed in Section V.

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The FTA defines a revenue Contract as “any third-party Contract whose primary purpose is to either generate revenues in connection with a transit related activity or to create business opportunities utilizing an FTA-funded asset.” All revenue contracts that utilize federal funds must follow the competitive selection procedures and flow-down requirements of FTA Circular 4220.1F. The Contract Officer must document the procurement files to show how competition requirements were met. The District may award a revenue Contract for more than five years.

4. Design-Build Contract

“Design-build” means a procurement process in which both the design and construction of a project are procured from a single entity.

Certain public entities, including transit districts, SamTrans and the JPB included, are permitted to use a design-build solicitation process for public works contracts under certain circumstances. Public Contract Code 20209.6 sets forth the per-project dollar limitations and other specific requirements for its use. Generally, to use the design-build process, rail projects must exceed \$50 million and all other projects must exceed \$10 million in value. Other requirements include, but are not limited to:

- a. Preparation of a Request for Proposal, defining the scope of the project and other specified components, including the methodology for evaluation of Proposals.
- b. Establishment of a procedure to prequalify design-build entities, including the use of a questionnaire requiring specific information from Offerors.
- c. Establishment of procedures for final selection of the design-build entity based on either a competitive bidding process resulting in lump sum Bids, or based upon best value criteria that has been identified in the Contract. Staff shall contact Contracts and Procurement for further details and mandated statutory requirements if a design-build selection process is selected for an eligible project.
- d. Establishment of procedures to use a qualifications-based process based on the requirements of the Brooks Act when the preponderance of work to be performed is considered to be for architectural and engineering (A&E) services as defined in FTA C. 4220.1f.

B. Selecting Contract Types

The following are the most common types of contracts utilized by the District. Selecting the Contract type generally requires the exercise of sound judgement. With input from the Using Department, Contracts and Procurement staff will determine the Contract type that is most appropriate for a specific procurement.

1. Firm-Fixed-Price Contract

A firm-fixed-price Contract provides for a lump sum price or unit price that is not

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subject to any adjustment on the basis of the contractor's cost experience in performing work under the Contract. In certain circumstances, the District may enter into a requirements type contract in which the unit price is fixed and the quantity is variable. The firm-fixed-price type of Contract places all risk and responsibility for all costs and profit or loss with the Contractor. A firm-fixed-price Contract is suitable for acquiring commercial items or other supplies or services where reasonably definite, clear, functional, or detailed specifications exist and the Contract Officer can establish fair and reasonable prices at the outset, such as when:

- a. Adequate price competition exists; or
- b. Reasonable price comparisons with previous purchases can be made; or
- c. Available data permits realistic cost estimates of the probable cost of performance.

Adjustments to pricing in a firm-fixed-price Contract can only be made through the operation of the "changes clause" in the Contract.

2. Fixed-Price with Escalation Contract

A fixed-price with escalation Contract is characterized by a lump-sum price subject to upward or downward adjustment depending on contingencies specified in the Contract. Generally, economic price adjustments are of three general types:

- a. Adjustments based on established prices:

The price adjustment is based on increases or decreases from an agreed-upon level published or otherwise established price of specific items or the Contract end products.

- b. Adjustments based on actual costs of labor or material:

The price adjustment is based on increases or decreases in specified costs of labor or material that the contractor actually experiences during the Contract performance.

- c. Adjustments based on cost indices of labor or material:

The price adjustment is based on increases or decreases in labor material costs standards or indices, such as a Consumer Price Index, that are specifically identified in the Contract.

3. Cost-Plus-Fixed-Fee Contract

A cost-plus-fixed-fee Contract is a cost-reimbursable Contract that provides for payment to the Contractor of a negotiated fee that is fixed at the inception of the Contract. The fixed fee does not vary with actual cost, but may be adjusted as a result of changes in the work to be performed under the Contract. This Contract type provides the contractor only a minimum incentive to control costs.

A cost-plus-fixed-fee Contract is suitable for use only when uncertainties involved in Contract performance do not permit costs to be estimated with sufficient accuracy to

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use any type of fixed-price Contract.

The cost-plus-fixed-fee Contract involves extensive Contract administration in order to track costs and fixed-fee. Cost-plus-fixed-fee contracts should be used only when the Contractor's accounting system is adequate for determining costs applicable to the Contract and there is appropriate District oversight during Contract performance to ensure efficient methods and effective cost controls are used.

4. Time and Materials Contracts

Time and materials contracts may only be used after the Director of Contracts and Procurement makes a finding and determination that no other type of contract is suitable for the procurement and only if the resultant contract specifies a ceiling price that the contractor shall not exceed, except at its own risk.

VIII. BID PROTEST PROCEDURES

A. Policy

It is the policy of the District to consider fully and adjudicate promptly protests relating to the District's solicitation procedures, Solicitation Documents, or recommendations for award of a Contract. Bidders or Proposers shall be advised of these procedures in the Solicitation Documents. Failure by the Bidder or Proposer to follow these protest procedures may result in a rejection of the protest by the District. These procedures shall apply to procurement and Contract actions resulting from formal competitive bidding and Requests for Proposals.

B. Content of Protest and Time Requirements

All protests shall first be filed with the Director of Contracts within the specified time limits set forth in this subsection and must clearly state in writing the name of the protestor, the solicitation number and description, and the grounds and evidence on which the protest is based. In circumstances where a protestor, in addressing the reviewing Board Committee or the full Board (see subsection D, below), raises new grounds or presents new evidence which could reasonably have been included in a written submission to the Director of Contracts, the District will not consider such new grounds or evidence in the determination on the protest.

1. Protests Based Upon Restrictive Specifications or Alleged Improprieties

Bidders or Proposers will first be required to utilize any procedures in the specifications for Approved Equals or requests for clarifications prior to submitting a protest. The District shall deny or approve such requests and if the requestor disagrees, they may avail themselves of the protest procedures outlined in this subsection.

Alleged improprieties in the bidding procedure or Contract specifications, which are apparent or reasonably should have been discovered by the Bidder or Proposer prior to the advertised Bid or Proposal submission date, shall be filed in writing with the Director of Contracts not later than five calendar days prior to Bid or Proposal due date. Staff shall respond to the protest with a written determination prior to submission date of Bids or Proposals. This determination and original protest will be sent to the Bidders or Proposers who received a solicitation.

If the protest is denied by the Director of Contracts, the protestor may continue to pursue its protest to the District's Finance Committee, which will make a recommendation to the Board of Directors. The protestor must notify the Director of Contracts of its intent to resubmit the protest within five calendar days after submission date for Bids or Proposals. The District's Finance Committee will consider the protest in the manner described in subsection C, below. Protests based upon alleged improprieties that are apparent or which reasonably should have been discovered prior to Bid opening will not be considered by the Board of Directors unless the protestor has submitted its protest to staff in accordance with this subsection.

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2. Protests Based Upon Contract Award Recommendation

Protests based upon alleged improprieties that are not apparent or which could not have reasonably been discovered prior to submission date of the Bid or Proposal, including instances where the low monetary Bid is being rejected or other disputes over the staff recommendation for Contract award, shall be submitted in writing to the Director of Contracts within five days of postmark, faxed date, or other form of notification of the District's notice of a Contract recommendation.

No protests shall be considered after Contract award except for compelling reasons whereby the lateness is due to the District's untimely handling of the protest submission. In no event will the District consider protests filed after Contract award due to negligence on the part of the protestor. Failure to comply with the time periods for filing protests as set forth herein shall be a basis for rejection of the protest.

Other than the time limit considerations, all other actions of the District's Finance Committee or the Board of Directors in response to a protest shall be as specified in subsections C and D, below. Procurements of specialized equipment conducted in accordance with the competitive negotiation procedures detailed in Public Contract Code 20216 et seq. have specific protest procedures unique to that process.

C. Notice of When a Protest Will be Considered

Protests based upon Section VIII.B, above, shall not be considered by the District's Finance Committee unless the protestor has submitted its protest in accordance with said section. Once the protestor's written notification is received by the Director of Contracts, and the District has reached an opinion on the matter, the Director of Contracts will respond to the protest and will advise the protestor and all other Bidders or Proposers for the subject solicitation of both the protest and the Director of Contract's response, in writing, at least three days prior to the meeting. The response from the Director of Contracts shall include the time and place of the meeting at which staff's recommendation to the District's Finance Committee will be considered. Should the Bidder decide to pursue its protest at the Committee and Board meetings, it will notify the Director of Contracts of its intention at least two days prior to the scheduled meeting of the appropriate Board Committee, or, in cases where the recommendation will be considered directly by the full Board, at such meeting of the full Board of Directors. The protestor may attend for the purpose of presenting its previously submitted grounds and evidence in support of its protest.

D. Proceedings Before the Board

After full consideration of the protestor's evidence, staff recommendation, and any other relevant information, the District's Finance Committee shall make a recommendation to the Board of Directors to reject or allow the protest.

The Board of Directors will consider the recommendation regarding the protest and render its decision. With the exception of certain types of protests related to federally funded Contracts as noted in Section X.E, the decision of the Board of Directors on the protest, bid

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rejection, or award of a Contract, if such decision is made, is final. Upon Board action, a written statement of the reasons therefore shall be included in the record and written notice shall be sent to all Bidders advising of the Boards determination on the protest.

E. FTA Funded Contracts

For protest procedures for federally funded contracts, see Section X.E.

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IX. CONTRACT ADMINISTRATION

A. Contract Representative

The Contract Officer shall be the authorized representative of the District and shall assume the primary role for purposes of communicating with all vendors, suppliers, the public, and Contractors as to contractual issues. The Contract Administrator is the employee of the District responsible for insuring that Contractors conform to the terms, conditions, and specifications of the Contract. Depending upon the requirements of the specific procurement, the Director of Contract may assign the responsibility of the Contract administration function to the Contract Officer, a Project Manager, or other designated employee of the Using Department.

B. Maintenance of Administration Records

The Contract Administrator shall maintain an administrative file for each District Contract. Such file shall contain all records sufficient to document the significant history of the Contract, including formal and significant informal communication between the District and the vendor, supplier, or Contractor. At a minimum, these records shall include:

1. The rationale for the method of procurement
2. Selection of contract type
3. Reasons for contractor selection or rejection
4. The basis for the contract type

In addition, such file may include, but not be limited to, the following records:

1. Executed Agreement
2. Contract Modifications, if any
3. Work Directives
4. Complete Solicitation Documents
5. Any documents evidencing the rationale for the method of procurement, such as sole source, formal competitive bidding, or negotiated purchase
6. Documents relating to the selection of the Contractor
7. Documents relating to the basis of the cost of the procurement, including the Project Manager's independent cost estimate
8. Documents detailing negotiation of price, price or cost analysis, and other Contract terms

C. Contract Modifications

1. Summary

When, in the course of the performance of a public works project and/or service or other Contract, the Contract Administrator or other Using Department staff deems it necessary that extra work be performed, or that certain authorized work be omitted, or that modifications be made regarding the Contract requirements, then a written modification must be issued to the Contractor prior to implementation of the modification. The Project Manager and/or the Contract Administrator shall have no unilateral authorization to

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implement such modification. Modifications may include changes in scope of work, extension of term, exercise of an option term or service, price adjustments, or other Contract requirements. The use of “tag-ons” or “cardinal” changes to a contract are prohibited. A tag-on or cardinal change is defined as additional work or tasks that are clearly beyond the actual or intended scope of the original contract. A new procurement shall be initiated if such work is required.

2. Procedures

The Contract Administrator shall prepare documentation adequately describing the Contract, the Contract modification required, a justification, the record of negotiations, an independent cost estimate, and the Contractor’s cost Proposal, if applicable.

The Contract Officer shall review and verify if the modification package is accurate, complete, and in the correct format. The modification shall identify the cost of the change in both dollar amount and percentage increase over the original Contract price. The Contract Officer shall verify that the modification complies with the terms of the Board Resolution authorizing the original Contract and obtain necessary signatures.

Upon the completion of this review and approval process, the Contract Officer shall issue the modification to the Contractor. For certain public works projects, the Chief Development Officer or designee shall manage the modification process (see 3. below). Execution of Contract modifications shall be in accordance with Appendices A,B, and C.

3. Construction Change Orders

After full execution of the construction public works contract, the technical administration of the contract becomes the responsibility of the originating department Project Manager with the assistance of the Contract Administrator. Specific process for Construction Change Orders are outlined in JPB’s Resident Engineer’s Manual for Caltrain Capital Projects, Section 8 – Contract Changes. The current version of the Manual resides at the following location: N:\Contracts and Procurement\CONTRACT ADMINISTRATION\JPB Resident Engineer's Manual. For the purpose of this submission, Section 8. Contract Changes outline is attached and identified as Appendix D.

D. Exercise of Options

Options are Contract provisions that establish a unilateral right for the District to purchase additional equipment, supplies, or services called for by the Contract, or to extend the term of the Contract. Options are exercisable in accordance with the option terms set forth in the Contract and provided funding is available.

1. Use of Options

The option quantities or time periods contained in the Contractor’s Offer must be evaluated as part of the Contract award process. In rare cases when options have not been evaluated as part of the award, the exercise of such options must be justified as a

sole source procurement.

2. Exercise of Options

The District may exercise an option only after receipt of a request and justification from the Project Manager and/or Contract Administrator and a written determination, signed by the Contract Officer and placed in the Contract file, that the Contractor's performance has been satisfactory and the exercise of the option is the most advantageous method of fulfilling the District's needs, considering price and other factors, and that such action is in accordance with the terms of the option and the requirements of this subsection. Even though options are considered as part of the Contract award process, the price must be reevaluated at the time the option is to be exercised, based on the following considerations:

- a. The time between the award of the Contract containing the option and the exercise of the option is so short that it indicates the option price is still competitive or the more advantageous offer. The District shall take into consideration such factors as market stability and comparison of the time since award with the usual duration of Contracts for such supplies or services; or
- b. An analysis of prices or an examination of the market indicates that the option price is better than prices available in the market or that the option is the more advantageous offer; or
- c. A new solicitation fails to produce a better price or a more advantageous offer than that offered by the option; and
- d. There is sufficient funding in the budget to cover the option work.

The determination of other factors shall also take into account the District's need for continuity of operations and potential costs of disrupting operations. Assuming the above criteria have been met, the Contract Officer shall prepare and forward a Contract modification to the General Manager/CEO, or designee, for approval of the exercise of the Contract option.

E. Work Directives

For certain types of Contracts, Work Directives may be issued on an as-needed basis for services that fall within the Scope of Work set forth in the Agreement. This method is utilized in Agreements for specialized engineering, construction management support, and other professional consulting services where the District anticipates recurring requirements but cannot predetermine precise quantities or services to be provided. Work Directives may be issued to assist the District with planning, implementation, and execution of various types of transit related projects as long as the scope of work falls within the Agreement term and there are funds in the project budget to cover the work as approved by the District's Board. Issuance of a Work Directive shall be in accordance with the District's Work Directive procedures.

F. Contract Claims or Disputes

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The District acknowledges that from time to time disputes may arise. Contract Administrators will resolve initial and routine claims within the procedures set forth in the Contract claims or dispute procedures set forth in the Contract Documents.

If an Agreement can be reached which resolves the claim, the parties will execute a Contract modification to document the resolution of the claim. However, when a claim rises to the level of a dispute, the Contract Administrator shall consult with Contracts and Procurement.

G. Reprocurement of Recurring Requirements

Contracts and Procurement shall provide notice to the Project Manager whenever a Contract that is subject to renewal is within 180 days of expiration. The Project Manager shall review and recommend technical changes and updates to the Contract specifications and return the corrected copy of the documents to Contracts and Procurement, along with a fully executed Requisition, within 30 calendar days.

The Contract Officer shall develop draft Solicitation Documents and shall forward them to the Project Manager and Attorney for review and approval. This process must be accomplished in accordance with the solicitation timeline.

H. Receiving

Upon receipt of any procured supplies, equipment, materials, or services, the Using Department shall verify that the items comply with the description and technical requirements in the Contract or Purchase Order.

In all cases where the items or services do not comply, whether because of shortage, excess, defect, or other discrepancy, the Contract Administrator, Project Manager, or Using Department staff shall contact the Contractor to resolve the discrepancy. In the event the discrepancy is not resolved, the Contract Administrator, Project Manager, or Using Department staff shall notify Contracts and Procurement for further action, which may include a notice to cure, assessment of liquidated damages, or termination in accordance with subsection J, below.

I. Warranty

In the event that the Contract Administrator, Project Manager, or the Using Department staff discovers any breakdown or patent or latent defect, they shall contact the Contractor to obtain repair or replacement of the item(s). In some cases, a written warranty claim may be required.

Any failure by the Contractor to timely meet its obligations under the warranty shall be made known to the Director of Contracts, along with details of the warranty claim. Procurement staff shall take such actions as are necessary to effect remedies set forth in the Solicitation Documents. If the warranty claim is not successfully resolved, and there is a performance bond which covers the warranty period, the Contract Officer shall notify the surety on such bond of any such failure on the part of the Contractor to seek resolution.

J. Contract Termination

The performance of work under a Contract may be terminated in whole or in part pursuant to the termination provisions in the Contract which generally provide termination for

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convenience with a 30-day written notice or for default after a 10-day cure notice. Termination shall be accomplished according to Contract provisions after a thorough examination of the performance record and with the concurrence of the Director of Contracts, the Project Manager, and Attorney.

When the decision to recommend termination of a Contract is made, a "Notice of Intent to Terminate Contract" shall be prepared by Contracts and Procurement and sent to the Contractor by "Certified Mail, Return Receipt Requested". The Notice of Intent to Terminate Contract shall specify the reason for the anticipated termination, the extent to which the performance of work is to be terminated, in whole or in part, and the day upon which such termination is expected to become effective. A meeting to negotiate the terms of the termination can be set up at this time if such a meeting is appropriate. After issuance of the Notice of Intent to Terminate Contract and pursuant to the Contract provision, negotiations for the settlement of claims, if any, shall be accomplished as soon as possible to protect the interests of and minimize the liability of the District.

As soon as the terms of the termination have been negotiated by Contracts and Procurement with the concurrence of the Project Manager, Contracts and Procurement will recommend the termination to the Board, the General Manager/CEO, or other individual that initially authorized the Contract.

Upon approval of the termination, Contracts and Procurement staff will issue a Notice of Termination to the Contractor, by "Certified Mail, Return Receipt Requested" stating the effective date of termination. In the case of a Purchase Order, an amended order will serve as final termination notice.

K. Contract Closure

Contracts that are determined to be complete must be formally closed out. A completed Contract is one that is both physically and administratively complete. A Contract is *physically complete* only after all deliverable items and services called for under the Contract have been delivered and accepted by the District. A Contract is *administratively complete* when all payments have been made and all administrative actions accomplished. The steps that must be completed to close out a Contract will depend upon the type and/or nature of the Contract.

The Contract Administrator will be responsible for collecting and compiling the records enumerated under subsection B, above, in accordance with applicable state and Federal laws.

L. Dispensation of Public Records

The California Public Records Act (Gov't. Code §6250 et seq.) mandates public access to government records. Therefore, unless the information is exempt from disclosure by law, the content of the Solicitation Documents, Proposals, Agreements, etc. shall be made available to the public through the District's Secretary (Resolution 2004-9). Public records are required to be open for inspection and copying at all times during District office hours and every person has a right to inspect any public record. Documents which are exempt from public inspection include:

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1. Communications containing trade secrets or other proprietary information received from a Proposer which it believes would cause substantial injury to its competitive position if disclosed and if requested by the Proposer by its marking each page containing such proprietary information as confidential; or
2. Records pertaining to pending litigation to which the public agency is a party; or
3. Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy; or
4. The contents of real estate appraisals or engineering or feasibility estimates and evaluations made for or by the District relative to the acquisition of property, or to prospective public works projects, until all of the property has been acquired or all of the Contract Agreement obtained; or
5. Other documentation specifically exempted by the Public Records Act or determined to be exempt from disclosure if a balancing test permitted by the Act suggests that the privacy interests in not disclosing outweigh the public's right to know.
6. Proposal information prior to the issuance of a formal Intent to Award a Contract or Reject a Proposal(s) which could affect contract negotiations.

All requests for public records must be coordinated through the District Secretary. Within 10 days from receipt of a written request for a copy of records, Contracts and Procurement shall determine whether the request, in whole or in part, seeks copies of existing and/or disclosable public records in the possession of the District and shall promptly notify the District Secretary of their determination, who in turn will notify the person making the request of the determination and the reasons therefore. In unusual instances, the 10-day period may be extended once, for no more than a 14-day period, for gathering off-site information, or the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request

Access to view the files shall be free of charge, however, the District may charge a fee for the actual cost of the copies only.

M. Record Retention and Destruction for Contracts

The continued efficient administration of District records requires that from time to time records be destroyed or otherwise disposed of, as authorized by law in accordance with the local Government Records Management Guidelines, prepared by the Secretary of State pursuant to Government Code §12236, and Government Code §60200 et seq., and in accordance with the District's Record Retention Policy.

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X. SUPPLEMENTAL RULES FOR FEDERALLY FUNDED CONTRACTS

A. Introduction

The District is the recipient of capital grants and operating assistance grants from the federal government. The FTA requires the inclusion of certain contractual provisions in all FTA-funded Contracts in accordance with the FTA Master Agreement and the FTA's Best Practices Procurement Manual. This manual provides FTA grantees with suggestions on conducting third party procurements to assist them in meeting the standards of FTA Circular 4220.1F. When procuring supplies, equipment, or services pursuant to such grants, the District shall conform to the applicable FTA procurement requirements. For revenue-generating Contracts involving FTA funded assets, see Section VII.A.3.

The Contract Officer may consult with the Attorney for current information on requirements for federally funded Contracts.

B. Competitive Proposals - Request for Proposal Procedure

1. General Requirements

FTA requires that all Notices for Requests for Proposals (RFP) issued for FTA-funded Contracts exceeding \$100,000 be published and that the RFP identify all evaluation factors and their relative weight of importance. However, specific numerical weights need not be disclosed. FTA also requires that the District solicit Proposals from an adequate number of qualified sources and provide sufficient time for Proposers to respond, usually not less than 30 days. If so stated in the RFP, the District may make a selection based on the original Proposals, without negotiations with any particular offeror. If the District decides to conduct negotiations, FTA requires discussion with all offerors in the competitive range, that is, all offerors that the District determines to have a reasonable chance of being selected for award based on cost or price and other factors that were stated in the RFP. (FTA Cir. 4220.1F)

2. Architectural and Engineering Services Contracts

FTA requires that the District use qualifications-based competitive Proposal procedures for the procurement of architectural, engineering and related services, such as construction or program management, feasibility studies, surveying, design, mapping or similar services. Under this method, the District shall evaluate the offeror's qualifications and select the most qualified competitor subject to negotiation of fair and reasonable compensation terms. The District shall not consider price as an evaluation factor at the qualification review stage, and it may initially negotiate with only the most qualified offeror.

3. Prevailing Wages and Davis Bacon

a. Under State law, prevailing wage requirements apply to all public works contracts in excess of \$1,000 (Lab. Code 1771), including Contracts let for maintenance work.

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b. Davis-Bacon General Decisions apply to all federally funded public works projects in excess of \$2,000. Applicable General Decisions must be included with any Solicitation Documents and Contract (40 USC §§276a-276a(7), 49 USC §5333(a), and 29 CFR Part 5).

C. Sole Source Procurements

1. Verification Criteria

Prior to any Contracts and Procurement action on a sole source procurement, the Director of Contracts, or designee, shall verify that the procurement meets the sole source definition set forth in Section VI.B, and whether it is subject to either of the following criteria:

a. If the FTA authorized non-competitive negotiations.

b. If the item is an associated capital maintenance item as defined in 49 USC Section 5307(a)(1) that is procured directly from the original manufacturer or supplier of the item to be replaced. The grantee must first certify in writing to the FTA: (a) that such manufacturer or supplier is the only source for such item; and (b) that the price of such item is no higher than the price paid for such item by like customers.

2. Contract Price or Cost Analysis

The Contract Officer shall perform a price or cost analysis in connection with sole source procurement actions.

For Contracts where there is no price competition and in all cases where a cost analysis is performed, the District is required to negotiate profit as a separate element of the price. In establishing a fair and reasonable profit, the District shall consider the complexity of the work, the Contractor's risk and investment, the amount of subcontracting, the Contractor's past record, and industry profit rates for similar work.

Costs or prices based on estimated costs for Contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with federal cost principles.

The cost plus a percentage of cost and percentage of construction cost methods of contracting are prohibited. For a detailed discussion of a price or cost analysis, see Section V.F.2.g.iii.

D. Leasing

Lease transactions supported by federal funds are considered third-party contracts. Contracts and Procurement shall follow guidelines in accordance with FTA Circular 4220.1F and the FTA Master Agreement, Section 16, Leases.

E. Protest Procedures

In cases where Contracts are wholly or partially funded by the FTA, the District is to notify FTA expeditiously and to keep FTA informed about the status of the protest in accordance with FTA Circular 4220.1F, Chapter VII, 1. Protests, and provide the information as detailed therein.

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In accordance with FTA Circular 4220.1F, the District will notify the FTA through the appropriate reporting mechanism (i.e. Milestone Progress Reports that may be filed periodically and routinely, or specific Project Management Oversight Reviews, if any are held) of protests that (a) have a value exceeding \$100,000, (b) involve a controversial matter, irrespective of amount, or (c) involve a highly publicized matter, irrespective of amount. The District will keep the FTA informed about the status of any protest that requires such notification.

Contracts and Procurements staff will advise the District's Capital Grants Department of relevant information concerning protests so that appropriate reporting will be accomplished.

In addition, the FTA has developed an appeals process for reviewing protests. The protestors may appeal the Board of Director's decision on a protest to the FTA within five days of such determination in accordance with FTA Circular 4220.1F, as may be periodically updated. The FTA's review will be limited to protests alleging that the District failed to have written protest procedures, violated its procedures or has not reviewed the protest when presented with the opportunity to do so.

F. Payment Rules

1. Advance Payments

The FTA will not participate in funding payments made by the District to a Contractor prior to the incurrence of costs by the Contractor unless prior written concurrence is obtained from the FTA (Cir. 4220.1F).

2. Progress Payments

The District may include a clause providing for payments to the Contractor, prior to delivery or completion, if the following conditions are met:

- a. Progress payments are only made to the Contractor for costs incurred in the performance of the Contract.
- b. When progress payments are used, the District shall obtain title to property (materials, work in progress, and finished goods) for which progress payments are made. Alternative security for progress payments by irrevocable letter of credit or equivalent means to protect the grantee's interest in the progress payments may be used in lieu of obtaining title.

G. Geographical Preferences Prohibited

The FTA prohibits the use of any local or state geographical preferences in the evaluation of Bids or Proposals.

H. Bonding Requirements

For all FTA-funded Contracts, the District shall follow the bonding requirements set forth in Section V.F.3, subject to the following federal directives:

1. FTA requires a Bidder's Security of at least five-percent of the Bid price for all public works projects contracts.
2. FTA requires a performance bond equal to 100 percent of the Contract price for all

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public works projects contracts,

3. FTA requires a payment bond for all Public Works Projects Contracts of at least:
 - a. 50 percent of the Contract price if the Contract price does not exceed \$1 million.
 - b. 40 percent of the Contract price if the Contract price exceeds \$1 million but is not more than \$5 million; or
 - c. \$2.5 million if the Contract price exceeds \$5 million.

For public works projects, including facility improvement contracts, exceeding \$100,000, the FTA may accept the District's bonding policy and requirements for such projects if they differ from the directives specified above, provided FTA determines that its interest is adequately protected. However, state law requires a 100-percent payment bond on all public works Contracts over \$25,000. (Civ. Code Sec. 9550.C).

I. Liquidated Damages

FTA-funded Contracts may contain a liquidated damages clause. The District shall determine whether such a provision is appropriate for each specific procurement. Such a clause should not be included in a Contract unless:

1. The time of delivery is of such importance that the District can reasonably expect to suffer damage if the delivery is delinquent;
2. The District determines that the delivery schedule is reasonable at the time of award; and
3. Damages would be difficult or impossible to establish.

If the District determines that a liquidated damages clause is necessary in a Contract, it shall document to the central file the derivation of the rate of assessment and ensure it is reasonable, proper, and not arbitrary. Any liquidated damages recovered shall be returned to the FTA unless the FTA permits otherwise. (Cir. 4220.1F)

J. Breach of Contract

FTA-funded Contracts above the small purchase threshold must contain remedies for breach of contract.

K. Termination

FTA-funded Contracts shall contain provisions for termination by the District, including the manner by which such termination will be implemented and the basis for settlement. In addition, all Contracts shall describe conditions under which the Contract may be terminated for default as well as for the convenience of the District. (OMB A-102, 49 CFR 18).

L. Rejection of Bids

FTA authorizes the District to reject any and all Bids if, in its discretion, there is a sound business reason(s) for such rejection. FTA requires that the District document the sound business reason(s) supporting its decision to reject any and all Bids in its file.

M. Disposal of FTA-Funded Property For disposal of federally funded assets, see Sec. XI.E.

XI. DISPOSAL OF SURPLUS EQUIPMENT AND SCRAP ITEMS

A. Summary

The District's department heads shall notify Contracts and Procurement when they have any supplies, equipment, or materials that might be considered surplus or scrap. During a fixed asset's useful life, the Finance Department tracks and manages the asset. For any item with an original acquisition cost not exceeding \$50,000, the Director of Contracts shall make the determination as to the manner of disposition. Such determination shall be made by the General Manager/CEO for all items whose original acquisition cost is greater than \$50,000 not exceeding \$100,000. The Board of Directors shall make a determination for any such item having an original acquisition cost greater than \$ \$100,000. In all cases, any disposition or sale of rolling stock shall require notification to the Board. In the case of any rolling-stock originally funded by FTA, approval of the Board is necessary prior to disposition as further defined in subsection E, below.

The method of disposition of any surplus or scrap items shall depend upon the nature of the items. Such methods may include: 1) transfer or sale to other public agencies; or 2) trade-in as part of a new procurement; or 3) sale by auction, advertisement for sealed Bids, or negotiation; or 4) where appropriate, proper recycling or disposal. The Director of Contracts shall have responsibility for carrying out the disposition procedures. In all cases, the Director of Contracts shall take steps necessary to indemnify the District against loss or liability that may result from use of the items after disposition.

B. Original Acquisition Cost Determination

The Director of Contracts or designee in coordination with the Using Department shall prepare adequate documentation describing the surplus or scrap items, method of original procurement, and acquisition costs, if available. Such documentation shall be submitted to the Director of Accounting for those items whose original acquisition costs are estimated to be \$50,000 or more for the purpose of verification of original acquisition cost and determination of depreciation. Depending upon such cost, the appropriate District personnel shall make the determination as to the manner of disposition according to the breakdown given in subsection A, above.

C. Methods of Disposition

District personnel making the surplus/scrap determination may also provide for disposal of the items by any reasonable means designed to maximize the property's disposal value to the District. In all cases, Contracts and Procurement shall be responsible for conducting the sale or other disposition of the property. The Risk Management Department maintains a Lost and Found Program, to process the disposition of abandoned property.

1. Sealed Bid Procedures

The surplus/scrap items may be disposed of by means of a sealed Bid procedure, similar to the IFB procedure. Upon appropriate determination and approval as described above, Contracts and Procurement shall place a Notice of Sale in a newspaper of general circulation in San Mateo County and on the District Website for a period of not

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less than two weeks. Such Notices shall adequately describe the items to be sold and the date, time, and location for acceptance of Bids. The Notice shall state that the sale shall be made to the highest responsive Bidder, and that the items will be sold in an "as-is," "where-is" and "with all faults" condition. The Notice may also specify the amount of a minimum Bid, if any. Contracts and Procurement may send the Notice to known interested dealers and other parties, including other transit agencies.

2. Auction

The surplus items may be disposed of by means of a public auction. The sale may be conducted by the District, an auction company, or may be held in conjunction with the County of San Mateo or other public auction. For auctions held at the District or in conjunction with other public agencies, Contracts and Procurement shall place a Notice of Public Auction to be published once in a newspaper of general circulation in San Mateo County. The Notice shall adequately describe the items to be disposed of, and the date, time, and location of the auction. For auctions held by an auction company, the auction company is responsible for advertising in accordance with the Contract requirements. In all cases, each item shall be sold to the highest responsive Bidder.

3. Trade-in, Negotiation, or Transfer to Other Public Agencies

Disposition may include trading the surplus/scrap property in for new supplies, equipment, or materials. Contracts and Procurement shall only arrange for a trade-in in connection with a District procurement conducted in accordance with the procedures mandated by this Procurement Manual. In no case shall a trade-in represent a lower dollar value than could verifiably have been realized by means of another method of disposition. Contracts and Procurement may proceed to dispose of the property by negotiating the sale thereof.

In some cases, the District may choose to transfer assets (property) to other public agencies. In such cases, the District must have confirmed in writing that the other public agency is willing to accept the property. The Contract Officer will generate the appropriate release of liability Agreement, including price to be paid by the agency, if any. This Agreement indemnifies the District from any and all claims which may arise from the transfer of such property. This Agreement shall be signed by the District in accordance with the signature threshold limits described in Appendix A, and by the other public agency prior to such transfer. The FTA has specific rules related to transfer of FTA funded property to other public agencies as described in Section XI.E.

4. Discard

In some instances, obsolete, broken, or valueless items may be disposed of by discarding as refuse. Contracts and Procurement may initiate disposal by first acquiring an appraisal of the goods or other such fair market value assessment of the items in question. Items which have no auctionable or trade-in value may be disposed of by

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dumping, donation, recycling, or other similar means at the least possible cost to the District.

D. Revenue-Generating Rolling Stock

In the case of disposition of surplus/scrap rolling stock, the Maintenance Department shall make available, upon the request of any interested party, the District maintenance records concerning such equipment. The Maintenance Department shall also be responsible for ensuring that no property that is not owned by the District (e.g., leased tires) is sold along with the rolling stock. In addition, the disposal of any rolling stock that was purchased with federal funds must follow the special procedures outlined in subsection E, below.

E. Disposition of FTA-Funded Property

1. Summary

District disposition of personal property acquired in whole or in part with federal funds shall be in accordance with 49 CFR Parts 18.32 and 18.33. Staff may consult with the Attorney regarding disposition of any property fully-owned by the federal government or in cases when FTA has reserved the right to transfer title.

2. Definitions

a. Property - Property is limited to personal property, which is all property except land.

b. Equipment - Equipment is tangible, non-expendable, personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit.

c. Supplies - Supplies are tangible personal property other than "equipment" as defined above.

d. Fair Market Value - Fair market value may be determined through competitive sale, auction procedures, or professional appraisal.

3. Procedures

a. Equipment Valued at Less Than \$5,000

Equipment with a current per unit fair market value of less than \$5,000 may be retained, sold, or otherwise disposed of with no further obligation to FTA.

b. Equipment Valued at More Than \$5,000

Equipment with a current per unit fair market value of \$5,000 or more may be retained or sold. However, FTA shall have right to an amount calculated by multiplying the current market value or proceeds from sale by the original percentage of FTA funding for the purchase.

c. Supplies Valued at More Than \$5,000

If there is a residual inventory of unused supplies exceeding \$5,000 in total aggregate fair market value upon termination or completion of the FTA grant, and if the supplies are not needed for any other federally sponsored

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programs of the District, then the District shall compensate FTA according to the percentage of FTA funding for the original purchase.

F. Prohibited Sales

Except for instances in which surplus property is sold at public auction conducted by an entity other than the District, sale of items shall not be permitted to any of the following:

1. Members of the Board of Directors;
2. District employees;
3. Members of employees' families; and
4. Agents acting on behalf of employee(s)

XII. VENDOR DATABASE AND PROCUREMENT WEBSITE

A. Summary

The Vendor Database resides in Public Purchase Web Server (<http://www.publicpurchase.com>) as part of the Procurement section of the Website. It is organized and maintained by Public Purchase. The Contract Officer shall refer to the website to monitor distribution lists, contact potential vendors or suppliers, and assure there are an adequate number of vendors to allow for full and open competition. Advertising via the Website does not replace the advertisement requirements detailed in Section V.F.2.b.(over \$100,000 check prior sections).

B. Procedures

Potential Offerors shall be directed to electronically register on the website and choose their subject area(s) of expertise for which they wish to supply a good or service. When the solicitation is advertised/issued, those potential Offerors whose area(s) of expertise match the solicitation will receive an electronic notification of the solicitation available for download, as well as any subsequently issued updates, such as Addenda.

In the case of IFB's, after Bids are opened, the Procurement Website Content Manager shall post the name of the Bidder(s) and the dollar amount of the Bid(s) on the Website as public information. In the case of an RFP, once an award determination is made, the Contract Officer shall post the name of the successful Proposer and the dollar amount of the award will be noted.

C. Contracting Opportunities

It is the responsibility of the Contract Officer to post solicitation information on the Website in coordination with the Website Content Manager. Once information becomes available regarding an upcoming solicitation, a brief description, anticipated advertisement date, estimated cost range, and other instructive information will be posted on the Website. Once the solicitation is publicly advertised, all Solicitation Documentation will be posted on the Website and will be updated throughout the procurement cycle. Other forms of the Solicitation Documents, such as a CD or hard copy format, should be made available to the potential Offerors upon request.

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**APPENDIX A
PURCHASES AND CONTRACTS REQUIREMENTS**

TYPE OF PURCHASE	AMOUNT OF PURCHASE	QUOTE & SOLICITATION REQUIREMENTS	PROCUREMENT MANUAL SECTION	CONTRACT TYPE	SIGNATURE AUTHORITY
Small Purchase Alternative ~ Petty cash (up to \$50), check requests (up to \$500)	\$1 to \$500	One verbal quote OK	V.B.	N/A	Cost Center Manager
Micro Purchase ~ Supplies, equipment, materials, professional and non-professional services	\$1 to \$ \$2,500	One verbal quote OK	V.B.i.	Purchase Order	Deputy CEO++, Director, C&P, Senior Contract Officer, Contract Officer, Materials Manager, Assoc. CO up to \$1500
Public Works Projects (Informal Solicitation)	Up to \$10,000	Two or more written quotes, which must be kept in C&P files	V.B.ii.	Purchase Order or Agreement	Deputy CEO++, Director, C&P, Sr. Contract Officer
Small Purchase (Informal Solicitation) ~ Supplies, equipment, materials, professional and non-professional services, except public works projects.	\$2,500 to \$100,000	Two or more oral or written quotes in response to written solicitation (RFQ) including terms & specs. No formal advertising required.	V.B.iii.	Purchase Order or Agreement	Refer to Exhibit 1 for signature authorization
Public Works Projects (Formal Bid)	\$10,000 and Up	Formal advertised Invitation for Bids (IFB)	V.C.	Agreement	Board approves and grants GM/CEO authority
Formal Solicitation ~ Supplies, materials, equipment, professional and non-professional services, architectural & engineering	Over \$100,000	Formal solicitation: RFP or IFB. IFB's and Federally funded RFP's must be publicly advertised.	V.C.	Agreement	Board approves and grants GM/CEO authority
Professional Services - Engineering, architectural & engineering, technical, accounting, legal	Over \$100,000	Formal solicitation: RFP Federally funded RFP's must be publicly advertised.	V.D.	Agreement	Up to \$100K GM/CEO; >\$100K Board approves and grants authority to GM/CEO
Sole Source ~ Supplies, materials, equipment, professional and non-professional services	\$501 to \$50,000	Sole Source Justification Form req'd from Using Department , verification by C&P and Cost Analysis required.	VI.B.	Purchase Order or Agreement	Up to \$50K Director, C&P
Sole Source ~ Supplies, equipment, materials, professional and non-professional services	\$50,001 to \$100,000/ >\$100K	Sole Source Justification Form req'd from Using Department , verification by C&P and Cost Analysis required.	VI.B.	Purchase Order or Agreement	Up to \$100K GM/CEO, or Designee; >\$100K Board approves and grants authority to GM/CEO

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TYPE OF PURCHASE	AMOUNT OF PURCHASE	QUOTE & SOLICITATION REQUIREMENTS	PROCUREMENT MANUAL SECTION	CONTRACT TYPE	SIGNATURE AUTHORITY
Sole Source ~ Public works projects	\$1 - \$10,000	Justification req'd from Using Department for sole source, verification by C&P and Cost Analysis required.	VI.B.	Purchase Order or Agreement	Director, C&P Sr. Contract Officer
Sole Source ~ Public works projects	\$10,001 - Up	Justification req'd from Using Department for sole source, verification by C&P and Cost Analysis required.	VI.B	Purchase Order or Agreement	Board approves and grants GM/CEO authority
Emergency Purchases ~ Supplies, equipment, materials, professional and non-professional services	\$1 - \$2,500	One or more verbal quotes. User may verbally place order.	VI.D.	Purchase Order or Agreement	GM/CEO, or Designee, Director, C&P
Emergency Purchases ~ Supplies, equipment, materials, professional and non-professional services	\$2,500 – Up	One or more verbal quotes. User may verbally place order. GM/CEO to approve and report to the Board of Directors the action within 14 days of the purchase.	VI.D.	Purchase Order or Agreement	PO signed by GM/CEO Board Ratification (ratified at next scheduled mtg. within 14-days)
Emergency Purchases ~ Public works projects	\$1 - \$10,000	One or more verbal quotes. User may verbally place order.	VI.D.	Purchase Order or Agreement	GM/CEO, or Designee, Director, C&P
Emergency Purchases ~ Public works projects	\$10,001 - Up	One or more verbal Bids OK. GM/CEO to approve and report to the Board of Directors the action within 14 days of the purchase	VI.D.	Purchase Order or Agreement	PO signed by GM/CEO Board Ratification (ratified at next scheduled mtg. within 14-days)

Footnote:

++Deputy CEO: The Deputy CEO classification is changing. The signature authority designations by position in the Agency are currently being revised due to a re-organization of the business that occurred in August 2015. These changes will be reflected in the Procurement Manual as soon as they are authorized by the Executive Team.

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APPENDIX A

CHANGE ORDERS AND AMENDMENTS TO CONTRACTS REQUIREMENTS

TYPE OF MODIFICATION	AMOUNT OF MODIFICATION	BACKGROUND REQUIREMENTS	PROCUREMENT MANUAL SECTION	CONTRACT TYPE	SIGNATURE AUTHORITY **
Change Orders ~ Usually limited to public works projects	Up to \$100K or 10% cumulative (whichever is greater), of the Contract amount *	~ Record of Negotiations ~ Justification Memorandum ~ Contractor Quote ~ Fully Executed Purchase Req. ~ Engineering ICE	IX.C	Public works projects	General Manager/CEO **
Change Orders ~ Usually limited to public works projects	Over \$100K or 10% cumulative (whichever is greater), of the Contract amount *	~ Record of Negotiations ~ Justification Memorandum ~ Contractor Quote ~ Fully Executed Purchase Req. ~ Engineering ICE	IX.C	Public works projects	Board of Directors approves and grants GM/CEO authority **
Amendments ~ Supplies, equipment, materials, services, or professional services type contracts	Up to \$100K or 10% cumulative (whichever is greater), of the Contract amount *	~ Record of Negotiations ~ Justification Memorandum ~ Contractor Quote ~ Fully Executed Purchase Req. ~ Cost Estimate	IX.C	Other than public works projects	General Manager/CEO **
Amendments ~ Supplies, equipment, materials, services, or professional services type contracts	Over \$100K or 10% cumulative (whichever is greater), of the Contract amount *	~ Record of Negotiations ~ Justification Memorandum ~ Contractor Quote ~ Fully Executed Purchase Req. ~ Cost Estimate	IX.C	Other than public works projects	Board of Directors approves and grants GM/CEO authority **

* The Contract amount shall equal the base amount of the Contract, supplemented by (a) the amount of any awarded options, (b) the amount of any Board-authorized contingency, and/or (c) the amount of any previously Board-approved amendments or Change Orders.

** See Appendix B, Delegation of Authority

Notes:

Signature authority thresholds exclude CPI increases, which are previously considered and approved in the original Contract Agreement.

Signature authority thresholds exclude tax, freight, or other regulatory fees except for public works, lump-sum Contracts or Change Orders.

**PROCUREMENT POLICY
SAN MATEO COUNTY TRANSIT DISTRICT**

The San Mateo County Transit District (“District”) is organized and established pursuant to the San Mateo County Transit District Act, set forth in the Public Utilities Code Section 103000, *et seq.* (the “Act”) which authorizes the District to acquire such property, facilities, equipment, materials and supplies as may be deemed necessary to carry out its duties.

The procedures governing procurements of the District derive from state law and federal law. By accepting state and federal funding, the District is also obligated to comply with certain regulations in its procurement of goods and services. More specifically, certain standards, regulations, and other requirements for grants to local governments issued by the United States Department of Transportation apply to the District in connection with contracts financed in whole or in part with federal funds. In the event of a conflict between the District’s Procurement Policy and state or federal law, such state or federal law shall supersede this Procurement Policy.

This Procurement Policy provides a broad overview of the standards and methods which will guide the District in obtaining goods and services. Wherever in this Procurement Policy the General Manager/CEO is designated authority, such authority shall be understood to include the designee of the General Manager/CEO.

A. Fundamental Principles of Ethical Procurement

The District’s procurement practices reflect its commitment to fundamental principles of ethical procurement, which are as follows:

1. Foster maximum open and free competition for District Contracts;
2. Promote the greatest economy and efficiency in District procurements;
3. Ensure adherence to proper standards of conduct by District board members, officers and employees;
4. Maintain procurement policies and procedures that guarantee compliance with applicable state and federal laws and regulations;
5. Establish and maintain an arm's length relationship with all Contractors;
6. Treat all prospective Contractors, Consultants, and vendors, including Disadvantaged Business Enterprises (“DBEs”) and small businesses, in an equal and equitable manner; and
7. Provide guidance for remedy and resolution of Contract claims or disputes.

Based on these fundamental principles of ethical procurement and the general standards of public sector procurement, the following set of procurement and contracting policies have been developed.

B. Conflicts of Interest

No director, officer, employee or agent of the District shall participate in any procedure, tasks, or decisions relative to initiation, evaluation, award, or administration of a contract if a conflict of interest, real or apparent, exists. Such a conflict of interest arises when (a) the director, officer, employee or agent, (b) any member of his or her immediate family, (c) his or her business associate, or (d) an organization which employs, or which is about to employ, any of the above described individuals has a financial or other interest in a firm that participates in a District procurement process or that is selected for an award. The standards governing the determination as to whether such an interest exists are set forth in the Political Reform Act (Section 81000 *et seq.* of the California Government Code) and in Sections 1090, 1091, and 1091.5 of the California Government Code.

C. Methods of Procurement

1. All purchases and contracts, whether by informal bidding, formal bidding or proposals, shall be made on a competitive basis to the greatest extent practicable.
2. The method of procurement, such as small purchases, informal bids or proposals, formal competitive bidding, requests for proposals, etc., shall be appropriate for the type of project or procurement and shall be in the best interest of the District.
3. Formal competitive bidding must be used for construction, repair, maintenance, alteration, and similar work whenever the estimated expenditure for such work exceeds \$200,000 or the current threshold set forth in California Public Contract Code section 22032(c), whichever is greater. Alternative methods of procurement, such as a design build approach, may be utilized if authorized by state law and in full compliance with all applicable requirements.

Federally funded procurements will comply with all applicable federal requirements.

Informal competitive procedures, as set forth in the District's Informal Bidding Ordinance, may be used for construction, repair, maintenance, alteration and similar work whenever the estimated expenditure is more than \$60,000 (or the current threshold set forth in California Public Contract Code section 22032(a), whichever is greater) and up to \$200,000 (or the current threshold set forth in California Public Contract Code section 22032(b), whichever is greater). Award will be made to the lowest responsible bidder. (Public Contract Code § 22038). For construction, repair, maintenance, alteration and similar work where the estimated expenditure is \$60,000 (or the current threshold set forth in California Public Contract Code section 22032(a), whichever is greater) or less, the District may use a negotiated contract or a purchase order.

4. Formal competitive bidding should be used when purchasing equipment, supplies, services or materials over \$150,000, but a “best value” approach may be used in circumstances where it is determined to be in the best interest of the District. “Best value” means a process in which the overall combination of quality, price, and other

elements such as reliability, standardization, vendor qualifications, warranty, life cycle costs, and sustainability issues are considered together to determine which proposal provides the greatest overall benefit to the District. On a case by case basis, and in particular when a procurement involves a combination of goods and services, the District Procurement Office, in consultation with the Project Manager or the department issuing the solicitation, shall make the determination of whether a “best value” approach is in the best interest of the District. In such circumstances, the determination will be documented in writing and a formal competitive proposal process will be utilized.

5. An informal procurement method may be utilized for the purchase of materials, equipment, services or supplies when the estimated expenditure is between \$10,000 and \$150,000. To the extent practicable, such a method shall involve obtaining a minimum of three quotations, either written or oral, that permit prices and other terms to be compared. The District will undertake adequate outreach to ensure open and free competition, and that small businesses, including Disadvantaged Business Enterprises are afforded opportunities to submit quotations. To the extent practicable, the District will strive to obtain at least one of the minimum of three quotations from a small business. The District will utilize interested vendors based upon a review of trade sources, lists of certified DBEs and small businesses that have registered with the State, and vendors that have registered with the District to receive notice of contract opportunities. When appropriate to ensure satisfaction of the Fundamental Principles of Ethical Procurement set forth in Section A of this Policy, such solicitations shall be advertised by the District. The District’s informal bidding procedures, using a lowest responsible bidder standard for bid comparison, will serve as the typical standard on which to base the purchase of materials, equipment, services or supplies, unless it is determined in writing that it is in the District’s best interest to apply a “best value” approach, in which event, qualitative factors such as those set forth in paragraph C.4. above, in addition to price may be considered in making an award.
6. Formal competitive proposals, which consider and evaluate factors in addition to price, will be used to retain professional and non-professional services when the estimated expenditure exceeds \$150,000. Specialized State and federal laws will apply to the procurement of architectural and engineering services as defined by applicable laws and regulations, regardless of the estimated expenditure.
7. The use of appropriate intergovernmental and cooperative agreements is encouraged in order to reduce duplicative effort and to achieve cost economies.
8. The District may purchase items on the open market under the following conditions: (a)(i) if the District rejects bids received in connection with a procurement of materials, supplies, services and equipment requiring formal competitive bidding, and (ii) the Board of Directors determines and declares by a two-thirds vote of all its members that in its opinion the supplies, equipment, services, and materials may be purchased at a lower price in the open market; or (b) if the Board of Directors, or the General Manager/CEO, within the General Manager/CEO’s procurement authority, has exercised discretion to waive the

competitive process when permissible under applicable law and consistent with the fundamental principles of procurement set forth in this Policy, or (c) if no bids or proposals are received in response to a formal solicitation and market research indicates another procurement for the supplies, equipment, services and materials will not render a different outcome. *See* Public Utilities Code §103223 and Section K “Discretion to Waive the Competitive Process” set forth below.

D. Procurement Documentation and Consideration of Bids and Proposals

1. Formal competitive bidding requires preparation of bid documents that clearly set forth all requirements which must be fulfilled in order for the bid to be responsive, advertisement in accordance with the law, and, once bids are received, an award, if made, to the lowest responsive and responsible bidder.
2. Formal competitive proposals, including the “best value” approach, require issuance of Requests for Proposals, which clearly set forth all the requirements, and state the qualitative factors, in addition to price, which will be used to evaluate and rank the Proposals. An award, if made, will be to the proposer receiving the highest consensus ranking, subject to successful negotiations with the District.
3. Any and all bids, quotes or proposals may be rejected by the District if it is in the District’s best interest to do so.
4. The District may only contract with persons, firms or entities that are qualified and possess the ability to perform successfully under the terms and conditions of the proposed procurement.

E. Execution of Contract Documents

1. All District contracts and amendments will be in writing and executed prior to beginning performance under the contract.
2. The General Manager/CEO may execute all contracts on behalf of the District that are duly approved within the General Manager/CEO’s authority. The Chairperson of the Board of Directors will sign contracts and leases that require approval by the Board, unless otherwise delegated to the General Manager/CEO.

F. Disadvantaged Business Enterprise Program

The District is committed to a Disadvantaged Business Enterprise (“DBE”) Program for DBE participation in District contracting opportunities in accordance with 49 Code of Federal Regulations (CFR) Part 26, effective June 22, 2001, as may be amended. It is the policy of the District to ensure nondiscrimination on the basis of race, color, sex or national origin in the award and administration of U.S. Department of Transportation assisted and District contracts. It is the intention of the District to create a level playing field on which DBEs can compete fairly for contracts and subcontracts to provide the District’s public works, supplies, equipment, materials and services.

G. Protest Procedures

Bidders may protest contracts that are let through informal bidding, formal competitive bidding or competitive negotiations. The General Manager/CEO, or designee, is authorized to review and determine protests concerning contracts awarded within the General Manager/CEO's procurement authority.

Protests for contracts not within the General Manager/CEO's procurement authority will first be reviewed and determined by the General Manager/CEO, or designee. Appeals of such determinations will be reviewed and acted upon by the Board of Director's Finance Committee and then the Board of Directors upon recommendation by the General Manager/CEO and the General Counsel. All protests will be processed in accordance with the written procedures set forth in the Procurement Manual.

H. General Manager/CEO's Procurement Authority

1. The General Manager/CEO is authorized to purchase supplies, equipment, services and materials and to arrange for work in a manner consistent with this Procurement Policy and written procedures as may be developed from time to time. The General Manager/CEO is authorized to execute agreements and expend funds for procurements and activities included within the District's approved annual budget as follows: (1) up to \$150,000 for equipment, supplies, materials, or services and (2) up to \$200,000 or the current threshold set forth in California Public Contract Code section 22032(b), whichever is greater for construction, repair, maintenance, alteration and similar work.

The General Manager/CEO is authorized to modify and otherwise administer all contracts on behalf of the District. For all contracts, the General Manager/CEO is authorized to issue contract change orders or amendments within any Board approved contingency. If the Board does not establish a contingency or in the event the contingency is exhausted, the General Manager/CEO is authorized to issue contract change orders or amendments up to \$150,000 or up to 10% (cumulative) of the Contract Amount, whichever is greater. The "Contract Amount" is defined as the original contract amount, plus any Board-exercised or approved options, plus any Board-approved amendments.

2. The General Manager/CEO is authorized to designate staff to oversee and monitor procurements and may delegate its contracting authority set forth in the paragraph above. Such delegation(s) must be in writing, documented by the Director of Contracts and Procurement, and must specify defined monetary limits.
3. Only the Board may award (a) contracts for materials, supplies and equipment or services over \$150,000, and (b) contracts for construction, repair, maintenance, alteration and similar work over \$200,000, or the current threshold set forth in California Public Contract Code section 22032(c), whichever is greater. When the Board awards such contracts, it also delegates to the General Manager/CEO the authority to execute the resulting agreement.

I. Emergency Contracts

For procurements requiring competitive bidding and/or Board approval, in case of any sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services, the Board hereby designates the General Manager/CEO to take all necessary and proper measures in emergency conditions to maintain the District's systems in operation. The Board also grants the General Manager/CEO the authority to determine that there is insufficient time for competitive bidding and that public interest and necessity demand the immediate expenditure of public money to safeguard life, health, or property. If the General Manager/CEO makes such a determination, the General Manager/CEO may expend or enter into a contract involving the expenditure of any sum needed in such emergency without observance of the provisions requiring contracts, bids or notice. The General Manager/CEO shall promptly report on the reasons and necessity for proceeding without a competitive solicitation for construction, repair, maintenance, alteration and similar work which exceeds \$200,000, or the current threshold set forth in California Public Contract Code section 22032(c), whichever is greater and for all other goods and services which exceed \$150,000, to the Board of Directors within 7 days of the action or at the next available meeting, provided that the General Manager/CEO reports to the Board no later than 14 days after taking such emergency action. Upon hearing the General Manager/CEO's report, the Board shall determine, by a four-fifths vote, whether or not there is a need to continue the emergency action. The Board shall continue to evaluate the emergency action, determining whether or not the emergency procurement is still required, at every regularly scheduled meeting thereafter until the action is terminated. *See* Public Contract Code §§ 20331 and 22050.

J. Cooperative Purchasing Agreements

To foster greater economy and efficiency, the District may avail itself of federal, state and local intergovernmental agreements for procurement or use of common goods and services. Joint procurements, state cooperative purchasing programs, and assignment of existing contract rights ("piggyback" procurements) with other public agencies may be used when consistent with applicable state and federal statutory or grant requirements.

K. Discretion to Waive the Competitive Process

The Board of Directors or the General Manager/CEO in the case of procurements within the General Manager/CEO's procurement authority, may waive the requirements for formal competitive bidding or other procedures set forth in this Policy when (1) permissible under applicable law, (2) a determination is made that the best interests of the District are served thereby, and provided there is adequate documentation of the need for such material, supplies, equipment, public works or services; and (3) a determination is made that following competitive procedures would be unavailing and not in furtherance of the purposes of the competitive bidding statutes and the District's procurement policy. These circumstances shall be evaluated on a case-by-case basis, in consultation with the legal staff, keeping in mind the Fundamental Principles of Ethical Procurement set forth in this Policy. The findings justifying the waiver must be documented in the record.

Regardless of the estimated cost of the procurement, the District is not required to engage in the competitive bidding process when procuring materials, equipment, supplies or services for which

there exists only a sole source of supply. If more than one distributor of a product is available, the product is not exempt from competitive bidding as a sole source, but may be exempt from competitive bidding as a single source with appropriate justification. A sole source decision is not permitted merely upon the grounds that the source demonstrates technical or administrative superiority, is the most convenient, or shows superior performance potential at lower costs. In all cases, staff must verify that the particular procurement meets the definition of a single or sole source and a cost or price analysis must be performed to determine the fairness and reasonableness of the price. The single or sole source findings will be reviewed by the Director of Contracts in consultation with legal staff, as needed. A written determination of the findings will be provided to the requestor for inclusion in the contract record.

L. Contract Administration

The District shall administer all contracts to ensure that contractors conform with the terms, conditions, and specifications of all contracts and to ensure all purchases are received in a timely manner. Contract administration files shall contain documentation concerning the solicitation, contract costs, modifications and final disposition. All significant formal and informal communications on all contracts must be committed to written memoranda and promptly included in the contract file.

M. Disposal of Surplus Property

1. The Director of Contracts and Procurement shall approve the manner of disposition of surplus supplies, equipment and materials. The Board of Directors shall approve the disposition of any item having a fair market value greater than \$150,000. In all cases, disposition or sale of rolling stock shall require approval of the Board. In the event the surplus item to be disposed of was purchased with federal funds, the District will comply with federal disposition requirements.
2. The method of sale or disposition of any surplus or scrap items shall depend upon the nature of the items. Such methods shall include: (1) transfer or sale to other public agencies, (2) trade-in as part of a new procurement, (3) sale by auction, advertisement for sealed bids, or negotiation, or (4) where appropriate, proper recycling, donation to a non-profit agency, or disposal.

N. Revenue Generating Contracts/Concessions

To the extent they are not otherwise governed by District policies, concession agreements are contracts where the District grants permission to use District facilities or property to vendors to sell products or services, for which the District receives a percentage of the proceeds and/or a flat rate of compensation. Generally, these arrangements are at no direct cost to the District.

Where it is determined that a number of potential vendors are available to provide similar products or services, a competitive negotiations procedure should be followed, and award made to the highest ranked proposer, taking into consideration the economic return to the District, quality of the product, service and experience of the vendor.

The Board of Directors shall approve revenue generating/concessions contracts that exceed \$150,000 in value.

O. Implementation

This Policy sets forth the standards and methods to be followed by the District in obtaining goods, materials, equipment and services. Since 2004, the District has had in place a Board-adopted Procurement Manual that sets forth implementing guidelines and procedures consistent with applicable law, best procurement practices, and the Procurement Policy. The General Manager/CEO shall have the authority to maintain and update as necessary the Procurement Manual to give effect to this Policy and may make subsequent revisions if necessary to implement changes in applicable laws and regulations and best procurement practices such as FTA Best Practices Procurement Manual, Caltrans Local Assistance Procedures Manual, American Public Transit Association guidelines and standards, or other well accepted external references. Changes that represent a deviation from this Policy must be approved by the Board of Directors. All District staff with responsibility for procurement activities shall be trained in, and adhere to, this Policy and the Procurement Manual.

Revised: Resolution No. 2019-10; April 3, 2019

Revised: Resolution No. 2018-30; July 11, 2018

Revised: Resolution No. 2017-14; March 1, 2017

Revised: Resolution No. 2010-04; January 13, 2010

Adopted: Resolution No. 2003-26; June 11, 2003