



NOTICE OF ADMINISTRATION COMMITTEE MEETING

Covering Policy, Administration and Community
Relations/Communications

NOTICE IS HEREBY GIVEN that the San Lorenzo Valley Water District has called a regular meeting of the Administration Committee to be held on Tuesday, February 9, 2021, 9:00am, via video/teleconference.

<https://global.gotomeeting.com/join/700027325>

You can also dial in using your phone.
(For supported devices, tap a one-touch number below to join instantly.)

United States (Toll Free): 1 866 899 4679
- One-touch: <tel:+18668994679,,700027325#>

United States: +1 (571) 317-3116
- One-touch: <tel:+15713173116,,700027325#>

Access Code: 700-027-325

AGENDA

1. Convene Meeting/Roll Call
2. Oral Communications
This portion of the agenda is reserved for Oral Communications by the public for items which are not on the Agenda. Please understand that California law (The Brown Act) limits what the Board can do regarding issues raised during Oral Communication. No action or discussion may occur on issues outside of those already listed on today's agenda. Any person may address the Committee at this time, on any subject that lies within the jurisdiction of the District. Normally, presentations must not exceed five (5) minutes in length, and individuals may only speak once during Oral Communications. Any Director may request that the matter be placed on a future agenda or staff may be directed to provide a brief response.
3. New Business: None
Members of the public will be given the opportunity to address each scheduled item prior to Committee action. The Chairperson of the Committee may establish a time limit for members of the public to address the Committee on agenda items.
4. Old Business:
Members of the public will be given the opportunity to address each scheduled item prior to Committee action. The Chairperson of the Committee may establish a time limit for members of the public to address the Committee on agenda items.

- A. Procurement Policies & Procedures
Discussion and possible action by the Admin Committee regarding Draft Procurement Policies & Procedures.
- 5. Informational Material: None
- 6. Adjournment

Agenda documents, including materials related to an item on this agenda submitted to the Committee after distribution of the agenda packet, are available for public inspection and may be reviewed at the office of the District Secretary, 13060 Highway 9, Boulder Creek, CA 95006 during normal business hours. Such documents may also be available on the District website at www.slvwd.com subject to staff's ability to post the documents before the meeting.

Certification of Posting

I hereby certify that on February 5, 2021 I posted a copy of the foregoing agenda in the outside display case at the District Office, 13060 Highway 9, Boulder Creek, California, said time being at least 72 hours in advance of the regular meeting of the Admin Committee of the San Lorenzo Valley Water District in compliance with California Government Code Section 54956.

Executed at Boulder Creek, California, on February 5, 2021.

Holly B. Hossack, District Secretary
San Lorenzo Valley Water District

Attachment A

San Lorenzo Valley Water District
Procurement Policies & Procedures
DRAFT as of 08-05-2020

Sections:

1. GENERAL PROCUREMENT STANDARDS

- A. Code of Conduct**
- B. Fair Competition**
- C. Solicitation Procedures**
- D. Environmentally Preferable Purchasing Guidelines**

2. PURCHASING CYCLE

- A. New Vendor Procedure**
- B. Purchasing Authority**
- C. Purchase Requisitions/Orders**
- D. Payment Methods**

3. PROCUREMENT METHODS

- A. Micro-Purchases**
- B. Small Purchases**
- C. Sealed Bids**
- D. Competitive Proposals**
- E. Noncompetitive Negotiation**
- F. Contract Change Orders**

4. CONTRACTING

- A. General Services**
- B. Professional Services**
- C. Public Works Projects**

5. FEDERAL FUNDING REQUIREMENTS

- A. Contract Provisions**
- B. Federal Awarding Agency or Pass-Through Entity Review**
- C. Time and Materials Contracts**
- D. Contract Cost and Price**
- E. Contracting with Small and Minority Business, Women's Business Enterprises, and Labor Surplus Area Firms**

1. GENERAL PROCUREMENT STANDARDS

A. Code of Conduct (CFR §200.318)

The purpose of the Code of Conduct is to give guidance to District staff so that they may conduct themselves in a manner that will be compatible with the best interests of San Lorenzo Valley Water District and maintain compliance with California Government Code §1090, *et seq.* All representatives of the District including District employees are expected to conduct themselves in a professional and ethical manner, maintaining high standards of integrity and the use of good judgment. Employees are expected to be principled in their business interactions and act in good faith with individuals both inside and outside the District.

The following Code of Conduct governs the performance, behavior and actions of the District, including employees, appointed or elected officials, volunteers, consultants, or agents (collectively referred to as "District staff") who are engaged in any aspect of procurement, including, but not limited to, purchasing goods and services, awarding contracts and grants, and the administration and supervision of contracts or subcontracts:

- No employee, appointed or elected official, volunteer, consultant, or agent of the District shall participate in the selection, award, or administration of a contract if a conflict of interest exists under applicable law. The District Manager, at his sole discretion, may also require any employee, official, volunteer, consultant or agent of the District to refrain from participation in the selection, award, or administration of a contract to avoid the appearance of conflict of interest.
- A conflict would arise if the employee, a Board member, any member of his or her immediate family, his or her partner or partner's immediate family, or an organization which employs or is about to employ any of the parties indicated herein, has a real or apparent financial or other interest in, or receives tangible personal benefit from, the firm selected for an award. It is imperative that the employee disclose to the District Manager as soon as possible the existence of any actual or potential conflict of interest so that safeguards can be established to protect all parties. (Immediate family members are defined as a spouse, domestic partner, legal guardian, son, daughter, mother, father, sister, brother, grandparents, or grandchild. Adopted, half-, and step- members are also included in immediate family).
- No employee, appointed or elected official, volunteer, consultant, or agent of the District shall do business with, award contracts to, or show favoritism toward a member of his or her immediate family, his or her partner or partner's immediate family, or to any company, vendor, contractor, or parties to subcontractors who either employ or has any relationship to a family member; or award a contract or bid which violates the spirit or intent of federal, state and local procurement laws and policies established to maximize free and open competition among qualified vendors.
- District staff may not solicit, accept or agree to accept any gratuity for themselves, their immediate families or others that would or could result in personal gain. Personal gain may result not only in cases where an employee or immediate family member has a significant interest in a firm, or subcontractor or a firm, with which the District does business but also when an employee or immediate family member receives any gift or

special consideration as a result of any transaction or business dealings involving the District. The following items are not considered gratuities:

- Discounts or concessions routinely available to the general public;
- Items less than twenty-five dollars (\$25) that are turned over to the District for general District use;
- Inexpensive advertising items bearing the name of the vendor, such as pens, cups, candy, calendars, etc. that have a monetary value of less than twenty-five dollars (\$25).

Disciplinary actions, up to and including termination for cause, will apply to any violation of these conflict of interest standards, in accordance with District policy, and/or, as applicable, a collective bargaining agreement, employment contract, or contract for services.

This Code of Conduct supplements, and does not abrogate, the District's Conflict of Interest Code. All representatives of the District are expected to follow all applicable requirements of the District's Conflict of Interest Code and this Code of Conduct.

B. Fair Competition (CFR §200.319)

District staff must discharge their duties impartially to assure fair competition among responsible vendors. All vendors will be treated equally and fairly at all times by all District staff, with equal information given to each vendor who participates in the procurement process. Prequalified lists of persons or firms, or products used in acquiring goods or services, are to be kept current and include enough qualified sources to ensure maximum open and fair competition.

- District staff may not place unreasonable restrictions on competition, including any of the following:
 - Placing unreasonable requirements on vendors to qualify for a procurement
 - Requiring unnecessary experience and bonding
 - Noncompetitive pricing practices between vendors or affiliated companies
 - Awarding noncompetitive contracts to consultants that are on retainer contracts
 - Organizational conflicts of interest
 - Specifying a brand name product instead of allowing an equal product to be offered (brand names may be specified in instances where no grant funding is applicable to the project as long as the procurement remains competitive)
 - Non-compliance with sole source restrictions
 - Precluding potential bidders from qualifying during the solicitation
 - Any arbitrary action in the procurement process
- District staff shall ensure that any vendor that develops or drafts specifications, requirements, statements of work, invitation for bids, requests for qualifications, or requests for proposals for a procurement is excluded from competing in that procurement.
- Procurements that involve any federal grant funds shall be conducted in a manner that prohibits the use of statutorily or administratively imposed state or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable

federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

- All solicitations will incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standard to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a brand name or equivalent description may be used as a means to define the performance or other relevant requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated.
- Bids and proposals shall identify all the requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

C. Solicitation Procedures (CFR §200.318(d)-(i))

The District has established written procurement procedures to provide oversight over the conservative utilization of resources, including any federal funding.

- Acquisition of unnecessary or duplicative items must be avoided. Consideration should be given to consolidating or dividing procurements to obtain a more economical purchase. When appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.
- To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services, the District shall enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services.
- Procurement of federal excess and surplus property in lieu of purchasing new equipment and property is encouraged whenever such use is feasible and reduces project costs.
- Value engineering clauses may be used in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.
- Contracts shall only be awarded to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement.

Commented [SH1]: As discussed, I think it is good to have, we just need to have a way internally to assign who and when we look for items like this. A good example was a piece of construction equipment.

Commented [SH2]: Agree that this covers enough of the current long listing of qualifications.

Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

- Records will be maintained sufficient to detail the history of the procurement. These records will include, but are not necessarily limited to, the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price. The District's **[note: staff to identify the responsible position]** will be the repository for said records which shall be maintained according to the District's written record retention schedule.
- The District alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the District of any contractual responsibilities under its contracts. A federal awarding agency will not substitute its judgment for that of the District unless the matter is primarily a federal concern. Violations of law will be referred to the local, state, or federal authority having proper jurisdiction.

Commented [SH3]: Agree, this needs to have internal assignments and procedures written.

D. Environmentally Preferable Purchasing Guidelines

[Note: Does the District want this type of guidelines?] The District is committed to the conservation of environmental resources and will support, whenever practical and possible, the purchase of recycled and environmentally preferable products.

Commented [SH4]: Discussed keeping only this sentence.

Reducing Waste at the Source

1. Purchase durable, reusable or refillable products whenever feasible.
2. Print multi-page documents on both sides. Set printer defaults for double-sided.
3. Purchase remanufactured or used products when feasible.
4. Reduce packaging. Reusable, recyclable or compostable packaging is preferred.

Buying Recycled Content Products

1. Office paper and envelopes should contain at least 30% recycled content.
2. Janitorial paper should contain at least 40% recycled content.
3. Request that printing vendors use recycled content paper.

Saving Energy, Water, and other Natural Resources

1. Use efficient interior lighting, indoors and out - At least as efficient as T-8 fluorescent bulbs for overhead lighting, and compact fluorescent bulbs (CFL) for task lighting. Consider LED lighting for even greater efficiency.
2. Purchase electronics with U. S. EPA Energy Star certification when available.
3. Purchase bio-based products - products made from plant-based material. Look for paper, bags, food & beverage containers, and cutlery that are biodegradable and compostable. Products from non-wood, bio-based sources are preferred.

Where possible and appropriate, try to use reclaimed building materials.

2. PURCHASING CYCLE

A. New Vendor Procedure

Before making purchases by any method other than petty cash, the vendor needs to be approved and set up in the District's financial software. New vendors must fill out, sign, and submit an IRS W9 Request for Taxpayer Identification Number form and provide complete vendor contact information, including an email address for the party responsible for receiving purchase orders or invoices.

[Note: staff to review & confirm:] The District's standard payment terms are Net 30, meaning a check must be issued to the vendor no more than thirty days after the invoice date. In specific instances the District and vendor may have agreed to alternate terms and payment must be made within those terms to receive a discount.

Commented [SH5]: Confirming this is accurate

B. Purchasing Authority

The following purchase authority thresholds apply for all expenditures approved in the fiscal year budget. Any expenditures which are not budgeted must be approved by the Board of Directors.

District Manager Approval Up to \$30,000

Board of Directors Approval Over \$30,000

Deleted: & PO

C. Purchase Requisitions/Orders

The purpose of a purchase order or requisition is to obtain written authorization before the purchase is made or work commences on a project. Purchases of greater than \$5,000 made without a purchase order are considered unauthorized and employees making such purchases may be subject to disciplinary action. Purchases made without the requisite prior approval may not be honored for payment by the District.

Commented [SH6]: Rick – we need to go over internal procedures for what you want to physically approve. We have ways we can limit the system approvals if the PO's cover it all.

Commented [SH7]: I suggest PO's are required for more than \$5K, I am also recommending \$5K is the "small" purchase limit for needing 3 price quotes.

Deleted: 2,500

The purchase order/requisition must contain the following information: **note: staff to review:**

- Vendors – If known, suggested vendors whose product was purchased in the past and was satisfactory.
- Requisition date – The date the requisition is written.
- Originator – Employee completing the requisition.
- Approval – Supervisor/Manager approving the requisition.
- Required date – A definite date by which delivery is needed.
- Quantity and unit
- Unit price
- Account number
- Signature
- **Any related project or work order code**

Deleted: [Others?]

The following items do not require the use of a purchase order, but are sometimes covered under a contract or agreement. When possible, a contract purchase order should be used: **[note: staff to review & confirm:]**

- Annual maintenance payments
- Annual lease payments or lease agreements
- Annual permits
- Debt payments and administration
- Employee salary and benefits
- Insurance
- Memberships/dues
- Postage
- Refunds/rebates
- Utility payments
- **[Others?]**

Splitting purchases is prohibited. Splitting purchases means the intentional separation of a District purchase or project into smaller portions to avoid any of the provisions of the procurement process, including but not limited to purchase requisition submission, purchase requisition approval limits, quote/bid requirements, or prevailing wage requirements for public works projects. Blanket or contract purchase orders must be established with vendors from whom numerous regular purchases are made which, annually, exceed the \$5,000 purchase order threshold.

Changes to contract amounts or quantities ordered, regardless of dollar amount, must be submitted as a change order to the original purchase order and will be subject to the same purchase approvals as the original purchase order.

Commented [SH8]: We commonly have issues where tax or shipping was excluded. Do we want to have it go through full approval again for that? Or do we want to give DoF authority to approve those?

D. Payment Methods

[Note: staff to review & provide feedback:]

Check Requests:

Check requests should be used when payment must accompany an order, and for such things as magazine subscriptions and organizational dues. A check is requested by completing the check request form. Please attach the purchase order/requisition for the item or service required to the check request form.

Credit Card:

Supervisors and Department Heads may make credit card purchases only when the vendor will not accept a purchase order, when a documented emergency renders the purchase order process infeasible, or when payment must be made in advance, i.e. signing up for training or travel. All credit card purchases must be pre-approved by a Department Head and the Finance Director or District Manager (depending on threshold for purchasing authority), regardless of the dollar amount of the purchase. All supporting documentation for the purchase shall be forwarded to Accounts Payable, noting the date the credit card purchase was made.

Petty Cash:

Expenses \$25 or less incurred by employees for District purposes may be reimbursed from petty cash. All expenses must include a receipt and be approved by the Department Head before submission for reimbursement.

Commented [SH9]: Currently it is \$25 I believe. If we want to change this to \$50 we will need to maintain more petty cash in the safe.

Deleted: 50

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3. PROCUREMENT METHODS

| <u>Type of Purchase*</u> | <u>District Threshold</u> | <u>Requirements</u> |
|--------------------------|---------------------------|--|
| Micro-Purchase | Less than \$500 | <ul style="list-style-type: none"> ○ No purchase order (PO) necessary |
| | Up to \$2,500 | <ul style="list-style-type: none"> ○ No PO necessary ○ At least 1 price quote required |
| Small Purchase | \$2,501 - \$30,000 | <ul style="list-style-type: none"> ○ 3 competitive price quotes required ○ PO required |
| Standard Purchase | Over \$30,000 | <ul style="list-style-type: none"> ○ Sealed bid or competitive proposal ○ PO required |

Commented [SH10]: I think we should add a column for approval rights.

A lot of what we do is on invoices and not PO's. But for either I think we should have limits for who is authorized.

For example, Dept Managers can approve expenditures up to \$2,500 that are part of the approved budget, but anything over \$2,500 requires DM approval on the front end.

The DM can still either approve all PO's or keep it at approving all invoices.

Commented [SH11]: I think we should create 3 quotes at the \$5k+ limit

**For public works projects of any size, competitive procurement must comply with the California Public Contracts Code.*

Purchased materials, supplies, components or chemicals that will be in contact with drinking water must be NSF 60/61 certified.

A. **Micro-Purchases (< \$2,501) (2 CFR §200.320(a))**

Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold as set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 and adjusted periodically for inflation. To qualify as a micro-purchase for District purposes, the items must be included in the annual budget.

- To the extent practicable, the District must distribute micro-purchases equitably among qualified suppliers.
- Micro-purchases may be awarded without a purchase order and without soliciting competitive quotations if the expenditure is approved in the annual budget and the District considers the price to be reasonable.
- As of the date of this policy, the federal micro-purchase threshold is **[note: confirm just prior to Board adoption of this policy:]** \$10,000. The District has adopted a lower threshold for micro-purchases of ~~\$5,000~~.
- Public works projects that qualify as micro-purchases may still be subject to wage rate requirements established by the California Department of Industrial Relations (DIR) or, in the case of federally funded construction projects, the Davis-Bacon Act (see section on Public Works Projects and Federal Funding Requirements).

Deleted: 2,500

B. Small Purchases (\$2,501 - \$30,000) (2 CFR §200.320(b))

Small purchase procedures are relatively simple and informal procurement methods for securing services, supplies or other property that do not cost more than the simplified acquisition threshold as set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 and periodically adjusted for inflation. Small purchases require submission of a purchase requisition.

- If small purchase procedures are used, price or rate quotations shall be obtained from at least three (3) qualified sources, evidence of which must be submitted with the purchase requisition. Exceptions include items where there are clearly and legitimately only one or two sources capable of supplying the item, or in the event of a documented emergency.
- As of the date of this policy, the federal simplified acquisition threshold is **[note: confirm just prior to Board adoption of this policy:]** \$250,000; however, to maintain effective internal controls and mitigate audit risk the District has adopted a lower small purchase threshold of \$30,000 for purchases already approved in the annual budget.

C. Sealed Bids (> \$30,000) (2 CFR §200.320(c))

Competitive sealed bids are publicly solicited and a firm fixed-price contract is awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the Request for Proposals (RFP) or Invitation for Bids (IFB), is the lowest in price. Upon obtaining bids, purchases greater than \$30,000 must be approved by the Board of Directors prior to issuing a purchase order.

According to 2 CFR §200.320(c)(1), this method is appropriate when the following conditions exist:

1. A complete, adequate and realistic specification or purchase description is available, which can exist for some construction projects, vehicle or inventory purchases.
2. Two or more responsible bidders are willing and able to compete effectively for the business.
3. The procurement lends itself to a firm fixed-price contract (lump sum or unit) and the selection of the successful bidder can be made principally on the basis of price.

If the sealed bid method is used, the following conditions, as set down in 2 CFR §200.320(c)(2) apply:

1. The RFP (or IFB) must be publicly advertised.
2. Bids must be solicited from an adequate number of known suppliers, and bidders must be provided a sufficient response time prior to the date set for opening bids.
3. The RFP (or IFB), which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond.

4. All bids will be publicly opened at the time and place prescribed in the RFP (or IFB).
5. A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually employed.
6. Bids may be rejected if there is a sound documented reason. Consultation with the District Manager and/or District Counsel may be appropriate prior to rejecting a bid.

D. Competitive Proposals (> \$30,000) (2 CFR §200.320(d))

This procurement method requires formal solicitation, includes fixed-price or cost-reimbursement contracts, and is used when sealed bids are not appropriate. The solicitation will usually include evaluative factors other than price and these factors should be spelled out in the solicitation document, as well as how the factors will be weighted in final consideration of bids. Upon obtaining bids, purchases greater than \$30,000 must be approved by the Board of Directors prior to issuing a purchase order.

If this method is used, the following requirements apply:

1. RFPs must be publicized and identify all evaluation factors and their relative importance.
2. Proposals must be solicited from an adequate number of qualified sources so as to ensure competition.
3. The methods for conducting technical evaluations of the proposals received and for selecting recipients may include, but are not limited to, oral interviews, reference checks, past performance, availability to perform work, and appropriate certifications as determined by project scope.
4. Written procedures are required for all RFP technical evaluations and must be retained in the event of a single audit.
5. Any response that takes exception to any mandatory items in this proposal process may be rejected and not considered.
6. Contracts must be awarded to the responsible firm whose proposal is most advantageous to the District, with price and other qualitative factors considered.

A review and selection committee may be appointed to evaluate and rank the proposals and may be comprised as follows:

- The committee may include the District Manager or designee, appropriate staff members, qualified members from another agency, or qualified and unbiased members of the professional discipline being considered.

- Board and/or committee member(s) may participate if so authorized at the time of RFP approval.
- The number of consultants to be interviewed shall be at the District Manager’s or designee’s discretion unless the Board provides specific direction.

Architectural and Engineering Services

Competitive proposal procedures *must* be used for qualifications-based procurement of architectural, landscape architectural, engineering, environmental, land surveying, and construction management services (collectively “A/E” professional services) whereby competitors’ qualifications are evaluated through a Request for Qualifications (RFQ) and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. This qualification method, where price may not be used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services, even when A/E firms are a potential source to perform the proposed service.

Inventory Purchases

[Note: staff to review and provide feedback:] Inventory purchases must be made through a pre-qualified supplier with the exception of sole source inventory items. Pre-qualified suppliers are those who have submitted a competitive price quote on 100 of the most frequently purchased inventory items and agree to honor that pricing for a minimum of one year, unless extenuating circumstances arise. Pre-qualified suppliers will be reviewed annually. Inventory orders, regardless of price, require a purchase requisition in order to receive items in the inventory system.

Commented [SH12]: The District has a vendor interest listing. Vendors that are interested in inventory bids are to contact us. Then on a re-order basis each order is sent out for competitive bids.

It is not uncommon for it to be awarded to multiple vendors, as some don’t carry all the parts. But sometimes a vendor would win 28 or the 30 parts, and the other 2 were insignificant to where we award to the one vendor since it saves staff time in processing one.

E. Noncompetitive Negotiation (2 CFR §200.320(d))

Also known as sole-source procurement, this procurement method may be appropriate only when one or more of the following criteria are met:

- The item is available only from a single source. The District must document why the individual or firm it has selected has the unique capability required and documentation must be retained.
- The District Manager deems an emergency exists and determines that the public health, safety or welfare of the community would be affected if the normal solicitation procedures were followed. Emergency purchases which would otherwise require formal solicitation must be submitted to the Board of Directors for ratification at the next regular Board meeting after purchase is authorized.
- In the event federal funding is utilized, the federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the District.
- After solicitation of a number of sources, competition is deemed inadequate and no other recourse for procurement is available.

Intergovernmental Contracts

Contracts with other governmental agencies can be excluded from the competitive bidding/proposal requirements.

F. Contract Change Orders

The District Manager is authorized to execute contract change orders (CCO) for projects in progress within the following guidelines:

- The total of all CCO's may not exceed the amount approved in the budget or amended by the Board for the project.
- Each CCO must be within the Board authorized scope of work for the contract. Out-of-scope (supplemental agreements) must be separately bid or separately authorized by the Board of Directors.
- Public Works Projects must be in construction, defined as the time period between Notice to Proceed and final completion/beneficial occupancy.

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4. CONTRACTING

A. General Services

The purchase of general services (other than professional services, as defined below) under a service contract or agreement requires the signature of the Board President or District Manager and should not exceed a two-year term.

B. Professional Services

Professional services are those services requiring a high degree of professional, educational or technical skill such as services rendered by architects, landscape architects, engineers, environmental engineers, environmental planners, surveyors, construction managers, economists, bond counsel, bond underwriters, financial advisors, appraisers, actuaries, attorneys, auditors, software service providers, web designers, and others. **[Note: The following is optional. Does the District want language like this?]** Professional services may be procured for three-year contracts, with an option to extend into one or two additional years as long as contract performance is satisfactory and pricing remains competitive. Longer contracts preclude competitive procurement standards and are discouraged on that basis. Professional services associated with a public works project may be approved for a multi-year contract that coincides with the term of the project at the discretion of the Board of Directors. In instances where a shorter term contract could result in significant disruption of District operations, such as legal services or information/communication technology services, the District may approve an extended contract.

The District Manager or management designee is authorized to negotiate a contract detailing scope of work and fair and reasonable compensation with the firm whose competitive proposal ranked highest during the evaluative process. If the District is unable to negotiate a satisfactory contract with the highest ranked firm, negotiations may be formally terminated and the firm dismissed from further consideration. Negotiations may continue with subsequently ranked firms until an agreement is reached. The substance of previous negotiations will not be divulged by District staff in discussions with subsequently ranked firms, and the submittals of unsuccessful candidates will be considered confidential. If no agreement is reached the District may consider republicizing the procurement. Choosing less than qualified consultants is not in the public interest and not consistent with the obligation of the District to protect the health, safety and welfare of the public.

When engaging professional services for a federally funded non-construction project, provision 2 CFR §200.308(c)(1)(vi) states, “Unless described in the application and funded in the approved federal awards, the subawarding, transferring or contracting out of any work under a federal award” requires prior approval from the granting agency.

Commented [SH13]: I think we should keep something like this, since we have things like the audit that is a 3-5 year contract.

C. Public Works Projects

Prevailing Wage Requirements:

Public works projects are defined, for prevailing wage purposes, in California Labor Code Section 1720 to include construction (including design, inspection or surveying), alteration, demolition, installation, or repair, paid for in whole or in part out of public funds. No contractors or subcontractors may be awarded a contract for a public works project unless registered with the California Department of Industrial Relations' Public Works Contractor Registration Program.

Commented [SH14]: The sections beyond this I think are more James/Ricks expertise

District Responsibilities:

1. Register project with the Department of Industrial Relations (DIR) by filing a PWC-100 form within 5 days of the award of the contract (failure to provide timely submission can jeopardize state funding)
2. Obtain prevailing wage rates from DIR
3. Notify potential contractors that they must register with DIR prior to bidding
4. Certify proof of contractor registration before awarding bid
5. Require contractors to post jobsite notices on public works requirements
6. Ensure contractor is paying prevailing wages in compliance with public works laws
7. Report any suspected violations to the Labor Commissioner

Contractor Responsibilities:

1. Register with the Department of Industrial Relations (DIR) as a public works contractor
2. Pay prevailing wages
3. Follow apprenticeship requirements
4. Maintain and submit certified payroll records

A small project exemption exists for maintenance projects that do not exceed \$15,000 or new construction, demolition, alteration or repair projects that are less than \$25,000. Contractors who work exclusively on small projects that qualify for exemption are not required to register as a public works contractor or file electronic certified payroll reports but are still required to maintain certified payroll records and provide them to the Labor Commissioner's office and the District on request. The District does not need to file a PWC-100 form for exempt projects.

Surety (Bonding) Requirements:

For public works construction contracts or subcontracts the District has established the following sureties: **[note: staff to review & provide feedback:]**

1. A bid guarantee from each bidder equivalent to ten percent (10%) of the bid price. The bid guarantee must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.

2. A faithful performance bond on the part of the contractor for no less than 100 percent (100%) of the contract amount. A performance bond is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
3. Required for contracts and subcontracts exceeding \$30,000: A payment bond on the part of the contractor for no less than 100 percent (100%) of the contract amount. A payment bond is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract. The District must approve the bond before work begins and is not allowed to release payment to the contractor without an approved payment bond. This threshold is less than the District's threshold for sealed bids or competitive proposals but exceeds the threshold for small purchases requiring competitive pricing. A design professional is not considered a direct contractor in this instance and is therefore exempt from the bond requirement.
4. A maintenance bond on the part of the contractor for no less than ten percent (10%) of the contract amount or \$3,000, whichever is greater, to remain in effect for a minimum of two years after the completion and acceptance of work performed under the contract. A maintenance bond protects the District against defects and faults in materials, workmanship, and design.

Federally funded contracts exceeding \$250,000 require, at a minimum, the bonding requirements listed under items 1, 2, and 3 (2 CFR §200.325).

6. FEDERAL FUNDING REQUIREMENTS

A. Contract Provisions (Federal Funding) (2 CFR §200.326)

All contracts using federal funding shall comply with the following provisions as applicable:

1. Contracts for more than the federally mandated simplified acquisition threshold (currently set at \$250,000), must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
2. All contracts in excess of \$10,000 must address termination for cause and for convenience by the District including the manner by which it will be effected and the basis for settlement.
3. Equal Employment Opportunity: All contracts, when funded in whole or partly by monies derived from the federal government (either directly or indirectly), must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."
4. Davis-Bacon Act: Construction contracts in excess of \$2,000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148). Contractors must be required to pay laborers and mechanics wages not less than the prevailing wage as determined by the Secretary of Labor and must be required to pay wages not less than once a week. Each bid solicitation published by the District must contain the current prevailing wage determination. Any award of the contract must be conditioned on contractor's acceptance of that wage determination and suspected or reported violations of this act shall be immediately reported to the Federal awarding agency. *[Projects controlled by the District must comply with State of California Department of Industrial Relations (DIR) requirements, including contractor and project registration, certified payroll reporting, and payment of California's prevailing wage rates, if they exceed corresponding Davis-Bacon rates, regardless of federal funding provisions].*
5. Copeland "Anti-Kickback" Act: Applies to construction contracts in excess of \$2,000. It prohibits kickbacks in construction contracts funded with Federal monies. Contractors and subcontractors or subrecipients shall be prohibited from inducing any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled and suspected or reported violations shall be immediately reported to the Federal awarding agency.
6. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708): Where applicable, all contracts awarded by the District in excess of \$2,000 for construction contracts and in excess of \$2,500 for other contracts that involve the employment of mechanics or laborers shall include a provision for compliance with sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 USC §§327-333), as

supplemented by the Department of Labor regulations (29 CFR Part 5). Under §102 of the act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1-1/2 times the basic rate of pay for all hours worked in excess of 40 hours in the workweek. Section 107 of the act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions that are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies, material or articles ordinarily available on the open market or to contracts for transportation or transmission of intelligence.

7. Rights to Inventions Made Under a Contract or Agreement: If the federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements.”
8. Clean Air Act & Federal Water Pollution Control Act: Contracts and sub grants in excess of \$150,000 must contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act and the Federal Water Pollution Control Act, as amended. Suspected or reported violations must be reported to the federal awarding agency and the regional office of the Environmental Protection Agency (EPA).
9. Energy Policy and Conservation Act: Mandatory standards and policies relating to energy efficiency that are contained in a state energy conservation plan issued in compliance with the Energy Policy and Conservation Act must be followed as appropriate.
10. Debarment and Suspension: A contract award must not be made to parties listed on the System for Award Management’s (SAM) “List of Parties Excluded from Federal Procurement or Non-Procurement Programs,” in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 and 12689 “Debarment and Suspension.” SAM exclusions contain the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
11. Byrd Anti-Lobbying Amendment: Contractors that apply or bid for an award of \$100,000 or more must certify that they will not and have not used federal funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award. Contractors must also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award.
12. Procurement of Recovered Materials (2 CFR §200.322): A non-federal entity that is a state agency, or agency of a political subdivision of a state, and its contractors must

comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in the guidelines of the EPA at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase of the items exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000. Other requirements include procuring solid waste management services in a manner that maximizes energy and resource recovery and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

B. Federal Awarding Agency or Pass-Through Entity Review (>\$250,000) (2 CFR §200.324)

1. The District shall make available, upon request of the federal awarding agency or pass-through entity, technical specifications on proposed procurements where the federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the District desires to have the review accomplished after a solicitation has been developed, the federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.
2. The District will make available upon request, for the federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:
 - a. Procurement procedures or operations fails to comply with the procurement standards in this part
 - b. The procurement is expected to exceed the simplified acquisition threshold (\$250,000) and is to be awarded without competition or only one bid or offer is received in response to a solicitation
 - c. The procurement, which is expected to exceed the simplified acquisition threshold, specifies a "brand name" product
 - d. The proposed contract is more than the simplified acquisition threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement
 - e. A proposed contract modification changes the scope of a contract or increases the contract amount by more than the simplified acquisition threshold
3. The District is exempt from the pre-procurement review in item 2 of this section if the federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of this part.

4. The District may request that its procurement system be reviewed by the federal awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third-party contracts are awarded on a regular basis.
5. The District may self-certify its procurement system. Such self-certification must not limit the federal awarding agency's right to survey the system. Under a self-certification procedure, the federal awarding agency may rely on written assurances from the District that it is complying with these standards. The District must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

C. Time and Materials Contracts (2 CFR §200.318(j))

A time and materials contract may not be used for a federally funded procurement unless 1) the contract includes a not-to-exceed price that the contractor exceeds at its own risk; and 2) the Board has determined that no other type of contract is suitable and the reasons for unsuitability are well documented. A time and materials type contract refers to a contract whose cost is the sum of the actual cost of materials plus direct labor hours charged at a fixed hourly rate that include wages, administrative expenses and profit. Because the contract price is likely open-ended, this type of contract provides no positive profit incentive for cost control or labor efficiency. A higher degree of oversight is required in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

D. Contract Cost and Price (2 CFR §200.323)

A price analysis is the process of comparing total price among comparable offers, whereas a cost analysis is the process of reviewing individual elements of cost that make up the overall price. If it is requested that costs are broken out in the submission of bid or proposal, each of the elements must be analyzed to determine whether it is fair, reasonable and beneficial to the overall deliverable. As part of the selection process, some form of cost or price analysis must be performed and documented in connection with every procurement in excess of the District's small purchase threshold (\$100,000), including contract modifications.

- The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, independent estimates shall be made prior to receiving bids and proposals.
- For federally funded contracts, profit shall be negotiated as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work
- Costs or prices based on estimated costs for contracts under the federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated

prices would be allowable for the District under Subpart E- Cost Principles of Part 200-Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

- The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

E. Contracting with Small and Minority Business, Women’s Business Enterprises, and Labor Surplus Area Firms (2 CFR §200.321)

All necessary affirmative steps will be taken to assure that minority business, women’s business enterprises, and labor surplus area firms are used when possible.

Affirmative steps include:

1. Placing qualified small and minority businesses and women’s business enterprises on solicitation lists.
2. Assuring that small and minority businesses and women’s business enterprises are solicited whenever they are potential sources.
3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women’s business enterprises.
4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses and women’s business enterprises.
5. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.
6. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.