



MST Procurement Policy

Adopted July 11, 2022

DESCRIPTION

This Policy covers procurement activities of the Monterey-Salinas Transit District (District) in compliance with governing federal, state and local laws, and rules and regulations.

PURPOSE

The purpose of this Policy is to ensure the District's procurement activities are conducted in accordance with applicable laws and Federal Transit Administration (FTA) Circular(s). Should the District's policy conflict with FTA compliance or federal law, FTA compliance and/or federal law shall take precedence. The General Manager/CEO shall establish administrative procedures to ensure proper review and budgetary monitoring for all procurement activities.

PERSONS AFFECTED

The persons affected by this policy are all Board members, employees, and independent consultants and contractors.

APPROVALS

Depending on the amount or type of procurement or purchase, the required approvals may be at the supervisor, department head, General Manager/CEO, and/or Board of Directors level.

REGULATORY FRAMEWORK

FTA Procurement Regulations.

Brooks Act Procurement.

MST Transit Act, California Public Utilities Code section 106000 et seq.

Public Contract Code.

District Policies.

TERMS AND DEFINITIONS

“Bid” means the document conveying an offer from a party desiring to provide or procure goods or services in response to an Invitation to Bid.

“Bidder” is the general term for an entity or individual that submits a response to a solicitation. May be used interchangeably with Proposer or Offeror.

“Best Value” means the overall combination of quality, price, and other elements of a proposal that when considered together and in response to the requirements described in the solicitation documents, provides the greatest overall benefit to the District. In a qualitative evaluation, a Best Value analysis may necessitate award to other than the proposer who receives the most points. For example, a Best Value award may be based on determining the firm with the lowest cost per qualitative point. If a Best Value approach is utilized, that approach shall be specifically stated in the solicitation.

“Cardinal Change” means a major deviation from the original purpose of the work or the intended method of achievement, or a revision of contract work so extensive, significant, or cumulative that, in effect, the contractor is required to perform very different work from that described in the original contract. (FTA Circular 4220.1F, Ch.I.1.5.c.)

“Competitive Negotiation” means a procurement process used by the District in lieu of a competitive sealed bid process when conditions are not appropriate for the use of sealed bids, and that permits the consideration of price, technical experience, past performance, management, or other factors in selecting the most cost-effective proposal for the manufacture and delivery of specified goods, rolling stock, or equipment.

“Debar or Debarment” means an action taken by the District to exclude a contractor, service provider or provider of goods or rolling stock, from any of the following: bidding or proposing on a District contract; being awarded a District contract; or performing work on a District contract for a defined period of time. A contractor or subcontractor so excluded is “debarred.”

“Goods” means the purchase of materials, supplies, and equipment, including rolling stock.

“Independent Cost Estimate (ICE)” means the cost or price analysis performed by the requesting District department in connection with every procurement action, including contract modifications. Ideally, the ICE should be prepared prior to issuance of solicitation(s). At the very least, it needs to be prepared and in possession of District staff prior to receipt of financial bids or proposals and retained per retention schedule.

“Invitation For Bid (IFB)” means a procurement done by sealed bid.

“Joint Procurement” is a method of contracting in which two or more purchasers agree from the outset to use a Sole Source solicitation and enter into a Sole Source contract with a vendor.

“Micro-Purchase” means purchases of ten thousand dollars (\$10,000) or less.

“Piggybacking” is the post-award use of a contractual document/process that allows someone or another public agency who was not contemplated in the original procurement to purchase the same supplies/equipment/services through that original document/process.

“Request For Proposals (RFP)” means a formal competitive procurement method that is appropriate when:

- 1) performance or functional Specifications are utilized;
- 2) there are an uncertain number of sources;
- 3) price alone is not determinative, or deemed to be a secondary factor in consideration of award; and
- 4) discussions with potential vendors are expected. (FTA Circular 4220.1F, Ch. VI. 3.d.(1)(d).)

“Request For Qualifications (RFQ)” (a.k.a. Brooks Act Procurement, 40 U.S.C. §§ 1101-1104) means a formal method for procurements of two thousand dollars (\$2,000) or more that are limited to professional Architectural/Engineering (A/E) services, and are also for program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying and mapping related services. The nature of the work to be performed and its relationship to construction, not the nature of the prospective contractor, determine whether qualifications-based procurement procedures may be used as described above. (FTA Circular 4220.1F, Ch. VI.3.f.)

“Rolling Stock” means transit vehicles such as buses, vans, cars, railcars, locomotives, trolley cars and buses, and ferry boats, as well as vehicles used for support services. (49 CFR 661.3)

“Small Purchase” means purchases over ten thousand dollars (\$10,000) but not more than one hundred thousand dollars (\$100,000). (2 CFR, Part 200.320)

“Sole Source” means there is only one known person or entity that can provide the contractual services required.

“Specifications” describes the material, product, or service being purchased and sets forth the minimum essential characteristics to meet the District’s needs. They must be of sufficient detail so that suppliers are able to submit a valid Bid/proposal that is within the expected range of the ICE. Types of Specifications include design and performance.

“Vendor Performance Management (VPM)” means the District’s responsiveness and responsibility for monitoring and analyzing the reliability, quality and performance of the District’s Vendors. It allows the District to help ensure contract compliance and, in severe cases, to debar a Vendor from doing further work with the District.

POLICY PROVISIONS

A. Policy Goals

1. Buy America: Federally-funded procurements are primarily governed by FTA's Buy America requirements. (49 CFR Part 661). Projects with multiple Department of Transportation (DOT) funding sources require careful evaluation as the applicable policies may differ.
2. Disadvantaged Business Enterprise Participation: The District shall administer its Disadvantaged Business Enterprise (DBE) Program in accordance with DOT FTA regulations found at 49 CFR Part 26 and as authorized by the Board's DBE Policy Statement dated June 10, 2019. Formal advertisements shall explicitly state the District's commitment to using DBEs. DBE outreach may be carried out in each federally-funded procurement and, whenever practicable, procurement strategies shall be implemented pursuant to applicable laws and regulations that provide maximum opportunities for DBEs to participate in the District's DOT-assisted procurements.
3. Small and Small Local Business Enterprise Participation: The DOT's FTA Small Business Enterprise (SBE) regulations and provisions shall apply to all DOT-assisted procurements. A list of qualified Small Businesses, if available from the California Unified Certification Program (CUCP), the District's vendor database, and/or other public agency Small, Local and Emerging Business Program database shall be prepared, and such firms notified via email upon the release of a formal solicitation. The use of SBE goals, set-asides, or, in the case of non-federally funded procurements, bid preferences shall be applied on a case-by-case basis and supported by an availability analysis or other reasonable means for warranting such actions.
4. Transparency and Fairness: District procurements shall be conducted in a manner that is open, transparent, fair, and equitable to all parties.
5. Efficient and Cost-Effective: District procurements shall be conducted in an efficient and cost-effective manner.

B. Standards of Conduct

District procurement shall be conducted with impartiality and without preferential treatment. Any violation of these standards may be cause for disciplinary action, including dismissal, if appropriate.

1. Prohibitions

No District Director, officer, employee, or agent shall:

- a. Release to an individual, entity, or its representative any knowledge such person may possess or have acquired in any way concerning any proposed

or actual procurement that would provide an unfair competitive advantage to any potential or actual Bidder.

- b. Make any commitment or promise relating to the award of a contract or any representation that could be construed as such a commitment. Under no circumstance shall any business representative be advised that an attempt will be made to influence preferential treatment in the award of a contract.
- c. Use their position to coerce, or give the appearance of coercing, another person, and/or provide any financial benefit to persons with whom they have family, business, or financial ties.
- d. Accept any gratuity for themselves, their family members, or others, either directly or indirectly, from any source that does or seeks to do business with, or has financial ties of any sort with, the District, or has personal interests that may be affected by the performance, or non-performance, of the official duties of District staff.
- e. Participate in the selection, award, or administration of a contract if a conflict of interest, real or apparent, exists.
- f. Accept any offer of employment or fees for services from a contractor for one year following their employment with the District if the officer or employee, during the year immediately preceding termination of employment, participated personally and substantially in the award of contracts or the issuance of change orders with a cumulative value of twenty-five thousand dollars \$25,000 or more to the contractor, its parent, or subsidiary.

2. Duty to Disclose

District purchasing agents 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. In cases where there may be such conflicts of interest, employees shall report such conflicts in writing to the General Manager/CEO.

3. Conflicts of Interest

The District's Conflict of Interest Code requires Directors and certain designated employees to disclose economic interests and prohibits them from participating in decisions that may have an effect on their financial interests. The terms and requirements of the Conflict of Interest Code are incorporated herein by reference.

No person shall participate in procedures, tasks, or decisions relative to initiation, award, or administration of a contract if a conflict of interest, real or apparent, exists. Such a conflict of interest arises when any of the following has a financial

or other interest in an entity that participates in a District bidding process or is selected for a contract award involving:

- a. The Director, officer, employee, or agent;
- b. Immediate family of a., above;
- c. A business associate of a. or b., above; or
- d. An organization that employs, or is about to employ, a current District employee.

The standards governing the determination as to whether such an interest exists are set forth in Government Code section 1090 et. seq., as may be amended.

4. Gratuities and Contingent Fees

No District Director, officer, employee or agent shall knowingly solicit, accept, or agree to accept gratuities, favors, or anything of more than a nominal monetary value in connection with actual or potential procurement and contracting activities. Under this policy, the term "nominal monetary value" shall be defined as a value of fifty dollars (\$50) or less.

5. Confidential Information

No District Director, officer, employee or agent involved in purchasing shall use confidential information for their actual, anticipated, or apparent personal gain, or for the actual, anticipated, or apparent personal gain of any person's immediate family. "Confidential Information" is defined as any proprietary, privileged, or nonpublic information coming to the employee's attention as a result of their employment, the knowledge of which makes financial gain possible.

C. Procurement Standards

District Procurement Standards are intended to ensure all federally and non-federally-funded procurements meet the minimum basic requirements outlined in Appendix A of this Policy for the following types of procurements:

- Materials, Supplies, and Equipment
- Professional Services
- Construction Services (including repairs or remodeling of District facilities)
- Architectural and Engineering Services

1. Informal Procurements Not Requiring Competitive Bidding

To the extent practicable, the District shall obtain quotations, which permit prices and terms to be compared, for expected expenditures for the purchase of

supplies, equipment, or materials in accord with applicable federal and state laws.

2. Competitive Bidding

The District shall formally advertise and publicly solicit the submission of sealed bids or proposals, on a competitive basis, for contracts for the purchase of materials, supplies, and equipment, services, or the construction of transit facilities in accord with applicable federal and state laws.

The procurement documents shall be drafted so as to foster competition and the participation of DBE, SBE, MSBE and SLBE utilization. The DBE Liaison Officer shall be notified of the existence and the general parameters of the project. Procurement documents must identify all requirements that potential bidders or proposers must fulfill, fully define the scope of work, products, materials or services, and factors/criteria to be used in evaluating bids and proposals.

The District may contract upon the terms and conditions the District finds in its best interest for the procurement of engineering, project management, and contract management services. The purchase of supplies, equipment and materials shall be awarded to the lowest responsible bidder or, in the District's discretion, the responsible bidder that provides the Best Value as determined by the District.

3. Negotiated Procurement of Rolling Stock and Other Technology

- a. Notwithstanding the Procurement Standards outlined in Appendix A of this Policy, the procurement of computers, telecommunications equipment, fare collection equipment, radio and microwave equipment, and other related electronic equipment and apparatus used in transit operations, and buses may be made using competitive negotiations in accordance with California Public Contract Code Sections 20216 and 20217.
- b. As an FTA grant recipient, the District shall require and include 49 CFR Part 26 procedures in all federally-funded contract actions.
- c. The Board of Directors may direct the purchase by competitive negotiation upon a finding by two-thirds vote of all members of the Board that the purchase of the above-described items by competitive sealed bid does not constitute a method of procurement adequate for the District's needs.
- d. Procurement under this section will be by formal advertisement requesting proposals and take into consideration any established DBE participation goals.
- e. Joint procurements or piggybacking may be used in accordance with FTA regulations.

- f. In accordance with the Government Code section 12410.6, as may be amended, audit contracts for Certified Public Accountants (CPAs) shall be competitively bid at least every five (5) years, or sooner as desired by the Board. Staff will present the process and the results of its screening and selection process of the external auditor to the Board Finance and Audit Committee and any actions relating to the annual renewal of audit contracts requiring Board approval.
- g. Should the then-independent audit firm of CPAs for the District wish to bid on the subsequent five-year audit contract, it will be necessary for them to specifically identify how they will address the requirements under State of California Government Code section 12410.6(b) for change out of the lead partner and/or coordinating/review partner in the timeframe allowed, in their RFP response to the District.

4. Cooperative Purchasing Agreements

To foster greater economy and efficiency, the District may participate in cooperative purchase agreements for the procurement of goods, supplies, services, materials, or equipment, where the administering agency has made its purchase through a competitive bid process. As the recipient of state and federal capital grants and operating assistance grants, which may require the inclusion of certain contractual provisions, the District shall ensure cooperative purchasing agreements contain the required provisions.

5. Piggybacking

The District may enter into purchase contracts with a supplier, vendor, or contractor for the purchase of goods, supplies, services, materials, or equipment, the pricing and terms of which have been previously established by another public agency, provided the District Board determines such purchase is in the District's best interest by making the following findings:

- a. The other agency used a solicitation method substantially similar to the method required by this Policy;
- b. The supplier, vendor, or contractor authorizes the District to utilize the terms, conditions, and prices of the underlying contract;
- c. The Specifications of the goods, supplies, services, materials, or equipment required by the District are not materially different from those specified in the other agency's solicitation; and
- d. The use of the Piggyback contract provides an overall value to the District versus the District performing its own solicitation.

The District shall enter into a separate contract with the supplier, vendor, or contractor and incorporate by reference the terms, conditions, and prices of the original solicitation. The contract shall be approved by the same authorization procedures set forth for all other District procurements.

6. Procurement by Non-Competitive Proposals (Sole Source)

- a. Sole Source procurement is utilized when the award of a contract is infeasible and the goods or services are available from only one source for a required proprietary need of the District, for compatibility purposes, or for reasons of continuity with previously-delivered services or products. A Sole Source procurement is accomplished through solicitation or acceptance of a proposal from a single source. A contract amendment or change order or subsequent maintenance agreement that is not within the scope of the original contract is considered a Sole Source procurement.
- b. Sole Source procurement is a limited exception to the procurement process and may be used only where the award of a contract is infeasible or impracticable under competitive procedures and at least one of the following circumstances applies, supported by written justification and documentation. The item is available only from a single responsible source and:
 - i. The product or services provide a unique capability or availability (unique or innovative concept, patents or restricted data rights, substantial duplication costs, or unacceptable delay);
 - ii. There exists an unusual and urgent need for services (not including delays in planning or in initiating the procurement) that will not permit the delay accompanying competitive solicitation;
 - iii. If, after solicitation of a number of resources, competition is determined inadequate. This determination may be made by the Purchasing Manager based upon industry research, and the formal or informal solicitation of potential sources; or
 - iv. The procurement is FTA funded, and Sole Source procurement is authorized under FTA Third Party Contracting Guidelines (FTA C. 4220 1F), and/or the use of a specific firm is contained within a grant.
- c. In the appropriate case, where supported by case law or statutory authority, District staff may recommend to the General Manager/CEO the authorization of this exception to the District's competitive bidding requirements.
- d. When evaluating vendors for a formal competitive process, the District shall use "Best Efforts" to include an outside evaluation member to assist with scoring solicitations.

6. Unsolicited Proposals

The District may enter into a third-party contract based on an Unsolicited Proposal, as defined in Chapter I of FTA 4220.1F, when authorized by applicable state or local law or regulation. Receipt of an Unsolicited Proposal does not, by itself, justify a contract award without providing for full and open competition. To satisfy the requirement for full and open competition, prior to entering into a contract resulting from an Unsolicited Proposal, the District shall:

- a. Publicize its receipt of the Unsolicited Proposal;
- b. Publicize an adequate description of the property or services offered without improperly disclosing proprietary information or the originality of thought or innovativeness of the property or services sought;
- c. Publicize its interest in acquiring the property or services described in the proposal;
- d. Provide an adequate opportunity for interested parties to comment or submit competing proposals; and
- e. Publicize its intention to award a contract based on the Unsolicited Proposal or another proposal submitted in response to the publication.

If it is impossible to describe the property or services offered without revealing proprietary information or disclosing the originality of thought or innovativeness of the property or services sought, the District may make a Sole Source award to the offeror. A Sole Source award may not be based solely on the unique capability of the offeror to provide the specific property or services proposed.

AUTHORITY

A. Board of Directors Authority

1. Establish general policy
2. Award Contracts

Except as indicated below, the Board of Directors shall have the sole authority to approve the award of any contract where the cost is one hundred thousand dollars (\$100,000) or more per contract year for goods, equipment, materials, architect and engineering (A&E), revenue and professional services, or construction. At the time of approval, Board members shall report any ex parte communications with a bidder, or representative of a bidder, during the procurement process. Copies of said written communication shall be provided to the District Clerk to the Board and made part of the record of the meeting. The following items are exempted from Board approval:

- a. fuel and/or parts for revenue vehicles exceeding one hundred thousand dollars (\$100,000) either in aggregate or individually that impact delivery of service;
- b. emergency procurements up to two hundred fifty thousand dollars (\$250,000) to avoid impacts to the health, welfare, or safety of an employee or the public;* and
- c. any procurement action taken to prevent a violation of law or a fine by another political jurisdiction.¹

3. Assess Vendor Performance and Debarment

The District Project Manager, or individual assigned as the point of contact for the contract, shall communicate with the vendor to discuss and agree on specific vendor performance criteria upon which to be rated.

- a. Procurement staff will incorporate into the contract assessment criteria matching the scope of services, tasks, key performance indicators, or other contractual deliverables. Such information may be in the form of narrative, quantitative, or qualitative information.
- b. Corrective action(s) will be documented and followed up on, as a result of the vendor performance communications and/or meeting(s). Failure of a vendor to adequately respond to corrective action(s) may result in any of the following actions:
 - i. Anticipatory breach of contract notice; or
 - ii. Termination of the contract or purchase order.
- c. Vendors may be debarred from doing business at any time, and at the District's sole discretion, when a vendor is found to be in debarment through the Federal Procurement System, SAMS (System for Award Management).
- d. Vendors may be debarred from doing business at any time, and at the District's sole discretion, when a vendor is found to be out of compliance through registration with the Department of Industrial Relations (DIR) and/or found to be out of compliance under the California State Licensing Board.

4. Amend Contracts

¹ Any procurement of this nature will come to the Board for ratification at the earliest possible date.

The Board of Directors shall approve all amendments to Board-approved contracts in excess of one hundred thousand dollars (\$100,000) of the original contract value, or any Cardinal Change in the terms and conditions of the original contract.

5. Assign Contracts

The Board of Directors shall approve the assignment of any contract that was originally approved by the Board.

6. Hear appeals from contractors or potential suppliers.

B. General Manager/CEO's Authority

1. Ensure Board guidance is implemented

2. Solicit and Award Contracts

With the exception of the items identified in the Section (above) of this Policy (Board of Directors Approval), the General Manager/CEO has the authority to approve all formal solicitations and the award of any contract where the services, materials, or supplies are in the approved annual District Operating or Capital Budget or as funds may become available. The General Manager's authority is set by the Board, and the General Manager/CEO has the authority to approve all informal solicitations under that threshold without Board approval. Approval of contracts by the General Manager/CEO less than the established threshold may be reported in the monthly financial report to the Board.

The General Manager/CEO, at their discretion, may forward any contract within their authority outlined above that they deem to be of significant importance to the Board of Directors for action.

3. The General Manager/CEO has the authority to execute contract extensions tied to options previously addressed in the solicitation, provided that such extension(s) is/are within the General Manager/CEO's authority and subject to all of the following conditions:
- a. There is a continued need for the services performed under the contract;
 - b. Sufficient funds are available in the Board-approved Budget;
 - c. The contractor's performance has been satisfactory; and
 - d. The General Manager/CEO, Assistant General Manager, and the respective Executive staff member agree the contract extension or the exercise of an option to extend the contract is in the best operational and financial interest of the District.

4. The General Manager/CEO has the authority to enter into agreements including, but not limited to, agreements for professional, technical, architectural, engineering, construction, and construction management services; agreements for repair or remodeling of District facilities; and lease or license agreements for District use of real property, facilities, equipment and software, provided that the General Manager/CEO or their designee first determines that the work or subject matter of the agreement cannot satisfactorily be performed by District. The General Manager/CEO also has the authority to enter into leases, including revenue leases, to third parties of District property provided the annual amount of the lease does not exceed one hundred thousand dollars (\$100,000) and the term of the lease does not exceed five (5) years. Any leases entered into by the General Manager/CEO that exceed their authority shall be submitted to the Board for approval.

C. Miscellaneous

1. Electronic Signatures: The use of DocuSign, AdobeSign, or similar e-signatures on purchase orders, contracts, MOUs, agreements, etc. is authorized if the purchase order is within the delegated signature authority or if the District Board has authorized the contract or purchase.
2. Periodic Review: This Policy may be reviewed and amended as necessary to comply with new or changing procurement regulations.
3. Procurement Manual: This Policy necessitates the preparation of a Procurement Manual for the consistent implementation of these policies.

**APPENDIX A
Procurement Policy**

Solicitation Threshold	Signature Authority
\$100,000 to \$250,000	Board Authorized during Declared Emergency, General Manager/CEO
All Amounts Above \$100,000 per Contract or Contract Year	Board Authorized, General Manager/CEO
Above \$25,000	General Manager/CEO
Below \$25,000	Assistant General Manager, Chief Operating Officer
Below \$10,000	Delegated MST Staff

Solicitation Requirements Procurement of Materials, Supplies and Equipment, and Professional Services (Non-Construction)					
Amount Non-Federal Funds	Amount Federal Funds	Procurement Requirements	DBE/SLBE (SBE-Fed)	Basis for Award	Secured By
\$10,000 or less	\$10,000 or less	Informal. Three (3) price quotes to extent practicable.		For federally-funded projects, determine and document that the price is fair and reasonable and how this determination was derived.	PO
\$10,000 to \$100,000	\$10,000 to \$100,000	Informal. To the extent practicable, at least 3 quotes required. Fair and reasonable price determination must be made for each procurement.	All opportunities shall be reviewed with the Civil Rights Officer for DBE, SBE, MSBE, or SLBE utilization per MST Board DBE Policy.	Lowest price if an Invitation for Bids (IFB) or Request for Proposal/Quotations (RFP/RFQ) was employed. For federally-funded projects, determine and document that the price is fair and reasonable and how this determination was derived.	PO and/or Written Contract
\$100,000 or more	\$100,000 or more	Formal advertisement: IFB or RFP. Sealed bids. Fair and reasonable	Solicitations shall be reviewed with the Civil Rights Officer for DBE, SBE, MSBE, or SLBE	Lowest responsible bidder or in District's discretion, responsible bidder that provides the Best Value.	Written Contract

		price determination must be made for each procurement.	utilization per MST Board DBE Policy.		
\$250,000 or more	\$250,000 or more	Emergency declaration: Invitation for Bids or Request for Proposals. Sealed bids. Fair and reasonable price determination must be made for each procurement.	Solicitations shall be reviewed with the Civil Rights Officer for DBE, SBE, MSBE, or SLBE utilization per MST Board DBE Policy.	Lowest responsible bidder or in the District's discretion, responsible bidder that provides Best Value.	Written Contract

Procurement of Architectural and Engineering Services (Including Construction Management Services, Repair or Remodeling of District Facilities)				
Amount Federal and Non-Federal Funds	Procurement Requirements	DBE/SLBE	Basis for Award	Secured By
\$10,000 - \$100,000	Minimum of three (3) price quotes. A fair and reasonable price determination must be made for each procurement.	Requests for quotes shall be reviewed by the Civil Rights Officer.	Negotiations are conducted with the most qualified offeror. Only after failing to agree with the most qualified offeror will negotiations with successive offerors in descending order be conducted until a contract award can be made.	PO or written contract
\$100,000 or more	Qualifications Based – Formal RFP. A fair and reasonable price determination must be made for each procurement.	Solicitations shall be reviewed by the Civil Rights Officer. Formal advertisement for the solicitation explicitly states the District's commitment to using DBE's and SLBE's in all procurements.		Written contract