

Memorandum

Date: August 17, 2017
To: Board of Directors
From: Kellyx Nelson
Re: Request to Sole Source to cbec eco-engineering for the Butano Channel Restoration and Resiliency Project

RCD staff requests permission from the Board of Directors to proceed with developing a scope of agreement to sole source to **cbec eco-engineering** (cbec) to design and oversee construction of the Butano Channel Restoration and Resiliency Project. Staff is not yet requesting Board approval of a contract, as the scope of work and budget has not been finalized. At this point, staff is requesting permission to proceed with a sole source process. If approved, staff will seek approval from the Board of Directors to enter into agreement with cbec at a future meeting.

The project aims to restore fish passage between Pescadero Marsh and Butano Creek and provide some flooding relief for the community of Pescadero. The RCD has been awarded a NOAA Coastal Resiliency grant in the amount of \$1.4 million and \$4 million from the State of California to dredge an 8,000-foot channel through Pescadero marsh that will remove an anticipated 45,000 cubic yards of sediment and beneficially reuse the dredged material to restore 28 acres of degraded marsh. The project will enhance habitat for multiple state and federally protected species, restore access to 10.1 miles of upstream habitat for steelhead trout and coho salmon, and have socioeconomic benefits to the town of Pescadero by reducing the frequency, duration, and inundation of flooding.

The *Public Contract Bidding, Vendor and Professional Consultant Selection, and Purchasing Policy* adopted by this Board of Directors on March 20, 2014 (Appendix A) requires solicitation of formal advertised bids for expenditures exceeding \$50,000. The policy allows exceptions to standard purchasing procedures in some circumstances, including when “services are of a unique type, are of a proprietary nature, or are otherwise of such a required and specific design or construction, or are specifically necessary for purposes of maintaining cost effective system consistency, so as to be available from only one source.” Staff believes that the work proposed to be sole sourced to cbec meets each and all of these criteria. The procurement policy further states, “The basis for the sole source recommendation shall be documented in writing and approved, in advance, by the Board for purchases exceeding \$50,000.”

Due to the needs of the community and aggressive timeline of the NOAA grant, construction is planned for summer 2018. To meet that goal, staff strives to complete 60% designs by October

2017 and begin environmental review and permitting work immediately. Community interest and engagement are also an important part of this project, which will require near-term engineering involvement. To ensure success of the project, the RCD needs to contract immediately with an experienced, qualified engineering firm that is positioned to produce 60% project designs and interface with stakeholders in the next 2 months.

The RCD recommends sole sourcing to cbec due to (1) the timeline needs of the project,(2) cbec's unique qualifications, and (3) cost efficiencies. Specifically, cbec:

- developed the project concept and produced the 30% design planset that is the basis of the NOAA grant and their qualifications were submitted as part of the grant;
- is currently collecting sediment samples and doing geochemical analysis for data that will be used in the design process;
- is currently developing a 2-dimensional model for the marsh under contract with the County of San Mateo and thus has all the computational tools in hand and ready;
- authored the 2014 *Solutions to Flooding* report upon which this and other projects are based;
- is involved in other modeling efforts in the watershed;
- has experience with key stakeholders regarding this project and is already aware of key considerations for design;
- has successfully demonstrated their ability to design and oversee construction of complex restoration projects; and
- is up to date and well versed in historic and recent work in the watershed related to the project.

The amount of the sole source contract(s) for 2017-18 to complete designs, assist in permitting, develop construction bid specifications, and oversee construction for the Butano Channel Restoration and Resiliency Project is estimated in the range of \$250,000 – \$412,000. This includes \$70,000 for subcontractors.

The procurement policy states that “professional services agreements shall not be split into smaller units, nor shall contract amendments be used, for the purpose of circumvention of this Policy.” The RCD’s work addressing flooding, sediment, and ecosystem restoration in the Pescadero Marsh and its watershed has proliferated since 2012, particularly building upon the *Solutions to Flooding* report prepared by cbec in 2014. As the RCD has built on its successes and taken advantage of funds and project opportunities that have become available, the RCD has entered into multiple contracts with cbec. At no point were total funds available that were split into smaller units for the purpose of circumventing procurement policies. Nonetheless, to

ensure transparency and access to information, RCD staff wishes to list the cumulative total of contracts with cbec to date, as well as pending contractual work.

contract year	Project	Amount	Funder(s)	Procurement
2013	Solutions to Flooding	\$ 238,851	County, US Fish & Wildlife Service (USFWS), Department of Water Resources	competitive bid process
2015	Sediment Modeling	\$ 24,968	USFWS	below threshold required for bids
2015	Butano Floodplain 65 % design	\$ 113,171	Coastal Conservancy, USFWS, POST	no bid- cbec identified project and helped develop project and grant application
2016	Butano Floodplain 100 % design, permitting and bid support	\$ 33,646	Department of Water Resources	(1) below bid threshold and (2) funding came through while cbec was completing 65% designs
2016	Butano Floodplain construction oversight	\$ 35,299	Department of Water Resources	(1) below bid threshold and (2) cbec was uniquely able to oversee construction of their own designs
	Total	\$ 445,935		

Pending contracts between cbec and the RCD include:

Project	Low	High	Funder	Comments
Sediment Modeling	\$ 15,865	\$ 15,865	USFWS	below bid threshold
Butano Floodplain post-construction monitoring	\$ 20,520	\$ 53,837	Department of Water Resources	(1) pending approval of additional funds and (2) cbec is uniquely able to monitor the project they designed
Butano Channel Project	\$ 250,000	\$ 412,000	NOAA, County, State Parks	this is the request in this memo
Proposed 2017-18	\$ 286,385	\$ 481,702		

San Mateo County Resource Conservation District

**PUBLIC CONTRACT BIDDING, VENDOR AND PROFESSIONAL CONSULTANT
SELECTION, AND PURCHASING POLICY**

Adopted
March 20, 2014

The purpose of this policy is to ensure that the District obtains quality services, supplies, material and labor at the lowest possible cost, and to provide a uniform method for procurement of services and supplies. In addition, through proper documentation, conformance to this Policy will enable the District's constituents to know that their public funds are being spent responsibly, and potential vendors and contractors to know that they are being treated equitably.

I. PURCHASING AUTHORITY

There are three levels of authority for purchases: Board Approval, Executive Director Approval and Executive Director Delegated Approval. The maximum purchasing authority amounts refer to the total price of an order, including tax and/or shipping, which may include more than one item and also includes change orders and contract amendments. As used in this Policy, the term "purchasing" refers collectively to contracting or procurement of services, supplies, material or labor.

A. Board Approval for Purchases In Excess of \$50,000

If the cost for furnishing services, supplies, materials, labor, or other valuable consideration to the District will exceed Fifty Thousand Dollars (\$50,000), approval from the Board of Directors is required prior to entering into the contract.

Contracts which have been approved by the Board shall be signed by the Executive Director, or in the Executive Director's absence, his or her designee, unless the Board has directed that the President sign on behalf of the District.

B. Executive Director Approval for Purchases Not Exceeding \$50,000

The Executive Director may obtain bids without advertisement or published notice inviting bids and may authorize and execute contracts for payment for services, supplies, material, labor, or other valuable consideration for any purpose, including the new construction of any building, structure, or improvement, in an amount not exceeding \$50,000.

II. SOLICITATION OF BIDS

A. Solicitation of Formal Advertised Bids for Expenditures Exceeding \$50,000

When any expenditure is expected to exceed \$50,000, the District shall invite bids a minimum of one week prior to the time of receiving bids. Distribution may include digital

distribution networks, the District web site, a general circulation newspaper, or other means deemed appropriate. This type of formal bidding process typically includes the issuance of written plans or specifications describing the goods or services to be provided and the receipt of written bids from the vendors involved. Solicitation of formal bids from a minimum of three vendors is required. As described in Section III.D below, selection of vendors may be based on a variety of criteria and may include but is not limited to the lowest cost bidder.

B. Expenditures Not Exceeding \$50,000

The District may invite bids for expenditures not expected to exceed \$50,000 at the discretion of the Executive Director or at the Request of the Board of Directors. Staff members shall obtain competitive cost information and consider qualifications of contractors providing services, whenever reasonably feasible, for any District purchase even though formal bids are not required for goods or services costing \$50,000 or less.

III. EXCEPTIONS TO STANDARD PURCHASING PROCEDURES

A. Emergency Conditions

An emergency is defined as the inability of the District to provide services, or a threat to public health, safety, or welfare, including, but not limited to, threatened damage to natural resources. In the case of an emergency requiring an immediate purchase, the Executive Director may authorize his or her designee to secure in the open market any services, supplies, material or labor required to respond to the emergency, regardless of the amount of the expenditure. The Executive Director shall, as soon as possible, provide a full written explanation of the circumstances to the Board for inclusion at a publicly noticed meeting.

In the case of a disaster or for civil defense, nothing contained in this Policy shall limit the authority of the Executive Director to make purchases and take such other emergency steps as are, or may be, authorized by the Board.

B. Limited Availability/Sole Source

Occasionally, necessary supplies, material, equipment, or services are of a unique type, are of a proprietary nature, or are otherwise of such a required and specific design or construction, or are specifically necessary for purposes of maintaining cost effective system consistency, so as to be available from only one source. After reasonable efforts to find alternative suppliers, the District may dispense with the requirement of competitive bids and recommend negotiating and making the purchase from the sole source. The basis for the sole source recommendation shall be documented in writing and approved, in advance, by the Board for purchases exceeding \$50,000.

C. Cooperative Purchasing

The District shall have the authority to join in cooperative purchasing agreements with other public agencies to purchase goods or services at a price established by that agency through

a competitive bidding process. The Executive Director may authorize and execute such cooperative purchasing agreements.

The formal competitive bidding procedures of Section II.A. for purchases exceeding \$50,000 are not required when the other public agency has secured a price through a formal, advertised competitive bidding process. Board approval is required prior to purchase.

D. Professional Services

Professional consultant services are of a technical and professional nature, and, due to the nature of the services to be provided, do not readily fall within the “low bid” competitive bidding process. In addition, State law requires that selection of professional consultants in the categories of architects, landscape architects, engineers, surveyors, construction managers, and environmental consulting be made on the basis of demonstrated competence and the professional qualifications necessary for the satisfactory performance of the required services. Professional consultants should be individually selected for a specific project or problem with the objective of selecting the most qualified consultant at a price that is fair and reasonable. Professional services agreements shall not be split into smaller units, nor shall contract amendments be used, for the purpose of circumvention of this Policy.

1. Selection Procedures for Professional Services in Excess of \$50,000

When the cost for professional services is expected to be in excess of \$50,000, the District shall prepare a Request for Qualifications (RFQ) outlining the professional’s qualifications, relevant experience, staffing and support and hourly rates as a basis for negotiating a contract or a Request for Proposal (RFP) outlining the terms, conditions and specifications of the services required by the District. A minimum of three (3) qualified firms or individuals shall be invited to submit proposals.

District staff and/or District directors and/or partners selected by District staff will review the proposals received, will select the most qualified firms for interviews, and will rank the consultants based upon appropriate criteria developed for the project or required services. These criteria will be included in the RFQ or RFP.

2. Renewal of Contracts with Professional Consultants

The District may, at its sole discretion, and after following required consultant selection procedures, enter into consultant agreements which contain provisions authorizing their extension or renewal. However, recommendations to extend or renew an existing contract with a professional consultant should include an annual written evaluation of the work performed by the consultant as well as a determination that the fees being charged are comparable to similar services offered by other consultants at the time of renewal or extension. If the total amount of the original and renewed contract in any one fiscal year does not exceed \$50,000, the Executive Director may execute the agreement. If the total amount exceeds \$50,000, the request must be approved by the Board.

3. Conflict of Law

These procedures are not applicable where superseded by local, state or federal law, where the terms of grant funding provide for the use of other consultant selection procedures, or where the District is obligated to select consultants through the use of different procedures, such as due to the requirements of an insurance or self-insurance program.

4. Special Circumstances

These procedures are not applicable when three (3) qualified firms or individuals are unavailable, or if it is appropriate and in the best interest of the District under the specific circumstances of the project at issue, to limit the number of consultants solicited. The basis for such action shall be documented in writing and approved by the Executive Director. When Board approval is required, the documented basis for such action shall be included in the report to the Board and publicly noticed at the next meeting of the Board.

E. Open Purchase Orders for Routine and Repetitive Supplies and Services

Open purchase orders may be entered into with vendors who are expected to supply routine services, supplies, materials or labor to the District on a regular basis throughout the fiscal year. Open purchase orders shall be closed at the conclusion of each fiscal year. Vendors of repetitive supplies and services shall be selected through the competitive bidding procedures set out in Section II, based upon the anticipated or budgeted cumulative cost of the supply or service. Multi-year contracts can be let only when appropriate and necessary to secure the best pricing, best service, or assure continuity of service. An annual review of the services and prices provided shall be documented by District staff to assure that the vendor is meeting the District's needs and expectations and remains at a competitive price. Whenever feasible, multi-year contracts for service or supplies shall provide that the option to renew or extend the contract is at the District's sole discretion.

IV CONFLICT OF INTEREST

No District employee or official shall be financially interested, directly or indirectly, in any purchase, contract, sale, or transaction to which the District is a party and which comes before said official or employee for recommendation or action. Any purchase, contract, sale, or transaction in which any employee or official is or becomes financially interested shall become void at the election of the District. No employee or official shall realize any personal gain from any purchase, contract, sale, or transaction involving the District.