

## Memorandum

Date: May 18, 2023  
To: Board of Directors  
From: Kellyx Nelson  
Re: Recommendation to adopt a new procurement and subaward policy

---

### Staff Recommendation

Staff recommends that the Board of Directors adopt the proposed new Procurement and Subaward Policy. This policy would replace the current policy (Public Contract Bidding, Vendor and Professional Consultant Selection, and Purchasing Policy) that was adopted on March 20, 2014. The new policy would include subawards; clarify the RCD's procurement requirements for obtaining services, supplies, materials and construction contracts; and be consistent with current state laws.

### Background

The RCD adopted a procurement policy in 2014 to "establish requirements for obtaining quality services, supplies, material and labor at the lowest possible cost, and to provide a uniform method for procurement of services and supplies." It established purchasing categories and purchasing authority limits, and requirements for competitive procurement as well as exceptions to these requirements. At a time when the RCD's programs were growing and diversifying along with the number and types of projects, the 2014 policy enabled the RCD to follow consistent procedures for procuring consulting services and construction contracts.

Over the past four years the RCD continued to grow, and the number and complexity of projects increased significantly. The current policy does not sufficiently address the types and conditions of procurement that the RCD needs. The policy should also be updated to explicitly reflect additional state law in the Public Contracting Code that is relevant to the RCD's work.

The recommended new policy was developed by RCD staff and Steve Stielstra, the chair of the finance committee on the RCD's board of directors, and reviewed by County Counsel (Brian Wong). In addition to consistency with state law, it is also consistent with San Mateo County's purchasing limits. Key notable changes to RCD procurement in the proposed policy include:

1. For Construction Services, the definitions of private vs. public works projects per California Public Contracting Code are cited for clarity in determining when competitive procurement requirements apply.
2. Non-competitive procurement limits would become consistent with San Mateo County's procurement policies, which reflect current allowable limits under state regulations. The proposed policy would change the non-competitive purchasing limit for public works construction services from \$50,000 to \$60,000 and for non-construction services from \$50,000 to \$200,000.
3. The proposed policy includes a description of a subaward which is a pass-through of funding to an eligible organization, and not a type of procurement.



**DRAFT Procurement and Subaward Policy**  
**San Mateo Resource Conservation District (District)**

*For Consideration for Adoption on May 18, 2023*

1. Purpose. The purpose of this policy is to establish the District's requirements for subawards and the procurement of services, construction contracts and materials and supplies.
2. Definitions.
  - 2.1. Procurement. Process for an organization to purchase products and services from external parties.
  - 2.2. Contract. A legally binding agreement between two or more parties that creates an obligation to perform a particular duty or set of tasks, e.g., contracting with an engineering firm to design a road. That entity is legally bound to complete a specific performance requirement, often defined by a scope of work contained in the contract and with the goods or services delivered by agreed upon date, with specific consideration for compensation, and other guidelines set forth in the contract language.
  - 2.3. Agreement. Formal or informal understanding of mutually agreed upon terms, e.g. an agreement with a landowner to access their property. These agreements may not always be legally binding. An agreement can also be used to set forth the terms and conditions of multiple contracts. A contract is an agreement, but an agreement is not always a contract. Agreements and contracts can be verbal or written, but a contract will always be legally enforceable.
  - 2.4. Purchase Order. Document(s) indicating terms, types, quantities, and agreed prices for products and/or services.
  - 2.5. Construction. Physical implementation of a project such as earth moving for habitat restoration, tree removal and mastication, hedgerow planting and compost application.
  - 2.6. Consulting. Professional services provided by any business, department, or individual whose procured services are not a manufactured or built product, e.g., engineering, grant writing, or IT support.
  - 2.7. Subaward and Subrecipient. When the District serves as a pass-through entity for funding to a partnering entity to carry out specific tasks, the partnering entity is a subrecipient and the funding they receive to carry out their responsibilities is the subaward. A subaward may be provided through any form of legally enforceable agreement, including an agreement that the subrecipient considers a contract.

3. Conflicts of Law or Policy. Procurement processes and procedures in the policy are not applicable where superseded by local, state, or federal law; where the terms of grant funding provide for the use of other procurement procedures; or where the District is otherwise obligated to use different procedures, such as due to the requirements of an insurance or self-insurance program.
4. Procurement. The following procurement process is used when the District acquires goods or services. The entity providing the goods or services is a contractor or vendor.
  - 4.1. Procurement Authority. The District has three levels of approval authority for procurement: approval by the Board of Directors; approval delegated to the Executive Director by the Board of Directors; and approval delegated to a designee by the Executive Director which, depending on circumstances, may or may not require prior approval of the Board of Directors. Where referenced, maximum procurement authority amounts refer to the total price of an agreement, contract, or purchase order, including all anticipated likely associated costs.
  - 4.2. Procurement of Consulting Services. Except as otherwise provided herein, the following selection procedures shall be followed when procuring consulting services.
    - 4.2.1. Basis of Award for Consulting Services. Consulting services are often of a technical and professional nature, and, due to the nature of the services to be provided, do not typically lend themselves to "lowest cost" as the primary selection criteria. Selection of the successful consultant may be based on a variety of criteria or considerations. Considerations include, but are not limited to: quality, dependability, warranty, demonstrated experience and competence, insurability, understanding of the scope of work, financial ability, resources to perform the work, willingness to cooperate with District and technical staff, and proposed methods to ensure timely and acceptable performance and management of the work.

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 (California Government Code §4526). 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 and consistent with industry practice.
    - 4.2.2. Consulting Services Equal to or Less Than \$200,000. If the cost for furnishing consulting services to the District will not exceed \$200,000 the District may obtain competitive cost information while also considering the qualifications of contractors providing services and document the basis for contract award, whenever reasonably feasible. The Executive Director may approve the contract without seeking the approval of the Board of Directors. The Executive Director-approved contract 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 Board President sign on behalf of the District.

4.2.3. Consulting Services in Excess of \$200,000. If the cost for furnishing consulting services to the District will exceed \$200,000, procurement shall be performed by the competitive procurement process for consulting services set forth in this policy, and approval from the Board of Directors shall be required prior to entering into 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 Board President sign on behalf of the District.

4.2.4. Competitive Procurement of Consulting Services. To establish a basis for award of the contract, the District shall: prepare a project-specific Request for Proposal (RFP) that outlines the terms, conditions and specifications of the services required by the District; and/or prepare a new or utilize an active Request for Qualifications (RFQ) that has relevant professional qualifications, experience, staffing and support and hourly rates as a basis for selecting a consultant and negotiating a contract for the project. To the extent reasonably possible a minimum of three (3) qualified firms or individuals shall be invited to submit proposals for an RFP or RFQ. District staff will determine appropriate posting of the RFP or RFQ announcement for generating interest. District staff and/or District directors and/or partners selected by District staff will review the proposals/qualifications received, will identify and review references for the most qualified consultants, and will rank the consultants based upon appropriate criteria developed for the project or required services. These criteria shall be included in the RFP or RFQ (if applicable). The criteria and rankings shall be documented in the recommendation for award of the contract to the Board of Directors during the approval process.

4.2.5. Renewal of Contracts for Consulting Services. The District may enter into agreements for consulting services that contain provisions authorizing a specific time extension or renewal of a contract. Any decision to extend or renew an existing contract should consider an evaluation of the work performed by the consultant. If the total amount of the original and renewed contract in any one fiscal year does not exceed \$200,000, the Executive Director may approve the contract without seeking approval of the Board of Directors. If the total amount exceeds \$200,000, the contract must be approved by the Board. In either case, the approved contract 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 Board President sign on behalf of the District.

4.3. Procurement of Construction Contracts. Except as otherwise provided herein, the following selection procedures shall be followed when the procurement involves a construction contract.

- 4.3.1. Projects on Private Land. Competitive procurement is not required for projects located on private land and involving no publicly owned, leased, or operated facility, as these are not public projects under California Public Contracting Code (§22002), and agreements for these projects are not considered public works contracts under this code (§1101).
- 4.3.2. Projects on Public Land. Competitive procurement is required for projects located on public land and involving publicly owned, leased, or operated facilities. These are public projects under California Public Contracting Code (§22002), and agreements for these projects are considered public works contracts under this code (§1101).
- 4.3.3. Construction Services Procurement Equal To or Less Than \$60,000. For construction projects where the estimated amount of the construction contract does not exceed \$60,000 per individual contractor per year, a competitive procurement process is not required. The District 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. The Executive Director may approve the contract without seeking the approval of the Board of Directors. The Executive Director-approved contract 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.
- 4.3.4. Construction Services Procurement in Excess of \$60,000. For construction projects where the estimated amount of the construction contract is greater than \$60,000 and less than or equal to \$200,000, the procurement shall be performed by the competitive formal or informal procurement (bid) processes for construction contracts set forth in this policy. For construction projects where the estimated amount of the construction contract is greater than \$200,000, the procurement shall be performed by the competitive formal procurement (bid) process for construction contracts set forth in this policy. The competitive formal bid process requires approval from the Board of Directors prior to entering into 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 Board President sign on behalf of the District. For contractors selected through a competitive informal bid process, the Executive Director may approve the contract without seeking the approval of the Board of Directors. The Executive Director-approved contract 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.
- 4.3.5. Competitive Formal Bid Process. The District shall invite formal bids as provided in California Public Contracting Code (§22037). Notice to contractors inviting formal bids shall state the time and place which may be a virtual meeting space for the opening of

sealed bids received either by mail or electronically and distinctly describe the project. This description typically includes plans and/or specifications describing the goods or services to be provided and the requirements for submission of complete bids. The notice shall be sent electronically at least 15 calendar days before the date of opening the bids. Distribution of the notice must include the construction trade journals as specified for San Mateo County by the California Uniform Construction Cost Accounting Commission as provided in California Public Contracting Code (§22036). Notice shall be published at least 14 calendar days before the date of opening the bids in a general circulation newspaper. Notice may also be distributed through digital distribution networks, the District web site, other construction trade journals, and other means the District deems appropriate.

The District reserves the right to waive irregularities relative to the responsiveness of any bid, so long as they do not give competitive advantage.

The District may reject any bids presented because bids exceed available funding, the bids are non-responsive and/or deemed not responsible. In such cases, the District shall have the option of pursuing any the following: select an alternate bidder under the same procurement, abandon the project, revise the scope of work and/or specifications or readvertising for bids in the manner described by this policy.

If a construction contract is awarded, it shall be awarded to the lowest-cost, responsive and responsible bidder, except as otherwise provided herein.

If no bids are received through the formal bid procedure, the project may be performed by negotiated contract without further complying with this policy.

4.3.6. Competitive Informal Bid Process. The District shall invite informal bids as provided in California Public Contracting Code (§22034). Notice to contractors inviting informal bids shall describe the project in general terms and how to obtain more detailed information about the project and state the time and place for the submission of bids electronically or by mail. Distribution of the notice to contractors inviting informal bids shall be provided in accordance with either or both of the following methods:

1. The notice inviting informal bids shall be sent electronically at least 15 calendar days before the bids are due. Distribution of the notice must include the construction trade journals as specified for San Mateo County by the California Uniform Construction Cost Accounting Commission as provided in California Public Contracting Code (§22036).
2. If the District develops and maintains a list of qualified contractors identified according to categories of work as set forth in this policy, all contractors on the list for the category of work being bid shall be mailed, faxed, or emailed a notice inviting informal bids unless the product or service is proprietary. All mailing of

notices to contractors pursuant to this subdivision shall be completed not less than 10 calendar days before bids are due.

To develop and maintain a list of qualified contractors identified according to categories of work, the District must at least once per calendar year establish a new or update the existing list by mailing, faxing, or emailing written notice to all construction trade journals designated for San Mateo County by the California Uniform Construction Cost Accounting Commission as provided in California Public Contracting Code (§22036). The notice shall invite all licensed contractors to submit the name of their firm to the District for inclusion on the District's list of qualified bidders. The notice shall require that the contractor provide: name and address to which a notice to contractors or proposal should be mailed, faxed, or emailed; phone number at which the contractor may be reached; type of work in which the contractor is interested and currently licensed to do (earthwork, pipelines, electrical, painting, general building, etc.); class of contractor's license(s) held; and contractor license number(s). The District may include any contractor names so desire on the lists, but lists must include, at minimum, all contractors who have properly provided the District with the information required in response to the notice.

If all bids received are in excess of \$200,000, the Board may, by adoption of a resolution by a four-fifths vote, award the contract, at \$212,500 or less, to the lowest responsible bidder, if it determines the cost estimate of the District was reasonable.

- 4.4. Procurement of Equipment, Supplies and Non-Consulting Services. Except as otherwise provided herein, the following selection procedures shall be followed when the procurement involves equipment, supplies or non-consulting services.
- 4.4.1. Equipment, Supplies or Non-Consulting Services Equal To or Less Than \$200,000. If the cost for furnishing equipment, supplies or non-consulting services to the District will not exceed \$200,000 the Executive Director may approve the contract or purchase order without seeking approval of the Board of Directors.
- 4.4.2. Equipment, Supplies or Non-Consulting Services in Excess of \$200,000. If the cost for furnishing equipment, supplies or non-consulting services to the District will exceed \$200,000, approval from the Board of Directors is required prior to purchase. Purchase orders 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 Board President sign on behalf of the District.
- 4.4.3. Open Purchase Orders for Routine and Repetitive Supplies and Services for RCD Operations. 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. Vendors of repetitive supplies and services shall be selected through a competitive procurement process as set out in Section 4.2.4, based upon the anticipated or budgeted cumulative cost of the supply or service. Multi-year contracts should be used only when appropriate and necessary to secure the best pricing, best service, or assure continuity of service. 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.

5. Exceptions to Procurement Requirements. Exceptions to the competitive procurement requirements in this policy are applicable under certain conditions.
  - 5.1. Documentation of Exception. In the event any of the exceptions to the competitive procurement process are used, an explanation of the applicable exemption(s) shall be documented in writing and approved prior to entering into contract, by the Executive Director for procurements within the authority of Executive Director approval and by the Board of Directors for procurements requiring Board approval.
  - 5.2. Competitive Procurement Exceptions.
    - 5.2.1. Limited Availability/ Sole Source. Competitive procurement is not required when the work, materials or services are either: (a) available from only one source, or (b) unique due to the specialized skill or experience of the contractor, consultant, or supplier so as to be available from only one source, or (c) proprietary in nature.
    - 5.2.2. Compatibility and Continuity. Competitive procurement is not required when work, materials or services needed are required to match, integrate or be compatible, or to maintain cost effect consistency with an existing project or program and the work, materials or services are from a contractor, consultant, or vendor who previously satisfactorily performed/provided work, materials or services for the District for that project.
    - 5.2.3. Emergencies. The Board of Directors hereby delegates to the Executive Director the authority to declare an emergency and to award contracts without a competitive bidding process. The Executive Director shall document in writing that the emergency will not permit a delay resulting from a competitive solicitation process, and that immediate action is necessary to respond to the emergency. 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 report the status of the emergency to the Board of Directors at the next regularly scheduled meeting, and at every regularly scheduled meeting thereafter, until the emergency is resolved.
    - 5.2.4. Cooperative Procurements; Piggyback. The District shall have the authority to join with other public jurisdictions or their umbrella organizations (e.g., California Association of Resource Conservation Districts) in cooperative purchasing plans, programs or pricing

agreements The District may also buy directly from a vendor at a price established by competitive bidding by another public jurisdiction in substantial compliance with a competitive procurement process even if the District had not joined with that public agency in a cooperative purchase. The District may also purchase from the United States of America or any state, municipality or other public corporation or agency. Board approval is required prior to purchases that exceed the maximum Executive Director approval amounts described in this policy.

6. Subaward. The District may fund a program or project or enter into a contract without a competitive selection process through a subaward of financial assistance to an eligible organization. Subawards are defined in the Federal Procurement Requirements (Federal Code of Regulations 200.317-200.327). Contracts or transactions between the District and government agencies, institutions of higher education, and non-profit organizations are often considered subawards regardless of whether the instrument is referred to as a contract. Where the subaward involves the pass-through of awarded funding, all applicable terms and conditions that are part of the primary award must be included in the subaward document.

Some characteristics that support the classification of an entity as a subrecipient rather than a contractor include when the entity:

- has responsibility for programmatic decision-making;
- requires considerable discretionary judgment in the performance of the work;
- contributes to the conduct of the project as described in the statement of work for the prime award;
- uses the funding to carry out a program for the entity's public purpose as specified in their mission statement or authorizing statute;
- would be considered as a co-author of publications resulting from the work performed under the award.

In determining whether the District classifies an entity as a subrecipient or a contractor, the substance of the relationship is more important than the form of the agreement. All of the characteristics listed above may not be present in all cases, and the District must use judgment in classifying each agreement as a subaward or a procurement contract. The Executive Director shall notify the Board of Directors of signed subaward agreements exceeding \$60,000.

Subawards are distinct from the purchasing of goods and services that constitutes a procurement relationship. Therefore, subawards do not function as exceptions to procurement requirements.

7. Conflict of Interest. All procurement must comply with the District's Conflict of Interest Policy which generally ensures that no District employee or official has a financial interest in any transaction to which the District is a party and which comes before said official or employee for recommendation or action.