

**Resolution No. 2023-36**

**Board of Directors, San Mateo County Transit District  
State of California**

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**Adopting Revisions to the District Procurement Policy**

**Whereas**, the California Public Contract Code and the California Public Utilities Code set forth various rules applicable to the San Mateo County Transit District's (District) procurement and contracting activities; and

**Whereas**, from time to time, the San Mateo County Transit District (District) Board of Directors (Board) has adopted various revisions to the Procurement Policy to keep pace with changing procurement related regulations and maintain efficient and effective practices for procuring contracts for the District; and

**Whereas**, the District provides all procurement and contracting support functions for the acquisition of such property, facilities, equipment, materials, supplies, and services, including public works, as may be deemed necessary to carry out the duties of the Peninsula Corridor Joint Powers Board (JPB) and the San Mateo County Transportation Authority (TA); and

**Whereas**, on April 3, 2019, the District updated its Procurement Policy via Board adopted Resolution No. 2019-10; and

**Whereas**, since that time, the number of projects and contracting costs have grown significantly, increasing the frequency with which staff must seek Board authorization for routine and relatively low value items that have already been described in the budget; and

**Whereas**, federal regulations allow for informal procurement of goods and services valued at \$250,000 or less; and

**Whereas**, additionally, the District's General Manager/CEO's delegated contract authority has fallen below peer agencies; and

**Whereas**, staff recommends that the Board approve an updated Procurement Policy, attached hereto as Attachment A, in order to increase the General Manager/CEO's delegated contracting authority, increase the threshold required for all formal procurements with the exception of public works contracts, and to make minor, administrative revisions.

**Now, Therefore, Be It Resolved** that the Board of Directors of the San Mateo County Transit District hereby approves the Procurement Policy attached hereto as Attachment A, which supersedes the Procurement Policy adopted pursuant to Resolution No. 2019-10; and

**Be It Further Resolved** that the General Manager/CEO or designee is authorized to take further actions as may be necessary to give effect to this resolution, including updating the District's Procurement Manual.

Regularly passed and adopted this 7th day of June, 2023 by the following vote:

Ayes: Chuang, Fraser, Medina, Mueller, Ratto, Powell

Noes: None

Absent: Canepa, Gee



Chair, San Mateo County Transit District

Attest:



District Secretary

## **ATTACHMENT A: PROPOSED PROCUREMENT POLICY**

### **PROCUREMENT POLICY SAN MATEO COUNTY TRANSIT DISTRICT**

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

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

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

#### **A. Fundamental Principles of Ethical Procurement**

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

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

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

**B. Conflicts of Interest**

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

**C. Methods of Procurement**

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

Federally funded procurements will comply with all applicable federal requirements.

Informal competitive procedures, as set forth in the District's Informal Bidding Ordinance, may be used for construction, repair, maintenance, alteration and similar work whenever the estimated expenditure is more than \$60,000 (or the current threshold set forth in California Public Contract Code § 22032(a), whichever is greater) and not more than \$200,000 (or the current threshold set forth in California Public Contract Code § 22032(b), whichever is greater). Award will be made to the lowest responsible bidder. (Public Contract Code § 22038). For construction, repair, maintenance, alteration and similar work where the estimated expenditure is \$60,000 (or the current threshold set forth in California Public Contract Code § 22032(a), whichever is greater) or less, the District may use a negotiated contract or a purchase order.

4. Formal competitive bidding should be used when purchasing equipment, supplies, services or materials over \$250,000, but a “best value” approach may be used in circumstances where it is determined to be in the best interest of the District. “Best value” means a process in which the overall combination of quality, price, and other elements such as reliability, standardization, vendor qualifications, warranty, life cycle costs, and sustainability issues are considered together to determine which proposal provides the greatest overall benefit to the District. On a case by case basis, and in particular when a procurement involves a combination of goods and services, the District Procurement Office, in consultation with the Project Manager or the department issuing the solicitation, shall make the determination of whether a “best value” approach is in the best interest of the District. In such circumstances, the determination will be documented in writing and a formal competitive proposal process will be utilized.
5. An informal procurement method may be utilized for the purchase of materials, equipment, services or supplies when the estimated expenditure is between \$10,000 and \$250,000. To the extent practicable, such a method shall involve obtaining a minimum of three quotations, either written or oral, that permit prices and other terms to be compared. The District will undertake adequate outreach to ensure open and free competition, and that small businesses, including Disadvantaged Business Enterprises are afforded opportunities to submit quotations. To the extent practicable, the District will strive to obtain at least one of the minimum of three quotations from a small business. The District will utilize interested vendors based upon a review of trade sources, lists of certified DBEs and small businesses that have registered with the State, and vendors that have registered with the District to receive notice of contract opportunities. When appropriate to ensure satisfaction of the Fundamental Principles of Ethical Procurement set forth in Section A of this Policy, such solicitations shall be advertised by the District. The District’s informal bidding procedures, using a lowest responsible bidder standard for bid comparison, will serve as the typical standard on which to base the purchase of materials, equipment, services or supplies, unless it is determined in writing that it is in the District’s best interest to apply a “best value” approach, in which event, qualitative factors such as those set forth in paragraph C.4. above, in addition to price may be considered in making an award.
6. Formal competitive proposals, which consider and evaluate factors in addition to price, will be used to retain professional and non-professional services when the estimated expenditure exceeds \$250,000. Specialized State and federal laws will apply to the procurement of architectural and engineering services as defined by applicable laws and regulations, regardless of the estimated expenditure.
7. The use of appropriate intergovernmental and cooperative agreements is encouraged in order to reduce duplicative effort and to achieve cost economies.
8. The District may purchase items on the open market under the following conditions: (a)(i) if the District rejects bids received in connection with a

procurement of materials, supplies, services and equipment requiring formal competitive bidding, and (ii) the Board of Directors determines and declares by a two-thirds vote of all its members that in its opinion the supplies, equipment, services, and materials may be purchased at a lower price in the open market; or (b) if the Board of Directors, or the General Manager/CEO, within the General Manager/CEO's procurement authority, has exercised discretion to waive the competitive process when permissible under applicable law and consistent with the fundamental principles of procurement set forth in this Policy, or (c) if no bids or proposals are received in response to a formal solicitation and market research indicates another procurement for the supplies, equipment, services and materials will not render a different outcome. *See* Public Utilities Code §103223 and Section K "Discretion to Waive the Competitive Process" set forth below.

**D. Procurement Documentation and Consideration of Bids and Proposals**

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

**E. Execution of Contract Documents**

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

**F. Disadvantaged Business Enterprise Program**

The District is committed to a Disadvantaged Business Enterprise ("DBE") Program for DBE participation in District contracting opportunities in accordance with 49 Code of Federal Regulations (CFR) Part 26, effective June 22, 2001, as may be amended. It is the policy of the

District to ensure nondiscrimination on the basis of race, color, sex or national origin in the award and administration of U.S. Department of Transportation assisted and District contracts. It is the intention of the District to create a level playing field on which DBEs can compete fairly for contracts and subcontracts to provide the District's public works, supplies, equipment, materials and services.

#### **G. Protest Procedures**

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

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

#### **H. General Manager/CEO's Procurement Authority**

1. The General Manager/CEO is authorized to purchase supplies, equipment, services and materials and to arrange for work in a manner consistent with this Procurement Policy and written procedures as may be developed from time to time. The General Manager/CEO is authorized to execute agreements and expend funds for procurements and activities included within the District's approved annual budget as follows: (1) \$250,000 or less for equipment, supplies, materials, or services and (2) not more than \$200,000 or the current threshold set forth in California Public Contract Code § 22032(b), whichever is greater for construction, repair, maintenance, alteration and similar work.

The General Manager/CEO is authorized to modify and otherwise administer all contracts on behalf of the District. For all contracts, the General Manager/CEO is authorized to issue contract change orders or amendments within any Board approved contingency. If the Board does not establish a contingency or in the event the contingency is exhausted, the General Manager/CEO is authorized to issue contract change orders or amendments not exceeding \$250,000 or not exceeding 10% (cumulative) of the Contract Amount, whichever is greater. The "Contract Amount" is defined as the original contract amount, plus any Board-exercised or approved options, plus any Board-approved amendments.

2. The General Manager/CEO is authorized to designate staff to oversee and monitor procurements and may delegate its contracting authority set forth in the paragraph above. Such delegation(s) must be in writing, documented by the Director of Contracts and Procurement, and must specify defined monetary limits.

3. Only the Board may award (a) contracts for materials, supplies and equipment or services over \$250,000, and (b) contracts for construction, repair, maintenance, alteration and similar work over \$200,000, or the current threshold set forth in California Public Contract Code § 22032(c), whichever is greater. When the Board awards such contracts, it also delegates to the General Manager/CEO the authority to execute the resulting agreement.

**I. Emergency Contracts**

For procurements requiring competitive bidding and/or Board approval, in case of any sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services, the Board hereby designates the General Manager/CEO to take all necessary and proper measures in emergency conditions to maintain the District's systems in operation. The Board also grants the General Manager/CEO the authority to determine that there is insufficient time for competitive bidding and that public interest and necessity demand the immediate expenditure of public money to safeguard life, health, or property. If the General Manager/CEO makes such a determination, the General Manager/CEO may expend or enter into a contract involving the expenditure of any sum needed in such emergency without observance of the provisions requiring contracts, bids or notice. The General Manager/CEO shall promptly report on the reasons and necessity for proceeding without a competitive solicitation for construction, repair, maintenance, alteration and similar work which exceeds \$200,000, or the current threshold set forth in California Public Contract Code § 22032(c), whichever is greater, and for materials, supplies, equipment, and services which exceed \$250,000, to the Board of Directors within 7 days of the action or at the next available meeting, provided that the General Manager/CEO reports to the Board no later than 14 days after taking such emergency action. Upon hearing the General Manager/CEO's report, the Board shall determine, by a four-fifths vote, whether or not there is a need to continue the emergency action. The Board shall continue to evaluate the emergency action, determining whether or not the emergency procurement is still required, at every regularly scheduled meeting thereafter until the action is terminated. *See* Public Contract Code §§ 20331, 22035, and 22050.

**J. Cooperative Purchasing Agreements**

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

**K. Discretion to Waive the Competitive Process**

The Board of Directors or the General Manager/CEO in the case of procurements within the General Manager/CEO's procurement authority, may waive the requirements for formal competitive bidding or other procedures set forth in this Policy when (1) permissible under applicable law; (2) a determination is made that the best interests of the District are served thereby, and provided there is adequate documentation of the need for such material, supplies, equipment, public works or services; and (3) a determination is made that following competitive procedures



would be unavailing and not in furtherance of the purposes of the competitive bidding statutes and the District's Procurement Policy. These circumstances shall be evaluated on a case-by-case basis, in consultation with the legal staff, keeping in mind the Fundamental Principles of Ethical Procurement set forth in this Policy. The findings justifying the waiver must be documented in the record.

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

**L. Contract Administration**

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

**M. Disposal of Surplus Property**

1. The Director of Contracts and Procurement shall approve the manner of disposition of surplus supplies, equipment and materials. The Board of Directors shall approve the disposition of any item having a fair market value greater than \$250,000. In all cases, disposition or sale of rolling stock shall require approval of the Board. In the event the surplus item to be disposed of was purchased with federal funds, the District will comply with federal disposition requirements.
2. The method of sale or disposition of any surplus or scrap items shall depend upon the nature of the items. Such methods shall include: (1) transfer or sale to other public agencies, (2) trade-in as part of a new procurement, (3) sale by auction, advertisement for sealed bids, or negotiation, or (4) where appropriate, proper recycling, donation to a non-profit agency, or disposal.

**N. Revenue Generating Contracts/Concessions**

To the extent they are not otherwise governed by District policies, concession agreements are contracts where the District grants permission to use District facilities or property to vendors to

sell products or services, for which the District receives a percentage of the proceeds and/or a flat rate of compensation. Generally, these arrangements are at no direct cost to the District.

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

The Board of Directors shall approve revenue generating/concessions contracts that exceed \$250,000 in value.

**O. Implementation**

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

Revised: Resolution No. 2023-36, June 7, 2023  
Revised: Resolution No. 2019-10; April 3, 2019  
Revised: Resolution No. 2018-30; July 11, 2018  
Revised: Resolution No. 2017-14; March 1, 2017  
Revised: Resolution No. 2010-04; January 13, 2010  
Adopted: Resolution No. 2003-26; June 11, 2003