

GOLDEN GATE BRIDGE, HIGHWAY AND TRANSPORTATION DISTRICT

ORDINANCE NO. 2018-001

**PROCUREMENT ORDINANCE OF
THE GOLDEN GATE BRIDGE, HIGHWAY AND TRANSPORTATION DISTRICT**

January 26, 2018

THIS ORDINANCE is adopted with reference to the following facts and circumstances, which are found and declared by the Board of Directors (Board) of the Golden Gate Bridge, Highway and Transportation District (District):

1. By Resolution No. 2009-092, adopted November 20, 2009, as amended by Resolution 2010-004, the Board of Directors adopted a Procurement Policy, which sets forth the District's procurement and contracting policies.

2. Senate Bill 622, which was officially supported by the District and signed into law to take effect January 1, 2018 (Stats. 2017, c. 396), amends the statutory procurement rules applicable to the District to provide greater flexibility for the District's procurement of public works/construction contracts and contracts for vessel repair, alteration and maintenance work, and to broaden the District's utilization of cooperative contracts.

3. Senate Bill 622 requires that the District enact an ordinance to set forth its informal bidding requirements for the selection of contractors to perform construction, repair, maintenance and alteration work and all similar work that does not exceed \$50,000, and for vessel repair, maintenance and alteration work that does not exceed \$1,000,000.

4. Staff recommends additional revisions to the Procurement Policy, consistent with SB 622's goals to simplify, clarify and modernize the District's procurement processes.

5. The Rules, Policy and Industrial Relations Committee recommends updating and replacing the Procurement Policy with this District Procurement Ordinance, to implement provisions of Senate Bill 622, increase the General Manager's contracting authority, and consolidate the District's procurement policies in one duly enacted ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF DIRECTORS OF THE GOLDEN GATE BRIDGE, HIGHWAY AND TRANSPORTATION DISTRICT AS FOLLOWS:

Section 1. Introduction

The Golden Gate Bridge, Highway and Transportation District is a political subdivision of the State of California, organized pursuant to California Streets and Highways Code Section 27000 et seq. and governed by a nineteen member Board of Directors. The procedures governing procurements of the District derive from the District's enabling legislation, the California Public Contract Code, Rules of the Board of Directors, and federal law. In addition, certain standards,

regulations, orders of the United States Office of Management and Budget, and requirements for grants-in-aid to local governments mandated by the United States Department of Transportation, Federal Transit Administration (FTA) and the Federal Highway Administration (FHWA) 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 Ordinance and applicable state or federal law, such state or federal law shall supersede this Procurement Ordinance.

Section 2. Goals.

The District Procurement Ordinance is guided by six basic goals, namely:

1. To promote the greatest economy and efficiency for the District;
2. To provide safeguards to maintain a procurement system of quality and integrity;
3. To instill public confidence in the procurement process of the District and adherence to proper standards of conduct by all District personnel;
4. To ensure fair and equitable treatment for all vendors who seek to do business with the District, including Disadvantaged Business Enterprises (DBEs) and Small Business Enterprises (SBEs);
5. To foster maximum open and free competition in the expenditure of public funds; and,
6. To maintain procurement policies and procedures to ensure compliance with applicable state, and federal laws and regulations.

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

Section 3. Conflicts of Interest.

No director, officer, employee or agent of the District shall participate in any procedure, task, or decision 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 a contract award. The standards governing the determination as to whether such an interest exists are set forth in Sections 1090, 1091, and 1091.5 of the California Government Code and the California Political Reform Act.

Section 4. 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 micro-purchases, informal bids or proposals, formal competitive solicitations, etc., shall be appropriate for the type of project or procurement and shall be in the best interest of the District.

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3. Formal competitive bidding must be used for public works contracts whenever the estimated expenditure for such work exceeds \$50,000, and for vessel repair, alteration, or maintenance work whenever the estimated expenditure for such work exceeds \$1,000,000. Alternative methods of procurement may be permissible if authorized by state law.
4. Formal competitive bidding should be used when purchasing equipment, supplies, or materials over \$100,000, 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 past performance, warranty, and life cycle costs 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.
5. Informal bidding may be used for contracts for construction, repair, maintenance, alteration and all similar work if the estimated expenditure does not exceed \$50,000. Award shall be made for all construction work to the responsible offeror submitting the lowest responsive bid. Award shall be made for repair, maintenance, alteration and similar work to the responsible offeror submitting the lowest responsive bid; or, as determined by the District, award may be made to the responsible offeror submitting the proposal that provides the greatest overall value to the District when considering price and other qualitative factors. This "best value" approach is as defined in Section 4.4.
6. Informal bidding may be used for vessel repair, maintenance and alteration if the estimated expenditure does not exceed \$1,000,000. Award shall be made to the responsible offeror submitting the lowest responsive bid.
7. To the extent practicable informal bidding shall involve obtaining a minimum of three quotations, either written or oral, that permit prices and other terms to be compared. Notice to contractors shall be provided in a manner determined by the District and may include a combination of web postings, email notification, phone calls or other methods of dissemination. The notice shall describe the project in general terms, how to obtain more information on the project, and state the time and place for submission of bids. Adequate outreach will be made to ensure open and free competition, and that small businesses and Disadvantaged Business Enterprises are notified of contract opportunities.
8. An informal procurement method may be utilized for the purchase of materials, equipment, supplies, or services when the estimated expenditure is between \$2,500 and \$100,000. To the extent practicable, such a method shall involve obtaining a minimum of three quotations or proposals, either written or oral, that permit prices and other terms, including qualitative factors, to be compared. Adequate outreach will be made to ensure open and free competition, and that small businesses, Disadvantaged Business Enterprises, and local vendors are notified of contract opportunities. A solicitation list of interested vendors based upon a review of trade sources, lists of certified DBEs, and vendors that have registered with the District to receive notice of contract opportunities will be developed. The District's informal bidding procedures using a lowest responsible bidder standard for bid comparison

shall normally be followed for the purchase of materials, equipment, or supplies, unless it is determined that it is in the District's best interest to apply a "best value" approach, in which event, qualitative factors in addition to price may be considered in making an award.

9. Formal competitive proposals, which consider and evaluate factors in addition to price, will be used to procure services when the estimated expenditure exceeds \$100,000, or to procure certain specialized equipment, including rolling stock, when the estimated expenditure exceeds \$100,000. Specialized State and federal laws will apply to the procurement of architecture and engineering services regardless of the estimated expenditure.
10. The use of appropriate cooperative procurement agreements with other public agencies, non-profits or cooperative organizations is encouraged in order to reduce duplicative effort and to achieve cost economies.

Section 5. 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, and advertisement in accordance with legal requirements. An award, if made, will be 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 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 contractors who are trustworthy and are qualified and possess the ability to perform successfully under the terms and conditions of the proposed procurement.

Section 6. 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 or his or her designee may execute all contracts on behalf of the District that are duly approved within the General Manager's authority. The President of the Board of Directors will sign contracts and leases that require approval by the Board, unless otherwise delegated to the General Manager.

Section 7. Disadvantaged Business Enterprise Program.

The District is committed to and has adopted a Disadvantaged Business Enterprise ("DBE") Program for DBE participation in District contracting opportunities in accordance with 49 Code

of Federal Regulations (CFR) Part 26, as amended. It is the policy of the District to ensure nondiscrimination on the basis of race, color, national origin, or sex 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/SBEs can compete fairly for contracts and subcontracts relating to the District's construction, procurement and services activities.

Section 8. General Manager's Procurement Authority

1. The General Manager or his or her designee may award and execute agreements and leases for equipment, supplies, materials, services or construction when the amount to be paid by the District does not exceed \$250,000, inclusive of any change orders, amendments and options. A report summarizing the transactions made within the General Manager's authority shall be presented to the Board of Directors on a periodic basis, no less than quarterly.
2. The General Manager may award contracts over \$250,000, for the routine procurement of equipment, supplies, and materials with the understanding that said contracts should not have a policy impact and provided that such procurements are included in the District's approved budget.
3. For procurements not subject to paragraph 2 , above, the Board of Directors shall approve the award of all contracts and leases when the amount to be paid by the District exceeds \$250,000.
4. The General Manager is authorized to execute options included in the original contract, provided that funds for the options are included in the District's approved budget.
5. The General Manager is authorized to approve change orders or amendments to contracts awarded by the Board up to the established contract contingency. For contracts without an established contract contingency, the General Manager may authorize change orders or amendments within the adopted budget cumulatively not to exceed ten percent (10%) of the original contract price up to the amount of the General Manager's delegated contract authority. All other change orders shall be approved by the Board of Directors.
6. Any changes in the General Manager's Procurement Authority may only be made by the Board.
7. The General Manager is authorized to delegate to managers or other employees the responsibility and authority to approve purchases within the General Manager's procurement authority, which delegation must be in writing, include defined monetary limits; be consistent with this Procurement Ordinance and be subject to the rules and procedures in the Procurement Manual.

Section 9. Protest Procedures.

Offerors may protest contracts in excess of \$50,000 that are let through informal bidding, formal competitive bidding or competitive negotiations. The General Manager is authorized to review and determine protests concerning contracts awarded within the General Manager's procurement

authority, and shall report on the disposition of these protests to the Board. Protests for all other contracts not within the General Manager's procurement authority will be reviewed and determined by the Board of Directors upon recommendation by the General Manager and the District's Attorney. All protests will be in accordance with the written procedures set forth in the Procurement Manual.

Section 10. 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. Each contract file shall contain documentation concerning the contract administration, including, but not limited to, monitoring of the contract budget, change orders and final disposition. Undocumented actions on all contracts must be committed to written memoranda and promptly included in the contract file.

Section 11. Emergency Contracts.

The General Manager has been authorized by the Board of Directors to take all necessary and proper measures in emergency conditions to keep the Golden Gate Bridge and approaches open for public transportation at all times and to maintain bus and ferry public transportation systems in operation. When emergency conditions do not permit a delay resulting from a formal competitive solicitation process, the General Manager is authorized to make emergency purchases without giving notice for bids or proposals. The General Manager shall promptly report on the reasons and necessity for proceeding without a competitive solicitation to the Board of Directors at the next available meeting after the emergency action is taken. Board ratification is required for any contract in excess of \$250,000, and shall be obtained as soon as it is practicable to do so.

Section 12. Sole Source.

Regardless of the estimated cost of the procurement, the District is not required to engage in the competitive bidding process, either formal or informal, 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. 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, the District must verify that the particular procurement meets the definition of a sole source and the District must perform a cost or price analysis to determine the reasonableness of the price of the sole source.

Section 13. Cooperative Procurement Agreements.

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

Section 14. Discretion to Waive the Competitive Process.

The Board of Directors, or the General Manager for procurements within the General Manager's procurement authority, may waive the requirements for a formal competitive process or other procedures set forth in this Procurement Ordinance when (1) permissible under applicable law; (2) the best interests of the District would be served by waiving such requirements under the circumstances; 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 District's Attorney, and keeping in mind the fundamental principles of procurement set forth in this Ordinance.

Section 15. Disposal of Surplus Property

1. The General Manager shall determine the manner of disposition of surplus supplies, equipment and materials that are beyond their useful life and whose depreciated value does not exceed \$100,000. The Board of Directors shall approve all other disposal of surplus property.
2. The method of sale or disposition of any surplus or scrap items shall depend upon the nature of the items. Such methods may 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 or disposal

Section 16. 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.

When the RFP has an anticipated value greater than \$250,000 and either involves a new concession activity or program, or involves policy-sensitive or controversial activities or programs, the Board shall approve soliciting proposals for the concession before the RFP is circulated.

Section 17. Implementation.

This Procurement Ordinance sets forth the standards and methods to be followed by the District in obtaining goods and services. Through Board Resolutions 2001-163 and 2008-11, the District Board has adopted a Procurement Manual that sets forth implementing guidelines and procedures consistent with applicable law, and best procurement practices. The General Manager shall have the authority to maintain and update as necessary the Procurement Manual to give effect to this Procurement Ordinance and may make subsequent revisions if necessary to implement changes in applicable laws and regulations and best procurement practices such as FTA Best Practices

Manual, Caltrans Local Programs Procedures Manual, American Public Transit Association guidelines and standards, or other well accepted external references. Changes that represent a deviation from this District Procurement Ordinance must be approved by the Board of Directors. All District staff with responsibility for procurement activities shall be trained in, and adhere to, this Procurement Ordinance and the Procurement Manual.

Section 18. The effective date of this Ordinance is January 26, 2018. The Procurement Policy adopted by the Board of Directors pursuant to Resolution 2009-092, as amended by Resolution 2010-04, is repealed and replaced as of the effective date of this Ordinance.

Section 19. If any provision of this Ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect any other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this Ordinance are severable.