

APPENDIX TO PURCHASING AND PROCUREMENT POLICY
PROCUREMENT MANUAL



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TABLE OF CONTENTS

I. PURPOSE..... 1

II. APPLICABLE ETHICS LAWS 1

III. BASIS OF AUTHORITY, GENERALLY 2

IV. FORM OF FUND DISBURSEMENT 3

V. PURCHASING/CONTRACTING METHODS; BID LIMITS 3

VI. RECORD RETENTION AND PUBLIC RECORDS COMPLIANCE 4

VII. EXCEPTIONS TO BID/QUOTATION REQUIREMENTS 4

I. PURPOSE

The purpose of this policy manual is to specify the responsibilities of the Fairview Fire Protection District's ("District") Governing Board ("Board") and District staff, including the General Manager, to maintain proper controls over purchases and procurements. The internal procedures governing District procurement derive from state law and the District's established policies, rules, and procedures, including its conflicts of interest code and its public records policy.

This policy manual shall be updated from time to time as the Board deems proper and as state laws and/or the District's policies are amended.

II. APPLICABLE ETHICS LAWS

District officials and staff carrying out District purchases or procurements shall discharge their responsibilities in accordance with the highest ethical standards, including as imposed by law and District policies.

Without limitation, state laws, including the California Government Code § 4526, specifically prohibit practices which might result in unlawful activity including, but not limited to, rebates, kickbacks, or other unlawful consideration. State law also specifically prohibits any government agency staff from participating in a bid selection process when the staff has a relationship with a person or business entity seeking a contract.

The California Constitution codifies a specific prohibition against the award of any public resource as a gift, without full and complete consideration to the District. The state's constitutional gift ban applies to all purchases and procurements. (*See* Cal. Const. Art. XVI, §6.)

In adopting and routinely updating the District's Conflicts of Interest Code & Policy, the District prescribes clear rules and protocols governing apparent and perceived conflicts of interest consistent with the California Government Code §§ 1090, 1091 and 1091.5, as well as the Political Reform Act of 1974, in California Government Code §§ 81000 – 91014, and implementing regulations. Any ambiguities as the application of these rules and protocols should be immediately referred to General Counsel for the District for compliance advice.

The District's Conflicts of Interest Code & Policy designates Directors and staff by prescribed categories that require disclosure of economic interests through state-mandated disclosure protocols, as well as clear prohibitions of conflicted persons from participating in decisions that may have an effect on their financial interests. The General Manager is designated under the District's Code and is required to file a Statement of Economic Interest annually.

The District also has a Code of Ethics Policy by which all Directors and staff must abide when conducting District business.

III. BASIS OF AUTHORITY, GENERALLY

III.A Governing Board

All District purchasing and procurement authority rests with the Governing Board of Directors except to the extent that authority is delegated by statute or by majority action of the Board.

III.B District Procurement and Purchasing Authority

The California Special Districts Association has provided Special Districts with the following general information:

Bidding is generally only required when a special district is contracting for construction services or the supply of materials. Contracts for personal services, including architectural, land surveying, and construction project management are not subject to ‘lowest responsible bidder’ requirements. Bidding requirements are generally contained within a district’s enabling act. A small number of special district types are not subject to any bidding requirements because there is no statute imposing them on the district. These districts are free to determine their own contracting procedures through board policy.¹

The District’s enabling act does not specifically set forth any applicable bidding requirements, with the exception of a single reference to a provision in the Public Contracting Code that imposes formal bidding requirements for public works contracts that “exceed[] ten thousand dollars (\$10,000).”² An earlier version of the enabling act did set forth bidding requirements, but that was formally repealed by statute in 1987.

The District’s “General Powers and Duties,” as reflected in the California Health and Safety Code, Section 13861 (a) through (k), *et seq.*, authorize the District’s exercise of “all rights and powers, expressed or implied, necessary to carry out the purposes and intent of” the Fire Protection District Law of 1987, including the rights and powers to:

- “enter into and perform all necessary contracts pursuant to Article 53 (commencing with Section 20810) of Part 3 of Division 2 of the Public Contract Code;” and
- “acquire any property, including water facilities for providing fire protection, within the district by any means, to hold, manage, occupy, dispose of, convey and encumber the property, and to create a leasehold interest in the property for the benefit of the district.”

The District is also authorized to acquire equipment, consistent with Section 13867 of the

¹ See California Special Districts Association’s “Special District Laws Reference Guide” at Pg. 16. See also Pg. 3, which expressly disclaims: “This publication is provided for general information only and is not offered or intended as legal advice. Readers should seek the advice of an attorney when confronted with legal issues and attorneys should perform an independent evaluation of the issues raised in these materials.”

² See California Health and Safety Act § 13861(f), incorporating California Public Contract Code § 20813.

California Health and Safety Code.

State law instructs that the provisions setting forth these and other District authorities “shall be liberally construed to effectuate [their] purposes,” per Section 13804 of the California Health and Safety Code.

IV. FORM OF FUND DISBURSEMENT

The District has two methods for expending District funds. The first is through warrants. A warrant is the legally prescribed means for drawing money from the county treasury, as reflected in California Government Code §§ 29800 - 29828. The District coordinates with City of Hayward administrative specialists to ensure a warrant is prepared for approval and contains all required information and an attached itemized invoice or bill, which is then submitted to the Treasurer or a designee for review (to ensure the warranted expenditure is consistent with the District budget) and signature. For any warrant that exceeds \$5,000, both the Treasurer or designee and the President or designee must review and sign the warrant. The second is through District authorized credit cards, which are subject to the District’s Credit Card Policy, where Directors and the General Manager shall, under proscribed circumstances be allowed to use District Credit cards, with payment to the card issuer satisfied by District warrants.

V. PURCHASING/CONTRACTING METHODS; BID LIMITS

The chart below summarizes relevant spending thresholds as established under state law and the District’s Purchase and Procurement Policy.

Dollar Amount	Purchasing/Contracting Method (Absent an Exception)
Purchases less than \$10,000	Quotations. District must obtain three written, informal quotes, where reasonably available, General Manager to exercise purchase authority, compliant with purchase and procurement policy via credit card or warrant, then report back to the Board at an agenda meeting.
Purchases of \$10,000 or greater	Bids. District must solicit formal bids with public advertisement, followed by Board award of contract.

V.A. Purchases/Contracts Less than \$10,000

For purchases or contracts whose total cost is less than \$10,000, and provided the purchase or contract is allocated in the current budget or otherwise approved by majority vote of the Board, the General Manager shall obtain quotations from three vendors, provided three quotations are reasonably available. Quotations may be in the form of written proposals or cost quotes provided by phone or in writing, provided the quote is memorialized via email or other writing to the vendor

providing the quote. Upon receipt of all informal quotation information, the General Manager shall memorialize all materially relevant bid details and apprise the Board by timely written update, then determine whether to award the contract or to reject all quotes, and at the next formalized, agenda meeting, provide a detailed report to the Board at an agenda meeting. At the General Manager's discretion, the General Manager may consult the Board for specific direction at a regular, agenda meeting prior to executing a purchase, or at any stage in the informal bid process.

The District shall not split or separate into smaller units of purchase any transactions covered by this policy for the purpose of evading cost thresholds and bid solicitation requirements set forth in this policy and/or otherwise under the law.

V.B. Purchases/Contracts \$10,000 or Greater

All purchases or contracts of \$10,000 or greater must be submitted to the Board of Directors, who shall in the first instance approve a solicitation of formal bids, followed by the District's full compliance with any and all applicable procedures required by the Public Contract Code.³

Upon receiving bids/responses compliant with this policy and any other state legal requirements, the General Manager shall make a recommendation to the Board, and the Board shall determine whether and to whom to award the contract.

Several detailed legal requirements govern the District's issuance of a formal bid specific to procuring *public works* of \$10,000 or greater, which are defined in Title 1 of the California Public Contract Code and require consultation with General Counsel.

VI. RECORD RETENTION AND PUBLIC RECORDS COMPLIANCE

Records related to unsuccessful quotes or bids should be preserved for at least 2 years, consistent with the District's Record Retention Policy. Records related to successful bids should be preserved for the life of the contract plus 7 years. To determine the applicability of the District's Public Records policy and the state of California's Public Records Act, the District may consult counsel.

VII. EXCEPTIONS TO BID/QUOTATION REQUIREMENTS

The following exceptions permit the District to exercise its purchase and procurement authority under the California Health & Safety Code and the California Government Code without informal quotations or formal bidding. The specified exceptions include Sole Source Purchases, Joint Procurement, Emergency Procurement, and Special Services. To confirm the applicability of any such exception, District officials should coordinate contract and procurement review with counsel and/or other appropriate stakeholders as required.

³ See California Health and Safety Act § 13861(f), incorporating California Public Contract Code § 20813.

VII.A Sole Source Purchases

Where the District requires a purchase or procurement for which there exists only a sole source of supply, special procedures apply that permit the District to proceed without collection of competing invoices or solicitation of bids, upon a majority vote of the Governing Board. The sole source must be the only known source of supply with the capability of meeting bona fide, documented specification requirements. Such procurements can arise when the specifications and requirements for the purchase or procurement are so unusual or distinct that they narrow possible sources down to one. This may be the case, for example, with replacement parts for highly regulated emergency service equipment. In this example, however, if more than one source is available, the exception does not apply. Sole sourcing is not permitted merely on the grounds that the source demonstrates technical or administrative superiority, is the most convenient, or shows superior performance potential at lowest cost. The District shall consult counsel where the applicability of the sole source exception is unclear.

VII.B Joint Procurement

Where cooperative purchasing is available, achieving cost savings through the leverage of purchasing power via economies of scale and the reduction of administrative costs through streamlined joint procurement, provided compliance with and authorization under Section 6502 of the California Government Code, the District can complete its procurement through the cooperative, provided a majority vote of the Governing Board.

VII.C Emergency Procurements

Pursuant to Section 22050 of the California Public Contract Code, the Board may by a four-fifths vote of its governing body invoke “emergency purchase” procedures to take a directly related and immediate purchasing action required by an emergency and to procure necessary goods, supplies, equipment, and materials for those purposes, without giving notice for bids. The vote must include “a finding, based on substantial evidence set forth in the minutes of its meeting, that the emergency will not permit a delay resulting from a competitive solicitation for bids, and that the action is necessary to respond to the emergency.”⁴

VII.D Special Services

Bidding requirements do not apply for so-called “special services” in the following fields, to the extent they require “persons specially trained, experienced, expert, and competent to perform the special services”⁵:

- accounting,

⁴ California Public Contract Code §§ 22050(a)(2).

⁵ For contracts of the “special services” identified in the bulleted list, Public Contract Code §§ 20812(a) and (b) authorize special districts with FFPD’s size and budget (as of the publication of this manual) to “follow the contracting and purchasing procedures which apply to the county government of its principal county.” Following the county’s contracting and purchasing procedures, including Alameda County Administrative Code Chapter 4.12, the District is authorized to contract for special services pursuant to California Government Code Section 31000.

- administration,
- ambulance,
- architecture,
- custodial,
- economics,
- engineering,
- finance,
- insurance,
- labor relations,
- maintenance,
- mechanics,
- medicine,
- planning,
- science, and
- technology.

This exception requires a careful consideration of the nature of the services to be provided, to ensure the District only relies on this exception where it applies.