



MODOC RESOURCE CONSERVATION DISTRICT

Procurement Policy-Adopted by Board September 2023

I. Purpose of Policy

The purpose of this policy is to provide for the fair and equitable treatment of all persons or business organizations involved in purchasing, contracting, and acquisition with the Modoc Resource Conservation District (MRCD); to assure that quality supplies, services, and construction are procured efficiently, effectively, and at the most favorable prices available; to promote competition in contracting; to provide safeguards for maintaining a procurement system of quality and integrity; to assure the public that district funds are being spent responsibly; and to assure that purchasing actions are in full compliance with all applicable federal and state laws.

II. Requirements

a. Application and Administration

- i. This procurement policy applies to all purchasing and contracts for the procurement of supplies, services, and construction (procurement transactions). It shall apply to every expenditure of funds for purchasing, irrespective of the source of funds. However, nothing in this policy shall prevent MRCD from complying with the terms and conditions of any grant or contract that is otherwise consistent with law.

b. Procurement Transactions

- i. Transactions shall be administered by the Executive Director, Chair of the Board of Directors, or his or her designee.
- ii. Procurement transactions and related procedures shall conform to the provisions of this Policy.

III. Guidelines

- a. Procurement transactions are subject to an annual planning process to assure efficient and economical purchasing.
- b. Procurement transactions, contracts and modification thereto are in writing, reasonably specifying the desired supplies, services, or construction, and are supported by reasonably sufficient documentation regarding the history of the procurement, including as a minimum the method of procurement chosen, the rationale for selecting or rejecting offers, and the basis for the contract price.
 - i. Procurement transactions comply with applicable regulations, specifically 2 CFR sections 200, et. seq. when and where applicable, with proper notice of procurement in full compliance with applicable federal law.
 - ii. There are sufficient unencumbered funds available to cover the anticipated cost of each procurement transaction before contract award or modification (including anticipated

change orders), work or services performed are inspected and reviewed before payment, and that payment is made promptly for contract work performed and accepted.

- iii. Procurement Transactions will only be made to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.
- iv. All procurement transactions will be conducted in a manner consistent with this policy and shall be consistent with the standards of 2 CFR sections 200, et. seq. when and where applicable.

IV. Authority:

- a. There are two (2) levels of authority for purchases: Board Approval and Executive Director Approval.
 - 1. **Board Approval for Purchases in Excess of \$1,000**

If the cost of furnishing services, supplies, materials, labor, or other valuable consideration to the district exceeds one thousand dollars (\$1,000), approval from the Board of Directors is required prior to entering into the procurement transaction, such approval to be provided as required herein.
 - 2. **Executive Director Approval for Purchases Not Exceeding \$1,000**

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, providing that funds have previously been secured/awarded to pay for such contracts. Executive Director purchases are not to exceed five thousand dollars (\$5,000.00) per month.
 - 3. Additionally, all employees must receive written approval (e-mail) from the Executive Director for all purchases made using the district credit card.
- b. The Board may appoint and delegate procurement authority to the Executive Director, or his or her designee, to sign contracts that are already approved by the Board and whose grant funding is approved by the Board, and to enter into procurement transactions on an informal basis for contracts of one thousand dollars (\$1,000.00) or less, as set forth below.

V. Procurement Methods

- a. **Selection of Method**
 - i. When satisfying its needs by procurement of individual items or services or for possible indefinite quantity purchases over a subsequent period of no more than 5 years, use one of the following procurement methods, based on the nature and anticipated dollar value of the total requirement.

- ii. When differing funding sources are used for a project, the work to be accomplished with each source of funds should be separately identified and treated as separate physical parts of a project when possible and when not feasible or determined desirable funding restrictions most stringent shall apply to the entire project. *The Modoc RCD Board of Directors reserves the right, at its sole discretion, to reject any and all bids.*

VI. Transactions

- a. **Procurement Transactions of one thousand dollars (\$1,000.00) or less shall adhere to this procurement policy.**
- b. The district may informally invite bids for expenditures more than one thousand dollars (\$1,000.00) but not exceeding one hundred thousand dollars (\$100,000.00) at the discretion of the board of directors. The Executive Director or his or her designee shall obtain competitive cost information and consider qualifications of contractors providing services, whenever reasonably feasible, for any district purchase although formal bids are not required for goods or services costing one hundred thousand dollars (\$100,000.00) or less. Such solicitation shall be in accordance with state regulations.
- b. ***Purchases of goods or services in excess of one hundred thousand dollars (\$100,000.00) or more will be required to be subjected to a solicited price quotation by phone, letter, or other informal procedure that allows participation by a reasonable number of competitive sources.***
 - i. The district shall invite bids a minimum of two (2) weeks prior to the time of receiving bids. Distribution may include digital distribution networks, the district website, a general circulation newspaper, or other means deemed appropriate. Quotes may be requested as
 - 1. A price quotation when price is the primary factor.
 - 2. By rating criteria when factors other than price are being considered. When soliciting quotations, the Modoc RCD shall inform the sources solicited of the specific item or service being procured, whether the procurement is a price quotation only or an evaluation of rating criteria and stating such rating criteria, the time by which quotations must be submitted, and the information required to be submitted with each quotation. The names, addresses, and/or the phone numbers of the person or entities contacted, and the date and amount of each quotation or other information provide shall be recorded.

VII. Competition

a. Sources

- i. The Modoc RCD shall attempt to obtain quotations from a minimum of three (3) qualified sources and document the procurement file with a justification whenever it has been unable to obtain at least three quotations.
- ii. Solicitation of fewer than three (3) sources is acceptable if the Modoc RCD has attempted but has been unable to obtain a sufficient number of quotations or services.

b. Emergency

- i. 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.

- ii. In the event of an emergency requiring an immediate procurement transaction, the Executive Director or his or her designee may secure in the open market any such services, supplies, materials, or labor required to respond to the emergency, regardless of the amount of the expenditures so long as the price quote by any contractor does not exceed actual labor cost plus fifteen percent (15%).
- iii. The Executive Director shall, as soon as reasonably possible, provide a full explanation of the circumstances with a proposed resolution to the board for inclusion at the next publicly noticed district board meeting.

VIII. Award Based on Price

- a. For the purchases awarded based on priced and fixed specifications, not subject to negotiation, shall be awarded to the qualified and responsible source with the lowest responsive quotation.

- i. **Award Based on Factors Not Limited to Price**

- 1. For purchases awarded based on factors that are not only limited to price, a solicitation (request for proposals or request for quotations) shall be issued, including evaluation factors and a rating system using assignment of points to evaluate each proposal or quotations.
 - 2. The solicitation shall identify all evaluation factors, including cost prices. Award shall be made to the best proposal or quotation as represented by the highest points in accordance with the stated evaluation factors and rating system.

- ii. **Availability/Sole Source**

- 1. It may be required to obtain necessary supplies, material, equipment, or services of a unique type, or of a proprietary nature, of which are otherwise 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.
 - 2. After reasonable efforts to find alternatives, the district may dispense with the requirement of competitive bids and recommend negotiating and making the purchase/contract from the sole source.
 - 3. The basis for the sole source recommendation shall be *documented in writing and approved in advance*, by the board for purchases exceeding \$100,000.

- v. **Professional Services**

- 1. 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.
 - 2. In addition, State law requires that selection of professional consultants in the categories of 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.
 - 3. Professional Consultants should be individually selected for a specific project or problems with the objective of selecting the most qualified consultant at a price that is fair and reasonable.

- vi. When the cost for professional services is expected to be in excess of \$100,000, the district shall prepare a Request for Proposal (RFP) outlining the professional's qualifications, relevant experience, staffing and support and hourly rates as a basis for negotiating a contract 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.

IX. Solicitation and Receipt of Bids

a. Issuance and Amendment

- i. Bids are publicly solicited, and a firm-fixed-price grant contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming to all material terms and conditions of the invitation for bids, is the lowest in price and is within the project budget.
- ii. The invitation for bids shall be issued and publicly advertised and shall include specifications or pertinent attachments defining the items or services so that bidders may respond, and all contractual terms and conditions applicable to the procurement.
- iii. Any amendments to the invitation shall be in writing, and if it is necessary to issue an amendment at least five (5) calendar days prior to the bid opening, and the bid opening may be postponed at the Modoc RCD's sole discretion.
- iv. The invitation for bids shall state the time and place for both the receipt of bids and the public bid opening. All bids received shall be time-stamped but not opened and shall be stored in a secure place until this opening.
- v. A bidder may withdraw its bid any time prior to bid opening by providing written notice of such withdrawal prior to bid opening.
- vi. After evaluation of proposals revision, if any, the contract shall be awarded to the responsible firm whose qualifications, price, and other factors considered, are the most advantageous according to points, or all proposals shall be rejected.
- vii. If the only one proposal is received, the sole proposal may be received, in unusual circumstances, such as when the Modoc RCD determines that the delays caused by re-soliciting would cause higher costs, or when determined that the proposal is fair and reasonable.

X. Bid Results

- a. In following industry standards in regard to bid results and the letting of bid information, the Modoc RCD will inform all bidders of the winning bid amount and the name of the individual or business who was selected with that bid. Bidders will be given their specific place in order of the bidding process. No other information will be provided.

XI. Mistakes in Bid

- a. Once a bid is opened, the bidder cannot thereafter change the bid. A bidder that submits a mistaken bid may be relieved from the bid by consent of the awarding authority if the bidder can establish to the district's satisfaction all of the following:
 - i. A good faith mistake was made
 - ii. The bidder gave written notice to the district within five (5) days after the bid opening, specifying in detail how the mistake occurred

- iii. The mistake was material and not due to an error in judgment or to carelessness in inspecting the site or in reading the plans and specifications

XII. Contract Form

- a. All procurement shall include the clauses and provisions necessary to define the right and responsibilities of the parties and adhere to federal and state regulations consistent within the grant agreement.

XIII. Contract Clauses

- a. Contract Clauses shall include those clauses imposed or required by federal statutes, executive orders, and their implementing regulations and state law.
- b. The following clauses should be considered for inclusion in written Modoc RCD procurement and contract documents:
 - i. Termination for convenience (Provisions of 24 CFR part 85.44)
 - ii. Termination for default
 - iii. Equal Employment Opportunity
 - iv. Anti-Kickback Act
 - v. Davis-Bacon Act (State governing wage rates, which the contracted contractor will ensure by providing a certified payroll to the RCD)
 - vi. Contract Work Hours and Safety Standards Act
 - vii. Modoc RCD's grant reporting requirements
 - viii. Appropriate insurance and indemnity provision beneficial to the district
 - ix. Additional contract clauses may be required as in the best interests of the district

XIV. Contract Administration

- a. Grantees, sub-grantees contractors, and subcontractors will maintain a contract administration system, which ensures that contractors and subcontractors perform in accordance with the terms, conditions, and specification of their contracts, subcontracts, or purchase orders.

XV. Jurisdiction and Applicability of Law

- a. Modoc RCD shall obtain contract provisions, where at all possible, requiring that formation and performance of any contract to which this policy applies shall be deemed to have occurred in the County of Modoc, California, and that the substantive and procedural law (excepting therefrom its conflict of law provisions) of the State of California shall apply to the construction of any such contract.

XVI. Appeals and Remedies

- a. It is the Modoc RCD's policy to attempt to resolve all contractual issues informally at the board level. If appropriate, alternative dispute resolution methods may be utilized by and may be prescribed in contracting documents. When appropriate, consideration of the use of informal discussion between the parties by individuals who did not participate substantially in the matter in dispute, to help resolve differences.

XVII. Bid Protests

- a. Any prospective contractor protesting the solicitation or award of a contract for serious violations of the principles of the Policy will be entitled to have that protest reviewed by the Modoc RCD board.
- b. Any protest against a solicitation shall be received before the due date for receipt of bids or proposals and any protest against the award of a contract shall be received within ten (10) calendar days after contract award.
- c. All bid protests shall be in writing, submitted to the Executive Director or his or her designee who shall issue a written decision in the matter. The Executive Director or his or her designee may, at his or her discretion, suspend the procurement pending resolution of the protest but is in no way obligated to do so.

XVIII. Ethics in Procurement

- a. No employee, consultant or board member of the Modoc RCD shall participate in the selection, or award or administration of a contract if a conflict of interest, real or apparent, would be involved.
- b. Such a conflict would arise when: The employee, RCD consultant or board Member, any member of his or her immediate family, his or her partner; or an organization which employs or is about to employ any of the above, has a financial or other interest in the firm/company selected for award.
- c. The Modoc RCD's Conduct of Ethics Policy shall also be applicable to all procurement and contracting activities.

XIX. Gratuities, Kickbacks, and Use of Confidential Information

- a. In no case shall the Modoc RCD board, employees, and/or consultant, solicit or accept a gift from a contractor or supplier in exchange for any promised action or inaction involving the Modoc RCD procurement and contracting.

XX. Conflict of Interest

- a. 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. No employee or official shall realize any personal gain from any purchase, contract, sale, or transaction involving the district.

Board Approval Date: _____

Chairman _____

Executive Director _____

Date: _____

Date: _____