

**WEST BAY SANITARY DISTRICT
PROFESSIONAL CONSULTANTS SELECTION POLICY
APPROVED JANUARY 26, 2011**

Purpose

Sections 4525 through 4529.5 of the Government Code (popularly known as the Mini-Brooks Act) govern contracts between public entities and private architectural, landscape architectural, engineering, environmental, land surveying, and construction project management firms. These statutes establish a Qualifications-Based Selection (QBS) method that public agencies in California must use to contract for professional services. This method requires that such services be engaged on the basis of demonstrated competence and qualifications for the types of services to be performed and at a fair and reasonable price. Accordingly, public agencies may not utilize competitive bidding for such services, except in the limited instances where the local agency determines that the services needed are more of a technical nature and involve little professional judgment and that requiring bids would be in the public interest. In addition, it is a stated goal of the Mini-Brooks Act that these procedures shall assure maximum participation of small business firms. The purpose of this policy is to establish the procedures for selecting and contracting with consultants for professional services.

Section 1. Policy

It is the policy of the West Bay Sanitary District that:

- A. When the District Manager or District Board determines that the District needs Professional Services, the District shall contract for such services in accordance with the procedures set forth in this policy.
- B. The selection of Firms to provide Professional Services shall be a Qualifications-Based Selection (QBS) process made on the basis of Firms' demonstrated competence and qualifications for the Professional Services to be performed, as authorized by Government Code §4526, et seq., rather than on competitive bidding based on price.
- C. The District's Professional Services contracting procedures shall comply with all mandatory provisions of Government Code Sections 4525 through 4529.5 and with the discretionary requirements of those statutes as specified in this policy.
- D. Pursuant to Government Code §4528, Professional Services contracts shall be negotiated for fair and reasonable compensation for services to be performed.
- E. This policy shall assure maximum participation of Small Business Firms in Professional Services contracts. (Gov. Code §4526.)
- F. This policy prohibits, and any procedures adopted pursuant to this policy shall prohibit, practices that might result in unlawful activity including, but not limited to, rebates, kickbacks, or other unlawful consideration. (Gov. Code §4526.)
- G. No District employees shall participate in selection processes described in this policy when those employees have a relationship with a person or business entity seeking a

contract for Professional Services with the District that would subject those employees to prohibitions of Government Code §1090 or §87100.

- H. The QBS procedures required by this policy shall not apply when the District Manager determines that the services needed are of a more technical nature and involve little professional judgment and that requiring bids would be in the public interest. (Gov. Code §4529.)
- I. The procedures set forth in this policy shall supersede any contrary or inconsistent District contracting policies regarding contracts for professional services.
- J. Specifications are generally prepared by the District's work groups and reviewed by the District Manager to eliminate undue limitations that unnecessarily reduce competition. On occasion a consultant or supplier may expend time and money assisting an individual District work group in developing the specifications. If this is done, the purchase or agreement may eventually be made through a Qualifications-based Selection process or a competitive process and the time spent on expensive designs, demonstrations and layouts does not guarantee an order. In addition, the assistance a firm provides a department in developing a proposal or specifications cannot be considered when the District makes an award of a contract or purchase.

Section 2. Professional Consultant Inventory

The District shall maintain a file of qualified professional consultants (SOQ List) for each area of professional expertise normally used by the District. Each file shall include statements of qualifications and charge rate schedules for the various professional consultants. The files shall be updated annually.

The District shall also keep an inventory list of consultants that have extensive knowledge of the District and demonstrated cost efficiencies. A consultant with an unsatisfactory performance rating, based on previous experience, from the District Manager or District Board will be removed from the inventory list.

Section 3. Qualification Procedures

District staff determines that a special project or task is required. Staff defines the scope of the project or task, determines what professional consultant services are required and prepares a preliminary cost estimate for each type of professional consultant service needed. Staff then proceeds with the selection of a professional consultant as specified below depending on the estimated cost of service.

Any Firm to which the District has awarded an aggregate of \$300,000, including contingencies spent, in Consulting Agreements within the preceding 12 month period shall require Board consideration and approval regardless of the amount.

Note: Contingencies, if proposed, are to be included in all dollar amount limitations.

Consulting Agreements less than \$75,000 (\$100,000 if budgeted)

1. Staff determines which firms in the inventory list are qualified to perform the work.

2. District Manager selects a firm and negotiates terms and conditions of the agreement. If negotiations with the firm fail, the District Manager shall proceed to negotiate a contract with a different firm from the inventory list.
3. District Counsel reviews and approves agreement as to form prior to District Manager executing agreement.
4. District Manager will report to the Board at the next regular scheduled Board meeting the terms of any executed agreement in excess of \$25,000.

Consulting Agreements from \$75,000 to \$250,000 or \$100,000 to \$250,000 if budgeted

1. Staff determines what consultants are qualified to perform the work from the SOQ List.
2. A Selection Committee composed of at least two staff members shall evaluate the Firms based on the Evaluation Criteria, and shall then rank the Firms, in order of preference, according to their relative satisfaction of such criteria.
3. District Manager selects a consultant and requests a written proposal to do the work. District Manager may request additional proposals from other firms at his discretion.
4. District Manager negotiates terms and conditions of the agreement with the designated consultant. If negotiations with the consultant fail, the District Manager shall proceed to negotiate a contract with the next qualified consultant.
5. District Manager shall present the final agreement to the Board for consideration.
6. Board reviews and approves the agreement.

Consulting Agreements of \$250,000 and above (including contingencies)

1. Staff reviews the file of qualified professional consultants to determine if other consultants should also be considered. The District shall notify Firms of the need through an announcement in a publication (electronic or print) of general circulation and through a Request for Qualifications (RFQ).
2. Staff sends requests for qualifications as necessary to consultants identified in Step 1.
3. A Qualification Committee composed of at least two staff members and the District Manager shall be established. The Qualification committee team members shall be appointed by the District Manager (or delegated staff) in a manner consistent with the Evaluation Criteria set forth below. The Qualification committee shall evaluate the Firms' statements of qualifications, based on an Evaluation Criteria, and shall then rank the Firms according to their relative satisfaction of such criteria. The Qualification Committee shall place the highest ranked Firms (3 to 8 firms) on a short list.
4. District Manager seeks approval from the Board to issue RFPs. Staff sends a request for proposal to the most qualified consultants.
5. Board Review Committee and staff Qualification committee review the proposals and make a selection. The Board Review Committee (consisting of 1 or 2 District Board members) and the staff Qualification committee may elect to interview the top 2 to 3 Firms. After review of the proposals and possibly interviews, the Board Review Committee and Qualification committee will select the proposal they believe is the most responsive.
6. The District Manager shall negotiate a scope and fee with the most responsive preferred consultant. If negotiations with the preferred consultant fail, the District Manager shall notify the Board President and proceed to negotiate a contract with the next preferred consultant.
7. District Manager shall present the final agreement to the Board for consideration.
8. Board reviews and approves the agreement.

Section 4. Evaluation Criteria

The Evaluation Criteria listed below shall be used when this policy or any procedures adopted pursuant to this policy require Firms to be ranked based on their qualifications. The Evaluation Criteria shall ensure a level playing field and include, but not be limited to, the following:

1. Professional qualifications necessary for satisfactory performance of the required service.
2. Specialized experience and technical competence in the type of work required.
3. Capacity to accomplish the work in the required time.
4. Past performance on projects of similar scope and nature in terms of cost control, quality of work, and compliance with performance schedules and standards.
5. Location of the Firm relative to where the project services will be performed and/or pertinent knowledge of the project area.
6. Proposed fee schedule based on fair and reasonable compensation for services to be performed.
7. Disabled Veteran Business Enterprise and Small Business Concern status and/or participation.
8. Acceptability under other appropriate evaluation criteria. Evaluation Criteria may be weighted by a qualification or Board review committee to emphasize those criteria particularly significant to a project, or to de-emphasize those criteria not significant to a project.

Section 5. Contract Negotiations for All Projects

Negotiations for fair and reasonable compensation shall be initiated with the highest-qualified Firm selected for any project. For all projects, contract negotiations shall be conducted by the District Manager (or delegated staff). If negotiations with the highest-qualified Firm for the project are not successful, negotiations with that firm shall be formally terminated in writing and negotiations shall proceed with the next qualified Firm. Negotiations shall continue in this manner until a mutually satisfactory agreement is reached or until the District Manager elects to terminate negotiations with all firms in the current QBS process.

Section 6. Contract Execution

The District Manager may execute contracts/agreements/amendments authorized by the District Board. The District Board must review and approve any contract for Professional Services which exceeds \$75,000 (\$100,000 if budgeted) or any Firm to which the District has awarded an aggregate of \$300,000, including contingencies spent, in Consulting Agreements within the preceding 12 month period regardless of the amount of the contracts/agreements/amendments.