San Mateo County Libraries

Agenda Item III. B.

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| To: | JPA Governing Board |
| From: | Anne-Marie Despain, Director of Library Services |
| | Lindsey Freeland, Financial Services Manager |
| Date: | February 3, 2021 |
| Meeting: | February 8, 2021 |
| Re: | Approval of the Procurement Policy |

## Background

As outlined in the Library Joint Powers Authority Agreement, the Library JPA Governing Board is responsible for creating, adopting and maintaining by-laws and related policies to provide for the conduct of library business as well as the services and programs of the system. San Mateo County Libraries policies provide the structure for the implementation of the Library's vision, mission and goals. From time to time it is necessary to evaluate and update policies to reflect current library practices, uses and issues.

On November 9th, staff recommended approval of an updated Procurement Policy to the Governing Board. The Board asked staff to seek legal counsel to see if more rigorous equity measures could be included in the policy.

## Discussion

Based on legal review, Proposition 209 prohibits public entities from granting preferential treatment to any individual or group on the basis of race, sex, color, ethnicity, or national origin, and therefore limits the mechanisms available to promote equity in public contracting and procurement.

There are localities in California that have implemented policies to require small business solicitations for certain levels of procurement. This type of policy can help increase the number of businesses owned by people of color and women being in the selection pool since people of color and women are more likely to be owners of small businesses. This type of policy also complies with Proposition 209 since it does not use race or gender to grant preferential treatment. The Library is interested in exploring a similar policy and has recently contracted with The Justice Collective to conduct an organizational assessment to recommend more equitable policies across the organization, including procurement.

It is recommended that the Library JPA approve the Procurement Policy as presented and staff will continue to work with The Justice Collective and legal counsel to determine if a more rigorous policy that aligns well with our types of procurement is feasible.

Revisions to the policy include changes to align with the recently revised County of San Mateo policy that increased Department Head approval threshold for purchases and contracts from over $100,000 to over $200,000. The revisions propose increasing the Library Director's approval threshold for purchases and contracts from up to $100,000 to up to $200,000 and adding language stating the Library's commitment to solicit proposals from minority, women owned, and small businesses. The County's Open Data Portal continues to provide an easily accessible view of library expenditures and activity data.

## Fiscal Impact

There is no fiscal impact associated with approving the recommended Procurement Policy.

## Recommendation

Recommend Library JPA Governing Board approve the Procurement Policy. Operations Committee members present at the February 2, 2021, meeting concurred with this recommendation.

## Attachment

1. Procurement Policy – (Recommended)
1a. Procurement Policy – (Revisions)

**PROCUREMENT POLICY - (Recommended)**

**Background and Purpose**

In all matters related to procurement, the San Mateo County Libraries is committed to ensuring that goods and services are of high quality, available when needed, and competitively priced. We are dedicated to maintaining the highest standards of professional behavior and ethical conduct in public purchasing.

This policy is intended to detail the process by which the Library will obtain goods (tangible) and services (non-tangible) and also establishes guidelines and internal controls to provide reasonable assurance that the procurement process is fair, open and competitive.

General Provisions

1. Administration: The Director of Library Services is ultimately responsible for procurement administration to ensure full compliance with these activities and all established terms and conditions.

2. Local Preference: When the combination of price, quality and terms and conditions are substantially equal, the Library shall give preference in purchasing to San Mateo County-based goods and service providers.

3. Minority, Women Owned, and Small Business Solicitations: Where possible, efforts should be made to solicit proposals from small businesses, and women- and/or minority-owned businesses.

4. Term: The length of the contract term (beginning and ending date) may vary depending on the type of contract, but the term must not be more than five years. The maximum five-year term includes any amendments to the contract term. Language must also include a detailed scope of work, a description of the deliverables, due dates, payment amount, payment rates, payment process and schedule.

5. Splitting Contracts: Efforts to split a contract into two or more contracts for the purpose of circumventing dollar limits on approval processes or other requirements are prohibited.

6. Insurance Requirements: The Contractor shall take out and maintain during the life of this Agreement such Bodily Injury Liability and Property Damage Liability Insurance as shall protect him/her while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and

all operations under this Agreement, whether such operations be by himself/herself or by any subcontractor or by anyone directly or indirectly employed by either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall not be less than $1,000,000. All contractors performing work/services with the County Library must have a minimum of $1,000,000 general liability insurance, $1,000,000 auto insurance, and statutory workers' compensation insurance, and the County Library must be named as an additional insured by insurer-issued written endorsement, a copy of which shall be provided to the Director of Library Services prior to initiation of work by contractor. Carrier's liability insurance at $0.60 per pound, per item will also be provided.

**7.** Legal Review: Contracts for services and vendor agreements above $200,000, or agreements that do not use the Library's standard templates, shall be reviewed by the Library's legal counsel to approve as to form and legality.

**8.** Authorized Signatures:
The following are authorized to approve invoices based on the amounts listed below:

| | |
|---|---|
| Library Managers: | $4,999 and Below |
| Director of Library Services | $200,000 and Below |
| Chair, Library JPA Governing Board | $200,001 and Above |

The following are authorized to execute agreements, contracts, and amendments or change orders based on the amounts listed below:

| | |
|---|---|
| Director of Library Services | $200,000 and Below |
| Chair, Library JPA Governing Board | $200,001 and Above |

The value of an agreement shall be determined by the total amount of the agreement. For example, if a contract is for $120,000 per year for a total of two years, its value is $240,000.

**9.** Contract Amendments: If an existing current contract requires a change, the contract must be amended. The amendment then becomes part of the existing contract. Examples of changes include an extension of the term, a change in the amount of the contract, modifications to the scope of work, or new standard contract language that was not in place at the time of the original contract.

The requirements described in this memorandum also apply to contract amendments. If an amendment causes a contract's total payment amount to exceed $200,000, all requirements for contracts exceeding $200,000, including the requirement for approval by the JPA Governing Board Chair, must be met. Contract amendments must not be used to circumvent solicitation requirements when a contract's total payment amount would be reasonably expected to exceed $200,000.

If a project under contract is underway and extenuating circumstances require an amendment that causes the contract total amount to exceed $200,000, an exception to the competitive process, where legally justified, may be approved by the JPA Governing Board Chair.

**10.** Library as Independent Contractor: When the Library receives financial compensation from a third party for the Library's provision of services, the Director of Library Services is authorized to approve and execute agreements $200,000 and below. All contracts in which the Library receives more than $200,000 must be approved by the Chair of the Library JPA Governing Board.

Selection Process for Procuring Services

Services refer to professional and non-professional services that provide support to and facilitate Library operations.

**1.** Services $4,999 and Below: A formal Request for Proposal (RFP) process is not required. However, internal procedures should be employed to ensure that the selection process is fair, that the provider is qualified, and that the cost is competitive.

**2.** Services $5,000 to $200,000: A formal RFP process is not required. However, staff are expected to exercise their best efforts to obtain a minimum of three quotes from potential providers. The results of another public agency's competitive process may also be used. Staff must document how and why each provider was selected.

**3.** Services $200,001 and Above: This category requires that a formal Request for Proposals (RFP) process be followed. RFPs shall be posted on the Library's website along with all answers to questions submitted by potential vendors. The purpose of this process is to ensure that the Library receives the best value in obtaining services. Another purpose of the RFP is to encourage competition and ensure that all qualified providers are given an opportunity to be considered. The determination of "best value" is not based solely on the lowest price or the highest quality. It involves a subjective weighting of efficiency, quality, and economy, and a recommendation as to how the services might best be provided. The outcome of the evaluation of proposals should be regarded as the recommendation of the provider with whom negotiations will be initiated regarding the work and the terms of the contract. The results of another public agency's competitive process may also be used.

Contracts for professional services will generally be awarded pursuant to the above guidelines; however, it is recognized that the Library's need for consultant services will vary from situation to situation, and accordingly, flexibility will be provided in determining the appropriate evaluation and selection process to be used in each specific circumstance.

Selection Process for Procuring Goods

Goods refer to the goods, materials, software, equipment, furniture, supplies and related services procured by the Library.

1. Goods $1 to $4,999: Specific purchasing requirements are not ordinarily expected for this level of purchase. However, the use of competitive quotations, when reasonably practical, ensures the acquisitions are of sound value and guards against bias.

2. Goods $5,000 to $200,000: This category requires that informal or open market procedures be followed. An open market solicitation is used to purchase goods by soliciting from any available source, and whenever practical be based on a least three quotes and awarded to the lowest and most responsive and responsible provider. Staff must document how and why goods were selected. The results of another public agency's competitive process may also be used. An open-market blanket purchase order may be established for goods for which the Library has a recurring need on an "as-needed" basis.

3. Goods $200,001 and Above: This category requires that a formal Request for Quotations (RFQ) process be followed. RFQs shall be posted on the Library's website along with all answers to questions submitted by potential vendors. Bids are to be evaluated based on the requirements and criteria set forth in the RFQ. The evaluation shall be based on the face value of the bid and, when applicable, consider the following cost factors: the total bid price including discounts, the unit or extended price, hour rates for specified personnel, maintenance costs and warranty provisions, the cost and rate of freight shipping and handling, assembly and start up. The evaluation shall also include consideration of the following responsibility and responsiveness factors when applicable: general reputation and experience of the bidder, adherence to the requirements and condition of the RFQ, quality and quantity of merchandise offered, compatibility with existing systems, overall completeness of the commodity line offered and delivery or completion date. After the bids are evaluated, the award shall be made to the lowest responsible responsive bidder. The results of another public agency's competitive process may also be used. An open-market blanket purchase order may be established for goods for which the Library has a recurring need on an "as-needed" basis.

Exceptions

The competitive procurement requirements of this policy may not apply if, under particular circumstances, an exception is warranted and legally justified. If an exception applies, written approval of the exception must be obtained from the Director of Library Services.

The following are examples of circumstances that may be considered in authorizing case-by-case exceptions to this policy. These options should only be utilized when justified and necessary to meet the Library's needs and supported by objective analysis and documentation.

- Sole Source and Single Source procurements are used when obtaining products or services. A Sole Source procurement occurs if it has been determined that there is only one source for the required product or service. A Single Source procurement is a sourcing method used to procure a product or service from one source, without soliciting competition, even though there are other vendors that can provide the product or service.
- Competition is precluded because of the existence of patent rights, copyrights, or similar circumstances and there is no equivalent item or service.
- The procurement is for replacement parts or components for equipment, and no information or data is available to ensure that the parts or components obtained from another supplier will perform the same function in the equipment as the part or component to be replaced.
- The procurement is for upgrades, enhancements or additions to hardware or for enhancements or additions to software, and no information or data is available to ensure that equipment or software from different manufacturers or developers will be as compatible as equipment or software from the original manufacturer(s) or developer(s), or would void or invalidate a manufacturer's warranty or guarantee.

**PROCUREMENT POLICY - (Revisions)**

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5. Splitting Contracts: Efforts to split a contract into two or more contracts for the purpose of circumventing dollar limits on approval processes or other requirements are prohibited.

6. Insurance Requirements: ~~All contractors must have a minimum of $1 million general liability insurance, $1 million auto insurance if travel is part of providing services, and statutory limits for workers' compensation insurance if the provider has two or more employees. Any waiver or modification of these requirements must be approved by the Director of Library Services. Professional liability insurance is required on contracts~~

~~where contractors are providing certain types of professional services. The Library must be named as an additional insured on the contractor's general liability policy with a separate Insurance Endorsement from the insurance carrier.~~ The Contractor shall take out and maintain during the life of this Agreement such Bodily Injury Liability and Property Damage Liability Insurance as shall protect him/her while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all operations under this Agreement, whether such operations be by himself/herself or by any Subcontractor or by anyone directly or indirectly employed by either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall not be less than $1,000,000. All contractors performing work/services with the County Library must have a minimum of $1,000,000 general liability insurance, $1,000,000 auto insurance, and statutory workers' compensation insurance, and the County Library must be named as an additional insured by insurer-issued written endorsement, a copy of which shall be provided to the Director of Library Services prior to initiation of work by contractor. Carrier's liability insurance at $0.60 per pound, per item will also be provided.

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The value of an agreement shall be determined by the total amount of the agreement. For example, if a contract is for ~~$60,000~~$120,000 per year for a total of two years, its value is ~~$120,000~~$240,000.

**9.** Contract Amendments: If an existing current contract requires a change, the contract must be amended. The amendment then becomes part of the existing contract. Examples of changes include an extension of the term, a change in the amount of the contract, modifications to the scope of work, or new standard contract language that

was not in place at the time of the original contract. ~~If a current contract under $100,000 is amended to a dollar amount over $100,000, the Library must submit the amendment to the Chair of the JPA Governing Board for approval and signature~~.

The requirements described in this memorandum also apply to contract amendments. If an amendment causes a contract's total payment amount to exceed $200,000, all requirements for contracts exceeding $200,000, including the requirement for approval by the JPA Governing Board Chair, must be met. Contract amendments must not be used to circumvent solicitation requirements when a contract's total payment amount would be reasonably expected to exceed $200,000.

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**6.** Services ~~$100,001~~$200,001 and Above: This category requires that a formal Request for Proposals (RFP) process be followed. ~~A formal RFP process must be conducted when the contract amount is expected to exceed $100,001.~~ RFPs shall be posted on the Library's website along with all answers to questions submitted by potential vendors. The purpose ~~for~~ of this process is to ensure that the Library receives the best value in obtaining services. Another purpose of the RFP is to encourage competition and ensure that all qualified providers are given an opportunity to be considered. The determination of "best value" is not based solely on the lowest price or the highest

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6. Goods ~~$100,001~~$200,001 and Above: This category requires that a formal ~~or Invitation to Bid (ITB)~~ Request for Quotations (RFQ) process be followed. RFQs shall be posted on the Library's website along with all answers to questions submitted by potential vendors. Bids are to be evaluated based on the requirements and criteria set forth in the ~~ITB~~RFQ ~~which may include criteria to determine suitability for a particular purpose~~. The evaluation shall be based on the face value of the bid and, when applicable, consider the following cost factors: the total bid price including discounts, the unit or extended price, hour rates for specified personnel, maintenance costs and warranty provisions, the cost and rate of freight shipping and handling, assembly and start up. The evaluation shall also include consideration of the following responsibility and responsiveness factors when applicable: general reputation and experience of the bidder, adherence to the requirements and condition of the ~~ITB~~RFQ, quality and quantity of merchandise offered, compatibility with existing systems, overall completeness of the commodity line offered and delivery or completion date. After

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- The procurement is for upgrades, enhancements or additions to hardware or for enhancements or additions to software, and no information or data is available to ensure that equipment or software from different manufacturers or developers will be as compatible as equipment or software from the original manufacturer(s) or developer(s), or would void or invalidate a manufacturer's warranty or guarantee.

~~Approved by the Library JPA Governing Board on November 6, 2017.~~