SANTA CRUZ MID-COUNTY GROUNDWATER AGENCY

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Policy No.: 6 (Version 3)	**Policy Title**: Procurement
Adopted Date: 9/9/2021	**Approval Resolution No**.: None
Policy Description: Provides guidance on Agency procurements	

PURPOSE AND APPLICABILITY

Santa Cruz Mid-County Groundwater Agency establishes the Procurement Policy. This policy is to provide guidance for the procurement of services and goods by the Agency.

POLICY

See attached.

SANTA CRUZ MID-COUNTY GROUNDWATER AGENCY
PROCUREMENT POLICY

Table of Contents

1. AUTHORITY 1
2. PURPOSE 1
3. ADMINISTRATION 1
4. GENERAL PROCUREMENT STANDARDS 2
   - 4.1 Code of Conduct 2
   - 4.2 Fair Competition 3
   - 4.3 Solicitation Procedures 4
5. PURCHASING APPROVAL THRESHOLDS 6
   - 5.1 Authority Thresholds 6
   - 5.2 Contract Change Orders 6
6. PROCUREMENT REQUIREMENTS 7
   - 6.1 Purchases less than $5,000 7
   - 6.2 Purchases from $5,000 to $50,000 7
   - 6.3 Purchases greater than $50,000 7
     - 6.3.1 Requests for Proposals 7
     - 6.3.2 Requests for Qualifications 8
     - 6.3.3 Sealed Bids 9
     - 6.3.4 Contract Cost or Price Analysis 10
   - 6.4 Time and Materials Contracts 10
   - 6.5 Sole Source Procurement 10
7. CONTRACT REQUIREMENTS 11
   - 7.1 All Contracts 11
   - 7.2 General Services Contracts 11
   - 7.3 Professional Services Contracts 12
   - 7.4 Public Works Projects 12
     - 7.4.1 Prevailing Wage Requirements 12
     - 7.4.2 MGA Responsibilities 13
     - 7.4.3 Contractor Responsibilities 13
     - 7.4.4 Small Project Exemption 13
     - 7.4.5 Surety (Bonding) Requirements 14
8. LOCAL BUSINESS PREFERENCE 14

SANTA CRUZ MID-COUNTY GROUNDWATER AGENCY

PROCUREMENT POLICY

1. AUTHORITY

The Santa Cruz Mid-County Groundwater Agency (MGA) is a joint powers agency organized under the laws of the State of California. A Joint Powers Agreement (JPA) was executed on March 17, 2016, by four member agencies (Members): the Soquel Creek Water District, the City of Santa Cruz, the County of Santa Cruz, and the Central Water District.

Under the JPA, the MGA has the authority to make and enter into contracts necessary to the full exercise of its power, and to employ, designate or otherwise contract for the services of agents, officers, employees, attorneys, engineers, planners, financial consultants, technical specialists, advisors and independent contractors.

2. PURPOSE

The purpose of the MGA Procurement Policy (Policy) is to establish a framework for the procurement of goods and services by the MGA. The Policy is designed to comply with applicable procurement standards, promote fairness in the procurement process, ensure the fiscal integrity of the MGA, and provide the flexibility needed to efficiently conduct the business of the MGA.

Any exceptions to this policy must be approved by the Board of Directors. The Board of Directors may, by majority vote and in accordance with its fiduciary responsibilities, approve expenditures in any amount and for any length of term that are not otherwise inconsistent with any applicable law or contract.

3. ADMINISTRATION

The MGA operates under a collaborative staffing model in which senior-level executive staff of the four Members (Executive Staff) are responsible for the management and administration of the MGA. Executive Staff include: the General Manager of the Soquel Creek Water District, the Director of the City of Santa Cruz Water Department, the County of Santa Cruz Water Resources Division Director, and the District Manager of the Central Water District.

The MGA Treasurer is the Finance and Business Services Manager of the Soquel Creek Water District. The MGA Treasurer and staff (MGA Financial Team) facilitate procurement payments as provided in this Policy and in the MGA Procurement Procedures. The MGA Board Clerk is the Executive Secretary/Board

Clerk of the Soquel Creek Water District (SqCWD).

4. GENERAL PROCUREMENT STANDARDS

4.1 Code of Conduct

The purpose of the Code of Conduct is to give guidance to representatives of the MGA so that they conduct themselves in a manner that is compatible with the best interests of the MGA and maintain compliance with California Government Code §1090*, et seq*. Representatives of the MGA are expected to: conduct themselves in a professional and ethical manner, maintain high standards of integrity, use good judgment, be principled in their business interactions, and act in good faith with individuals both inside and outside the Mid-County Groundwater Basin.

The following Code of Conduct shall govern the performance, behavior and actions of the MGA, including employees, Member agency employees, appointed or elected officials, volunteers, consultants, or agents (collectively referred to as "MGA Representatives") who are engaged in any aspect of procurement, including, but not limited to, purchasing goods and services, awarding contracts and grants, and the administration and supervision of contracts or subcontracts:

- No MGA representative or agent of the MGA shall participate in the selection, award, or administration of a contract if a conflict of interest exists under applicable law. The Executive Staff, at their sole discretion, may also require any employee, official, volunteer, consultant or agent of the MGA to refrain from participation in the selection, award, or administration of a contract to avoid the appearance of conflict of interest.

- A conflict would arise if the MGA representative or agent of the MGA or any member of his or her immediate family, his or her partner or partner's immediate family, or an organization which employs or is about to employ any of the parties indicated herein, has a real or apparent financial or other interest in, or receives tangible personal benefit from, the firm selected for an award. It is imperative that the MGA representative disclose to the Executive Staff as soon as possible the existence of any actual or potential conflict of interest so that safeguards can be established to protect all parties. (Immediate family members are defined as a spouse, domestic partner, legal guardian, son, daughter, mother, father, sister, brother, grandparents, or grandchild. Adopted, half, and step members are also included in immediate family).

- No MGA representative or agent of the MGA shall do business with, award contracts to, or show favoritism toward a member of his or her immediate family, his or her partner or partner's immediate family, or to any company, vendor, contractor, or parties to subcontractors who either employ or has any relationship to a family member; or award a contract or bid which violates the spirit or intent of federal, state and local procurement laws and policies established to maximize free and open competition among qualified vendors.

- MGA Representatives may not solicit, accept or agree to accept any gratuity for themselves, their immediate families or others that would or could result in personal gain. Personal gain may result not only in cases where an employee or immediate family member has a significant interest in a firm, or subcontractor of a firm, with which the MGA does business but also when an employee or immediate family member receives any gift or special consideration as a result of any transaction or business dealings involving the MGA. The following items are not considered gratuities:

    - Discounts or concessions routinely available to the general public
    - Items less than twenty-five dollars ($25) that are turned over to the MGA for general MGA use
    - Inexpensive advertising items bearing the name of the vendor, such as pens, cups, candy, calendars, etc. that have a monetary value of less than twenty-five dollars ($25)

- Disciplinary actions, up to and including termination for cause, will apply to any violation of these conflict of interest standards, in accordance with MGA policy, and/or, as applicable, a collective bargaining agreement, employment contract, or contract for services.

4.2 Fair Competition

MGA Representatives must discharge their duties impartially to assure fair competition among responsible vendors. All vendors will be treated equally and fairly at all times by all MGA Representatives, with equal information given to each vendor who participates in the procurement process. Prequalified lists of persons or firms, or products used in acquiring goods or services, are to be kept current and include enough qualified sources to ensure maximum open and fair competition.

- MGA Representatives may not place unreasonable restrictions on competition, including any of the following:

- Placing unreasonable requirements on vendors to qualify for a procurement
- Requiring unnecessary experience and bonding
- Noncompetitive pricing practices between vendors or affiliated companies
- Awarding noncompetitive contracts to consultants that are on retainer contracts
- Organizational conflicts of interest
- Specifying a brand name product instead of allowing an equal product to be offered (brand names may be specified in instances where no grant funding is applicable to the project as long as the procurement remains competitive)
- Non-compliance with sole source restrictions
- Precluding potential bidders from qualifying during the solicitation
- Any arbitrary action in the procurement process

- MGA Representatives shall ensure that any vendor that develops or drafts specifications, requirements, statements of work, invitation for bids, requests for qualifications, or requests for proposals for a procurement is excluded from competing in that procurement.

- All solicitations will incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standard to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a brand name or equivalent description may be used as a means to define the performance or other relevant requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated.

- Bids and proposals shall identify all the requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

Notwithstanding any provision in this Policy, procurements funded by a state or federal funding program shall be conducted in a manner that satisfies all funding requirements.

4.3 Solicitation Procedures

The MGA has established procurement procedures to guide the

conservative utilization of resources.

- Acquisition of unnecessary or duplicative items must be avoided. Consideration should be given to consolidating or dividing procurements to obtain a more economical purchase. When appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

- To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services, the MGA shall enter into state and local inter-governmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services.

- Encourage the procurement of federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

- Value engineering clauses may be used in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lowest cost.

- Contracts shall only be awarded 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.

- Records will be maintained sufficient to detail the history of the procurement. These records will include, but are not necessarily limited to, the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price. The Board Clerk will be the repository for said records which shall be maintained according to the MGA's written record retention schedule.

- The MGA will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the MGA of any contractual responsibilities under its contracts. Violations of law will be referred to the local, state, or federal authority having proper jurisdiction.

5. PURCHASING APPROVAL THRESHOLDS

All expenditures must be approved in the fiscal year budget approved by the MGA Board of Directors (Board). The purchasing approval thresholds below establish the authority of either Executive Staff or the Board to approve individual expenditures within the fiscal year.

The Board may, however, approve expenditures in any amount and for any length of term that are not otherwise inconsistent with any applicable law or contract. Any purchase not covered under an existing budget allocation will be paid through budgeted contingency reserves upon approval of the Board or the Executive Team pursuant to the Authority Thresholds at Section 5.1.

5.1 Authority Thresholds

Procurements of up to $50,000 must be approved by a member of the Executive Staff.

Procurements over $50,000 must be approved by the Board.

Any expenditure estimated to cost $100,000 or more that is not included in the Agency's annual budget must be approved by a unanimous vote of all Member Agency directors participating in voting pursuant to Section 9.3 of the First Amended JPA.

5.2 Contract Change Orders

Contract change orders (CCO) may be executed for projects that are in progress provided:

- Executive Staff approves all CCOs within its authority threshold;
- The Board approves all CCOs within its authority threshold;
- The total of all CCO's do not exceed the amount approved in the annual budget unless approved by the Board; and
- The CCO is within the authorized scope of work for the contract. Out-of-scope (supplemental agreements) must be separately bid and authorized by the Executive Staff for contracts within its approval authority, or by the Board.

A project is "in process" between the execution of the contract and/or Notice to Proceed, whichever is earlier, and final completion of the contract. Executive Staff

shall report to the Board at the next Board meeting any CCO executed under this authority.

6. PROCUREMENT REQUIREMENTS

6.1 Purchases less than $5,000

The price of any purchase must be considered reasonable by anyone duly authorized by the MGA.

6.2 Purchases from $5,000 to $50,000

Price or rate quotations from at least three (3) qualified sources must be submitted to the MGA Financial Team or proof of compliance with one or more of the factors for sole source procurement set forth in Section 6.5, below.

6.3 Purchases greater than $50,000

All goods or services over $50,000 are to be procured by the formal solicitation processes unless it is determined that the requirements of sole source procurement set forth in Section 6.5 are satisfied. Competitive proposals require formal solicitation, this includes fixed-price or cost-reimbursement contracts, and are used when sealed bids are not appropriate. The solicitation will often include evaluative factors other than price, and these factors shall be identified in the solicitation document, as well as how the factors will be weighted in the final consideration of bids.

6.3.1 Requests for Proposals

If a Request for Proposals (RFP) is used, the following requirements apply:

- The RFP must be publicized and identify all evaluation factors and their relative importance;
- Proposals must be solicited from an adequate number of qualified sources so as to ensure fair competition;
- The methods for technical evaluations of the proposals received and for selecting recipients may include, but are not limited to, oral interviews, reference checks, past performance, availability to perform work, and appropriate certifications as determined by project scope;
- Written procedures are required for all RFP technical evaluations and

must be retained in the event of an audit;

- Any response that takes exception to mandatory items in the RFP proposal process may be rejected and not considered; and

- Contracts must be awarded to the responsible firm whose proposal is most advantageous to the MGA, with price and other qualitative factors considered.

A review and selection committee may be appointed to evaluate and rank the proposals and may be comprised as follows:

- The number of committee members and consultants to be interviewed shall be at the discretion of the Executive Staff or Board.

- The committee may include Executive Staff, other appropriate Member staff, other qualified individuals, or qualified and unbiased members of the professional discipline being considered; and

- If authorized by the Board, Board member(s) may participate in the selection committee.

6.3.2 Requests for Qualifications

Requests for Qualifications (RFQ) must be used for the required qualification-based procurement of architectural, landscape architectural, engineering, environmental, land surveying, and construction management services (collectively "A/E" professional services). The selection will be on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required, pursuant to Government Code Section 4526.

Criteria for selecting an A/E firm should include such factors as professional excellence, demonstrated competence, specialized experience of the firm, education and experience of key personnel, staff capability, workload, ability to meet schedules, principals to be assigned, nature and quality of completed work, reliability and continuity of the firm, location, professional awards, and other relevant considerations. Such factors shall be weighed according to the nature and complexity of the project, the needs of the Agency, and the special requirements of the specific project.

Under an RFQ, competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation.

6.3.3 Sealed Bids

Sealed bids are an alternative procurement method for purchases over $150,000 that are not suited to Competitive Proposals under Sections 6.3.1 or 6.3.2.

Competitive sealed bids are publicly solicited and a firm fixed-price contract is awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the Invitation for Bids (IFB), is the lowest in price. Upon obtaining and awarding bids, purchases must be approved pursuant to the approval guidelines in section 5.1. Purchases of materials, supplies, components or chemicals that will be in contact with drinking water must be NSF 60/61 certified and a certification form must accompany the purchase requisition.

This method is appropriate when the following conditions exist:

- A complete, adequate and realistic specification or purchase description is available, which can exist for some construction projects, vehicle or inventory purchases;

- Two or more responsible bidders are willing and able to compete effectively for the business; or

- The procurement lends itself to a firm fixed-price contract (lump sum or unit) and the selection of the successful bidder can be made principally on the basis of price.

If the sealed bid method is used, the following conditions apply:

- The Invitation for Bids (IFB) must be publicly advertised;

- Bids must be solicited from an adequate number of known suppliers, and bidders must be provided a sufficient response time prior to the date set for opening bids;

- The IFB, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;

- All bids will be publicly opened at the time and place prescribed in the IFB;

- A firm fixed-price contract award will be made in writing to the lowest

responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually employed; and

- Any and all bids may be rejected if there is a sound documented reason.

6.3.4 Contract Cost or Price Analysis

As part of the selection process for every purchase over $150,000, some form of cost or price analysis must be performed, including any contract modifications. A price analysis is the process of comparing total price among comparable offers, whereas a cost analysis is the process of reviewing individual elements of cost that make up the overall price. If it is requested that costs are broken out in the submission of bid or proposal, each of the elements must be analyzed to determine whether it is fair, reasonable and beneficial to the overall deliverable.

6.4 Time and Materials Contracts

The use of time and materials contracts are discouraged and may only be used if 1) the contract includes a not-to-exceed price that the contractor exceeds at its own risk; and 2) the Board has determined no other type of contract is suitable and the reasons for unsuitability are well documented. The cost of a time and materials type contract is the sum of the actual cost of materials plus direct labor hours charged at a fixed hourly rate that include wages, administrative expenses and profit. Such contracts are disfavored because they provide no positive profit incentive for cost control or labor efficiency, and require a higher degree of oversight to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

6.5 Sole Source Procurement

All goods or services over are to be procured as presented in Sections 6.1 to 6.4 above unless it is determined and documented that the requirements of sole source procurement are satisfied.

For procurements less than $50,000, which require Executive Staff approval and for which a contract has been executed, a copy of the contract and the written justification for sole source procurement must be provided to the Board at the next meeting of the Board. For procurements over $50,000, which require Board approval, the written justification must be distributed with the Board meeting materials in advance of the meeting at which the contract is approved.

Sole source procurement may be utilized when competitive procurement would fail to produce an advantage or the procurement process is undesirable, impractical, or impossible. The following factors may justify sole source procurement:

a) When the goods or services are needed on an emergency basis. Executive Staff may determine if an emergency exists and that the potential impacts to public health, safety or welfare of the community warrant this procurement method. All emergency purchases which would otherwise require competitive solicitation must be submitted to the Board for ratification at the next meeting of the Board.

b) When the goods or services are either:
   i. available from only one source, or
   ii. unique due to the specialized skill or experience of the contractor, consultant or supplier, or
   iii. proprietary in nature.

c) When the goods or services are required to match, integrate or be compatible with an existing project or program and the work, materials or services are from a contractor, consultant or vendor who previously satisfactorily performed or provided work, materials or services to the MGA or a Member Agency.

d) When the goods or services are obtained by cooperative procurements or "piggyback" on the competitive procurement process of another agency. The MGA shall have the authority to join with other public jurisdictions in cooperative purchasing plans, programs or pricing agreements. The MGA may also contract for Services and Supplies at a price established by competitive procurement by another public jurisdiction in substantial compliance with that public agency's competitive procurement process. The MGA may also contract with any federal, state, municipality or other public agency.

7. CONTRACT REQUIREMENTS

7.1 <u>All Contracts</u>

All MGA contracts are signed by the Board Chair or Vice-Chair or a member of the Executive Staff and approved as to form by MGA legal counsel.

7.2 <u>General Services Contracts</u>

The purchase of general services (other than professional services, as defined below) under a service contract or agreement should generally not exceed a two-

year term. Services associated with a project may be approved for a multi-year contract that coincides with the term of the project at the discretion of the Board. In instances where a shorter term contract could result in significant disruption of MGA operations, the Board may approve an extended contract.

7.3 Professional Services Contracts

Professional services may be procured for up to three-year contracts, with an option to extend into one or two additional years as long as performance is satisfactory and pricing remains competitive. Longer contracts preclude competitive procurement and are discouraged. Professional services are services requiring a high degree of professional, educational or technical skill such as services rendered by architects, landscape architects, engineers, environmental engineers, environmental planners, surveyors, construction managers, economists, bond counsel, bond underwriters, financial advisors, appraisers, actuaries, attorneys, auditors, software service providers, web designers, and others. Professional services associated with a project may be approved for a multi-year contract that coincides with the term of the project at the discretion of the Board. In instances where a shorter term contract could result in significant disruption of MGA operations, the Board may approve an extended contract.

Executive Staff is authorized to negotiate a contract detailing scope of work and fair and reasonable compensation with the firm whose competitive proposal ranked highest during the evaluative process. If the MGA is unable to negotiate a satisfactory contract with the highest ranked firm, negotiations may be formally terminated and the firm dismissed from further consideration. Negotiations may continue with subsequently ranked firms until an agreement is reached. The substance of previous negotiations will not be divulged by MGA member agency staff in discussions with subsequently ranked firms, and the submittals of unsuccessful candidates will be considered confidential. If no agreement is reached the MGA may consider re-publicizing the procurement.

7.4 Public Works Projects

7.4.1 Prevailing Wage Requirements

Public works projects are defined, for prevailing wage purposes, in California Labor Code Section 1720 to include construction (including design, inspection or surveying), alteration, demolition, installation, or repair, paid for in whole or in part out of public funds. No contractors or subcontractors may be awarded a contract for a public works project unless the contractor and subcontractor is registered with the California Department of Industrial Relations' Public Works Contractor Registration Program.

7.4.2 MGA Responsibilities

For any public works project, the MGA must:

- Register the project with the Department of Industrial Relations (DIR) by filing a PWC-100 form within 5 days of the award of the contract (failure to provide timely submission can jeopardize state funding);
- Obtain prevailing wage rates from DIR;
- Notify potential contractors that they must register with DIR prior to bidding;
- Certify proof of contractor registration before awarding bid;
- Require contractors to post jobsite notices on public works requirements;
- Ensure contractor is paying prevailing wages in compliance with public works laws; and
- Report any suspected violations to the Labor Commission.

7.4.3 Contractor Responsibilities

For any public works project, the contractor must:

- Register with the Department of Industrial Relations (DIR) as a public works contractor;
- Pay prevailing wages on any project over $1,000;
- Follow apprenticeship requirements for any project over $30,000;
- Maintain and submit certified payroll records.

7.4.4 Small Project Exemption

A small project exemption exists for maintenance projects that do not exceed $15,000, or new construction, demolition, alteration or repair projects that are less than $25,000. Contractors who work exclusively on small projects that qualify for exemption are not required to register as a public works contractor or file electronic certified payroll reports but are still required to maintain certified payroll records and provide them to the Labor Commissioner's office and the MGA on request. The MGA need not file a PWC-100 form for exempt projects.

7.4.5 Surety (Bonding) Requirements

For public works construction contracts or subcontracts the MGA has established the following sureties.

- A bid guarantee from each bidder equivalent to ten percent (10%) of the bid price. The bid guarantee must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.

- A faithful performance bond on the part of the contractor for no less than 100 percent (100%) of the contract amount. A performance bond is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

- Required for contracts and subcontracts exceeding $25,000: A payment bond on the part of the contractor for no less than 100 percent (100%) of the contract amount. A payment bond is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract. The MGA must approve the bond before work begins and is not allowed to release payment to the contractor without an approved payment bond. This threshold is less than the MGA's threshold for sealed bids or competitive proposals but exceeds the threshold for small purchases requiring competitive pricing. A design professional is not considered a direct contractor in this instance and is therefore exempt from the bond requirement.

- A maintenance bond on the part of the contractor for no less than ten percent (10%) of the contract amount or $2,000, whichever is greater, to remain in effect for a minimum of two years after the completion and acceptance of work performed under the contract. A maintenance bond protects the MGA against defects and faults in materials, workmanship, and design.

8. LOCAL BUSINESS PREFERENCE

To support the local business community, the MGA will provide a preference of up to 6% to vendors located within Santa Cruz County. The preference has two tiers: a 2% preference for vendors with a business location within Santa Cruz County, and an *additional* 4% preference when at least 50% of the business owners live in Santa

Cruz County. The preference is used only for the evaluation of quotes, bids, or proposals, and does not reduce the amount of a submitted quote, bid, or proposal.

The business location must be a business address. Home-based businesses may qualify if they have a home occupancy permit.

The local business preference does not apply to the following: 1) purchases of less than $5,000, 2) sole source procurements, 3) construction projects, 4) urgent purchases necessary to protect public health, welfare, or safety, 5) purchases made under a cooperative agreement, 6) purchase made by credit care, petty cash, or on claims, 7) purchases funded by outside agencies that prohibit the use of local business preferences, and 8) qualifications based selections in which price is not considered in the selection of which service provider to engage in negotiations.

When seeking quotes, bids, proposals for purchases of over $5,000, the MGA will provide potential bidders with a Local Business Preference Certification Form to be returned with the quote, bid, or proposal.