

**MENDOCINO COUNTY AIR QUALITY MANAGEMENT DISTRICT  
ADMINISTRATIVE POLICY # 1**

**PURCHASING AND, LEASING & CONTRACTING POLICY**

Adopted:  
September 14, 2010

Adopted by:  
The Mendocino County Air Quality Management District Board

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## **1.0 GENERAL PROVISIONS**

### **1.1 Purpose and Intent**

The purpose and intent of this policy is to outline the authority, the Air Pollution Control Officer (APCO) or the Air Quality Management District Board, to carry out each of the described tasks. When express authority is not delegated to the Air Pollution Control Officer, the Mendocino County Air Quality Management District Board retains sole authority for the activity. All purchases subject to this policy are contingent upon the Air Quality Management District Board adopting the budget each fiscal year and the availability of funds.

### **1.2 Sources of Authority; Priorities in Case of Conflict**

Public agencies, such as the District, have only those powers given to them by the Legislature with regard to acquiring and disposing of personal and real property or contracting for services. District employees have only that purchasing and contracting authority expressly delegated to them by the Air Quality Management District Board or the APCO and may be held personally liable for a transaction undertaken without such express delegation.

Except as otherwise provided by law or by action of the Air Quality Management District Board, all purchases of materials, supplies, furnishings or equipment required by the District shall be made on behalf of the District by the APCO or designee.

Throughout this policy, reference will be made to state statutory law, or Board policies or resolutions. Should there be any conflict between this policy and state law, the state law provision will govern.

#### **1.2.1 Contracting With Other Agencies for Purchasing Services**

The Air Quality Management District Board, through an MOU, may choose to have another public agency contract with the District to provide purchasing services. Contracting with another agency should only occur when it is in the best interests of the District.

The APCO will retain final approval authority over any orders or purchases made under contract unless that authority is specifically retained by the Air Quality Management District Board.

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**1.3 Policies and Procedures**

This section describes responsibilities and procedures that apply generally to contracts covered in this policy. In the event of a conflict between this section and another more specific provision of this policy, the provision dealing with the specific subject matter shall be followed.

**1.3.1. Initiating, Amending, and Funding Contracts**

The APCO is responsible for preparing contracts for consideration by the Air Quality Management District Board. The APCO is also responsible for the administration of the contract once it is signed.

If a proposed amendment to the contract would have changed the level of approval required, approval of the changes must be requested from the person or entity that would have approved such a contract initially. (See Sections 5.4 through 5.6 of this policy.)

**1.3.2 Approval and Administration of Contracts**

With the exception of pre-approved standard contracts (see Section 5.4), all contracts must be reviewed for approval by District Counsel. Approval of a contract by District Counsel means that it has been determined that the necessary clauses are included and that the contract is legally enforceable - District Counsel approval does not necessarily indicate that the contract contains all clauses which may be advisable, that the language clearly expresses the intent of the parties, or that the best deal has been negotiated. Concerns over issues of this type shall be raised by specific questions to District Counsel.

The APCO, or Air Quality Management District Board's role in District contracting depends on the type of contract and the amount of compensation. The APCO shall be authorized to sign personal and professional service contracts up to \$10,000. The Air Quality Management District Board shall sign personal and professional service contracts over \$10,000.

The Mendocino County Risk Manager (currently Mendocino County Risk Management), with input from District Counsel, drafts the language for the insurance provisions of all District contracts and leases. The Mendocino County Risk Manager must approve any modification of these standard insurance provisions. All contracts that do not comply with the standard contract provisions set forth for personal and professional service contracts and other pre-approved standardized contracts must be routed through the Mendocino County Risk Manager for approval.

Following the necessary approvals, the APCO shall arrange for the contract to be signed by all parties. If the Air Quality Management District Board's signature is necessary, the APCO shall place the contract on the Air Quality Management District Board's agenda for consideration.

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The APCO is responsible for ensuring that any required documents related to the contract - certificates of insurance, bonds, etc. - remain in effect during the life of the contract.

**1.3.3 Negotiating Contracts or Purchases Not Subject to Competitive Bid**

With regard to those contracts or purchases that are not subject to the competitive bidding process, the burden of arriving at the best terms, i.e., price, quantity, quality, warranty, delivery, setup, training, etc., is placed on the party charged with the negotiation process. That person is either the APCO or designee.

In every case, the District shall maintain documentation showing that the choice of contractor or vendor was fair and reasonable. These records shall be kept until the work is completed, but no less than five years. These records will be kept at the District Office.

If the contract is for the purchase of equipment or some other item of personal property, the District shall insist that the vendor not waive or limit warranties. When the District is buying equipment - a computer, a large printer, etc. - the contract shall require "acceptance testing" to demonstrate that the equipment works to the District's satisfaction. The contract shall provide that if the item does not meet the District's standards for operation, the vendor will remove the equipment and return all amounts paid by the District.

The person negotiating personal and professional service contracts on the part of the District shall advise the other party that the contract is subject to final approval by District Counsel, Mendocino County Risk Manager or the Air Quality Management District Board, as appropriate.

Once the contract has been signed by the APCO or the Air Quality Management District Board, the original of the contract will be kept by the District. A copy of the Contract shall be forwarded to the Mendocino County Auditor-Controller, so that the Mendocino County Auditor's staff has authorization to make payments under the contract.

**1.3.4 Grant Award Contracts**

Funding provided by the District for grants awarded shall be done under contract or Memorandum of Understanding after Air Quality Management District Board approval. A standard form of these Contracts or MOUs will be approved by the Mendocino County Risk Manager and District Counsel. Individual contracts that are consistent with the standard approved form do not need separate approval.

Grant awards approved by the Board at a public meeting are not subject to the expenditure limits outlined elsewhere in this policy.

**1.3.5 Cash Advances**

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Advance payment of contract amounts by the District is not allowed.

**1.3.6 Purchasing of Recycled-Content Materials**

Materials and supplies with recycled content shall be purchased preferentially when price, quality, suitability and availability are equivalent to or better than the same item(s) without recycled content.

**1.3.7 Local Purchasing**

In line with the District's mission to reduce emissions, the APCO shall make all reasonable efforts to purchase from local vendors provided costs are reasonable and competitive with vendors located outside the District.

**1.4 Vendor Relations**

It is to the District's advantage to maintain and promote good relations with suppliers. All District staff are responsible for promoting fairness, integrity, courtesy and goodwill in vendor relations.

The APCO or designee may serve as an intermediary between the District and vendors, interviewing vendors, arranging interviews with District staff, or obtaining prices, catalogs, samples, equipment demonstrations and general information on commodities.

**1.5 Ethical Standards for Purchasing Activities**

It is the responsibility of all District employees to maintain the good name of the District, and to develop good relations between the District and its suppliers. In personal and professional service contacts with the vendors, each employee represents the District.

It is the policy of the District to promote integrity and guard against misconduct or even the appearance of impropriety by prescribing certain essential standards of conduct for employees.

District employees and officers must discharge their duties impartially so as to assure fair competitive access to government procurement by responsible suppliers and contractors and to foster public confidence in the integrity of the procurement system.

District employees and officers must not solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment for them or their family in connection with any decision, approval, recommendation, or preparation of any part of a program requirement, specification, standard or contract.

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District employees and officers must not participate directly or indirectly in procurement when the employee or officer knows that:

- (a) the employee or any member of the employee's family (defined as by marriage or blood) has a financial interest pertaining to the procurement;
- (b) a business or organization in which the employee has financial interests pertaining to the procurement; or
- (c) any other person, business or organization with which the employee is negotiating or has an arrangement concerning prospective employment is involved in the procurement.

## **2.0 PURCHASES OF SUPPLIES OR EQUIPMENT**

### **2.1 APCO or Designees Role in the Purchase of Supplies or Equipment**

The APCO or designee is the sole representative of the District in negotiating with vendors and preparing purchase orders or formal contracts for purchases. District staff may only make direct purchases from vendors when authorized by the APCO or designee to make direct purchases from a specified vendor (see Section 2.3). In no event shall such direct purchases exceed \$5,000, unless specifically authorized by the APCO or the Air Quality Management District Board. However, charges for ongoing maintenance are separate from the purchase price and can be paid only if a maintenance (personal and professional service) agreement is executed in accordance with Section 5.8 of this policy.)

### **2.2 Limitations on Items that may be Purchased**

The District (acting through the APCO, or the Air Quality Management District Board) may purchase only those items necessary to carry out the authorized activities of the District. The Mendocino County Auditor-Controller will not reimburse purchases of items not specifically authorized by law unless the purchase is ratified by formal Board action upon a finding that the purchase was necessary and appropriate.

Before requesting or making a purchase, District staff shall be sure that state law or Board action authorizes that purchase.

Examples of purchases, which require advance written approval from the Mendocino County Auditor or the Air Quality Management District Board, include:

- (a) food and drink dispensed to employees or the public; or
- (b) plaques or other awards (including flowers) to employees, community leaders or volunteers.

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**2.3 Acquisitions by Direct Purchase**

**2.3.1 Acquisition by the APCO**

The APCO or designee may make routine purchases (including tax, delivery, and set-up charges) directly from the vendor. In no event shall such direct purchases exceed \$5,000 unless specifically authorized by the Air Quality Management District Board.

**2.3.2 Acquisition by Direct Purchase with a Credit Card**

The APCO may make certain direct purchases with a procurement (credit) card.

In no event shall such direct purchase authorization limit for individual items, individual transactions, or total transactions in a 30-day period exceed the limits established by this policy or the Mendocino County Auditor.

Under Section 2.3.2, to avoid a conflict of interest, direct purchase from County of Mendocino or District employees is prohibited. The District shall make purchases from recognized, responsible vendors only. When purchasing from companies on the Internet, authorized employees shall utilize on-line shopping services only from those companies providing a secure site, protected by Secure Socket Layer (SSL) technology or better. Further, such purchases may not be combined with personal activities in any manner. Claims for direct purchases will be audited by the Mendocino County Auditor-Controller. Misuse of direct purchasing or credit card privileges will be reported to the APCO and/or the Air Quality Management District Board.

**2.4 Obtaining Fixed Assets**

A fixed asset is any individual item costing \$5,000 or more, including tax, delivery costs and all costs to put it in place in a working condition. The APCO or designee must accomplish acquisition of a fixed asset, even if the asset is leased, lease/purchased or rented.

**2.4.1 Purchases of Computer Hardware/Software**

All requisitions for Computer Hardware must be approved by the District's Information Services provider prior to purchase.

**2.4.2 Checks and Receipts**

The Mendocino County Auditor-Controller must approve all purchases of pre-printed checks, voucher books, or receipts.

**2.4.3 Purchase Orders**



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Whenever necessary, or desirable, and for all purchases of \$2,000 or more, the APCO may issue a formal purchase order after a vendor has been selected. The purchase order constitutes a legal contract between the District and the vendor.

**2.4.4 Canceling a Purchase Order**

The APCO must be notified at once of any difficulty with a purchase order. The APCO will notify the Mendocino County Auditor/Controller to eliminate the purchase from the schedule of encumbrances.

**2.5 Post-Acquisition Activities**

**2.5.1 Payment of Invoices**

When the District receives an invoice, the District shall submit it with a claim to the Mendocino County Auditor for payment.

**2.6 Bidding When Required**

In event the APCO purchases any individual item (as distinct from the total contract) costing more than Ten Thousand Dollars (\$10,000) without securing competitive bids or quotations thereon, the APCO shall report such action to the Air Quality Management District Board, with his/her reasons therefore.

**2.7 Emergency Purchases**

An “emergency” exists when an item must be purchased in order to ensure the continued operation of the District office, air monitoring equipment, or when necessary for the preservation of life or property.

The Air Quality Management District Board shall be immediately be notified of any emergency purchases.

In order for the Mendocino County Auditor to pay for fixed asset items (items costing over \$5,000) purchased on an emergency basis, the APCO must obtain the approval of the Air Quality Management District Board.

**2.8 Payment of Routine Utility and Non-Routine Fuel Bills**

Payments for routine utility charges are paid directly by the District.

**2.9 Purchases from Petty Cash Accounts**

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The Air Quality Management District Board has authorized the Mendocino County Auditor to establish petty cash (imprest cash fund) accounts at the District. The purpose of having a petty cash account available to the District is to allow the District the flexibility to meet its emergency needs.

Receipts are gathered and retained to justify the expenditures from and later to replenish the money in the District's petty cash account.

The Mendocino County Auditor-Controller will deny any claim for the purchase of goods or services that is not in conformity with existing District policy. It is a violation of state law to use petty cash funds to cash personal checks or to give loans to employees; doing so is grounds for disciplinary action.

**2.10 Penalties for Failure to Follow Procedures**

A purchase made in violation of these purchasing procedures is grounds for disciplinary action and the APCO may be held personally accountable.

Splitting of orders to avoid the need to issue a purchase order is contrary to this policy and state law, and may be grounds for disciplinary action.

**3.0 MAINTENANCE RENTALS AND LEASES OF EQUIPMENT AND OTHER PERSONAL PROPERTY**

The APCO is authorized to negotiate and execute all equipment service contracts and lease purchase agreements of personal property on behalf of the District. All leases extending beyond the current fiscal year must contain a non-appropriation clause that allows the District to terminate the lease should funding for the equipment terminate or decrease.

**4.0 LEASES OF REAL PROPERTY**

The APCO is authorized to negotiate and execute all rentals of real property which the District may require. The APCO's authority to enter into leases is limited, however, by State of California Government Code Section 25350.51.

**4.1 Definition of Real Property**

Real property includes land, buildings and other structures attached to the land, and fixtures. In general terms, a fixture is any tangible item that is securely attached to a building. Any questions regarding whether a particular item is a fixture and therefore real property, shall be

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addressed to District Counsel. District Counsel shall also be consulted when the property in question is a mobile home or similar structure.

**4.2 Rental Agreements**

The APCO is authorized to enter into Rental Agreements for any facility used to conduct meetings, trainings, and seminars (etc.) for up to \$1,000 and no more than 7 days.

**5.0 CONTRACTS FOR SERVICES**

**5.1 Definition; Authority to Enter Into Personal and Professional Service Contracts**

Personal and professional service contracts are contracts that engage the time and effort of the contracting party with the primary purpose of performing specific functions or tasks rather than furnishing an end product.

The Air Quality Management District Board has delegated its power to contract for personal and professional services to the APCO up to \$10,000, if sufficient funds have been budgeted.

The Air Quality Management District Board has also authorized the use of certain standardized contracts that have been pre-approved as to form by the District Counsel and Risk Management.

It is not necessary to have a contract to perform or request services under the North Coast Air Basin inter-District MOU.

A personal and professional service contract is not necessary to procure services required by the District to investigate or prosecute crimes.

It is not necessary to have a personal and professional service contract to acquire services required by a court order.

Any requests from a state or federal agency for investigative support either by or for the District does not require a contract.

**5.2 Entering A Personal and Professional Service Contract**

Personal and professional service contracts are initiated by the District. Most personal and professional service contracts, regardless of the amount of compensation, will follow the format used for those contracts under \$10,000, which are described in Section 5.4 of this policy.

A statement of work is that part of the personal and professional service contract, prepared by the APCO or designee during negotiations with the consultant, which describes what the District wants the consultant to do or accomplish. The statement of work shall be included as an attachment and shall be a part of the service contract.

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**5.3 Personal and Professional Service Contracts with Compensation Less Than \$10,000**

The Air Quality Management District Board has authorized the APCO to sign personal and professional service contracts. All Contracts signed by the APCO shall meet all of the following criteria:

- (a) Total compensation, including reimbursable costs, will not exceed \$10,000. “Contract splitting” to keep each agreement under the maximum allowable amount is prohibited.
- (b) The contract is primarily for personal and professional services rather than the purchase of goods (although the contract may provide for incidental purchases, such as the purchase of training materials).
- (c) The contract is for a one-time service or for duration of two years or less.
- (d) The amount of the contract is already budgeted for in the District’s current budget.
- (e) The services to be provided are not legal, psychiatric, medical or rehabilitative services.
- (f) The contractor is not employed by the District or the County in any other capacity.
- (g) The contractor is not related to any person employed in by the District or the County (by blood or by marriage).
- (h) The contract covers all services to be rendered by the contractor.
- (i) The contract does not involve the remodeling or modification of District-owned or leased premises; the installation or maintenance of security or alarm systems; or the rental of equipment, vehicles or real property.
  
- (j) The contract is compliant with all applicable local, state and federal laws and regulations.

If a proposed contract does not meet any one or more of the above requirements, the procedures described in Section 5.5 or 5.6 of this policy shall be followed.

The consultant must submit the required Certificates of Insurance before the contract is signed by the APCO and any services are performed. The APCO shall carefully review the certificates to be sure that they conform to the requirements of the standard format contract. The District shall contact the Mendocino County Risk Manager if there are any questions concerning the certificates. The District shall provide quarterly reports to the Purchasing Agent on all contracts entered into and signed off by the APCO.

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**5.4 Personal and Professional Service Contracts with Compensation of More Than \$10,000**

All personal and professional service contracts for more than \$10,000 must be approved and signed by the Air Quality Management District Board. The Mendocino County Risk Manager and District Counsel must review these contracts before they are submitted to the Board.

**5.5 Aggregate Vendor Services Contracts**

An aggregate vendor services contract commits the contractor to perform a series of similar services during the term of the contract. If the stated or reasonably projected dollar amount of an aggregate services contract is less than \$10,000 per fiscal year for the total of all services and/or projects, the APCO may sign the contract. The contract may be negotiated by the APCO or designee, with the assistance of District Counsel as requested.

The APCO administers the contract once it is made. It is essential that the compensation not exceed \$10,000 during the fiscal year. If total compensation will exceed that amount, an amendment to the contract must be prepared for the Purchasing Agent's approval and signature. Any Aggregate contract over \$10,000 must be approved by the Air Quality Management District Board.

**5.6 Maintenance Contracts**

As used in this section, maintenance contracts are personal and professional service contracts for labor and materials necessary to properly maintain specified equipment, vehicles or other personal property owned or used by the District. All equipment maintenance contracts are signed by the APCO.