

## **CHAPTER 12 PROCUREMENT POLICY**

### **12.1 GENERAL PROVISIONS**

#### **12.1.1 Scope –**

This chapter shall, except where otherwise noted, govern the purchase of supplies, services, construction, real or personal property, and the disposal of property, whether real or personal, by the District. This policy shall apply to every expenditure of public funds irrespective of the source of the funds. No purchases shall be made and no encumbrances shall be incurred for the benefit of the District except as provided in this chapter.

#### **12.1.2 Budget Expenditures – Board of Directors Approval –**

No purchase shall be made and no encumbrance shall be incurred unless funds sufficient to cover the purchase or encumbrance have been budgeted and are available within the approved budget or unless the purchase or encumbrance is approved by the Board.

#### **12.1.3 Responsibility for Budgetary Compliance –**

The District Manager is the authorized officer charged with the responsibility of staying within the District's budgets and authorizing no expenditures in excess of the budgets as required by the California Public Contract Code and the California Water Code.

#### **12.1.4 State Code Provisions –**

Expenditures shall comply with any applicable federal and state requirement and law, and regulation, including the California Public Contract Code and Irrigation District Law embodied in the Water Code, particularly Division 11, Section 20500 of the Water Code, and with terms and conditions of any grant, gift or bequest consistent with law.

#### **12.1.5 Public Procurement Mission –**

Public policy dictates that the fundamental mission of a public procurement function is to promote economy, efficiency, and effectiveness in the acquisition of goods and services and expenditure of public funds. The District to accomplish this mission must at least:

A. Provide for public confidence.

- B. Use fair and equitable treatment to all concerned.
- C. Employ effective broad-based free and open competition.
- D. Strive for maximum value for District expenditures.
- E. Provide for work to be performed in a thoroughly professional and ethical manner, with honesty and integrity within applicable laws and regulations adopted by the District.
- F. Provide safeguards for maintaining a procurement system of quality and integrity, including prohibition against conflicts of interest and gratuities.
- G. Allow sufficient flexibility to maintain safe, reliable water service to the community and meet emergency needs.

**12.1.6** Prohibited Acts –

It is a violation of District policy:

- A. For any bidder or prospective bidder, including its employee(s) or officer(s), in connection with a purchase by the District, to engage in any act or inaction, which is a restraint of trade, anti-competitive, or price-fixing, and not in accordance with Fair Political Practices guidelines.
- B. For any person to offer or to give to any employee of the District or any member of his immediate family, any gift whose value is greater than \$50 in a given year, whether in the form of money, services, loan, travel, entertainment, hospitality, promise, or other form or for any District employee to directly or indirectly solicit or directly or indirectly accept any such gift for such purpose as provided in the California Government Code and the California code of Regulations.
- C. For any District employee, officer, or Director to disclose, in advance of the opening of the bids, the content of any bid invited through the formal or informal competitive bidding procedure.
- D. For any District employee, officer, or Director to actively participate in the awarding of a contract from which he will directly benefit.
- E. For any District employee, officer, Director, or other person to misappropriate for personal use any item of public property.

**Any District employee or officer committing any of the foregoing acts is subject to discipline.**

### **12.1.7**    Voidable Contracts –

The following contracts are voidable at the discretion of the District:

- A. Contracts that result from a conflict of interest under this policy or other applicable law.
- B. Contracts awarded to a person or firm that tried to influence the award of such contract by offering something of value to any District employee, officer, or Director.
- C. Contracts awarded by an official or employee circumventing the requirements of this chapter or other applicable statute.
- D. A contract, which was bid or awarded under circumstances prohibited under Section 12.1.6.

The Board hereby declares its intent that such contracts would not have been entered into on behalf of the District if the misconduct had been discovered prior to the execution of the contract. The Board further states that no District officer or employee has authority, either actual, apparent, or implied, to negotiate or execute any such contract, and that such contract shall, at the discretion of the Board, be voidable, unless the action of the District officers and employees in executing the contract is ratified by affirmative action of the Board after the misconduct was discovered and made known to the Board.

All persons or firms responsible for any misconduct prohibited by this chapter shall be liable for any losses incurred by the District as a result of the misconduct.

## **12.2**    **PURCHASE OF GOODS AND SERVICES**

### **12.2.1**    Scope –

This part shall apply to the purchase of goods and services, except as otherwise specified in Parts 3 and 4.

### **12.2.2**    Competitive Process –

Whenever the total price of a contract or purchase exceeds \$1,000, the contract shall be awarded through a competitive bidding or proposal process. Contracts may not always be awarded to the lowest bidder, as the bid price shall not be the sole determining factor when awarding contracts. At a minimum, the District shall give consideration to a bidder's ability to provide the required service(s), reference checks, history of prior or similar services, local community impact, and a history of prior services to the District. Effort will be made in all purchases for goods or services to source Paradise vendors whenever possible.

Competitive bids shall be secured and documented under the following conditions:

- A. For purchases totaling between \$1,000 and \$3,000, bids may be obtained verbally and recorded on a verbal quotation sheet. This verbal quotation sheet shall be available for review if requested by any director during board meetings.
- B. For purchases totaling between \$3,001 and \$5,000, bids shall be secured in writing and recorded.
- C. Authorization amounts without prior Board approval are as follows:

Approval of Management Staff	Up to \$1,000 for any item
Approval of District Manager	Up to \$5,000 for any item and up to \$25,000 for any expense necessary in the operation and maintenance of the water treatment and distribution system.

- D. For purchases in excess of \$5,000, written bids, prices, proposals or agreements shall be secured, and the Board shall award such contracts.
- E. The Manager is authorized to approve purchases in excess of \$5,000 in the case of an emergency that poses a threat to the public health, welfare, or safety. The Manager shall report these purchases at the next scheduled Board meeting.
- F. The Manager is authorized to approve purchases in excess of \$5,000 for equipment or facility repairs or materials that require immediate action to continue the daily operation of District business. The Manager shall report these purchases at the next scheduled Board Meeting.
- G. Prior to a Board meeting at which an award is to be considered by the Board, staff shall provide a summarized analysis of bids received, including some or all of the following information:
  - 1. A list of bidders
  - 2. Compliance with the work statement(s) and/or specifications
  - 3. Compliance with the schedule
  - 4. Compliance with stated terms and conditions and other administrative contract requirements

Amendments:  
 09/21/16, Sec. 12.2.2  
 12/20/17, Sec. 12.2.6  
 04/17/19, Sec. 12.2.2.1

5. Compliance with risk management policy
6. Consideration of any alternative that may be offered
7. Cost
8. Any other pertinent data

**12.2.2.1** Avoidance of Acquisition of Unnecessary or Duplicative Items –

To the extent authorized by law, consideration will be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

**12.2.3** Budget Line Item –

Funds designated for the purchase of goods or services under a particular budget line item may not be used for the purchase of goods or services under a different budget line item without the prior approval of the Manager.

**12.2.4** Designated Department Funds –

Funds designated for a particular department's use within a budget line item may be utilized by a different department with the approval of the Manager.

**12.2.5** Reports –

All expenses shall be reported to the Board within thirty (30) days following the end of the month of the date of expenditure by providing a complete listing of all general fund checks as described in Section 13.3(A)(1).

**12.2.6** Petty Cash Account –

Petty cash in an amount determined by the Manager may be established for the purposes of providing cash for miscellaneous cash purchases, front counter customer service transactions, and for Paradise Lake permit fee sales. Access to petty cash shall be limited to the Office Manager, an Accounting Technician, and a Utility Billing Technician. Petty cash funds may be used to purchase supplies, materials, equipment, and other services when the cost does not exceed \$100 and when written documentation of the purchase is maintained. Supplies, materials, equipment, and other services regularly purchased and available to the District through regular purchasing channels shall not be purchased using petty cash funds. Employees shall not be allowed to cash personal or payroll checks through petty cash.

Amendments:

09/21/16, Sec. 12.2.2

12/20/17, Sec. 12.2.6

04/17/19, Sec. 12.2.2.1

### **12.2.7 Purchases Without Competition –**

The Manager may purchase supplies, goods, or services, and the District may enter into construction contracts without the receipt or review of competitive bids or proposals, if any of the following occur:

- A. In the case of an emergency that poses a threat to the public health, welfare, or safety, or as determined by the Manager.
- B. When there is a sole source of supply as declared in writing by a staff member and acknowledged by the Manager.
- C. When the purchase or work is a continuation of previous purchases or work, and there exists a clear, potential economic benefit to the District to negotiate a contract directly with the firm that supplied the initial purchase or work.
- D. When the District does not receive a response to its announcements, requests, or invitations for bids or proposals.
- E. In the case of a small purchase or contract (less than \$1,000).
- F. When the Board determines that it is not in the best interest of the District to change legal, financial, or software services as described in Section 12.4.
- G. When the award to a specific supplier, service provider, or contractor is a condition of a contribution that will fund the full cost of the supply, service, or construction item.

## **12.3 CONSTRUCTION AND CAPITAL IMPROVEMENT CONTRACTS**

### **12.3.1 Procedure –**

Whenever the total price of a construction or capital improvement contract is for \$5,000 or less, the contract shall be handled as provided for under Section 12.2. If the contract exceeds \$5,000, the contract shall be awarded through a competitive bidding or proposal process.

### **12.3.2 Contract Formation –**

- A. Subject to the limitations of this section, any type of contract that will promote the best interests of the District may be used, provided that the use of a cost-plus-a-percentage-of-cost contract is prohibited. A cost-reimbursement contract may be used only when a determination is made in writing that such contract is likely to be less costly to the District than any other type or that it is impracticable to obtain the supplies, services, or construction required except under such a contract.

- B. Except with respect to firm fixed-price contracts, no contract shall be used unless it has been determined by the Manager, or waived, that:
  - 1. The proposed contractor's accounting system will permit timely development of all necessary cost data in the form required by the specific contract type contemplated.
  - 2. The proposed contractor's accounting system is adequate to allocate costs in accordance with generally accepted accounting principles.

### **12.3.3 Bid Security –**

- A. When the District Manager determines the need for bid security, such bid security in an amount equal to at least 10% of the amount of the bid shall be required. Bid security shall be a bond provided by a surety company authorized to do business in the State of California, the equivalent in cash or certified cashier's check, or any other form satisfactory to the District.
- B. When a bidder fails to comply with the requirement for bid security set forth in the invitation for bids, the bid shall be rejected unless, pursuant to Federal, State, or District rules, it is determined by the Board that the failure to comply with the security requirements is non-substantial.
- C. After the bids are opened, they shall be irrevocable for the period specified in the invitation for bids. If a bidder is permitted to withdraw a bid before award, no action shall be taken against the bidder or the bid security.

### **12.3.4 Bonds –**

- A. When a construction contract is awarded under this chapter, the contractor to whom the contract is awarded shall deliver the following bonds or security to the District, which shall become binding on the parties upon the execution of the contract, except when deemed unnecessary for the protection of the District by the Board:
  - 1. A performance bond satisfactory to the District that is in an amount equal to 100% of the total contract amount specified in the contract and is executed by a surety company authorized to do business in the State of California, or other form satisfactory to the District.
  - 2. A payment bond satisfactory to the District that is in an amount equal to 100% of the total contract amount specified in the contract and is executed by a surety company authorized to do business in the State of California, or any other form satisfactory to the District, which is for the protection of each person supplying labor, service, equipment,

or material for the performance of the work provided for in the contract.

- B. A performance bond and/or a payment bond may not be required under Section 12.3.4.A if the construction does not exceed \$10,000 when awarded.

#### **12.3.5 Capital Expenses Constructed By District Personnel –**

A line item budget may be approved by the Board for capital projects constructed by District personnel in lieu of presenting each item over \$5,000 for approval.

#### **12.3.6 Other Capital Fund Expenditures –**

- A. The District shall negotiate all contracts in excess of \$5,000 in a format approved by legal counsel. The contract shall be approved and signed by the Manager as the District's representative.
- B. Capital projects or expenditures, which are up to \$5,000, may be authorized by the Manager. All capital projects and expenditures in excess of \$5,000 shall be submitted to the Board for approval.
- C. Construction "change orders" representing the lesser of \$10,000 or 10% of the contract amount, may be approved by bearing both the Manager and Treasurer's signature. Each such approval shall be reported to the Board for ratification at its next regular Board meeting.
- D. "Change orders" for more than \$10,000 or more than 10% of the contract amount shall be submitted to the Board for approval.
- E. Upon completion of each project, a final summary of costs shall be submitted to the Board for review.

### **12.4 PROCUREMENT OF PROFESSIONAL SERVICES POLICY**

#### **12.4.1 Objective –**

It is the policy of the District to:

- A. Openly discuss and report all requests for professional services to the Board.
- B. Negotiate contracts for professional services on the basis of demonstrated competence and qualifications for the type of service required.
- C. Negotiate contracts for professional services at fair and reasonable prices.



#### **12.4.2 Definitions –**

“Professional Services” include:

- A. Architectural and engineering services.
- B. Legal services.
- C. Financial advice and/or bond underwriting services (“Financial Services”).
- D. Auditing services.
- E. Consulting services, including software/hardware support, as needed and identified from time to time by the Board.

#### **12.4.3 Proposals/Notification Process For Qualified Candidates –**

##### **A. Architectural and Engineering Services –**

When the District requires these types of professional services, requests for proposals or requests for a Statement of Qualifications (SOQ) shall be prepared requesting firms to submit to the District a proposed SOQ and/or a SOQ update. The request will state the types of professional work anticipated by the District and contain a statement that selection of consultants and professional services will be made in accordance with District policy.

##### **B. Legal Services –**

As a matter of practice, the District will retain the services of its existing outside counsel unless the Board determines otherwise. Prior to retaining an alternative law firm, the Board shall evaluate whether the District should consider a law firm different than that currently being used. Factors to consider are:

1. Lapse of time between projects
2. Adequacy of performance on prior projects
3. The proposed law firm’s areas of expertise
4. Investigation of capabilities and client recommendations
5. Comparisons between the District’s then current law firm’s quotes for legal services with market quotations as determined by an informal telephonic survey.

In the event the Board determines it is in the best interest of the District to consider additional services or a change in services, proposals shall be prepared requesting firms to submit a SOQ to the District. In addition, a copy of the announcement will be mailed to professional firms who have, in writing, expressed an interest in providing professional services to the District. The proposal will state that the selection of legal services will be made in accordance with District policy. The District desires to maintain continuity in the provision of legal services so long as the quality and cost of such services are maintained at a level acceptable to the District.

C. Financial Services –

The District will retain a financial advisor on a continuing basis to provide on-going advice pertaining to proposed and existing bond issues, investment of District funds, and related matters. The District's financial advisor shall be prepared to provide certain services that shall include, but will not necessarily be limited to, the preparation and presentation of information to rating agencies and bond insurance companies, bond issue structuring, official statement preparation, recommendations pertaining to the selection of underwriter(s), coordination of the particulars of issuing bonds, interface with bond counsel, investment of reserves and funds, and related matters. The District desires to maintain continuity in the provision of financial services so long as the quality and cost of such services are maintained at a level acceptable to the District.

D. Auditing Services –

Every three years as required under Section *13.2* (B), the District shall prepare requests for proposals requesting a SOQ for performing the District's annual financial audit and/or such other audits as designated by the Board. The proposal will state that the selection of consultants and professional services will be made in accordance with District policy.

E. All Other Professional Services –

Each time the District undertakes a project wherein the District anticipates the cost of other professional services will exceed \$10,000, including software and hardware requirements, the Manager shall determine whether competing professional service firms are available for use by the District. In the event the Manager determines they are available, the District shall issue a request for proposal to firms to provide professional services to the District. In addition, a copy of the proposal will be mailed to professional firms who have, in writing, expressed a desire to furnish the District the requested professional services. The request for proposal shall contain a short description of the project and a statement that selection of consultants and professional services will be made in accordance with District policy.

#### **12.4.4 Statement of Qualifications – Content –**

The District will request the following information to be included in “Statements of Qualifications”:

- A. Name of the firm, location of all offices, and specifically the location of the principal place of business in California.
- B. Age of the firm and the average number of employees over the past five years in the California office.
- C. Education, training, qualifications and availability of key employees of the firm, specifically those in the California office, pertaining to the types of work anticipated by the District.
- D. Experience, special technical capabilities and expertise of the firm, and available equipment necessary or useful in pertinent types of professional work.
- E. References from at least five clients and previous projects, including two from the preceding twelve-month period.
- F. Any other relevant information as determined from time to time by the District.

#### **12.4.5 Proposal For Professional Services –**

Proposals for professional services shall include the following:

- A. The information contained in an SOQ.
- B. Description of the project.
- C. Work plan for accomplishing the project, including descriptions of the tasks to be performed.
- D. Schedule for completing the tasks.
- E. Description and estimate of direct and reimbursable costs to be paid by the District.

#### **12.4.6 Selection Committees –**

A selection committee shall review and rank submitted proposals. Each committee shall include at least the Manager and one other staff member. The review process may include an additional review by at least two Board members

from one of the existing Board designated committees or a designated ad-hoc committee.

#### **12.4.7 Selection Methods –**

##### **A. Architectural and Engineering Services –**

The selection committee shall select and rank at least three firms from the SOQs. Requests for proposals shall be sent to the selected firms. After receipt of the proposals, the selection committee shall review the proposals and may request interviews and/or samples of previous work. The selection committee shall then rank the firms and present its recommendations to the Board.

##### **B. Legal Services –**

The Manager will rank the professional firm(s) based on their SOQs. The Manager and selection committee may request an interview with the ranked firm(s). When a particular need for legal services occurs, the Board, in consultation with the Manager, shall select the law firm to perform such particular legal services.

##### **C. Auditing Services –**

The Manager and Treasurer shall rank the firms based on their proposals and interviews, if any, held by the District. The selection committee will present its recommendations to the Board. Notwithstanding the foregoing, the same auditor shall not perform the District's annual financial audit for more than six (6) consecutive years.

##### **D. All Other Professional Services –**

The Manager may or may not interview the prospective consultants. The Manager and staff member shall rank the firms based on the proposals received from the firms and interviews, if any, conducted by the District. The selection committee will present its recommendations to the Board.

#### **12.4.8 Selection Criteria –**

The criteria for selection to be applied to all SOQs and proposals are:

- A. Appropriate level of training, experience, expertise, and availability of key project personnel.
- B. Ability to perform the work, with respect to personnel availability, adequacy, present workload, available equipment and facilities.

- C. Firm resources and expertise available to the project.
- D. Quality of work plan and project schedule, if required.
- E. Past performance on similar projects for other parties and for the District in particular.
- F. Local office, local firm presence, and availability of project personnel for meetings and communications with District personnel.
- G. Estimated costs of the professional firm.
- H. Other special requirements for the projects, as determined by the District.

**12.4.9 Contract Negotiations –**

- A. The Manager shall present the ranking and recommendations of the proposals to the Board. After finding that the process has complied with policy, the Board shall approve the Firm recommended by the Manager, or the Board may select a Firm other than the recommendation and shall report its reasons for doing so.
- B. The District shall commence negotiations for a contract with the consultant approved or selected by the Board.
- C. The contract shall be negotiated for fair and reasonable prices. Legal counsel shall review the contract.
- D. If negotiations fail with the approved consultant, the District shall terminate negotiations and may begin negotiations with the next highest ranked consultant approved by the Board.

**12.4.10 Small Contract Method –**

If the estimated professional fees do not exceed \$5,000, the Manager shall select the firm, determine the scope of work, and authorize contract negotiations.

The selection committee under this method shall be the Manager and at least one staff member. The selection committee shall review any required SOQs or a list of potential consultants. The Manager shall approve the selection and scope of work and authorize any required contract negotiations. The firm shall submit a proposal, including a fee proposal. The District will prepare a contract for legal counsel review.

## **12.5 DISPOSAL OF SURPLUS PROPERTY**

### **12.5.1 Reporting Surplus Property –**

Any surplus property shall be reported to the Board. Surplus property may be sold to employees after the Board has authorized the sale of surplus property and the bidding process has formally taken place.

### **12.5.2 Authorization –**

After the Board is properly notified of surplus property, the Board shall then declare the property as surplus and authorize staff to dispose of it. After disposing of the surplus equipment and machinery, a description of the surplus equipment and machinery, together with a statement that reflects any consideration received for the surplus property, shall be provided to the Secretary and Treasurer.

## **12.6 FIXED ASSETS AND DEPRECIATION**

### **12.6.1 Fixed Assets and Depreciation –**

Single item purchases with at least an anticipated useful life of three years and exceeding \$10,000 each shall be capitalized as a fixed asset and depreciated over the asset's estimated useful life.