

**Purchasing Policy**  
**Santa Maria Valley**  
**Water Conservation**  
**District**

**1. PURPOSE AND SCOPE**

(a) This Policy provides direction regarding the procurement of supplies, equipment, works of improvement, professional services, and other goods and services to ensure the District will receive high quality goods and services at a fair price. The following terms are defined for the purposes of this Article:

(1) "Formal bidding" means the solicitation of bids with written specifications and pursuant to publication of a Notice Inviting Bids at least once a week for two successive weeks in a newspaper of general circulation, the last publication to be made not less than two weeks nor more than six weeks prior to the opening of bids.**[DO WE WANT TO ADD THE NEWSPAPER PUBLISHING REQMT?]**

(2) "Informal bidding" means the solicitation of at least three quotations after approval of specifications by the General Manager**[DO WE WANT TO USE GM AT THIS POINT OF JUST USE "THE BOARD"?)** pursuant to a notice to potential bidders as determined by the General Manager.

(3) "Request for proposals" means the solicitation of a written scope, schedule and cost of the work to be accomplished by a service provider.

(4) "Goods" means a tangible product, not including a work of improvement.

(5) "Service" means an intangible product.

(6) "Work of improvement" means the construction of works, structures, and equipment, the furnishing of labor, and the acquisition of real or personal property for works.

(7) "Designated qualified vendor" means a vendor selected for the purchase of certain items or classes of items as a result of a formal or informal bid process to fulfill an on-going need.

(8) "Emergency" means procurement of goods or services that are

estimated to cost \$35,000 or more necessary for the repair of public facilities

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caused by a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property or essential public services.

(9) "Urgent" means a procurement of works of improvement, professional services or goods and services that are estimated to cost less than \$35,000 and necessary for the repair of public facilities of the District, damaged by unanticipated calamity where expeditious action is required to prevent potential interruption of service, restore required redundancy or avoid additional damages.

## **2. EMERGENCIES**

(a) Emergency purchases of \$35,000 or more may be made without formal bids, informal bids, or requests for proposals, if this Section is followed.

(1) When a meeting of the Board can be commenced in a timely manner to authorize emergency action, by 4/5's vote, the Board shall be requested to authorize procurement of works of improvement, professional services, or goods and services without formal bids, informal bids, or requests for proposal. Such authorization shall be based on substantial evidence set forth in the minutes of the meeting that the emergency will not permit delay and action is necessary to respond to the emergency. Until the emergency subsides or the work is complete, at each subsequent regular meeting the board shall determine by 4/5's vote whether to continue to terminate the authorization for emergency.

(2) When a meeting of the Board cannot be commenced in a timely manner to authorize emergency action, the General Manager may authorize procurement of works of improvement, professional services, or goods or services without formal bids, informal bids, or requests for proposal. The General Manager shall report to the board within 7 days of the emergency or at the next regular meeting scheduled within 14 days after the procurement.**[DELETE THE 14 DAY LANGUAGE AND JUST USE NEXT REGULAR MEETING?]** The report shall describe the emergency and present evidence that the emergency did not permit

delay and action was necessary to respond to the emergency. Until the emergency subsides

or the work is complete, at each subsequent regular meeting following the General Manager's action, the board shall determine by 4/5's vote whether the need for emergency action continues.

(b) Urgent purchases under \$35,000 may be made without informal bids or requests for proposals following procedures established by the General Manager.

### **3. WORKS OF IMPROVEMENT**

(a) The District shall procure works of improvement in accordance with Public Contract Code, Section § 20640, et seq. **[NOT REQ'D TO DO THIS, BUT WHY NOT?]**

(b) Works of improvement estimated to cost less than \$35,000 may be procured through the informal bid process. If the work is included in the current year budget, the General Manager may solicit informal bids without prior Board approval. If the work is not included in the current year budget, Board approval shall be obtained before informal bids are solicited.

(c) Works of improvement estimated to cost \$35,000 or more shall be procured through the formal bid process. The General Manager may solicit formal bids only with prior Board approval.

### **4. PREQUALIFICATION OF BIDDERS**

(a) The General Manager may designate works of improvement that require specialized skills which cost in excess of five million (\$5,000,000) to be subject to prequalification of bidders.

(b) To become a prequalified bidder, a contractor must submit to the District a prequalification application consisting of a standardized questionnaire, financial statement, and statement of experience as part of the pre-qualification bidding packet.

(c) The questionnaires and financial statements submitted by prospective contractors are not public records and are not subject to public inspection. Records

of the names of contractors applying for prequalification status are public

records and subject to disclosure. Documents submitted by a prospective contractor will be submitted under penalty of perjury.

(d) The District will rate prospective contractors in accordance with a rating system based on (1) Public Contract Code § 20101 and (2) the model guidelines and standardized questionnaire created by the Department of Industrial Regulations, as modified by the District to address the needs of the particular project, or projects, to which they are to be applied.

(e) The District will devise the questions, process and scoring for the rating system, to best evaluate a contractor's ability to successfully complete a particular project. This information will be provided as part of the pre-qualification bidding packet. The rating system will be applied uniformly and objectively to prospective contractors, which have submitted properly completed documents in accordance with this policy. The District may determine only a certain number of the top scoring pass-rated contractors shall be considered prequalified for a specific project. This determination shall be made prior to issuing the Notice Inviting Prequalification for the specific project.

(f) When the District uses this prequalification process, the only contractors eligible to submit a bid are prequalified contractors. Further, such contractors shall submit bids only naming a prequalified subcontractor when subcontractors are prequalified. A bid received listing an unqualified subcontractor will be disqualified as nonresponsive. No bid shall be accepted for the project from unqualified contractors.

(g) A contractor's prequalification status will immediately terminate if: (1) The contractor fails to give the District written notice of change in the information previously provided within 10 days before a bid opening; (2) the contractor's license is suspended or terminated by the California State Licensing Board; (3) the contractor is convicted of a crime of moral turpitude; (4) the contractor's application contains materially false information; or (5) the contractor's control over a public works contract, whether within the District's jurisdiction or otherwise is terminated for cause.

(h) The District shall give written notice to each contractor of the prequalification determination for that contractor. A contractor may appeal a rating of "not qualified", including a decision to revoke a previous qualified rating. There is no appeal from a finding that a contractor is not prequalified because of a failure to submit required information or failure to submit required information in a timely manner.

(1) Contractor may appeal the decision as follows:

a. By giving written notice of appeal to the General Manager no later than ten days after receipt of the not qualified rating.

b. The notice of appeal shall contain at least the following:

(i) The name, address and telephone number of the person making the appeal.

(ii) A description of the determination which is the subject of the appeal, and the date of the Notice of Determination; or

(iii) A brief description of the grounds for the appeal.

(2) The District will provide the contractor with a written statement of the basis for the not qualified determination and supporting evidence received from others or adduced as a result of investigation.

(3) Within 14 days of sending the response to the contractor, the General Manager shall hear the appeal. The hearing shall be an informal one. The contractor may rebut evidence which is the basis for the determination and present evidence why the contractor is qualified.

(4) The General Manager or designee may affirm the earlier determination or reverse the determination and assign an alternate rating. This decision will be in writing containing a summary of the facts that led to the decision. The decision of the General Manager is final. A contractor shall have no right to appeal the decision to the Board.

a. The General Manager may cancel the prequalification process at any time during the prequalification process, even after receiving and scoring applications. If the prequalification process is

cancelled, the normal competitive bidding rules will apply. The District assumes no liability for the cost a prospective contractor may have incurred by submitting an application for prequalification, and the submittal of a prequalification application is a waiver to claim any such cost or losses due to cancellation of the process.

## **5. DEBARMENT**

(a) The District shall have the right to debar a contractor, prohibiting it from entering into any agreements with the District. Debarment of a contractor is not meant to be a punishment, but a procedure to ensure that publicly funded business is conducted legally with responsible parties, maintaining the integrity of the District's procurement process.

(b) Reasons for debarment.

(1) A finding by the District that a contractor has within the last three (3) years demonstrated a lack of integrity that could jeopardize the District's interest if the District were to contract with the contractor. Factors which may result in a finding that a contractor is not able to perform responsibly include, but are not limited to, any of the following:

- (i) A conviction of a criminal offense incident to the application for or performance of a contract or subcontract with a public agency.
- (ii) A conviction of a criminal offense which negatively reflects on the contractor's business integrity, including but not limited to, embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, negligent misrepresentation, price-fixing, bid-rigging, or a violation of state or federal anti-trust statutes.
- (iii) A loss or suspension of a license or the right to do business or practice a profession, the loss or suspension of which indicates dishonesty, a lack of integrity, or a failure or

refusal to perform in accordance with the ethical standards of the business or profession in question.

- (iv) A conviction of a criminal offense or other violation of other state or federal law, as determined by a court of competent jurisdiction or an administrative proceeding, which in the opinion of the District indicates that the contractor is unable to perform responsibly or which reflects a lack of integrity that could negatively impact or reflect upon the District

(2) A finding by the District that the contractor is not able to perform responsibly, based upon any of the following upon the sole judgement and at the discretion of the District:

- (i) Violation by the contractor of bid solicitation procedures or violations of the terms of a solicitation after bid submission.
- (ii) Failure by the contractor to substantially perform a public contract or subcontract according to its terms, conditions, and specifications within specified time limits.
- (iii) Refusal by the contractor to provide information or documents required by a contract, including but not limited to, information or documents necessary for the District to monitor contract compliance.
- (iv) Failure by the contractor to respond to requests for information regarding its performance or accumulating repeated substantiated complaints regarding performance of a contract or purchase order.
- (v) Failure of the contractor to perform a public contract or subcontract in a manner consistent with any applicable state or federal law, rule, or regulation.
- (vi) Repeated unsafe work practices that have put workers, the District employees and/or the general public at risk.
- (vii) An inferior finished work product/poor workmanship that does not comply with the contract specifications or what is

considered generally acceptable workmanship by industry standards that is not remedied at the request of the District.

- (viii) Any contract in which the contractor's Surety is requested by the District to satisfactorily perform or complete the work as specified in the contract.
- (ix) Violations of Division of Industrial Relations requirements including but not limited to non-payment of prevailing wages.

(c) Debarment Procedure

(1) The District will issue a notice of proposed debarment to a contractor subject to debarment by certified mail, return receipt requested, or by courier service. All of the following shall be included in the notice:

- (i) A statement that proposed debarment action is being considered by the District.
- (ii) A description of the reasons for the proposed debarment in sufficient detail to put the contractor on notice of the conduct and causes upon which proposed debarment is based.
- (iii) A statement indicating that within thirty (30) calendar days from the date of the notice, the contractor may submit, in writing, information in opposition to the proposed debarment, including any additional specific information that raises a genuine dispute over the material facts and any mitigating circumstances.
- (iv) Explanation that the contractor has thirty (30) calendar days to request a hearing.
- (v) A statement that failure by the contractor to respond with a written request for a hearing within thirty (30) calendar days, will result in debarment by the District without a hearing.

- (vi) A description of the potential implications of debarment.
  - (2) If debarment is imposed, the contractor shall be given prompt notice by certified mail, return receipt requested, or by courier service. The notice of debarment shall include the following information:
    - (i) Reference to the notice of debarment.
    - (ii) Specific reasons for debarment.
    - (iii) The period and scope of debarment including the effective dates.
    - (iv) An explanation that the vendor has ten (10) business days after receipt of the notice of debarment to protest the debarment in writing to the District.
  - (3) If debarment is not imposed, the official shall promptly notify the contractor by certified mail, return receipt requested, or by courier service.
- (D) Debarment Protest:
- (1) A debarred contractor may protest the debarment action by written submission to the District stating in detail the reasons that debarment is in error. The written protest shall be received within ten (10) business days after the date of the notice of debarment. The District shall review all facts on which the debarment was based and the contractor's protest, and shall make a decision within thirty (30) calendar days after receipt of the protest to either uphold or overturn the debarment. The contractor shall be notified in writing of the decision.
  - (2) The District may reduce the debarment period, upon the debarred contractor's request, supported by documentation for the following reasons:
    - (i) Newly discovered material evidence.
    - (ii) Reversal of the conviction or civil judgment upon which the debarment was based.
    - (iii) A good faith change in ownership or management.
    - (iv) Elimination of other causes for which the debarment was imposed.

- (E) Period of Debarment:
  - (1) Debarment shall be for a period commensurate with the seriousness of the contractor's actions and causes for debarment. After the debarment period expires, the vendor may reapply for inclusion on bidder lists through the regular application process.
- (F) Effect and Scope Debarment:
  - (1) Debarment affects all divisions or other organizational units of the contractor, unless the debarment decision is limited by its terms to specific divisions or organizational units. The debarment decision may extend to any affiliates of the contractor or named individuals, if the affiliate or individual is specifically named in the notice of debarment and given written notice of the proposed debarment and an opportunity to respond. Contractors debarred are excluded from receiving contracts, and the District shall not solicit offers from, award contracts to, or consent to subcontracts with these contractors. Bids or proposals received that name or indicate an intention to use any debarred subcontractors, affiliates or individuals shall be deemed non-responsible and rejected. Awarded contracts later discovered to utilize debarred subcontractors, affiliates or individuals shall immediately cease from utilizing them and will be subject to cancellation of the contract with monetary penalties as permitted by law including but not limited to the forfeiture of any monies due to the contractor for work in progress. Notwithstanding the debarment or proposed debarment of a contractor, contracts or subcontracts in existence at the time a contractor is debarred may continue unless cancelled pursuant to the cancellation clause of the contract. However, contracts with debarred contractors may not be renewed or otherwise extended.

## **6. PREQUALIFICATION OF VENDORS**

- (a) The GM may establish a list of qualified vendors for goods or services which the district frequently purchases. The list will be valid for 5 years and vendors who

prove to be unqualified shall be removed and vendors who demonstrate their qualifications may be added.

(b) The GM may purchase goods or services from qualified vendors on the list described above with further bidding if the amount of the purchase is less than \$35,000. The board must approve purchases from qualified vendors if the amount of the purchase is \$35,000 or more.

## **7. SERVICES**

(a) The District shall procure professional services, such as legal, medical, engineering, architectural, financial, human resources, labor relations, and educational, in accordance with the procedures recommended by the ethics of the discipline involved and taking into consideration quality of work, performance, and price.

(b) The District shall procure contractual services, such as those for custodial work and landscaping, in accordance with procedures that allow for consideration of the quality of work, warranty and establishment of performance standards in addition to price.

(c) If the service is estimated to cost less than \$35,000, the General Manager may informally solicit proposals and enter into contracts without Board approval.

(d) If the service is estimated to cost \$35,000 or more and is included in the current year budget, the General Manager may solicit formal proposals without Board approval. Formal proposals are solicited with a written request for proposals made publicly available on the District's website for at least 2 weeks. If the service is not in the current year budget, the General Manager may solicit proposals and enter into contracts only with prior Board approval.

(e) All contracts of \$35,000 or more require Board approval.**[DOES THIS APPLY TO UNBUDGETED ITEMS-SEE (d) ABOVE]**

**8. GOODS**

- (a) The District shall procure goods, other than works of improvement and services, as mentioned above, pursuant to this Section.
- (b) Goods included in the current year budget and estimated to cost less than \$35,000 shall be purchased without further Board action following informal bidding procedures.
- (c) Goods and services included in the current year budget and estimated to cost \$35,000 or more shall be purchased by the formal bidding process.
- (d) The General Manager may solicit formal bids for items estimated to cost more than \$35,000 without prior Board approval only if the amount is included in the current year budget.
- (e) All contracts of \$35,000 or more require Board approval.**[SAME ISSUE AS ABOVE]**

**9. EXCEPTIONS**

- (a) The General Manager may approve changes to contracts ("change orders") for the procurement of supplies, equipment, contracts for professional services, and other goods and services provided;
  - (1) The change order is within the scope of the approved contract by the board, the cost of the changed work does not exceed the adopted budget; and,
  - (2) The cumulative change orders are within 10% of the original contract amount; and
  - (3) Other parameters set by the Board are followed.**[MEANING?]**
- (b) The General Manager may approve change orders for works of improvement provided the changed work is within the scope of the project approved by the board, the cost of the changed work does not exceed the budget for the work approved by the board, and:
  - (1) For contracts less than or equal to \$1,000,000:

- a. a single change order does not exceed \$50,000;

- b. the total of all change orders does not exceed \$100,000;
- (2) For contracts greater than \$1,000,000:
  - a. a single change order does not exceed 5% of the original amount awarded by the board;
  - b. the total of all change orders do not exceed 10% of the original amount awarded by the board; and
- (3) For contracts regardless of amount:
  - a. a time extension up to 25% of the time stated in the contract; and
  - b. a deduction change order within the foregoing parameters, but a deduction change order shall not offset the above amounts.

(c) The General Manager shall file a written notice with the clerk **[CHANGE TO PROVIDE NOTICE TO THE BOARD?- WHO IS THE CLERK?]** when a change order is approved by the General Manager pursuant to this sub-section. The clerk shall distribute to the board as an information item at the next board meeting.

(d) Bidding shall not be required for goods or services in the following circumstances:

- (1) Goods and services included in the current year budget and that have an estimated value less than \$2,500.
- (2) A vendor is the sole source for the goods or services as determined by the General Manager.
- (3) If the vendor has been selected during the past twelve consecutive months as the designated qualified vendor for the items, or classes of items, to be purchased.
- (4) Emergency or urgent purchases, as defined.

(e) The procurement procedures set forth in this Article do not apply if the cost of goods or services is established by federal, state or local regulation, such as is the case with utility services and the supplies and appurtenant equipment.

(f) If competitive bid procedures have already been utilized, such as in

purchasing from federal, state, county, city or special district governmental

agencies, or from cooperative purchasing consortiums consisting of such agencies, and these materials and services are supplied to the District at the same or better price, the informal or formal bidding procedures specified herein may be waived.

**10. MISCELLANEOUS**

(a) Goods and services shall be procured from the responsive vendor who provides the greatest value as determined by the criteria specified in the Notice Inviting Bids, the written specifications, or the request for proposal.

(b) The procedures, personnel, and system of forms to be used by District employees in the procurement of goods and services shall be determined by the General Manager and set forth in clean and concise written form consistent with the provisions of this Article. **[WHY THE NEED FOR THE PROCEDURES IF IN POLICY ALREADY?]** The directive shall be made available to employees and shall become the process for the procurement of goods and services.

**11. SURPLUS**

The General Manager may declare supplies, materials or equipment as surplus, obsolete or unused and authorize its disposal. The General Manager shall implement procedures to ensure that the District receives fair value for surplus items.

**12. FEDERALLY DECLARED EMERGENCY PURCHASING PROCEDURES**

(a) In the event of an emergency declared by the President of the United States, the District must comply with Federal procurement standards as a condition of receiving public assistance funding from the Federal Emergency Management Agency (FEMA) for contract costs for eligible work. FEMA funding is governed by Title 2 of the Code of Federal Regulations (CFR) Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

(b) Federal Emergency Procurement Procedures.

(1) Micro-Purchases

- a. Purchases within the micro-purchase threshold specified by Federal statute (e.g., currently set at purchases of \$10,000 or less) may be awarded without soliciting competitive quotations if the District considers the price to be reasonable. To the extent practicable, the District must distribute micro-purchases equitably among qualified suppliers.
- (2) Small Purchases
- a. Purchases within the simplified acquisition threshold, as specified by Federal statute (e.g., currently set at purchases of \$250,000 or less) shall not be required to be formally bid. Price quotations must be received from no less than three (3) sources.
- (3) Formal, Sealed Bid
- a. Formal, sealed bidding is required for purchases greater than the simplified acquisition threshold, which is currently set at \$250,000, or as may be adjusted by the Federal Acquisition Regulation, pursuant to 48 CFR § 2.101.
  - b. The District must publicly advertise the Invitation for Bids and publicly open all bids at the time and place prescribed in the invitation.
  - c. Any contracts awarded pursuant to this procedure shall be to the lowest responsible bidder submitting a responsive bid and shall be for a firm fixed price.
- (c) Solicitation of Competitive Proposals
- (1) When the nature of a procurement does not lend itself to formal, sealed bidding (e.g., professional services), the District may solicit competitive proposals.
  - (2) A request for proposals (RFP) must be publicly advertised, and the District must solicit proposals from an adequate number of sources. The RFP must identify all evaluation factors and their relative

importance; however, the numerical or percentage ratings or weights need not be disclosed.

- (3) Any contract awarded based on the competitive proposal procurement process cannot be based exclusively on price or price-related factors.
- (4) If a contract is awarded, it shall be to the responsible firm whose proposal is most advantageous to the District ("best value"), with price and other factors considered.

(d) Federal Emergency Noncompetitive Procurements

- a. Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply: The item is only available from a single source;
- b. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- c. The District authorizes noncompetitive proposals, as otherwise permitted by the Procurement Policy; or
- d. Competition is deemed inadequate after the solicitation of a number of sources.

(e) Federal Emergency Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Area Surplus Firms

- (1) The District must conduct all necessary affirmative steps to ensure the use of minority businesses, women's business enterprises, and labor surplus area firms when possible, as set forth at 2 CFR § 200.321.

(f) Federal Emergency Cost or Price Analysis

- (1) The District shall perform a cost or price analysis in connection with every procurement action, including contract modifications, in

excess of the simplified acquisition threshold. While the method and degree of analysis depend on the facts surrounding the particular procurement situation, the District must at minimum, make independent estimates before receiving bids or proposals.

(2) The District shall negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where a cost analysis is performed as required by 2 CFR § 200.323(b).

(g) Federal Emergency Payment Procedures

(1) Contracts entered into pursuant to this Section 2-6.412 shall utilize only fixed-price, cost-reimbursement, or, to a limited extent, time and materials payment methods.

(h) Time and Materials (T&M) Contracts

(1) T&M contracts should be used rarely, and the use of T&M contracts should be limited to a reasonable time period (e.g., no more than 70 hours) based on circumstances during which the District cannot define a clear scope of work.

(2) The District shall only enter into a time and materials contract if all of the following apply:

- a. No other contract was suitable; and
- b. The contract has a guaranteed maximum price that the contractor exceeds at its own risk; and
- c. The District provides a high degree of oversight to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

(3) The District must define the scope of work as soon as possible to enable procurement of a more acceptable type of contract (i.e., non- T&M).

(i) Separate Invoicing

(1) All purchases made during a proclaimed Emergency shall require separate invoicing from routine (i.e., non-emergency related) purchases. All invoices shall state the goods, services, or equipment provided and shall specify where the goods or services were delivered. All invoices shall specify the location(s) where the goods or services were used, if possible. Any invoice which fails to properly identify the emergency nature of the purchase and provide details as to the date(s) and location(s), as appropriate, shall not be paid until such errors are corrected by the vendor and re-submitted in correct form.

(j) Auditing of Invoices for Debris Removal

(1) All invoices for debris clearance and removal shall be audited prior to payment to the vendor. Vendors shall be notified of this requirement prior to the award of any contract for debris clearance and/or removal. Audits shall be in accordance with procedures for debris removal monitoring specified in FEMA's Publication 325, Debris Management Guide.