

## POLICY AND PROCEDURE

<b>POLICY TITLE:</b> <b>Purchasing Policy</b>	<b>NUMBER:</b> <b>2017-02</b>	<b>PAGE:</b> <b>1 of 11</b>
<b>APPROVED BY:</b> <b>Zone 7 Board</b>	<b>REVISION:</b> <b>2</b>	<b>EFFECTIVE DATE:</b> <b>April 16, 2025</b>

### **PURPOSE OF THE PURCHASING POLICY**

The purpose of this Policy is to define the practices and policies governing the procurement of supplies, materials, equipment and services, including construction and capital improvements, for the use of the Zone 7 Water Agency ("Agency") and to relate the policies and principles to applicable provisions of governing law and to the Agency administrative policies. ("Purchasing Policy" or "Policy"). This Policy is the written rule and regulation required by California Government Code section 54202 and also serves as the Agency's administrative policies and procedures governing procurement activities. This Purchasing Policy is compliant with Title 2 of the Code of Federal Regulations Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

Pursuant to Section 36 of the Alameda County Flood Control and Water Conservation District Act, the Zone 7 Board of Directors shall have the powers to make and enforce all needful rules and regulations for the administration and government of Zone 7. The Board hereby delegates the purchasing authority to the General Manager. The General Manager, or designee, is authorized to purchase such goods and services which the General Manager deems necessary for the continued operation of the Agency, provided such purchases are consistent with prescribed law, funding approved by the Board of Directors in the Annual Budget or amendment thereon, and the terms of this Purchasing Policy.

### **POLICY STATEMENT**

California law requires all local agencies to formally adopt policies and procedures governing the acquisition of materials, supplies, equipment and services as referenced below.

*"California Government Code section 54202: Every local agency shall adopt policies and procedures, including bidding regulations, governing purchases of supplies and equipment by the local agency. Purchases of supplies and equipment by the local agency shall be in accordance with said duly adopted policies and in accordance with all provisions of law governing same. No policy, procedure, or regulation shall be adopted which is inconsistent or in conflict with statute."*

## 1.0 DEFINITIONS

When used in this Policy, the following terms shall have the meanings hereinafter set forth unless the context indicates otherwise:

- (a) Purchase or Purchases: includes the purchase of supplies, materials, equipment, leases and contractual services for the Agency. "Purchases" do not include Public Works Contracts as defined by the Public Contract Code.
- (b) Bid: refers to the procurement method used to procure goods, services and public works projects for the Agency. For the purposes of this policy, "bid" is used generically for all procurement methods including quotes, bids, Request for Information (RFI), Request for Qualifications (RFQ) and Request for Proposal (RFP).
- (c) State of Emergency: exists if the Governor has declared a state of emergency for an area which includes the geographic service area of the Agency; or the Board of Directors, or the General Manager through express delegation, or designee has declared an emergency within the Agency's facilities or geographic location.
- (d) Public Works Contract: an agreement for the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind.
- (e) Progressive Design-Build: a project delivery process in which both the design and construction of a project are procured from a single entity that is selected through a qualifications-based selection at the earliest feasible stage of the project.
- (f) Responsible bidder" a bidder who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform the scope of work and meet the specifications of the bidding documents or solicitations.
- (g) Responsive Bid: a proposal submitted adheres to, and meets, all of the requirements of the bidding documents or solicitation.
- (h) No Bid: a written no bid response a vendor supplies in response to a solicitation request. A written no bid may count as a quote providing the vendor is capable of providing the requested goods or services.
- (i) No Response: the vendor did not provide a written no bid in response to a solicitation request. A no response from a vendor may not count as a quote and will be determined by the Purchasing Agent or designee.
- (j) Emergency: 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, safety, welfare or property, or essential public services.

- (k) Sole Source Purchase: is any Purchase where only one known source exists or only one single supplier can fulfill the requirements because of its technological nature, specialized nature, proprietary nature or unique character.

## **2.0 PURCHASING AGENT**

The General Manager may appoint a Purchasing Agent from among the staff of the Agency. In the absence of such appointment, the Assistant General Manager, Finance shall be Ex Officio Purchasing Agent. The Purchasing Agent may delegate approvals levels and responsibilities to staff within the Procurement section.

## **3.0 PURCHASING AGENT ROLE**

The Purchasing Agent shall be responsible for planning, coordinating and implementing the purchasing process within prescribed law, Agency policy and administrative directives of the General Manager. The Purchasing Agent shall formulate purchasing procedures and standards and assist Agency sections with implementation. The Procurement section will assist the Purchasing Agent with these functions.

## **4.0 SECTION RESPONSIBILITY AND ACCOUNTABILITY**

The procurement of goods and services will be reviewed and processed through the Agency's Procurement section. While Procurement will provide oversight, Agency staff may conduct solicitations for the purchase of goods and services in accordance with the Agency's Purchasing Policies and Procedures.

## **5.0 EMERGENCY PURCHASES**

Emergency purchases may be necessary when unforeseen circumstances require an immediate purchase to avoid a substantial hazard to life, property or serious interruption of Agency operations. The requirement for competitive bidding may be waived in the case of an emergency. In accordance with the Public Contract Code Section 22050 (b), the Board of Directors delegates the authority to declare an emergency to the General Manager until the next regularly scheduled Board Meeting where the General Manager or designee will report emergency conditions to the Board for informational and/or reaffirmation purposes. To reaffirm the emergency status, the Board of Directors shall find, by a four-fifths vote, at each subsequent regular board meeting that the emergency continues to not permit a delay resulting from a competitive solicitation for bids/competitive pricing requirements of the Public Contract Code or this Policy. Documentation of any emergency purpose must be retained according to the Agency's retention policy and shall include the reason for the emergency purchase, the amount of the purchase and the criteria for the selection of the particular vendor or contractor.

Generally, emergency purchases shall be made only for the following reasons:

1. To preserve or protect life, health, safety, welfare or property; or
2. Upon natural disaster; or
3. To forestall a shutdown of essential public services; or
4. To permit continuity of fundamental and critical Agency operations which would include items such as:
  - a. Unplanned equipment failure that could result in substantial revenue loss;
  - b. Release of a hazardous substance requiring immediate containment and/or remediation;
  - c. Unplanned interruption of water supplies required minimum water flows and related power generation.
  - d. Other emergency situations deemed by the General Manager.

Since emergency purchases do not normally provide the Agency an opportunity to obtain competitive pricing, those performing the purchasing function shall use sound judgment in keeping such orders to an absolute minimum. Emergency Purchases fall into two categories:

1. Goods and General Services and 2) Public Works Contracts.

### **5.1 EMERGENCY PURCHASES OF GOODS AND GENERAL SERVICES**

Once the General Manager, Purchasing Agent or designee determines the need for an emergency purchase, the purchase may be made, without competitive pricing requirements, utilizing the Agency's purchasing procedures and practices to rent or purchase from the nearest available source any equipment, supplies, services, or other items necessary for the Agency to respond to an immediate threat to life, public health, or safety, or to eliminate/reduce an immediate threat of significant damage to improved public and private property through cost-effective measures.

Whenever possible, Agency sections shall consult with the Purchasing Agent prior to making the emergency purchase. If prior consultation was not possible, the Agency section shall advise the Purchasing Agent of emergency purchases as soon as possible after the commitment.

This Policy assures that, in a proclaimed disaster or emergency, the Agency is able to acquire the goods and services required to address an immediate threat to life safety, public health, or to eliminate or reduce an immediate threat of significant damage to improved public and private property through cost-effective measures while still maintaining an effective purchasing process and complying with applicable local and state purchasing laws. Where the Agency is included in a major disaster or emergency declared by the President of the United States, this Policy also assures that Agency procurements comply with Federal regulations applicable to

Federal disaster grant reimbursement as defined in Title 2 of the Code of Federal Regulations, Part 200. (2CFR Part 200)

Notwithstanding the terms of this policy, nothing contained herein shall conflict with Federal procurement regulations as currently defined in 2 CFR Part 200.

## **5.2 EMERGENCY PUBLIC WORKS CONTRACTS**

Once the General Manager, Purchasing Agent or designee determines the need for an emergency purchase, per Public Contract Code, contracts for work may be made without advertising or bid in cases of significant emergency as determined by the Board. Cases of significant emergency include, but are not limited to:

- (1) States of emergency as specified in Government Code Section 8558.
- (2) When emergency repair or replacement is necessary to permit the continued operation or service of the Agency.
- (3) When the emergency work is necessary to avoid danger to life or property.

## **6.0 GENERAL PROVISIONS**

The following provisions shall apply to all Purchases unless otherwise provided for herein:

- (a) Policies Applicable to All Purchases. All purchases for the Agency shall be made in conformance with these policies and procedures.
- (b) Bid Procedures. The Agency may determine the best method to procure goods or services through public procurement best practices and available bid options. The solicitation may be in the form of a quote, bid, RFI, RFQ, or RFP. Documentation of the solicitation process and ultimate selection is required.
- (c) Competitive Pricing. Agency employees must always strive to purchase competitively and wisely, except as otherwise directed by law, or as directed by the Board of Directors or as provided by this Policy. Documentation of competitive pricing shall be submitted to Procurement with a requisition. Documentation for RFP's shall be obtained and retained as provided by the Agency's Records Retention Policy by the Agency section performing the purchase.
- (d) Competition to be Encouraged. It shall be the duty of any Agency employee involved in the purchasing process to discourage collusive or uniform bidding by every possible means and to endeavor to obtain as full and open competition as possible on all purchases.

- (e) Splitting Orders to Avoid Competitive Pricing/Bid Process Prohibited. Splitting or separating into smaller orders the purchase of supplies, material, equipment or services to evade the competitive pricing provisions of this Policy is prohibited.
- (f) Purchases not Conforming to the Competitive Pricing/Bid Process. Certain purchases are not readily adaptable to competitive pricing or informal and formal bidding processes. These purchases may include the following: Advertisements and notices, consulting and professional services, United States Postal Service postage, insurance, membership dues, real property/easement acquisition, subscriptions, trade circulars or books, government fees, utility payments and any purchases from another public entity. As such, these purchases may be exempt from competitive pricing requirements.
- (g) Highest Ethical Standards. All purchasing functions are to be conducted with the highest ethical standards. All employees must remain constantly aware of their responsibilities for spending public funds. Acceptance of money, gifts or favors in exchange for purchasing goods or services is strictly prohibited.
- (h) Gifts and Gratuities. It is the policy of the Agency that it conducts its business in a fair and ethical manner. The Agency employees and Board members are governed by Section 81000 of the Government Code also known as the Political Reform Act. Consultants, contractors, vendors and others who do business or intend to do business with the Agency are also governed by the Act. Please visit the Fair Political Practices Commission's website at [www.fppc.ca.gov](http://www.fppc.ca.gov).
- (i) Recurring Expenditures Bidding. If it is known that the recurring purchase of any material, supply and/or item of equipment will result in an annual expenditure in excess of \$100,000, then formal bidding procedures shall be used for that purchase.
- (j) Time and Place for Opening of Bids. All solicitations for written bids shall specify the time and place for the public opening of written formal bids. However, other than Public Works bids, there is no requirement for a public bid opening, and it shall be at the discretion of the Agency.
- (k) Record of Bids. The Purchasing Agent or designee shall make tabulation or other record of all bids received on any item and such records shall be open to public inspection per public records after the bid opening or the last day for receiving bids.
- (l) Awards to Bidders/Lowest Responsible Bidder. All purchases made pursuant to formal or informal bids shall be awarded to the lowest responsive and responsible bidder. In determining the lowest responsible bidder, the Purchasing Agent or designee shall take into consideration the quality offered and its conformity with the specifications, the delivery and discount terms, pricing, ability to perform the scope of work, and any other information and data required to prove the bidder's responsibility. The award of

all contracts for goods up to \$100,000 shall be made by the Purchasing Agent. The award of all contracts for goods in excess of \$100,000 and general services in excess of \$50,000 under this section shall be made by the Board of Directors.

- (m) Subcontractors. Any bidder making a bid or offer to perform the work, shall, in the bid offer, set forth the name, the location of the place of business, and the California contractor license number and California Department of Industrial Relations registration number, if applicable, of each subcontractor who will perform work or labor or render service to the prime contractor in or about the construction of the work or improvement according to detailed drawings contained in the plans and specifications, in an amount in excess of one-half of 1 percent of the primes contractor's total bid.
- (n) Rejection of Bids. At the discretion of the Board of Directors, Purchasing Agent or designee, the Agency may reject any and all bids and re-advertise or re-solicit for bids at any time.
- (o) Tie Bids. If two or more bids are received for the same total amount, or unit price, and if the public interest will not permit the delay of rebidding, the award of the contract may be made to one of the tie bidders by drawing lots in public.
- (p) Failure of Bidder to Execute or Perform Contract. If the successful bidder fails to execute the contract, the bidder's security shall be forfeited to the Agency. If the Purchasing Agent, or designee, deems it is for the best interests of the Agency, he/she may, on the refusal or failure of the successful bidder to execute the contract, award it to the second lowest responsible bidder.
- (q) Purchase of Patented or Proprietary Articles. When the Agency requires supplies, materials, or equipment, which are patented, or proprietary and which are obtainable in two or more equally satisfactory and competitive makes, brands or types, the Purchasing Agent or designee shall list the acceptable make, brands or types in the invitation to bid. Such lists shall also include the phrase "or equal" to permit bidders to bid on alternate or additional makes, brands or types. In order for any such alternate or additional make, brand or type to be considered, it shall be incumbent on each such bidder to prove to the satisfaction of the Purchasing Agent or designee prior to the time for submitting bids that the alternate or additional make, brand or type is equal in quality or performance to those listed in the invitation to bid.
- (r) Competitive Pricing Exceptions. There may be instances when open competitive pricing is not practical, such as purchases of standardized goods and services, or goods and services that can only be obtained from one source. Exceptions to competitive pricing require the Purchasing Agent's approval in advance.



- a. Directed Purchases can be justified for standardization and/or compatibility purposes. Standardization includes technical product applications when compatibility and interchangeability are important and/or useful. Standardization is used to ensure compatibility of components and maintain commonality of items to save time, training and reduce replacement part stocking. Standardization tends to limit the competitive pricing, yet to the extent possible, competitive pricing of a standardized product should be obtained. Items typically standardized include water meters, vehicles, water treatment equipment, and computer equipment. Directed Purchases may also be applicable to replacement and repair of specific operational equipment by the manufacturer, dealer or service provider to ensure warranty coverage and standardization of equipment.
- b. Sole Source Purchases: Any purchases where only one known source exists or only one single supplier can fulfill the requirements because of its technological nature, specialized nature, proprietary nature or unique character. At other times, the reasons for sole sourcing may include warranties, compatibility, territorial limitations, proprietary items sold directly from the manufacturer, items that have only one distributor authorized to sell in this area or a certain product that has proven to be the only acceptable product and/or other factors that requires the Agency to purchase products or services only from those businesses. Examples of acceptable sole source exceptions may also include:
- 1) Only one known source exists for supplies or services as determined by documented research;
  - 2) No other reasonable alternative source exists that meets the Agency requirements;
  - 3) Only one service provider meets the business needs of the Agency or is required for equipment installation, maintenance, and/or repair to comply with manufacturer's warranty or specific knowledge of the equipment and its use in a water agency environment.
- c. Tri-Valley Intergovernmental Reciprocal Services Master Agreement: Pursuant to Resolution No. 15-12, the Agency entered into a Master Agreement with Tri-Valley Intergovernmental Reciprocal Services to facilitate the process of contracting for services, or sharing resources, materials, personnel, and equipment between the signatory local or regional government entities, and, to the extent appropriate, private utilities for the purposes described in the Master Agreement. The Agency at times will use this Master Agreement for purchases of commodities and services.
- d. Emergency purchases. See, Section 5.0 above.
- (s) Purchases Pursuant to Other Public Agency Bids or Cooperative Purchasing Organizations. The Agency may make purchases from vendors to whom other public



agencies or cooperative purchasing organizations have awarded competitively bid contracts at the prices provided for in such awarded contracts without requesting competitive bids; provided, the Purchasing Agent or designee determines such prices are competitive. Purchases under this section for services greater than \$50,000 or goods greater than \$100,000 shall be presented to the Board of Directors for award.

**(t) Competitive Pricing Requirements for Purchase of Goods and Services:**

- a) Purchases \$3,000 or less** – For purchases of \$3,000 or less, competitive pricing shall be used whenever practical.
- b) Purchases for Goods greater than \$3,000 and less than \$100,000** – Require at least 3 documented competitive pricing quotes from capable vendors in order to determine the lowest responsible bidder. Quotes should be documented on the Agency's Request for Quote form whenever possible.
- c) Purchases for Goods over \$100,000** - Require formal bid procedures for all purchases of goods. Formal bids for goods shall be awarded by the Board of Directors.
- d) Purchases for General Services over \$50,000** – For contracts over \$50,000 and for the purchase of general services that do not come within the definition of Public Works Contracts, formal bid procedures are required as provided for in this Policy. Formal bids for services shall be awarded by the Board of Directors.

## **7.0 PROFESSIONAL SERVICES**

Professional Services are exempt from competitive pricing requirements. However, a competitive selection and/or qualifications processes should be used to ensure the most qualified firm or individual is selected. The competitive selection process is at the discretion of the Purchasing Agent and may include a sole source, RFP, or other approved procurement process. A proposal with pricing should be submitted by the qualified firm or individual for evaluation prior to selection. Professional services over \$50,000 require formal competitive solicitation which includes submission of formal proposals and pricing for evaluation prior to selection with a contract awarded by the Board of Directors.

Professional Services typically involves extensive analysis, the exercise of discretion and independent judgment, and/or an advanced, specialized type of knowledge customarily acquired either by a prolonged course of study or equivalent experience such as but not limited to: accountants, consultants, investigators, attorneys, architects, surveyors and engineers.

## 8.0 PUBLIC WORKS CONTRACTS

Per State of California Public Contract Code Article 82 - Alameda County Flood Control and Water Conservation District and Agency policies, all construction bids and contracts will be formally bid and awarded per the guidelines provided within the Code. Effective January 1, 2024, until January 1, 2029, Senate Bill (SB) – 991 authorize local agencies, defined as any city, county, city and county, or special district authorized by law to provide for the production, storage, supply, treatment, or distribution of any water from any source, to use the progressive design-build process for up to 15 public works projects in excess of \$5,000,000 for each project.

## 9.0 PURCHASES (FORMAL BIDDING)

Formal bid procedures for all purchases of goods exceeding \$100,000, services and contracts for any improvement or unit of work exceeding \$50,000 that does not come within the definition of Public Works Contract, and Public Works Contracts over \$25,000, as outlined in Section 21151 of the Public Contract Code, shall be made as provided for in this section.

- (a) Public Notice. Bids for such purchases and contracts shall be solicited by public notice in the manner prescribed by the Board of Directors; provided that such manner shall not be inconsistent with provisions of Section 21151 of the Public Contract Code. All public notices for purchases shall include a general description of the goods or services to be purchased, shall state where contract bids and specifications may be secured and shall specify the time and place of opening of bids. In addition to the giving of such public notice, the Purchasing Agent or designee shall solicit bids from prospective bidders on any bidder's list maintained by the Agency by sending them a notice of solicitation or such other notice that will acquaint them with the proposed Purchase.
- (b) Form and Submission of Bids. All bids shall be submitted in sealed envelopes or through an official electronic procurement system in the form and manner prescribed by the Agency. Bids submitted in a sealed envelope shall specify the goods or services being bid upon and/or bid contract number.
- (c) Surety. If deemed appropriate by the Purchasing Agent or designee, a bid security or bid bond may be required when inviting bids. Those required bids shall be accompanied with security in the form of a certified or cashier's check or bid bond in such amount as be prescribed in the Agency's bid solicitation or bid contract document. Unsuccessful bidders shall be entitled to return of their bid security.
- (d) Written Contract Required - Forfeiture of Surety. Written contracts shall be awarded for all such purchases or contracts. If the successful bidder does not enter into a written contract within the time limit specified in the invitation to bid, the bidder shall forfeit its bid bond or other forms of security, which accompanied the bid, unless the Agency is responsible for the delay. The bidder shall also be liable for any cost in excess of its bid security which the Agency incurs in purchasing the goods or services elsewhere.

- (e) Required Bidder's Statement. The Purchasing Agent shall require each bidder to accompany the bid with a statement of non-collusion made under penalty of perjury that the bidder has not been a party with other bidders to an agreement to bid a fixed or uniform price. Violations of such statements shall void the bid of such bidders.
- (f) Public Contract Awards. At the time the contract is awarded, the contractor shall be properly licensed in accordance with the laws of the state.
- (g) Award of Bid. The award of all contracts for goods in excess of \$100,000 and general services that do not come within the definition of Public Works Contract in excess of \$50,000, and Public Work Contracts over \$25,000 shall be made by the Board of Directors.
- (h) Flood Control Facilities: Pursuant to Public Contract Code Section 21151 (the specific section applicable to the Alameda County Flood Control & Water Conservation District), work for "*channel protection or maintenance work*" can be contracted for without going through the formal competitive bid process as required for other Public Works Contracts. While the Agency will go through with its own 'in-house' competitive process it is done as a good business practice as opposed to a legal requirement. . As such, the Agency is not constrained to award to the lowest bidder but rather, can make a selection based upon other considerations.

## **10.0 DETERMINATION OF NON-RESPONSIBLE BIDDERS**

Public Contract Code Section 1103 defines a responsible bidder as "a bidder who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform the Public Works Contract." The General Manager or the Purchasing Agent may determine and declare a bidder to be non-responsible and may remove the bidder's name from the bidder's list and bar the bidder from bidding for a reasonable period not in excess of one year if the bidder fails to furnish proof of responsibility or if the bidder has repeatedly made slow or unsatisfactory performance/deliveries. Such barred bidder shall be furnished with a statement of the reasons for this action.

## **11.0 INSURANCE REQUIREMENTS**

Depending upon the type of procurement, the Agency may require bidders to submit proof of required insurance coverage prior to contract award. The specific insurance requirements will be included in the solicitation documents.

## **12.0 CONTRACTOR WAGE REQUIREMENT**

Depending upon the type of procurement and its funding source, the Agency, State of California or Federal government may require certain prevailing or living wage requirements,

particularly for public works projects. Those specific requirements will be included in the solicitation documents.

### **13.0 PURCHASING CARDS**

Authorized Agency employees have been issued a purchasing card (P-Card) for small dollar purchases. While these cards have been issued in the employee's name, the Agency is responsible for paying all debts incurred in the use of the card. Vendors should always request picture identification when charging against these cards. Sales should not be made to anyone other than the person whose name appears on the card. The P-Cards follow the same purchasing policy established by the Agency and the cardholders are accountable and responsible for all purchases made on their cards.

### **14.0 CONFLICT OF INTEREST**

No director, officer, employee or agent of the Agency shall participate in any procedure, tasks, or decisions relative to initiation, evaluation, award, or administration of a contract if a conflict of interest, real or apparent, exists. Such a conflict of interest arises when (a) the director, officer, employee or agent, (b) any member of his or her immediate family, (c) his or her business associate, or (d) an organization which employs, or which is about to employ, any of the above described individuals has a financial or other interest in an entity that participates in an Agency procurement process or that is selected for an award. The standards governing the determination as to whether such an interest exists are set forth in the Political Reform Act (Section 8100 *et seq.* of the California Government Code) and in Sections 1090, 1091, and 1091.5 of the California Government Code.

### **15.0 POLICY REVIEW**

The General Manager, or designee (Treasurer/Assistant General Manager – Finance), will be responsible for reviewing and updating this Purchasing Policy every five years, and presenting any recommended revisions to the Board of Directors for adoption.

### **16.0 HISTORY**

<b>Date</b>	<b>Action</b>	<b>Resolution</b>
June 21, 2017	Adopted	17-53
April 16, 2025	Updated	25-22