



## **POLICY AND PROCEDURE**

<b>POLICY TITLE:</b> <b>Purchasing Policy</b>	<b>NUMBER:</b> <b>Z7AF-143-17</b>	<b>PAGE:</b> <b>1 of 11</b>
<b>APPROVED BY:</b> <b>Zone 7 Board</b>	<b>REVISION:</b>	<b>EFFECTIVE DATE:</b> <b>June 21, 2017</b>

### **GENERAL**

Pursuant to section 36 of the 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 the Zone. 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 Zone 7 Water Agency (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.

### **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, or designee has declared an emergency within the Agency's facilities or geographic location;
- (d) "Public Works Contract," means an agreement for the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind.

- (e) "Responsible bidder," means 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.
- (f) "Responsive Bid," means a proposal submitted adheres to, and meets, all of the requirements of the bidding documents or solicitation.
- (g) "No Bid," means 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.
- (h) "No Response," means 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.
- (i) "Emergency," means 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.
- (j) "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 Accounting/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 Sections with implementation. The Accounting/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 team within the Accounting 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 Purchasing Agent 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 majority 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. Commodities and General Services and 2) Public Works Contracts.

### **5.1 EMERGENCY COMMODITIES AND GENERAL SERVICES PURCHASES**

Once the General Manager, Purchasing Agent or Section Manager determines the need for an emergency purchase, the purchase may be made, without competitive pricing requirements, utilizing the Agency's purchasing procedures and practices. If neither the General Manager,

Assistance General Manager, Finance, nor the EOC Director are available, the Accounting Manager, Procurement staff or Section Managers have authority 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, Sections shall consult with the Purchasing Agent prior to making the emergency purchase. If prior consultation was not possible, the 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 Section Manager determines the need for an emergency purchase, per Public Contract Code, Sections may let contracts for work 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 commodities or services through public procurement best practices and available bid options. The solicitation may be in the form of a quote, bid, Request for Information (RFI), Request for Qualifications (RFQ), or Request for Proposal (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 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 process. These purchases may include examples of the following: Advertisements and notices, consulting and professional services, United States Postal Service, insurance, medical payments, membership dues, real property/easement acquisition, subscriptions, computer hardware and software maintenance agreements, trade circulars or books, certain travel expenses, vehicle and heavy equipment repairs and utility payments, 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 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 most 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.
- (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, or a subcontractor licensed by the State of California who, under subcontract to the prime contractor, specially fabricates and installs a portion of the work or improvement according to Public Contract Code.
- (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, or the bid can be cancelled and the purchase may be made in the open market, provided the price paid in the open market shall not exceed the lowest bid price.
- (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: Sometimes there is compelling urgency or it is in the best interest of the Agency to purchase a product or service because it is the best use of public funds or because not obtaining the product or service may cause harm, injury or unnecessary expense. At other times, it 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.
- (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 shall be presented to the Board of Directors for award.
- (t) **Competitive Pricing Requirements:**

Commodities and General Services

- a) **Purchases less than \$3,000** - Although there is no specific requirement for the competitive pricing of Purchases less than \$3,000, competitive pricing shall be used whenever practical.
- b) **Purchases for Commodities from \$3,001 to \$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 Commodities over \$100,000** - Require formal bid procedures for all purchases and contracts for any improvement or unit of work, which shall be made as provided for in this Policy and the Public Contract Code for Public Works contracts.
- d) **Purchases for General Services over \$50,000** - Require formal bid procedures for all purchases and contracts for any improvement or unit of work, which shall be made

as provided for in this Policy and the Public Contract Code for Public Works contracts. 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 Section Manager and/or 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 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 Agency and Agency policies, all construction bids and contracts will be formally bid and awarded per the guidelines provided within the Code.

## **9.0 PURCHASES (FORMAL BIDDING)**

Formal bid procedures for all purchases of goods exceeding \$100,000. And services and contracts for any improvement or unit of work, exceeding \$50,000, shall be made as provided for in this section and over \$25,000 for Public Works contracts as outlined in Section 21151 of the Public Contract Code.

- (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 21321 of the Public Contract Code. All public notices for purchases shall include a general description of the commodities 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 commodity or service 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 by a surety 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 or bid bond.
- (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 in cash an amount equivalent to any surety, 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 price which the Agency incurs in purchasing the commodity or service 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 Commodities shall be made by the Purchasing Agency. The award of all contracts for services in excess of \$50,000 under this section 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 like for other public works contracts. While we do go through our own 'in-house' competitive process it is done as a good business practice as opposed to a legal requirement thus the RFP process vs. the formal advertisement & bidding process. As such, we are not constrained as we would be with other types of public works contracts, to go with the cheapest bid but rather, can make our selection based upon considerations other than just who's the cheapest.

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

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.

**HISTORY**

<b>Date</b>	<b>Action</b>	<b>Resolution</b>
June 21, 2017	Adopted	17-53