

COACHELLA VALLEY PUBLIC CEMETERY DISTRICT



PURCHASING & CONTRACTING POLICY AND PROCEDURES GUIDE

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1. **INTRODUCTION**

(a) **Purpose**

The Coachella Valley Public Cemetery District (“District”) is a public cemetery district formed in 1928 by resolution of the Riverside County Board of Supervisors and existing under the provisions of the laws of the State of California.

This Purchasing and Contracting Policy and Procedures Guide (“Guide”) and the policies and procedures set forth in this Guide shall apply to the District. This Guide is intended to establish a system of controls for the efficient use and expenditure of public funds. This Guide standardizes accounting and financial policies and procedures and provides guidance for District staff on the use and expenditure of District funds and resources.

Except where so designated, this Guide shall be considered a public record and shall be available to all members of the public, including vendors and potential vendors. This Guide is not intended to create any enforceable rights for any third parties.

Revisions to the Guide may occur from time to time. Revisions will be presented to the District Board for review and approval.

(b) **Definitions**

(i) Approval Authority means the District Board or District official with the authority to approve a particular contract or purchase.

(ii) Fourth Supervisorial Local Business means a vendor, contractor, or consultant who has a valid physical business address located within the geographical boundary of Riverside County’s Fourth Supervisorial District, at least six months prior to bid or proposal opening date, from which the vendor, contractor, or consultant operates or performs business on a day-to-day basis, and holds a valid business license by a jurisdiction located in the Fourth Supervisorial District. Post office boxes are not verifiable and shall not be used for the purpose of establishing such physical addresses.

(iii) General services means furnishing of labor, time, or effort by a contractor for non-professional services as the District may, from time to time, find necessary and proper for the functioning of the District. Examples include, but are not limited to, janitorial, uniform cleaning, maintenance and other services which do not require any unique skill, special background or training.

(iv) Goods means any and all supplies, materials, articles, equipment, apparatus, vehicles, things, or property, other than real property, furnished to be used by the District.

(v) Local Business means a vendor, contractor, or consultant who has a valid physical business address located within the District’s geographical boundary, at least six months prior to bid or proposal opening date, from which the vendor, contractor, or consultant operates or performs business on a day-to-day basis, and holds a valid business license by a jurisdiction located

in the District. Post office boxes are not verifiable and shall not be used for the purpose of establishing such physical addresses.

(vi) Maintenance services means the furnishing of labor, time or effort by a contractor, including but not limited to:

- Routine, recurring, and usual work for the preservation or protection of a publicly owned, or publicly operated facility for intended purposes;
- Minor repainting;
- Resurfacing streets and highways at less than one inch;
- Landscape maintenance, including mowing, watering, trimming, pruning, planting, replacement of plants, and servicing of irrigation and sprinkler systems; and
- Other similar services that are generally classified as maintenance and not public projects.

(vii) Professional services means services provided by a person, company, corporation, or firm engaged in a profession based on a generally recognized special knowledge, skill, license, and/or certification to perform the work including, but not limited to, the professions of accountant, attorney, artist, architect, landscape architect, construction manager, engineer, environmental consultant, dentist, physician, training or educational consultant, or land surveyor, and whose services are considered distinct and unique.

(viii) Public works project or public project means:

- A project for the erection, improvement, painting, or repair of public buildings and works;
- Work in or about streams, embankments or other works for protection against overflow;
- Street work except maintenance or repair; and
- Furnishing supplies or materials for any such project, including maintenance or repair of streets.

(ix) Request For Proposal (“RFP”) is a document that solicits firms to submit a proposal to perform the scope of work associated with a proposed project. Cost is not the sole basis for selection in an RFP; other qualifications including experience, turnaround time and approach to work are important factors when evaluating proposals. RFPs are project specific and preparation requires general knowledge of the project. It is expected that interested parties would do a limited amount of work to develop a quality proposal.

(x) Request For Qualification (“RFQ”) is a document that solicits firms to submit information about their qualification and capabilities to perform the type of work associated with a proposed project. The preparation of an RFQ generally does not require specific project knowledge or scope. An RFQ may be used as a pre-qualification step to engaging a service provider. If an RFQ is required, only those candidates who successfully respond to it and meet the qualification criteria will be included in the subsequent RFP process. An RFQ will contain specific reference to selection criteria.

(xi) Services means either general services, maintenance services, or professional services.

2. ADOPTION OF THE BUDGET

(a) The District Board formally adopts an operating and capital budget (the “Budget”). When the District Board adopts the Budget, they appropriate the funds necessary to pay for expected District expenditures by fiscal year. An appropriation is an authorization to incur obligations on behalf of the District. This authorization allows for the expense of District funds to pay those obligations. Authorized obligations are limited to the current operational year of the budget.

(b) The Budget provides the basis for the classification and expenditure of funds. Purchases include the procurement of goods, services, and public projects needed by the District. The total spending for a fund or a capital project will stay within the parameters established by the adopted budget. No expenditures can be authorized to an account whose deficit exceeds total available balance of the program.

(c) No contract or purchase shall be made unless the General Manager shall have first confirmed that there is an unencumbered appropriation in the fund against which such expenditure is to be charged sufficient to cover the amount of purchase or contract, unless in cases of emergency.

3. PURCHASING POLICY PROCEDURES

(a) **Unauthorized Purchases.** No officer or employee of the District shall request a supplier to deliver goods, services, or public projects to the District without prior authorization by the General Manager. Such purchases are void and not considered an obligation of the District.

(b) **Development of Bid Specifications; Review and Approval.**

(i) Accurate and clear specifications shall be developed for every type procurement.

(ii) The District Board shall adopt plans, specifications, and working details for all public works projects, including emergency and change order work, which may affect the design or operation of public improvements and which may bring into question the District’s liability for dangerous conditions of public property. This authority may be delegated if the nature of the specifications warrants such an action.

(c) **Performance Bonds.** The General Manager shall have authority to require a performance bond before entering a contract in such an amount necessary to protect the best interests of the District.

(d) **Split Purchases.** A split purchase occurs when the quantity of a required goods, service, or public project is known prior to the initial purchase, and is divided into multiple purchases in order to avoid the requirement for obtaining bids or proposals. Split purchases are

prohibited, may be misdemeanors under State law (PCC §20163) if public bidding is required, and are generally considered fraud, waste, and/or abuse and in violation of best practices standards.

(e) **Master Agreements.** The District may enter into master agreements, under which District staff purchases goods and services, including but not limited to on-call services. Master Agreements shall have a not-to-exceed cost limit and be subject to the procurement requirements of this Guide based on the not-to-exceed value.

(f) **Purchasing Approval Authority.** The Approval Authority applicable for the purchase of goods, services, and public projects shall be delegated as follows:

(i) Award by General Manager. The General Manager may make purchases or contracts for goods, services, and public projects in an amount not to exceed \$15,000.

(ii) Award by District Board. The District Board shall make purchases or contracts for goods, services, and public projects, that exceed \$15,000.

(g) **Petty Cash.** The purpose of a petty cash procedure and policy is to support “day-to-day” small immediate demands of the District that cannot be met through other established procedures for obtaining required goods. These demands are generated for items that are within the goals and objectives of the District and are provided for in the District’s operating budget. The maximum petty cash monetary limit is \$100 per transaction. In order to be reimbursed, the employee must complete a petty cash form, have it approved (signed) by the General Manager or designee. Approval signature on the petty cash form is mandatory.

(h) **Prevailing Wages.**

(i) As a general rule, the definition of public work under state prevailing wage law in the Labor Code is broader than the corresponding definition under the Public Contract Code and other public procurement statutes. It is important for the District to recognize that simply because a project is not subject to competitive bidding under the Public Contract Code does not necessarily mean that the project is not subject to state prevailing wage law.

(ii) California Labor Code Sections 1720 et seq. and 1770 et seq., as well as California Code of Regulations Title 8, Section 16000, et seq. (“Prevailing Wage Laws), require the payment of prevailing wage rates and the performance of other requirements on certain “public works” and “maintenance” projects. If the services are being performed as part of an applicable “public works” or “maintenance” project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, the District must make vendors aware of these requirements and vendors must fully comply with such Prevailing Wage Laws.

(i) **Purchase Orders and Contracts**

(i) Purchase Orders/Contracts. Unless otherwise allowed by this Guide, a purchase order or contract (collectively “contract”) is required for all purchases. Unauthorized purchases are void and not considered an obligation of the District. Contracts shall be issued to a vendor when procuring goods, services, or public projects and not “after the fact” for work already

done or goods already ordered. A contract submitted by an authorized person becomes a legally binding contract.

(ii) Digital or Electronic Signatures. The District may execute and accept contracts utilizing digital signatures, pursuant to Government Code section 16.5, or electronic signatures, pursuant to the California Uniform Electronic Transactions Act (Civil Code sections 1633.1, et seq.).

(iii) Counterparts. Unless otherwise prohibited by law, all District contracts may be executed in multiple counterparts, which shall constitute a single integrated document.

(iv) Vendor Signature. Requirements for contracts vary depending on whether a vendor conducts business in the capacity of a corporation, general partnership, limited partnership, or as an individual.

(1) Where the contract is with a vendor doing business as a corporation, California Corporations Code § 313 requires the contract to be signed by:

a. One officer from the corporation's "operational group" consisting of the chairman of the board, the president, or any vice president; and,

b. One officer from the corporation's "financial group" consisting of the secretary, or assistant secretary, or the chief financial officer or any assistant treasurer.

(2) Where the contract is with a vendor conducting business as a general partnership or limited partnership, the contract should be signed by a least one general partner having apparent authority to enter into the contract on behalf of the partnership.

(3) Where the contract is with a vendor conducting business as a limited liability company ("LLC"), the contract should be signed by a least one member or manager having apparent authority to enter into the contract on behalf of the LLC.

(4) Where the contract is with a vendor doing business as a corporation, general partnership or limited partnership, or LLC, the signature lines should always include the name and title of the person or persons executing the contract on behalf of the vendor, preferably typed in rather than hand-written, as well as the business name of the vendor.

(5) Where the contract is with a vendor doing business as an individual, the signature lines need only include the name of the vendor, as well as the vendor's business name when the vendor is doing business under a name other than the vendor's own name.

(v) District Execution of Contracts.

(1) The District should generally only execute contracts after all vendor signatures are obtained. Either the Chairperson of the Board or General Manager must sign all contracts. Ordinarily, the General Manager will sign most of the District's contracts either at the District Board's direction or in conformance with his or her Approval Authority.

(2) The two original executed copies of each contract, together with sufficient evidence of any insurance required by the contract must be submitted to the Board Clerk or designated District staff responsible for administering the contract before the time a vendor undertakes performance of the work required by the contract. Upon receiving an original copy of the contract and evidence of insurance, the Board Clerk will stamp the date of receipt on the contract and review all signatures on the contract for compliance with this Guide. In addition, the Board Clerk will review all accompanying certificates of insurance, insurance policies or insurance endorsements for compliance with contract requirements. If the Board Clerk is unable to determine whether the insurance complies with contract requirements, the Board Clerk will consult with the District's risk manager.

(3) Upon determining that the contract has been properly signed by or on behalf of both the vendor and the District, and that the accompanying evidence of insurance meets the contract's requirements, the Board Clerk will attest to the execution of the contract. Thereafter, the Board Clerk will file one original contract and evidence of insurance in the District's official records, transmit the other original copy of the contract to the vendor, and return a non-original copy to the District staff responsible for administering the contract. For contracts executed in multiple counterparts, the original contracts shall include each executed signature page counterpart.

(4) The District staff responsible for administering the contract will not direct a vendor to proceed with the work required by the contract until receiving an attested copy of the contract from the Board Clerk.

(5) The District's Attorney should review and approve all contracts for legal sufficiency. The District's Attorney may approve contracts to form in advance of District approval or execution by other parties.

(6) In the physical absence or incapacitation of the Chairperson, the Vice-Chairperson may execute approved contracts. In the absence of the General Manager, an acting general manager may execute contracts that require the General Manager's signature. Where the District Board is the Approval Authority, execution of the approved contract is a mandatory and ministerial duty, which the appropriate official shall not refuse to perform.

(7) The Board Clerk and District's Attorney may designate deputies to respectively attest and approve to form contracts. In general, the attestation and approval to form should appear as signature lines on the signature page of the contract. However, the actions are not required to appear on the contract and may be documented through other means, such as memoranda or e-mails to the file. The attestation and approval to form are intended only to be internal procedural safeguards. Counterparties to the contract and third parties cannot seek to void contracts with the District for lack of attestation or approval to form. Additionally, the fact that a contract has been attested or approved to form shall not in any way waive or limit the District's rights under the contract.

(j) **Change Orders.** Contracts may be amended by the issuance of a change order or amendment, provided the change is reasonably related to the scope of the original contract. All

requests for change orders/amendments must be reviewed by the General Manager to ensure available budget and/or identify need for an additional appropriation.

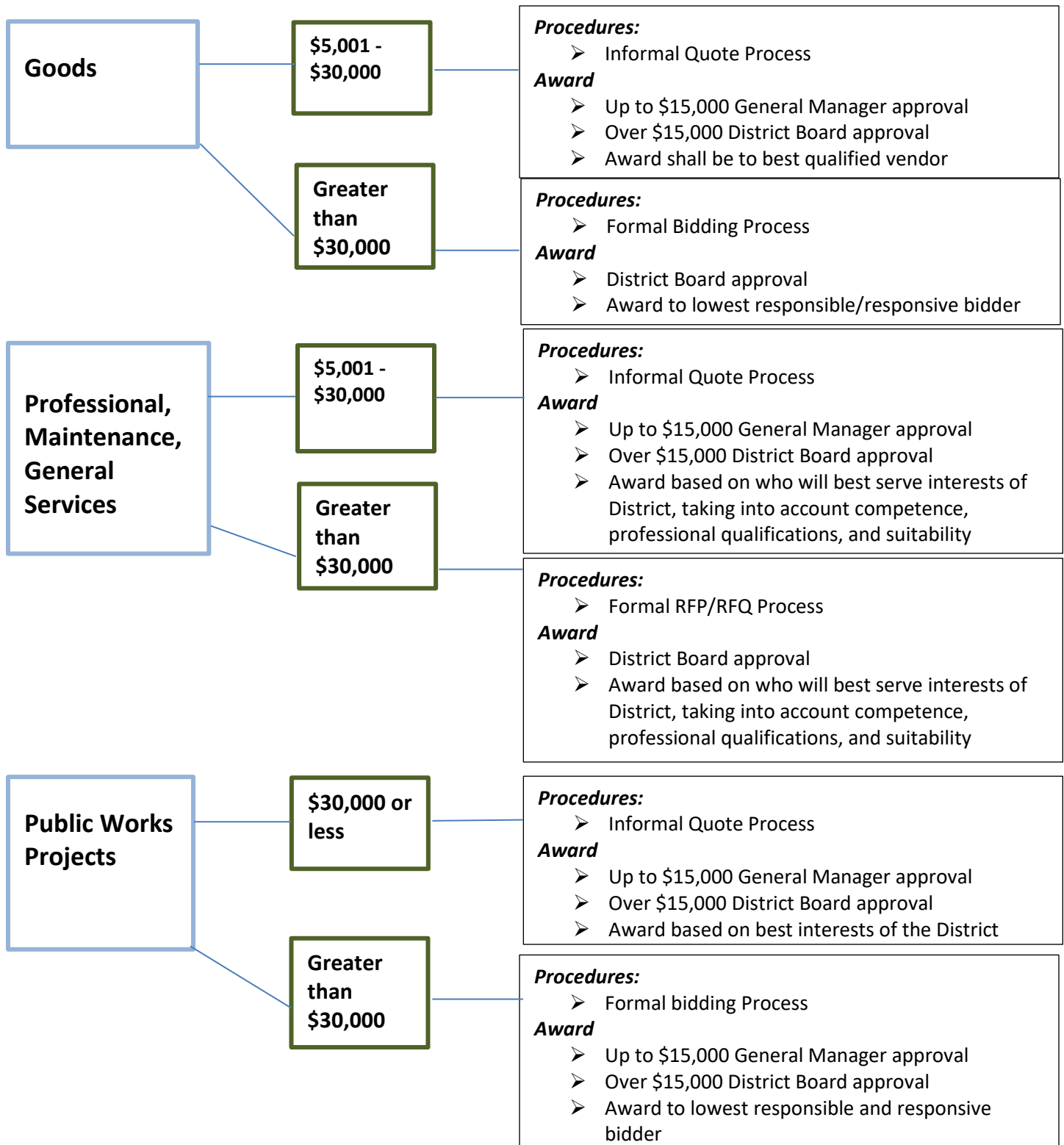
(i) Change Order/Amendments Authority

(1) General Manger. The cumulative value (original + change order) shall not exceed \$15,000. Notwithstanding the foregoing, if an award is approved by District Board (i.e., value is over \$15,000), it is recommended that the General Manager request delegation to the General Manager to approve change orders within 10% of the awarded price. Additional contingency may be approved depending on the nature of the project and the potential for unpredictability of costs.

(2) District Board. All change orders/amendments as required.

4. BIDDING AND PURCHASING METHODS

The following summarizes the bidding and purchasing methods for goods, services, and public projects described in this Section 4 of the Guide and should be used for reference only.



(a) **Competitive Bidding**

(i) Goods

- (1) No bidding required: \$5,000 or less
- (2) Informal Quote Process: \$30,000 or less
- (3) Formal Bid Process: Over \$30,000

The District Board may dispense with the formal bid process for goods over \$30,000 if the District Board finds that a competitive RFP process would be more beneficial to the District or if the District Board finds that the need to compare different products and/or negotiate the best value would be better achieved through a RFP process.

(ii) Professional, Maintenance, and General Services

- (1) No bidding required: \$5,000 or less
- (2) Informal Quote Process: \$30,000 or less
- (3) Formal RFP/RFQ Process: Over \$30,000

(iii) Public Projects

- (1) Informal Quote Process: \$30,000 or less
- (2) Formal Bid Process: Over \$30,000

(b) **Informal Quotes Process**

(i) Soliciting Quotes or Proposals. District staff shall solicit via posted notice, telephone request, mail, email, fax or any other reasonable solicitation method, price quotes or proposals documented in writing. If unable to obtain a minimum of three (3) price quotes, staff shall document that reasonable efforts were made to obtain price quotes or proposals including, that a notice was posted for not less than seven (7) business days; that there were no other vendors to solicit price quotes or proposals from; or that they solicited to other vendors and two or more declined to provide a quote or proposal.

(ii) Award of Purchase. Award shall be made to the best qualified vendor presenting a quote or proposal that is in the District's best interests. Contracts for the purchase of professional services shall be awarded to the best qualified vendor on the basis of demonstrated competence and professional qualifications. While a reasonable price is always a consideration in selecting a vendor, it cannot be the sole factor in selecting a vendor for professional services.

(c) Formal Request for Proposal (RFP)/Request for Qualifications (RFQ) Process

The RFP or RFQ process shall be utilized to engage services on the basis of demonstrated competence and qualifications for the types of services to be performed and at fair and reasonable prices to the District. The following minimum guidelines and procedures shall be implemented.

(i) Notice Inviting RFQs or RFPs. At a minimum, the notice inviting RFQs or RFPs shall: (1) describe the project; (2) state how to obtain more detailed information about the project; (3) state the date, time and place for the submission of qualifications or proposals; (4) describe general parameters for evaluation and selection; and (5) include any other information required by state or local law.

(ii) Published Notice. District staff shall solicit RFQs or RFPs via published notice in a newspaper of general circulation and/or the District's website at least ten (10) calendar days before the date for receiving qualifications or proposals, unless exigent circumstances call for a shorter time.

(iii) Review of Qualifications or Proposals. The District will receive qualifications or proposals at the date, time and place of submission on the noticing inviting RFQs/RFPs. Any proposals received after the proposal opening time will be time/date stamped and returned unopened to the proposer. The District will review and evaluate qualifications or proposals based on the evaluation and selection criteria in the RFQs/RFPs and rank proposals based on factors listed in the RFQ/RFP.

(iv) Negotiation. Once proposals are ranked, the District may negotiate a contract with the highest ranked proposer only, may negotiate with multiple proposers, or may attempt to reach an agreement with the highest ranked proposer before negotiating with other proposers in order of ranking. The District may also dispense with negotiations and recommend an award based on the proposals.

(v) Award. Award for professional services contracts shall be to the best qualified vendor who will best serve the District interests taking into account the demonstrated competence, professional qualifications and suitability for the project. Award for other contracts shall to the vendor offering the best value to the District, in the District's sole and absolute discretion.

(vi) Rejection of Bids. The District Board may, in its sole and absolute discretion, reject all proposals presented and re-advertise.

(d) Formal Bidding Process

(i) Required Process. The formal bidding procedures shall comply with all aspects of state and local law governing formal competitive bidding, including, but not limited to, the Public Contract Code, Government Code, Labor Code, resolutions of the District Board as may be adopted from time to time, and this Guide.

(ii) Notice Inviting Formal Bids. Notice inviting formal bids shall be provided. Notices shall state the time and place for the receiving and opening of sealed bids and distinctly describe the project. At a minimum, the notice inviting formal bids shall: (1) describe the project; (2) state how to obtain more detailed information about the project; (3) state the date, time and place for the submission of sealed bids; and (4) include any other information required by state or local law.

(iii) Published Notice. The notice shall be published at least ten (10) calendar days before the date of opening the bids in a newspaper of general circulation and on the District's website. Notice shall be published at least twice not less than five (5) days apart.

(iv) Bidder's Security. All bids shall be presented under sealed cover accompanied by one of the following forms of bidder's security: (a) cash; (b) cashier's check made payable to the District; or (c) a bidder's bond executed by an admitted surety insurer made payable to the District. Such security shall be an amount at least equal to ten percent of the bid amount. No bid shall be considered unless security in the form above set forth is enclosed with the bid.

(v) Forfeiture of Security. If the successful bidder fails to execute the contract, the bidder's security shall be forfeited to the District. The District Board may on refusal or failure of the successful bidder to execute such contract award the contract to the next lowest responsible bidder. If the District Board awards the contract to the second lowest bidder, the amount of the lowest bidder's security shall be applied by the District to the difference between the low bid and the second low bid. The surplus, if any, shall be utilized to offset any and all costs of preparation and printing of plans, specifications, estimates of cost, publication of notices, and any surplus remaining shall be returned to the lowest bidder who fails to execute the contract.

(vi) Bid Opening. Sealed bids shall be submitted to the Board Clerk and shall be clearly identified with the bid number on the envelope. Upon receipt, the Board Clerk shall date and time stamp the envelope. Bids shall be opened in public at the time and place stated in the public notices.

(vii) Review of Bids. The District shall review all bids received for completeness, accuracy, responsiveness to the invitation and bid documents, and the District's experience with or knowledge of the qualification and reliability of each bidder and prepare a recommendation for the District Board.

(viii) No Bids. If no bids are received, the District Board may have the project done in any manner that the District Board may direct without further complying with this Section.

(ix) Award of Contract. If awarded, the contract shall be awarded to the lowest responsible and responsive bidder. If two or more bids received are the same amount, the District Board may decide which bid to accept and award.

(x) Rejection of Bids. The District Board may, in its sole and absolute discretion, reject any one or more items of a bid, reject any and all bids, or waive any irregularities or informalities in the bids or bidding process if deemed to best serve the interests of the District. After all bids are rejected, the District Board may pass a resolution by a four-fifths vote of its members declaring that the project can be performed more economically by employees of the city

or procuring goods on the open market, or elect to readvertise for bids pursuant to the procedures prescribed in this Section.

(e) **Exceptions to Procurement Methods**

(i) Use of Exceptions. This Section contains exceptions to the District's general procurement requirement. The Approval Authority may determine that use of an exception is most beneficial under the circumstances. Exceptions should only be used where the particular exception provides a greater public benefit than adhering to standard procurement requirements.

(ii) Emergency. When in case of emergency.

(1) "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, property, or essential public services.

(2) In the case of an emergency which requires the immediate procurement of public works, services or goods, the District Board by a four-fifths vote may procure these items without regard to the provisions of this Guide. The action shall only be to repair or replace a public facility, take any directly related and immediate action required by that emergency, or procure the necessary equipment, services, and supplies for those purposes. Award shall be made to the vendor offering the lowest acceptable quotation that best meets the needs of the District. The District Board shall terminate the emergency action at the earliest possible date that conditions warrant.

(iii) No Competitive Market. When the District Board determines that a competitive market does not exist or that the District will not gain a competitive advantage by using the formal bidding procedure, the District may use any other procurement method.

(iv) Competitive Bidding Already Completed. When the General Manager or District Board determines that: (1) a competitive bid procedure has been conducted by another public agency, including, but not limited to, another local agency, the State through the California Multiple Award Schedule (CMAS), the federal government through the General Services Administration (GSA), or a joint powers agency, authority or alliance that procures competitive contracts; and (2) the price to the District is equal to or better than the price to that public agency.

(v) State Purchase. When the purchase is made on behalf of the District by the State Department of General Services.

(vi) County Purchase. When the purchase is made on behalf of the District by the County of Riverside.

(vii) Mandated Expenditures. When expenditures are mandated by law or regulation, such as county booking fees, utilities, postage, waste disposal fees or other non-negotiable permit, use or application fees.

(viii) Shared Services. When the District Board or General Manager authorizes the award and execution of contracts for services, subject to the dollar limits consistent with this

Guide, that are provided by another government, public entity, joint powers authority, quasi-governmental entity, special district or non-profit entity that will maximize efficiency, increase cost effectiveness, increase range of services, minimize duplication, provide training or education encourage collaboration or standardize efforts, or leverage government resources.

(ix) Best Interest of District. When, except where otherwise prohibited by law, the District Board or General Manager authorizes the award and execution of contracts for services and goods subject to the dollar limits consistent with this Section, without following the required procurement methods, provided that the District Board or General Manager finds that such award is in the best interest of the District, or of the public health, safety, and welfare.

(x) Sole Source. When the District Board or General Manager determines that there is only one source that provides the needed services or goods, or to ensure compatibility with other District products and equipment, the District shall work to procure these items in the best interest of the District.

(xi) Purchase of Recurring Charges. The District may create an open vendor list for the purposes of providing services and goods for the fiscal year for ongoing cleanup, maintenance and different routine items that are of a continuing nature. Prices from each vendor shall be obtained in a manner to ensure competitive pricing, in the best interest of the District. The threshold for each vendor may be determined by the District Board, at the recommendation of the General Manager. A vendor list may be approved by the District Board as often as necessary but not less than once every twenty four (24) months.

(xii) Task or Job Orders. Unless prohibited by law, task or job orders that the District places through a duly approved master agreement shall not be subject to further procurement requirements.

(xiii) Alternative Delivery Methods. The District may utilize any alternative delivery methods that are otherwise available under the law. Examples of alternative delivery methods include, but are not limited to, design-build (Public Contract Code sections 22160, et seq.), energy conservation projects (Government Code sections 4217.10, et seq.) and public-private partnerships (Government Code sections 5956, et seq.). The Approval Authority shall authorize use of alternative delivery methods either prior to release of a solicitation or prior to award of a contract.

(xiv) Otherwise Authorized. When otherwise authorized by this Guide or applicable law.

5. **LOCAL BUSINESS PREFERENCE**

(a) **Statement of Policy.** It is the policy of the District to promote employment and business opportunities for local residents and preference shall be given to Local Businesses and Fourth Supervisorial Local Businesses, provided price, quality, and availability is satisfactory and to the extent consistent with the law and interests of the public.

(b) **Local Preference in Purchasing Goods.**

(i) In the purchasing of Goods between \$1,200 and \$10,000, preference may be given to a Local Business when evaluating price quotations in an amount not to exceed five percent (5%) of the Local Business's total quotation price. In the purchasing of Goods that exceed \$10,000 and the Board may give preference to a Local Business when evaluating bids or proposals in an amount not to exceed five percent (5%) of the Local Business's total bid price, or \$5,000.00, whichever amount is lower. To be eligible to claim the preference, a Local Business must request the preference in its bid or proposal and provide a copy of its current business license from a jurisdiction in the District. If a Local Business that would otherwise qualify for the local preference fails to request the local preference in its bid or proposal, the District may waive this requirement and apply the local preference on its own initiative.

(ii) The local preference noted above shall also be provided to Fourth Supervisorial Local Businesses at the rate of two and a half percent (2.5%).

(c) **Local Preference in Services.** In awarding contracts for services, preference to a Local Business shall be given whenever practicable pursuant to policies and procedures set forth herein and consistent with the Statement of Policy in subsection a of this Section. The vendor will also, to the extent legally possible, solicit applications for employment and proposals for subcontractors for work associated with the proposed contract from local residents and firms as opportunities occur and hire qualified local residents and Local Businesses whenever feasible. To be eligible to claim the preference, a Local Business must request the preference in its bid or proposal and provide a copy of its current business license from a jurisdiction in the District. If a Local Business that would otherwise qualify for the local preference fails to request the local preference in its bid or proposal, the District may waive this requirement and apply the local preference on its own initiative.

(d) **Exceptions to the Local Business Preference Policy.** The preference set forth in this Section shall not apply to the following purchases or contracts:

(i) Goods or services provided under a cooperative purchasing agreement.

(ii) Purchases or contracts which are funded in whole or in part by a governmental entity and the laws, regulations, or policies governing such funding prohibit application of that preference.

(iii) Purchases made or contracts let under emergency or noncompetitive situations.

(iv) Public projects.

(v) Application of the Local Business or Fourth Supervisorial Local Business preference to a particular purchase, contract, or category of contracts for which the District is the awarding authority may be waived at the District's discretion.

(e) **Quality and Fitness.** The preferences established in this Section shall in no way be construed to inhibit, limit or restrict the right and obligation of the District to compare quality and fitness for use of services or goods proposed for purchase and compare the qualifications, character, responsibility, and fitness of all persons, firms, or corporations submitting bids or

proposals. The preferences established in this Section shall in no way be construed to prohibit the right of the District from giving any other preference permitted by law or this Guide.

(f) **Verification of Local Business Preference Eligibility.** Any Local Business or Fourth Supervisorial Local Business shall certify in its bid or proposal, that it is a Local Business or Fourth Supervisorial Local Business . The District shall not be required to verify the accuracy of any such certification and shall have sole discretion to determine if a vendor or contractor meets the definition of a Local Business or Fourth Supervisorial Local Business .

(g) **Enforcement.**

(i) The information furnished by a Local Business or Fourth Supervisorial Local Business requesting a local business preference shall be under penalty of perjury.

(ii) No person or business shall knowingly and with intent to defraud, fraudulently obtain, retain, attempt to obtain or retain, or aid another in fraudulently obtaining or retaining or attempting to obtain or retain certification as a Local Business or Fourth Supervisorial Local Business for the purpose of this Section.

(iii) No person or business shall willfully and knowingly make a false statement with the intent to defraud, whether by affidavit, report, or other representation, to a District official or employee for the purpose of influencing the certification or denial of certification of any entity as a Local Business or Fourth Supervisorial Local Business.

(iv) A business which has obtained District certification as a Local Business or Fourth Supervisorial Local Business by reason of having furnished incorrect supporting information or by reason of having withheld information, and which knew or should have known, the information furnished was incorrect or the information withheld was relevant to its request for certification, and which by reason of such certification has been awarded a contract to which it would not otherwise have been entitled, shall:

(1) Pay to the District any difference between the contract amount and what the District's costs would have been if the contract had been properly awarded;

(2) In addition to the amount described in sub-section (1) above, be assessed a penalty in an amount of not more than ten percent (10%) of the amount of the contract involved; and

(3) Be subject to debarment from future award of contracts from the District.

(v) The penalties identified above shall also apply to any business that has previously obtained proper certification and, as a result of a change in its status would no longer be eligible for certification, fails to notify the District of this information prior to responding to a solicitation or accepting a contract award.

(h) **Promulgation of Administrative Rules.** The General Manager is authorized to adopt administrative rules supplemental to the provisions of this Section as necessary or

appropriate to implement the provisions of this Section. The provisions of this Section and the rules adopted by the General Manager shall be provided to potential bidders, vendors, and contractors to the widest extent practicable.

6. **PROTEST PROCEDURES**

(a) **Right to Protest.** Prior to making the award, any responsible bidder in connection with the award of a contract may protest the award. A subcontractor of a bidder or proposer may not submit a protest. This Section shall apply to all contracts awarded by the District Board through a formal competitive process, including but not limited to a formal bid or formal request for proposal process. The protest procedure does not apply to contracts that are awarded at the staff level or through a non-competitive process (e.g., by sole source). The protest procedure is solely to serve the public interest and obtain finality of District contract awards.

(b) **Timing of Protest.** If the District issues a notice of intent to award (or reject) a bid, then the protest shall be submitted in writing within five (5) calendar days following the issuance of the notice of intent and prior to the date of the award. Untimely protests will not be considered and will be deemed waived.

(c) **Contents of Protest.** The protest shall identify and explain the factual and legal grounds for the protest. Any grounds not raised in the written protest are deemed waived by the protesting bidder.

(d) **District Response.** If the protest is in response to a notice of intent, then the protest will be considered as part of the award of the contract, and the District Board's action is final.

(e) **Effect of Failure to Comply with Protest Procedures.** The procedures set forth in this Section are mandatory and are the sole and exclusive remedy of a bidder or proposer to dispute the award of a contract. A protest that does not comply with these procedures may be summarily rejected.

(f) **Conflicts.** The protest procedure contained in this Section shall not apply if a particular procurement solicitation contains a different protest procedure.

7. **FEDERAL GRANT AND EMERGENCY PROCUREMENT**

(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 eligible work. In addition, most federal grant funding is also subject to federal procurement standards. To that end, the Procurement Standards of 2 CFR §200.317 to 2 CFR §200.326, found in Title 2 of the Code of Federal Regulations (CFR) Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, are hereby incorporated into and made part of this Guide.

(b) These Procurement Standards shall be complied with in connection with utilization of federal funding by the District, in addition to any other specific federal grant or FEMA requirements. These Procurement Standards are in addition to and are not intended to replace or

supersede procurement requirements in this Guide or state law requirements. In the case of a conflict between these procedures, the more stringent requirement shall govern, provided that the more stringent requirement would not violate a federal procurement requirement. In such case, for federally funded contracts, the federal requirement shall govern. As part of following the Procurement Standards, the District shall require the following for federal procurement transactions:

(i) In the selection, award, and administration of contracts, no employee, officer or agent of the District shall participate in selection, or in the award or administration of a contract supported by federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when the employee, officer or agent; any member of his immediate family; his or her partner; or an organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The District's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Such a conflict will not arise where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. Employees must follow applicable laws, rules, and regulations in regard to conflicts of interest including, but not limited to, this Guide, the Political Reform Act, the prohibition against contractual conflicts of interest, and guidelines in the California Code of Regulations regarding acceptance of gifts. The violation of the foregoing standards by employees will subject the violator to disciplinary actions allowed by current District conflicts of interests policies and this Guide.

(ii) The District shall maintain records sufficient to detail the history of each procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(iii) A clear and accurate description of the technical requirements for the material, product or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a brand name or equal description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offerors shall be clearly stated.

(iv) All requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

8. **DISPOSITION OF SURPLUS GOODS**

(a) **Submitting Reports.** All departments shall submit to the General Manager, when requested, reports showing all materials, supplies and equipment which are no longer used or which have become obsolete or worn out.

(b) **Disposing of Surplus.** The District Board shall have authority to sell as surplus all materials, supplies, and equipment which cannot be used by any department or which have become unsuitable for District use, or to exchange the same for, or trade in the same on, new materials, supplies, and equipment. The sale of surplus materials, supplies, and equipment shall be made pursuant to rules prescribed by the District Board.

(i) Staff will determine if the item(s) is/are capital assets. Capital assets are defined by current District policy and applicable tax law.

(ii) Disposal of all capital assets must be authorized by the District Board. Non-capital assets may be disposed of by the authority of the General Manager in accordance with Section 8, Subsection d.

(c) **District Officials and Staff.** District officials and employees and their immediate families, shall not be eligible to purchase such surplus materials, supplies, and equipment.

(d) **Approved Methods of Disposition**

District assets with an estimated value of more than \$1,000 must be liquidated in a manner that ensures fair and competitive bidding by members of the public, or fair trade-in value for the District. Estimated value may be established by comparison to similar products for sale on the open market. Acceptable methods of disposition include the following.

(i) Listed sale on online auction sites specifically designed for the liquidation of public agency goods, such as Govdeals.com.

(ii) Listed sale through licensed, independent auction houses where the disposition of District goods is handled independent of District oversight.

(iii) Public sealed bidding process. A public bidding process may be utilized if it conforms to the following guidelines:

a. Items for sell must be listed via public notice in the local newspaper, or other printed or digital publication/information site in common circulation in the community, as well as on the District's website, no less than ten (10) business days prior to bid closing.

b. Sealed bids must be opened within two (2) business days after the deadline for submittal has passed, at a District office, with no less than two (2) District employees present. The date, time and location of the bid opening must be published with the initial public notice and be open to the public for viewing.

(iv) Trade-in program for the specific purpose of acquiring new, like merchandise. Trade-in value should be established as fair, if possible, by evaluating similar items for sell in the open market, or by establishing the procurement of favorable terms on the new item purchased.

(v) Items with an estimated value of less than \$1,000 may be disposed of in any manner the General Manager deems in the best interest of the District.

9. **ETHICAL STANDARDS AND FAIR PROCESSES**

(a) **Ethical Standards for Purchasing.**

(i) When placing District business with the business community, it is every employee's responsibility to follow good business and ethical practices and to adhere to the District's applicable law, policies, and procedures. This is a responsibility that should not be taken lightly as it is a duty under the law. All vendors shall be treated equally and fairly at all times by District personnel, with equal information given to each vendor who participates in a competitive situation.

(ii) District employees must discharge their duties under the this Guide in an impartial manner to foster the integrity of the District's purchasing function and to assure fair and open competition for District business and the selection of competent, responsible vendors.

(b) **Conflicts of Interest.**

(i) No employee, officer, or agent of the District may participate in the selection, award, or administration of a contract pursuant to this Guide he or she has a real or apparent conflict of interest. A conflict of interest would arise when the District employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a material benefit from a vendor considered for a contract. Subject to any applicable standards for determining whether a financial interest is not substantial or a gift is an unsolicited item of nominal value, the officers, employees, and agents of the District may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts.

(ii) California Government Code § 1090 prohibits District officers and employees from having a financial interest in any contract "made" by them or by any board or body of which they are members. Virtually all board members, officers, employees, and consultants of a public entity are considered public officials under Government Code §1090. In a case where a consultant is developing a scope of work for a future project, creation of that scope of work is considered part of the "making" of the contract and defined by Section 1090. As such the consultant would be prohibited from submitting a proposal and/or being awarded a contract for the work.

(c) **Communications Related to Solicitations.**

(i) For each solicitation, the General Manager shall designate a single point of contact (or, as appropriate, multiple specific points of contact) to communicate with the potential vendors about the solicitation. No District Board member, official, agent, or employee other than the designated District representative(s) shall communicate with potential vendors about a solicitation. The District Board and each District Board member shall not interfere with staff's

performance of duties related to any solicitation or procurement process in any way. This prohibition does not prevent the District Board from forming a standing or ad hoc committee, or citizens' advisory committee, to review or provide input on any particular procurement or type of procurement, provided that such bodies only act in an advisory capacity and do not interfere with staff's duties.

(ii) Bidders, proposers, and other potential vendors shall not contact District officials outside of the solicitation process and shall not make any efforts to unduly influence District decision-making or otherwise gain an unfair advantage outside of the solicitation process. Improper contacts or attempts to influence the selection process shall be grounds for automatic rejection.

(iii) To the maximum extent feasible, District representatives shall provide each vendor with the same information related to the solicitation. For formal bids, RFP's and RFQ's, such information shall be provided in the form of an addendum to the solicitation.

(d) **Confidentiality and Transparency.**

(i) Negotiations related to any solicitation shall be maintained with strict confidentiality. No District official or employee with knowledge of the District's bargaining position, or of the non-public position of other bidders or proposers, shall disclose such information for purposes of aiding a particular vendor, giving an advantage to a particular vendor over other bidders or proposers, or otherwise corrupting or frustrating the District's procurement efforts. This Section does not prevent the District's designated representative from engaging in negotiating tactics to obtain the best value to the District.

(ii) All bids, proposals, quotes and any related documents, including communications such as e-mails related to solicitations, are public records and shall be made available to the public upon request. However, public records may be withheld from disclosure while negotiations are pending, in accordance with applicable law.

(iii) To the extent a solicitation involves proprietary information or trade secrets, vendors should mark the proprietary information as confidential. Information that is not proprietary or a trade secret shall not be marked confidential. Unless a law specifically and expressly allows price information to be confidential, all price proposals and other financial terms shall be public.

(iv) District Board decisions on all contract awards shall strictly comply with the Ralph M. Brown Act (Government Code sections 54950, et seq.). District Board members and staff should not engage in any series of communications that result in a majority of the District Board deliberating on a proposed contract award outside of a properly noticed District Board meeting.

(e) **Disclosures.**

(i) Solicitations should require that bidders, proposers and other potential vendors disclose: (1) any ex parte contacts made by the vendors or made by District officials to the vendors outside of the official procurement process, (2) any gifts, loans or other benefits (other

than campaign contributions) made to District officials within the 12 months preceding the solicitations, (3) whether the vendor has knowledge that a District official will be financially interested in the contract. Vendors shall promptly notify the District if any District official requests any payment, contribution or any other quid pro quo in exchange for award of a contract.

(ii) Vendors may be required by the District's Conflict of Interest Code, the Political Reform Act, and/or the Fair Political Practices Commission to disclose financial interests on the Form 700. Such vendors shall comply with all disclosure requirements.

(f) **Discipline/Censure.** Violations of the ethical and fair process requirements contained in this Section shall be grounds for discipline (if by an employee) or censure (if by an elected official). Censure shall be within the policies and procedures adopted by the District and/or state law for censuring District Board members. Criminal violations, such as willful violations of Government Code section 1090, may be reported to the Riverside County District Attorney.