

RESOLUTION NO. 20-1131

**RESOLUTION OF THE BOARD OF DIRECTORS
OF THE WATER REPLENISHMENT DISTRICT OF SOUTHERN CALIFORNIA
AMENDING CHAPTER 10 OF THE WRD ADMINISTRATIVE CODE**

WHEREAS, the Water Replenishment District of Southern California ("District") has undertaken efforts to review and revise Chapter 10 of its Administrative Code ("Code"); and

WHEREAS, Chapter 10 of the Code establishes policies and procedures for procurements; and

WHEREAS, through this amendment to Chapter 10 of the Code, the District wishes to establish revised policies and procedures for the various types of procurements addressed therein; and

WHEREAS, through the adoption of this Resolution the District desires to supplant the existing Chapter 10 of the Administrative Code with the attached, consistent with the recommendation of the Administrative Committee.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors as follows:

1. The District finds that the above recitals are true and correct and hereby adopts the above recitals as if set forth herein.
2. The District with passage of this Resolution, hereby adopts the revised Chapter 10 to the District Administrative Code attached hereto as Exhibit "A".
3. The Secretary shall certify the adoption of the Resolution.

PASSED, APPROVED AND ADOPTED THIS 7th day of May,2020 by the following vote

**AYES:5
NOES:0
ABSENT:0
ABSTAIN:0**

WATER REPLENISHMENT DISTRICT OF SOUTHERN CALIFORNIA


Vera Robles DeWitt, President

ATTEST:


Secretary

APPROVED AS TO FORM:

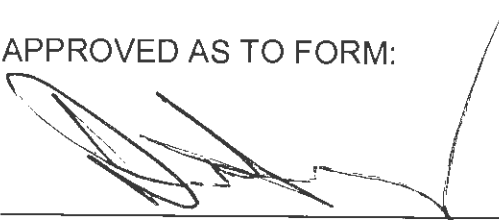

Leal Trejo APC, District Counsel

EXHIBIT "A"

10 CONSTRUCTION, MSE AND PROFESSIONAL SERVICES PROCUREMENT POLICIES AND PROCEDURES

10.1 INTRODUCTION PURPOSE AND MISSION STATEMENT

At the Water Replenishment District of Southern California ("WRD" or "District"), ongoing projects that maintain and support WRD's mission in managing and protecting local groundwater resources in the areas WRD serves are an essential component to WRD's business operations. The District will procure goods and services in connection with its operational and capital improvement requirements and the District intends to engage in procurements that ensure the appropriate quantity, quality, timeliness and price that represents the best value to the District.

10.2 GENERAL PROVISIONS

10.2.1 DEFINITIONS

- (a) **Board.** The Board of Directors of the District.
- (b) **Construction Contract.** The term Construction Contract means any written agreement between the District and any Entity pursuant to which such Entity provides construction, alteration, maintenance and/or repair related services, including, but not limited to, the construction, alteration, addition to, maintenance or repair of a project and/or facility.
- (c) **Consultant.** The Person, business, or Entity awarded a Professional Services Contract by the District.
- (d) **Contract.** For the purposes of this section, Construction Contract, Professional Services Contract, and MSE Contract shall collectively be referred to as "Contract."
- (e) **Contractor.** The Person, business, or Entity awarded a Construction Contract by the District.
- (f) **Contract Solicitation.** The term Contract Solicitation shall include any and all means by which the District seeks proposals, offers, bids or prices for the purpose of entering into a Contract totaling twenty-five thousand dollars (\$25,000.00) or more.
- (g) **Director.** A member of the Board of Directors of the District.
- (h) **District.** The Water Replenishment District of Southern California.
- (i) **DVBE.** A business enterprise that is at least fifty-one (51) percent independently owned and operated by a "Disabled Veteran" and that the daily business operations are managed and controlled by one or more

Disabled Veterans. The term "Disabled Veteran" means a veteran of the United States of America's military, naval, or air service and resident of the State of California who has a service-connected disability of at least ten (10) percent or more.

- (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, property, or essential public service. (Authority: Public Contract Code section 1102).
- (k) **Entity.** Entity refers to any natural person, corporation of any kind, partnership of any kind, business entity of any kind, organization, association, or governmental entity.
- (l) **General Counsel.** The General Counsel of the District.
- (m) **General Manager.** The General Manager of the District.
- (n) **LBE.** A business Entity that is in full compliance with all applicable licensing and tax laws of the County of Los Angeles and the municipality in which the Entity is headquartered and holds a valid business license issued by a jurisdiction in Los Angeles County that is in or within five (5) miles of the District's service boundary continuously for at least six (6) months prior to the date a bid or proposal for the award of a District Contract is due. To qualify as an LBE, an Entity must also satisfy one of the following criteria:
 - i. At least half of the Entity's full-time employees work in Los Angeles County and within five (5) miles of the District's service boundary for a minimum of sixty (60) percent of their total regular hours worked on an annual basis; or
 - ii. The Entity is headquartered in Los Angeles County and in or within five (5) miles of the District's service boundary. For the purposes of this section, "headquartered" means the location where the Entity physically conducts and manages all of its operations.
- (o) **Material, Supplies or Equipment ("MSE") Contract.** The term MSE Contract means any written agreement between the District and any Entity pursuant to which such Entity provides materials, supplies or equipment, related to the construction, alteration, addition to, maintenance or repair of a project.
- (p) **President.** The President of the Board of Directors of the District.
- (q) **Professional Services Contract.** The term Professional Services Contract shall include, but shall not be limited to, architectural, engineering, environmental, land surveying, geological, or construction

project management services that are let on the basis of demonstrated competence and on the professional qualifications necessary for satisfactory performance of the service required pursuant to Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the California Government Code.

- (r) **Responsible Entity.** A "Responsible" Entity means an Entity who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform the work called for by the Contract Solicitation.
- (s) **SBE.** An Entity independently owned and operated small business enterprise that meets the criteria set forth by the Federal Small Business Administration 8(a) Business Development Program, the State of California Small Business Program, or any other public entity or certifying organization recognized within the State of California.
- (t) **Secretary.** The Secretary of the Board of Directors.
- (u) **Subcontract.** A written agreement between a Contractor, Consultant, or Vendor and a Subcontractor for the purchase of goods, equipment, or services, including, but not limited to, design and construction, by or for the benefit of the District.
- (v) **Subcontractor.** The Person, business, or Entity awarded a Subcontract by a Contractor, Consultant, or Vendor.
- (w) **Vendor.** The Person, business, or Entity awarded the MSE Contract by the District.

10.2.2 INTENT

These Procurement Policies and Procedures shall govern all construction, professional services and MSE related Contracts entered into by the District and shall be incorporated by reference into all Contract Solicitations issued by the District and resulting Contracts entered into by the District. These Procurement Policies and Procedures are intended to implement the requirements Part 8 of Division 18 of the California Water Code, commencing with Section 60600, and to provide guidance in the carrying out of any construction, professional services and MSE related Contract Solicitations by the District.

10.2.3 ALL CONTRACTS SHALL BE IN WRITING, UNLESS SPECIFIED SOMEWHERE ELSE

All expenditures for construction, professional services and for MSE, regardless of price, shall be made pursuant to a written Contract. All District Contracts shall be in writing in a form prescribed by the General Manager and approved by the General Counsel. Each Contract shall include the relevant scope of work, duration, and terms of payment.

(Authority: Water Code § 60230.5; Government Code § 54202)

10.2.4 BOARD APPROVAL OF CONTRACTS; SIGNING OF CONTRACTS

- (a) **\$10,000.00 or more** – All Contracts and other documents executed by the District that require or authorize the District to expend ten thousand dollars (\$10,000.00) or more shall be authorized by the Board and signed by the President and the Secretary except that the Board may, by resolution for a specific expenditure, authorize the General Manager or other District representative to sign Contracts and other documents in the name of the District, not to exceed twenty-five thousand dollars (\$25,000.00).

(Authority: Water Code § 60622(a)).

- (b) **Less than \$10,000.00** – All Contracts and other documents executed by the District that require or authorize the District to expend less than ten thousand dollars (\$10,000.00) may be approved and signed by the General Manager or other District representative authorized by the Board, provided, however, that the General Manager may not execute multiple Contracts or documents on behalf of the District with the same Entity within a one-year period that cumulatively total ten thousand dollars (\$ 10,000.00) or more, without the Board's prior approval.

(Authority: Water Code § 60622(b)).

10.2.5 PROHIBITION AGAINST UNLAWFUL ACTIVITIES

Procurement practices which might result in unlawful activity including, but not limited to, rebates, kickbacks, or other unlawful consideration are prohibited, and District Officers, Directors, and employees shall not participate in a Contract Solicitation or the award of a Contract in which she or he knows or has reason to know she or he has a financial interest.

Further, no District Officer, Director or employee shall make, participate in making or in any way attempt to use his or her official position to influence a District procurement decision in which he or she knows or has reason to know he or she has a financial interest or has a family relationship with any Entity seeking a Contract with the District.

(Authority: Government Code § 87100).

10.2.6 PROOF OF INSURANCE

Bidders/proposers shall furnish satisfactory proof of all insurance required by law, by the Contract Solicitation and the Contract to the District. Such insurance shall include, without limitation, workers compensation insurance as required by California law. Failure to comply with the requirements of this Section within ten (10) calendar days of notice of the award of the Contract may cause revocation

of the award. Thereafter the Board, at its sole discretion, may award a Contract for the project as provided herein.

10.2.7 HAZARDOUS SUBSTANCES

The General Manager is authorized to remove or cause to be removed any hazardous waste from any District property or facility provided that the cost of removal related to any single occurrence does not exceed twenty-five thousand dollars (\$25,000.00). All removal of hazardous waste shall be in accordance with state and federal laws.

10.2.8 LICENSES AND CERTIFICATIONS

All Contractors, Vendors and Consultants shall possess all applicable licenses and certifications required by local, county and State agencies and as also specified or required by any Contract Solicitation and/or Contract.

10.2.9 ELECTRONIC CONTRACT SOLICITATIONS

- (a) The District will attempt to make its Contract Solicitations available on the District's internet based bid management system and/or on the District's website. However, the District reserves the right to make its Contract Solicitations available through any other means at its sole discretion. The availability of the District's Contract Solicitations will be described in its advertisement for the specific Contract Solicitation.
- (b) The District may use electronic commerce whenever practicable or cost-effective. The District may accept electronic signatures and records that are received through electronic submissions in connection with District Contract Solicitations, as permitted by law and as described in the Contract Solicitation.

10.2.10 EXCEPTIONS TO COMPETITIVE BIDDING REQUIREMENTS

The competitive bidding requirements of this Chapter 10 do not apply or may be waived in connection with the following:

- (a) Public Entities and Cooperative Funding Agreements. Contracts with public entities and cooperative funding agreements undertaken to perform the purposes and activities of the District.
- (b) Sole Source Agreements. The District is authorized to suspend the competitive bidding process and enter into a sole source agreement with a particular Contractor, Vendor or Consultants in circumstances where competitive bidding would be incongruous or would not result in any advantage to the District. In circumstances where the District enters into a sole source agreement, the Board must adopt findings which support the conclusion that competitive bids/proposals work an incongruity and

are unavailing, or that competitive bids/proposals do not produce any advantage. The Board must also approve the sole source Contract.

- (c) Emergencies. The District is authorized to suspend the competitive bidding process in the case of an Emergency when an Emergency exists involving a sudden, unexpected occurrence or discovery of a condition or circumstance 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. In case of an emergency relating to the repair or replacement of District facilities, the District shall comply with Chapter 2.5 (commencing with Section 22050) of the Public Contract Code.
- (d) Lack of Response. The competitive bidding requirements may be waived when a reasonable attempt has been made to obtain competitive bids/proposals and it has been determined that no Contractor, Vendor or Consultants can be located or when the District has an insufficient or lack of response to a Contract Solicitation.

(Authority: Water Code §§ 60602(c), 60614; Public Contract Code §§ 1102, 20168, 22050; Government Code § 53060)

10.2.11 SPLITTING OF CONTRACTS PROHIBITED

Contracts may only be divided to meet unique scheduling of a project or to accommodate necessary time frames. The District will not split or separate into smaller Contracts the purchase of supplies, materials, equipment or services for the purpose of evading the competitive bidding provisions of this Chapter. In addition, no specifications shall be drafted in such a manner as to limit competitive bidding or solicitation directly or indirectly to any one specific vendor, or any specific brand, product, thing, or service, except for those items that are approved as exempt from the competitive bidding process.

(Authority: Public Contract Code § 20116).

10.2.12 CONTRACTOR/VENDOR/CONSULTANT QUALIFICATIONS

- (a) All Contracts shall be awarded to Responsible Entities only. A prospective Contractor, Vendor or Consultant must affirmatively demonstrate its responsibility. The District reserves the right to evaluate the qualifications of Contractors, Vendors or Consultants submitting responses to Contract Solicitations.
- (b) Responsible Entity. The District shall determine whether the Entity is "responsible" by considering the following:
 - i. The ability, capacity and skill of the Entity to perform the Contract or provide the service required;

- ii. The ability of the Entity to perform the Contract or provide the service promptly, or within the time specified, without delay or interference;
- iii. The reputation and experience of the Entity;
- iv. The prior and current compliance by the Entity with applicable law;
- v. The sufficiency of the Entity's financial and staffing resources for performing the Contract or providing the service;
- vi. The quality, availability and adaptability of the supplies or contractual services to the particular use required;
- vii. The ability of the Entity to provide future maintenance and service; and
- viii. The District may include in its Contract Solicitations questions and requests for documentation for the purposes of determining whether an Entity is a Responsible Entity. Such questions may concern, without limitation, the Entity's prior experience on projects of a similar nature and size, the Entity's technical capabilities, the Entity's financial capability, and the Entity's references.

10.2.13 PRE-QUALIFICATION

Should the District determine that the scope, technical complexity, or other unusual features of a proposed project warrant the prequalification of Entity's, or that it would be in the District's best interests to pre-qualify Entity's for recurring or particular types of Contracts, the District may establish pre-qualification procedures in accordance with the provisions of Public Contract Code Section 20101.

(Authority: Public Contract Code §§ 1103, 20101).

10.2.14 DIVERSITY IN BUSINESS PROGRAM

- (a) Findings and Purpose. The District has an economic interest in leveraging the money it spends when contracting with private firms for construction, professional services, and materials, supplies and equipment to maximize competition for District Contracts and to ensure open access to contracting opportunities to businesses that reflect the diversity of the District's service area. It is, therefore, the District's policy to encourage and solicit participation in the performance of Construction, Professional Services, and MSE Contracts by individuals and businesses, including, but not limited to, SBEs, DVBES, LBEs, and Other Business Enterprises (OBEs). To attract the greatest number of qualified bidders, the District promotes and supports broad-based participation in its contracting activities in order to stimulate participation by responsible

bidders who might otherwise be prevented or discouraged from participating in the District's procurement activities.

In addition, the District's Diversity in Business Program serves the purpose of rewarding service-connected disabled veterans for their sacrifice of military service, helping to ease the transition from military service to civilian life, and attracting loyal and well-disciplined individuals to government contracting opportunities. DVBE programs are beneficial to disabled veterans, the local community, and the public agencies implementing these programs by encouraging the establishment of new businesses, providing new growth opportunities for existing businesses, developing new employment opportunities for disabled veterans, and recognizing and utilizing skills unique to veterans to encourage business success and promoting job creation.

Further, the District spends significant funds yearly contracting with private firms on Construction, Professional Services, and MSE Contracts. The funds for these Contracts are derived in large measure from taxes and fees collected from individuals and businesses within the District's regional service area. Local businesses, however, are at a competitive disadvantage in light of the current economic conditions and hardships in Los Angeles County. Current data evidences that the sales tax rate in Los Angeles County is higher than that in other surrounding jurisdictions, housing and land values are generally higher, and wage rates paid to employees are higher. Actions, such as the Diversity in Business Program, are necessary to grow the local economy and preserve the local businesses that have diligently served Los Angeles County for many years. Strategies that encourage people to buy locally are an important component of economic sustainability by reducing economic export, increasing the financial productivity of taxpayer dollars, and increasing the consumption of local goods and services. The District recognizes that sustainable procurement policies are an important step towards a sustainable economy. And by leveraging the purchasing power of the District to buy local supplies, equipment, materials, and services, the local economy is strengthened by attracting the greatest number of qualified bidders and stimulating participation by responsible bidders who might otherwise be prevented from participating in the District's procurement activities. Therefore, it is in the District's best interest to encourage and promote contracting with individuals and businesses within the District's service and immediate surrounding areas to assure the greatest level of competition and to reinvest in the local economy.

The District will tailor the Diversity in Business Program to encourage these businesses to compete for District contracting opportunities. The District will implement and apply the Diversity in Business Program in a race and gender-neutral way and in a manner that is reasonable in light of the dollar-value received in relation to such expenditure.

- (b) Setting Contract-Specific Participation Goals. The District shall review each potential Contract opportunity to determine whether and to what extent the requirements for the Diversity in Business Program should be applied. If any participation goals or bid evaluation preferences under the Diversity in Business Program are part of the procurement process for a Contract issued by the District, the District shall identify that the Diversity in Business Program applies in the solicitation for bids or proposals issued by the District and identify the participation goal and any incentive program, if any, associated with the Contract opportunity.
- (c) Meeting Contract-Specific Participation Goals. In order to be eligible to participate in an incentive program under the Diversity in Business Program, a bidder or proposer must certify in writing that either it qualifies as an SBE, DVBE, or LBE or will Contract with Subcontractors with proper SBE, DVBE, or LBE certifications and, prior to Contract award, must provide all necessary documentation to establish these qualifications. In seeking to participate in an incentive program under the Diversity in Business Program, a bidder or proposer represents to the District that neither it nor its Subcontractors obtained or retained their SBE, DVBE, or LBE status using incorrect or fraudulent information and that it is unaware of any fact or circumstance that would warrant the reconsideration or revocation of the Entity's or its Subcontractor's certification. The General Manager may, but is not required to, verify the accuracy of any such certification.

When the Diversity in Business Program applies, a bidder or proposer will receive credit toward the participation goal only up to the portion of the Contract that will be performed by a Contractor, Subcontractor, Consultant, or Vendor with a proper SBE, DVBE, or LBE certification.

The application of the Diversity in Business Program to any contracting opportunity established in this section shall in no way be construed to inhibit, limit, or restrict the right and obligation of the District or its General Manager to compare quality, fitness, qualifications, character, and responsibility of the Entities submitting bids or proposals to the District.

- (d) Applicability.

The Diversity in Business Program applies only to Contracts that involve the expenditure of funds entirely within the District's control and shall not apply to Emergency Contracts or Contracts that involve the expenditure of funds beyond the District's control, such as state and federal grant funds, unless the rules, regulations, or policies governing such funding permit a participation requirement and/or incentive program.

- (e) Failure to Maintain Compliance with Participation Commitments.

- i. Contractor, Consultant, and Vendor Compliance. A Contractor, Consultant, or Vendor shall not alter a Subcontract to an SBE, DVBE, or LBE by either substituting the SBE, DVBE, or LBE business subcontracted or the amount of the Subcontract work, without the prior written consent of the District. A Contractor, Consultant, or Vendor that fails to maintain the SBE, DVBE, or LBE commitment established for a project or Contract shall be subject to a penalty up to 10 percent (10%) of the amount of the unpaid or underpaid amount of the applicable Subcontract.

At the end of each project, before final calculation of any penalty, the District may withhold from the Contractor, Consultant, or Vendor as disputed funds up to 150 percent (150%) of the estimated amount of any penalty.

- ii. Certification Compliance. Any Contractor, Consultant, and/or Vendor who (a) obtained a classification as an SBE, DVBE, or LBE by reason of having furnished incorrect supporting information about an SBE, DVBE, or LBE certification for itself or a Subcontractor or (b) during the term of the Contract, no longer qualifies as an SBE, DVBE, or LBE or who continues to employ Subcontractors who no longer qualify as an SBE, DVBE, or LBE shall:

- a. Pay to the District any difference between the amount paid to the firm pursuant to the Contract and what the District's costs would have been if the Contract had been properly awarded;
- b. Be assessed a penalty in an amount of not more than 10 percent (10%) of the amount of the Contract involved;
- c. Be subject to having all or part of the Contract terminated, at the option of the District; and
- d. Be ineligible to transact any business with the District for a period of not less than three (3) months and not more than twenty-four (24) months as determined by the District.

Prior to the imposition of any sanction under this section, the Contractor, Consultant, or Vendor shall be entitled to a public hearing by the District and to a ten (10) day notice of the time and place thereof. The notice shall state the reason for the hearing.

The remedies available to the District under this subsection are cumulative to all other rights and remedies available to it under law.

- (g) Administration. The General Manager shall have broad discretion to promulgate rules, as approved by the Board of Directors, to implement and administer the Diversity in Business Program, including any rules relating to joint ventures between and among participants of this Program, the investigation and auditing of compliance with the provisions of the Program, and the investigation of and processes employed to adjudicate violations of a requirement of this section. Any Contractor, Consultant, Vendor or Subcontractor participating in the Diversity in Business Program shall cooperate with any audit or investigation of compliance with the Program, including keeping all project records for a period of not less than three (3) years from substantial completion of any District project on which the Contractor, Consultant, Vendor, or Subcontractor worked.
- (h) Severability. The provisions within this section are severable from each other provision. In the event that any provision of this section is found to be unconstitutional or otherwise invalid by any court of competent jurisdiction, that invalidity shall not affect the remaining provisions of this section, which can be implemented without the invalid provisions.

10.2.15 PROTESTS

- (a) The procedure and time limits set forth in this section are mandatory and the sole and exclusive remedy in the event of a protest of any Contract Solicitation. Failure to comply with the procedures shall constitute a failure to exhaust administrative remedies and a waiver of any right to further pursue the protest, including the filing of a Government Code claim or a legal proceeding. Bid protests that do not comply with the deadlines and filing requirements set forth above will not be considered. The award of any Contract by the District shall be contingent on the final resolution of any protests thereof.
- (b) An Entity may protest the award of a Contract by submitting to the District a written protest stating the grounds for the protest along with supporting documentation within five (5) business days following the District's award of the Contract.
- (c) The protest of an award shall only be considered if it is based on allegations of error during the bid/proposal evaluation if it meets all of the following conditions:
 - i. The Entity has submitted a bid/proposal that it believes to be responsive to the Contract Solicitation;
 - ii. The Entity believes that its bid/proposal meets the administrative and technical requirements of the Contract

Solicitation, proposes services of proven quality and performance, and offers a competitive cost; and

- iii. The Entity believes that the District has incorrectly selected another Entity submitting a bid/proposal for a Contract award.

(d) The protest of an award must be submitted in the following form and pursuant to the following requirements:

- i. The protest must be in writing and sent by certified, or registered mail, or overnight delivery service (with proof of delivery) or delivered personally. If the protest is hand-delivered, a receipt must be requested.
- ii. The protest shall include the name, address, telephone and facsimile numbers, and email address of the party protesting or their representative.
- iii. The title of the Contract Solicitation document under which the protest is submitted shall be included.
- iv. A detailed description of the specific legal and factual grounds of the protest and any supporting documentation shall be included.
- v. The specific ruling or relief requested must be stated.
- vi. The District, at its sole discretion, may make a decision regarding the protest without requesting further information or documents from the protestor. Therefore, the initial protest submittal must include all grounds for the protest and all evidence available at the time the protest is submitted. If the protestor later raises new grounds or evidence that was not included in the initial protest, but which could have been raised at that time, the District will not consider such new grounds or new evidence.

(e) The General Manager in consultation with the General Counsel shall investigate the grounds for the protest, examine the documentation, make reasonable inquiries as necessary, and accept or reject the protest in writing within five (5) business days of receipt.

(f) Protest determinations of the General Manager may be appealed to the Board at its next scheduled meeting, provided the appeal is filed by the end of five (5) business day of the General Manager's determination and is otherwise eligible for posting on the agenda. The President of the Board may call a special Board meeting to hear and rule on the appeal.

Upon receipt of a request for appeal, the Board will review the request and shall issue a final determination. The Board's decision shall constitute the final action of the District in connection with the protest.

- (g) If the protest is accepted, the District may, at its sole discretion, reject the bid or proposal in question and thereafter award the Contract according to this Chapter 10, reject all bids or proposals, re-solicit the project, or take any other action as may be required to promote compliance with this Chapter 10 and applicable law.

10.3 CONSTRUCTION CONTRACTS

10.3.1 COMPETITIVE BIDDING REQUIREMENTS

- (a) Construction Contract Solicitations shall include tax, delivery, and all other costs associated with the procurement.
- (b) Where the amount or value involved is less than twenty-five thousand dollars (\$25,000.00), an informal Construction Contract Solicitation may be made by the General Manager without written bid, and by informal quotes through telephone, mail or electronic inquiry, comparison of prices on file or otherwise. The District shall attempt to solicit at least three responses to such an informal solicitation, but is not required in situations where it is determined that three responses are not attainable or is otherwise determined to be unnecessary.
- (c) Where the amount of value involved is twenty-five thousand dollars (\$25,000.00) or more within any twelve (12) month period, the District shall advertise for bids by issuing a formal Construction Contract Solicitation.
- (d) The District shall advertise a Construction Contract Solicitation pursuant to the requirements of this Procurement Policy and the laws, regulations and guidelines of the State and any other applicable law. The District shall advertise a Construction Contract Solicitation in a newspaper of general circulation in Los Angeles County at least once a week for four consecutive weeks.
 - i. In addition to the requirements stated immediately above, the District may also advertise a Construction Contract Solicitation in a publication of the respective professional society or other publication reasonably calculated to reach its intended audience. The Construction Contract Solicitations may also be made by solicitation to those firms that have indicated in advance their interest in providing the applicable service, by advertising in relevant trade publications, or by notice to lists of known providers.

(Authority: Water Code § 60604).

- (e) A Construction Contract Solicitation shall set forth all of the following:

- i. That plans and specifications for the work to be done can be seen and obtained at the District's offices or through the District's website;
- ii. That the Board will receive sealed bids for the Contract in the manner specified in the Construction Contract Solicitation;
- iii. That the Contract will be awarded to the lowest responsive and Responsible Entity;
- iv. That bids will be publicly opened at a given time, place and manner specified in the Construction Contract Solicitation; and
- v. If less than the whole work provided for in the plans and specifications is to be done, the portion of the work to be performed must be particularly described in the Construction Contract Solicitation.

(Authority: Water Code §§ 60606, 60608; Public Contract Code § 10141).

- (f)** No Construction Contract Solicitation shall be prepared in a manner that limits participation to a single concern, person or Entity except as otherwise permitted by law including, without limitation, Public Contract Code Section 3400, and except upon a finding of necessity by the Board based upon the unique nature of the services or materials to be provided, public emergency, or the demonstrated absence of any alternative providers of such services or materials and the impossibility of modifying the District's requirements to avoid such limitation.
- (g)** After issuance of a Construction Contract, the District shall not change any material provision in the Construction Contract except by issuance of a formal written addendum.
- (h)** Bids shall be opened in public at the time and place stated in the Construction Contract Solicitation. Two (2) District employees and/or representatives shall be present at the bid openings. As each bid is opened, the bidder's name and bid amount shall be announced. At the conclusion of the bid opening, the name of the apparent low bidder and its bid amount shall be announced. A tabulation of all bids received shall be open for public inspection during regular business hours for a period of not less than thirty (30) calendar days after the bid opening.
- (i)** Following the public opening of bids, the Board may do any of the following:
 - i. Let the work to the lowest Responsible Entity;
 - ii. Reject any or all bids and re-advertise; or
 - iii. Proceed to construct the work under its own superintendence.

(Authority: Water Code §§ 60612).

- (j) After bids are opened, but before a Construction Contract is awarded, the District shall verify that the successful bidder is properly licensed as a Contractor pursuant to the Contractors State License Law to perform the work for which it submitted a bid at the time its bid was submitted. This duty may be discharged by contacting the Contractors State License Board of the Department of General Services' Department of Consumer Affairs concerning the successful bidder's Contractor's license status and classification and making a written record of such inquiry.

10.3.2 PAYMENT AND PERFORMANCE BONDS

- (a) Every Construction Contract awarded by the District shall provide for the filing with the District of separate payment and performance bonds in accordance with the provisions of Water Code § 60620 and Civil Code Sections 9550, et seq. Failure to comply with the requirements of this Section within ten (10) calendar days of award of the Construction Contract shall cause revocation of the award and the bidder shall forfeit its bid security. Thereafter, the Board at its discretion may award the Contract for the project as provided herein.

(Authority: Water Code § 60620; Civil Code § 9550 et seq.)

- (b) The District must approve any payment bond before it is accepted. Any payment bond filed with the District shall be in a form approved by the General Manager and the General Counsel and may not be approved unless it strictly conforms with the requirements of California Civil Code Section 9550 et seq., is issued by an admitted surety insurer, and complies with any additional requirements set forth in the Construction Contract Solicitation.

- i. The District shall investigate the sufficiency of any payment bond and the surety thereon before it is accepted. The District's duty to investigate may be discharged by: (1) verifying that the payment bond is in the form previously approved by the General Manager and the General Counsel, (2) verifying with the State of California Department of Insurance or other governmental agency charged with maintaining such information that the surety on the bond is an admitted surety insurer, and (3) ensuring that the payment bond is in the proper amount and complies with any additional requirements set forth in the Construction Contract Solicitation.

- (c) The District must approve any performance bonds and shall be in a form approved by the General Manager and the General Counsel conditioned on the full and faithful performance of the Contract, in an amount not less than twenty-five percent (25%) of the total amount of the successful bidder's bid and shall be issued by an admitted surety insurer.

(Authority: Water Code § 60620; Civil Code § 9550 et seq.).

10.3.3 WITHDRAWAL OF BIDS

- (a) Bids may be withdrawn by bidders at any time before the deadline for submission of bids set forth in the applicable Construction Contract Solicitation. To be effective, written notice of such withdrawal must be received by the District before the deadline for submission of bids. Any such withdrawal will be without prejudice to the submission of a new bid by the same bidder, so long as the bid is timely submitted and complies with all provisions of the Construction Contract Solicitation and these Procurement Policies and Procedures.
- (b) Bids may not be changed or withdrawn after the deadline for submission of bids, except that the District may consent to relieve a bidder from its bid, without forfeiting its bid security, on the grounds of mistake provided that the bidder establishes to the satisfaction of the District that:

 - i. A mistake was made;
 - ii. The bidder gave the public entity written notice within five (5) working days after the opening of the bids of the mistake, specifying in the notice in detail how the mistake occurred;
 - iii. The mistake made the bid materially different from what the bidder intended it to be; and
 - iv. The mistake was made in filling out the bid and not due to error in judgment or to carelessness in inspecting the site of the work, or in reading the plans or specifications.
- (c) If the District consents to relieve a bidder of its bid after the deadline for submission of bids without forfeiting its bid security, the District shall prepare a report documenting that the bidder has satisfactorily established each of the four elements set forth in the immediately preceding subparagraph. The report shall thereafter be available for inspection as a public record.

(Authority: Public Contract Code §§ 5100, et seq.)

10.3.4 INTERPRETATION OF BIDS

In the event of any ambiguity in a bid, the District shall resolve such ambiguity as follows: unit prices shall govern over any extension thereof by the bidder, and prices for individual bid items or elements shall govern over the summation thereof by the bidder. The District may correct a bid by multiplying the bidder's unit price for a particular bid item by the applicable quantity, and by adding the bid items together to obtain the bidder's total bid. Bids so construed shall be deemed to be the bid submitted by the bidder. If an ambiguity in a bid cannot be resolved by the foregoing method, the bid shall be deemed non-responsive and rejected by the District.

10.3.5 BID SECURITY

- (a) All bids for Construction Contracts shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:
 - i. Cash;
 - ii. A cashier's check made payable to the District;
 - iii. A certified check made payable to the District; or
 - iv. A bidder's bond executed by an admitted surety insurer, made payable to the District.

(Authority: Water Code § 60610).

- (b) Forfeiture of Bid Security. If the bidder who has been determined by the District to be the lowest responsive and Responsible Entity fails or refuses to enter into a Contract for the project in question, or otherwise refuses to be bound by its bid, that bidder's bid security shall, at the District's discretion, be forfeited to the District upon three (3) calendar days written notice by the District, regardless of whether the Board awards the Contract in question to another bidder, re-advertises for bids, or abandons the project altogether, subject only to the provisions of these Procurement Policies and Procedures governing withdrawal of bids. The amount of the forfeiture shall be limited to the amount of the bid security or the difference between the rejected bid and the next lowest responsive bid accepted by the District, whichever is lower. Thereafter, the Board may at its discretion award a Contract for the project as provided in these Procurement Policies and Procedures.

- (c) Return of Bid Security. Upon an award of a Construction Contract to the lowest responsive and responsible bidder, the security of any unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the District beyond sixty (60) calendar days from the time the award is made.

(Authority: Water Code §§ 60610, 60612).

10.4 MATERIALS, SUPPLIES AND EQUIPMENT ("MSE") CONTRACTS

10.4.1 COMPETITIVE BIDDING

- (a) MSE Contract Solicitations shall include tax, delivery, and all other costs associated with the procurement.
- (b) Where the amount or value involved is less than twenty-five thousand dollars (\$25,000.00), an informal MSE Contract Solicitation may be made by the General Manager without written bid, and by informal quotes through telephone, mail or electronic inquiry, comparison of prices on file or otherwise. The District shall attempt to solicit at least three responses

to such an informal solicitation, but is not required in situations where it is determined that three responses are not attainable or is otherwise determined to be unnecessary.

- (c) Where the amount of value involved is twenty-five thousand dollars (\$25,000.00) or more within any twelve (12) month period, the District shall advertise for bids by issuing a formal MSE Contract Solicitation.
- (d) MSE Contract Solicitations shall provide a minimum of ten (10) calendar days for response before the date of opening the bids. The MSE Contract Solicitation shall be published at least two (2) times, not less than five (5) calendar days apart, in an adjudicated newspaper of general circulation, printed and published in Los Angeles County. The MSE Contract Solicitation shall distinctly state the project to be done.

(Authority: Public Contract Code § 20164).

- i. In addition to the advertising requirements stated immediately in the section above, the District may also advertise a MSE Contract Solicitation in a publication of the respective professional society or other publication reasonably calculated to reach its intended audience. The MSE Contract Solicitations may also be made by solicitation to those firms that have indicated in advance their interest in providing the applicable service, by advertising in relevant trade publications, or by notice to lists of known providers.
- (e) No MSE Contract Solicitation shall be prepared in a manner that limits participation to a single concern, person or Entity except as otherwise permitted by law including, without limitation, Public Contract Code Section 3400, and except upon a finding of necessity by the Board based upon the unique nature of the services or materials to be provided, public emergency, or the demonstrated absence of any alternative providers of such services or materials and the impossibility of modifying the District's requirements to avoid such limitation.
- (f) After issuance of a MSE Contract Solicitation, the District shall not change any material provision in the MSE Contract Solicitation except by issuance of a formal written addendum.
- (g) Bids shall be opened in public at the time and place stated in the notice inviting bids. Two (2) District employees and/or representatives shall be present at the bid openings. As each bid is opened, the bidder's name and bid amount shall be announced. At the conclusion of the bid opening, the name of the apparent low bidder and its bid amount shall be announced. A tabulation of all bids received shall be open for public inspection during regular business hours for a period of not less than thirty (30) calendar days after the bid opening.

- (h) For MSE Contracts, following the public opening of bids, the Board may do any of the following:
- i. Let the work to the lowest Responsible Entity; or
 - ii. Reject any or all bids, and thereafter, either re-advertise for bids or solicit offers from not less than three Responsible Entities; or
 - iii. Upon receipt of an offer for a lower price than that specified in the lowest rejected bid, the Board may enter into a Contract for the furnishing of the materials, supplies or equipment with the Person who has offered them at the lowest price.

(Authority: Water Code §§ 60616 and 60618).

10.4.2 WITHDRAWAL OF BIDS

- (a) Bids may be withdrawn by bidders at any time before the deadline for submission of bids set forth in the applicable MSE Contract Solicitation. To be effective, written notice of such withdrawal must be received by the District before the deadline for submission of bids. Any such withdrawal will be without prejudice to the submission of a new bid by the same bidder, so long as the bid is timely submitted and complies with all provisions of the MSE Contract Solicitation and these Procurement Policies and Procedures.
- (b) Bids may not be changed or withdrawn after the deadline for submission of bids, except that the District may consent to relieve a bidder from its bid, without forfeiting its bid security, on the grounds of mistake provided that the bidder establishes to the satisfaction of the District that:
- i. A mistake was made;
 - ii. The bidder gave the public entity written notice within five (5) calendar days after the opening of the bids of the mistake, specifying in the notice in detail how the mistake occurred;
 - iii. The mistake made the bid materially different from what the bidder intended it to be; and
 - iv. The mistake was made in filling out the bid and not due to error in judgment or to carelessness in inspecting the site of the work, or in reading the plans or specifications.
- (c) If the District consents to relieve a bidder of its bid after the deadline for submission of bids without forfeiting its bid security, the District shall prepare a report documenting that the bidder has satisfactorily established each of the four elements set forth in the immediately preceding subparagraph. The report shall thereafter be available for inspection as a public record.

(Authority: Public Contract Code §§ 5100, et seq.)

10.4.3 INTERPRETATION OF BIDS

In the event of any ambiguity in a bid, the District shall resolve such ambiguity as follows: unit prices shall govern over any extension thereof by the bidder, and prices for individual bid items or elements shall govern over the summation thereof by the bidder. The District may correct a bid by multiplying the bidder's unit price for a particular bid item by the applicable quantity, and by adding the bid items together to obtain the bidder's total bid. Bids so construed shall be deemed to be the bid submitted by the bidder. If an ambiguity in a bid cannot be resolved by the foregoing method, the bid shall be deemed non-responsive and rejected by the District.

10.4.4 USED EQUIPMENT

The General Manager is authorized to purchase on behalf of the District any such item of used equipment in an amount not to exceed twenty-five thousand dollars (\$25,000.00), if it is determined that a savings can be realized only by effectuating such purchase prior to the next regular meeting of the District's Board. Any such purchase in excess of ten thousand dollars (\$10,000.00) shall promptly be reported to the Board.

10.5 PROFESSIONAL SERVICES CONTRACTS

10.5.1 Request for Proposal

- (a) Before making a Professional Services Contract, the District may solicit a Request for Proposal for such services. However, a Request for Proposal is not required for Professional Services Contracts.
- (b) If it is determined that a Request for Proposal will be issued for a Professional Services Contract, the Request for Proposal shall be advertised by any means reasonably calculated to reach its intended audience.
- (c) Evaluation of Request for Proposals and Award of Contracts for Professional Services.
 - i. Upon review and receipt of the Proposal from interested firms, the District shall select therefrom, in order of preference, based upon criteria established by the District, from no less than three of the firms deemed to be most highly qualified to provide the services required. The District shall then conduct discussions with the selected firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services.

- ii. The District shall thereafter negotiate a Contract with the firm ranked highest by the District at a compensation which is fair and reasonable to the District. If the District is unable to negotiate a satisfactory Contract with the highest ranked firm at a price that is fair and reasonable to the District, negotiations with such firm shall be formally terminated. The District shall then undertake negotiations with the second highest ranked firm. Failing accord with the second highest ranked firm, negotiations with such firm shall be formally terminated, and negotiations commenced with the third highest ranked firm.
- iii. Should the District be unable to negotiate a satisfactory Contract with any of the selected firms, the District shall select additional firms in order of their competence and qualifications and continue negotiations until an agreement is reached.
- iv. Upon negotiating a Contract with the highest ranked firm, the Contract shall be submitted to the Board for approval.

(Authority: Water Code § 60602(c)(6); Government Code § 4525 et seq.)

10.5.2 Request for Qualifications

- (a) The District may issue a Request for Qualifications for the purpose of developing a list of qualified Consultants to provide professional services for future work. However, a Request for Qualifications is not required for Professional Services Contracts.
- (b) A Request for Qualifications shall be advertised by any means reasonably calculated to reach its intended audience.
- (c) Upon review and receipt of the qualifications from interested Consultants, the District shall develop the list of qualified Consultants based upon criteria established by the District.
- (d) The District may choose a Consultant from the qualified list to perform a specific scope of services as needed. The scope of work and terms and conditions for the services shall be negotiated by staff, and approved by District Counsel and shall be presented to the Board for consideration.